



## TERM SHEET

### Private Equity Acquisition of Company

This term sheet (the "Term Sheet") is intended to describe the general terms and conditions of a proposed acquisition of XYZ Company, a company organized under the laws of [\_\_\_\_\_] ("XYZ"), and certain of its affiliates by ABC, a [\_\_\_\_\_] organized under the laws of [\_\_\_\_\_] ("ABC") and is subject to the negotiation and execution of a definitive purchase and sale agreement, a definitive escrow agreement and any other agreement that may be necessary to effect the transaction (together, the "Transaction Documents"). Except for sections below entitled "Confidentiality", "Dispute Resolution", "Exclusivity", "Expenses" and "Governing Law", which are intended to be, and are, binding agreements between the parties, this Term Sheet is not a binding agreement on ABC or the Existing Shareholders (as defined below) to proceed with the transaction and will not impose any obligation or liability on any such party if the transactions contemplated herein are not consummated. Any such agreement will be made only if and when definitive Transaction Documents containing such agreements are agreed to and executed.

1. Parties: ABC and Mr. [\_\_\_\_\_] , Mr. [\_\_\_\_\_] and Mr. [\_\_\_\_\_] , as the individual shareholders of XYZ (together, the "Existing Shareholders" with a current shareholding of [\_\_]%, [\_\_]% and [\_\_]% respectively in XYZ, and together with ABC, the "Parties"). The obligations of the Existing Shareholders herein and in the Transaction Documents will be joint and several.
2. Transaction: ABC will purchase (the "Transaction") (i) 100% of the fully-diluted capital stock of XYZ, XYZ1 and XYZ2 and any other entity (together, the "XYZ Group Companies") engaged in the business of the XYZ Group Companies or necessary to continue the XYZ Group Companies' business in accordance with the business plan presented by the Existing Shareholders to ABC on [\_\_\_\_\_] (the "Business Plan") and (ii) all other assets owned by the Existing Shareholders that are used in, related to or necessary for the business that is conducted by the XYZ Group Companies, including associated trademarks, trade names, brand names (such as "XYZ", "XYZ2", "XXX", "YYY", "ZZZ" and any other products sold by the XYZ Group Companies), goodwill, customer lists, contracts, warranties, leases, rights, arrangements and other assets.
3. Purchase Price: Subject to ABC's obtaining at closing (the "Closing") debt financing of at least the equivalent of \$[\_\_\_] on terms acceptable

to ABC in its sole discretion (the “Acquisition Financing”), the purchase price (the “Purchase Price”) to be paid by ABC to the Existing Shareholders (pro rata based on each such Shareholder’s interest in the XYZ Group Companies as of the Closing Date) will equal \$[\_\_\_], of which:

- (i) \$[\_\_\_] will be paid on the Closing Date, subject to a reduction for increased salary expenses in an amount to be agreed by the Parties. The Parties will negotiate the amount of the reduction once ABC has completed its due diligence of the XYZ Group Companies. The Parties acknowledge that the initial estimate of the amount of the reduction is \$[\_\_\_], calculated as follows: the increased expenses of XYZ if its current salary mechanisms were not used during [\_\_\_] (initially estimated at \$\_\_\_\_\_ ) multiplied by a purchase multiple of [\_\_\_]; and
- (ii) \$[\_\_\_] will be held in escrow as described in the section entitled “Escrow” below.

The Parties agree that they will structure the payments of the Purchase Price in a tax efficient manner and that any such structure will be subject to the mutual agreement of the Parties. Similarly, although the Parties currently intend to structure the Transaction as the purchase of the stock of the XYZ Group Companies, the Parties may consider structuring the Transaction in a different manner, including a purchase of all of the assets of the XYZ Group Companies, subject to tax, legal and other considerations.

4. Escrow:

\$[\_\_\_] of the Purchase Price will be placed in a bank account in the names of the Existing Shareholders and an independent escrow agent (satisfactory to both Parties) will release funds in such bank account, including any interest earned thereon, to the Existing Shareholders as follows:

- (i) An amount to be agreed upon by the Parties prior to the execution of the Transaction Documents (although initially agreed to be \$[\_\_\_], pending due diligence by ABC), which amount will be released [\_\_\_] months after the Closing Date if there are no claims arising out of the Transaction as of such date (including claims for breach of the representations and warranties described in the section on claims below).

(ii) An amount to be agreed upon by the Parties prior to the execution of the Transaction Documents (although initially agreed to be \$[\_\_\_], pending due diligence by ABC), which amount will be released [\_\_\_] months after the Closing Date if there are no claims arising out of the Transaction as of such date (including claims for breach of the representations and warranties described in the section entitled “Limitation on Claims” below).

(iii) \$[\_\_\_] less the EBITDA shortfall amount (as defined below, the “ESA”) released on the date which is [\_\_\_] days following the receipt by ABC of complete and accurate financial statements of the XYZ Group Entities for the fiscal year ended [\_\_\_\_\_], in accordance with GAAP standards in a form satisfactory to ABC, as audited by, and with a clean opinion from, an internationally recognized accounting firm (satisfactory to both Parties) (the “Audited Financials”). The ESA will represent a reduction in Purchase Price if the XYZ Group Companies fail to achieve an EBITDA of \$[\_\_\_] (less any such reduction for increased salary expenses as described under 3(i) above) for the year ending [\_\_\_\_\_], as indicated in the audited financials described above. The ESA will be equal to:

(x) the difference between \$[\_\_\_] (less any such reduction for increased salary expenses as described under 3(i) above) and the XYZ Group Companies’ [\_\_\_] EBITDA (less any such reduction for increased salary expenses as described under 3(i) above) multiplied by

(y) [\_\_\_].

For the avoidance of doubt, (i) if there is no ESA, the maximum amount which will be released under this clause will be \$[\_\_\_], plus any interest earned thereon; and (ii) if the ESA exceeds \$[\_\_\_], the Existing Shareholders will not be liable to ABC for any additional amounts.

(iv) A amount to be agreed upon by the Parties prior to the execution of the Transaction Documents (although initially agreed to be approximately \$[\_\_\_], pending due diligence by ABC and subject to any difference in Working Capital upon receipt of the Audited Financials), which amount will represent the Excess

Working Capital in the XYZ Group Companies' accounts on the Closing Date. As used herein, "Excess Working Capital" means the amount of working capital in excess of that required by the XYZ Group Companies to conduct their business in the manner contemplated by the Business Plan as determined by the Parties prior to the execution of the Transaction Documents. Any such Excess Working Capital shall be released to the Shareholders on the date which is [\_\_\_\_] days following the receipt by ABC of the Audited Financials.

5. Non-Compete: The Existing Shareholders will agree not to, directly or indirectly, enter into, encourage, assist, work, consult or own any interest in a competing business involving the [\_\_\_\_\_] in [\_\_\_\_\_] for a period of [\_\_] years following the Closing Date without the written consent of ABC. The Existing Shareholders will also agree not to solicit any employee, customer or vendor of the XYZ Group Companies for such [\_\_]-year period.
6. Due Diligence: The Existing Shareholders will give, and will cause the XYZ Group Companies to give, ABC and ABC's accountants, attorneys, partners, consultants, financing sources and all other representatives and agents of ABC full access to the XYZ Group Companies' management, consultants, accountants, advisors and all other representatives, and to all properties, operating and financial data, records, agreements and other information relating to the Transaction, to the extent reasonably requested by ABC. The Existing Shareholders will use their best efforts to keep ABC informed of any material changes that have occurred or may occur affecting the business, results of operations, condition (financial or otherwise) or prospects of the XYZ Group Companies.
7. Confidentiality: The Parties agree to extend the Confidentiality Agreement dated [\_\_\_\_\_] to [\_\_\_\_\_].
8. Exclusivity: During the period from the date of this Term Sheet to the earlier of the Closing Date and [\_\_\_\_\_], the Existing Shareholders will not, and will cause the XYZ Group Companies not to, directly or indirectly, other than in the ordinary course of business, or as contemplated by this Term Sheet, (i) solicit, initiate or encourage any inquiries, discussions or proposals from any other person or entity relating to a possible acquisition of any part of the business or of the capital stock, securities or assets of any of the XYZ Group Companies,

(ii) continue, solicit, encourage or enter into negotiations or discussions relating to any such possible acquisition, (iii) furnish to any other person or entity any information (not already in the public domain) relating to any of the XYZ Group Companies or the Transactions contemplated hereby, except as required by applicable law, or (iv) enter into or consummate any agreement or understanding providing for any such possible acquisition. ABC agrees to inform XYZ within a reasonable period of time following the failure to obtain the necessary Acquisition Financing, or the necessary approvals of ABC's investment committee, and such notice will terminate the exclusivity period described herein.

9. Sale of XYZ3 Assets: Pending due diligence by ABC, the Parties agree that if it is determined by ABC, in its discretion, that the assets located at XYZ3 (consisting primarily of a building and equipment being used by the Shareholders for business unrelated to XYZ) are not necessary for XYZ Group Companies to conduct its business in the manner contemplated by the Business Plan, then XYZ will sell 100% of such assets at fair market value, as determined by an independent appraiser mutually selected by Mr. [\_\_\_\_\_] and ABC. The Parties agree to implement such transfer as soon as reasonably practicable after the Closing Date.
10. Limitation on Claims: The Existing Shareholders agree to pay and/or reimburse ABC and its affiliates for any claims and/or liabilities (including, but not limited to, reasonable attorneys' fees and the costs and expenses of defending any claims) arising out of, relating to or based upon allegations of:
- (i) any inaccuracy or breach of any representation or warranty of the Existing Shareholders contained in the Transaction Documents;
  - (ii) any breach of any covenant contained in this Term Sheet, and the Transaction Documents;
  - (iii) any liability or cost arising out of the manner in which the XYZ Group Companies compensate their employees and other persons who work or have worked for the XYZ Group Companies; and
  - (iv) past taxes (including interest, penalties, etc.) imposed in respect of the income, business, property or operations of the XYZ Group Companies, or for which any Existing Shareholder may otherwise be liable for the

period up to and including the Closing Date.

ABC, in its sole discretion, may permit any of the Existing Shareholders to participate, at his own expense, in any defense of, or settlement negotiations with respect to, any third party claims.

Any claim arising out of the inaccuracy or breach of any representation or warranty contained in the Transaction Documents must be made prior to the second anniversary of the Closing Date.

The maximum amount of claims that the Existing Shareholders may be liable to ABC for a breach or inaccuracy of any representation or warranty will be \$[\_\_\_], as described in the section entitled "Escrow" above, except to the extent that such claims arise from a breach of certain representations or warranties to be identified in the Transaction Documents, or fraud.

11. Closing Conditions:

The obligations of ABC to complete the Transaction contemplated herein will be subject, among other things, to the satisfaction of the following conditions:

- (v) satisfactory completion of legal, accounting, tax, financial, commercial and environmental due diligence, in ABC's sole discretion;
- (vi) negotiation, execution and delivery of satisfactory and mutually acceptable Transaction Documents;
- (vii) receipt of Acquisition Financing as described in 3 above;
- (viii) absence of any material adverse change in the business, results of operations, condition (financial or otherwise) or prospects of the XYZ Group Companies or any of its subsidiaries;
- (ix) absence of any material adverse change in the financial markets or economic conditions in [\_\_\_\_\_];
- (x) receipt of all necessary governmental, board of directors, investment committee and third-party approvals;
- (xi) absence of any action or proceeding against the Existing Shareholders, the XYZ Group Companies or

ABC that may affect the Transaction or the value of ABC's investment;

- (xii) true and correct representations and warranties as of the Closing Date;
- (xiii) employment contracts with key managers of XYZ satisfactory to ABC;
- (xiv) as of the close of business on the business day before the Closing Date, combined working capital of the XYZ Group Companies that is sufficient to continue the business as contemplated by the Business Plan as determined by ABC in its sole discretion;
- (xv) as of the Closing Date, no indebtedness outstanding in any form, other than the Acquisition Financing and as agreed between the Parties; and
- (xvi) the forgiveness of all Existing Shareholder loans, and the receipt of releases from the Existing Shareholders in respect of any claims by the Existing Shareholders against the XYZ Group Companies.

- 12. Representations and Warranties: The Transaction Documents will contain representations and warranties that are customary for transactions of this size and nature, including, without limitation, the representations and warranties listed in Annex I hereto.
- 13. Governing Law: The Transaction Documents and this Term Sheet will be governed by the laws of [\_\_\_\_\_].
- 14. Dispute Resolution: Any controversy, conflict or dispute of any nature arising out of or relating to the Transaction contemplated herein will be settled exclusively and finally by arbitration governed by ICC rules carried out in [\_\_\_\_\_]. The Existing Shareholders and ABC will each select one arbitrator to represent them, and the two arbitrators together will select a third arbitrator for the proceedings.
- 15. Expenses: Each Party will bear its own expenses, however, if ABC advises the Existing Shareholders prior to [\_\_\_\_\_] that it has received all necessary approvals, but the Closing does not occur by [\_\_\_\_\_], then the Existing Shareholders will reimburse ABC for its reasonable documented out-of-pocket expenses up to a total of \$[\_\_\_\_\_].

16. Closing Date: [\_\_\_\_\_].

## ANNEX I

### REPRESENTATIONS AND WARRANTIES

The representations and warranties to be contained in the Transaction Documents will be in form and substance customary and appropriate for a transaction of a similar size and nature. Without limiting the generality of the foregoing, it is expected that the representations and warranties will address the following topics:

- *Organization.* Corporate organization, qualification and good standing of the XYZ Group Companies and any subsidiaries.
- *Authorization.* Corporate power of and due authorization of definitive Transaction Documents by the Existing Shareholders; due execution, delivery and legal, valid, binding and enforceable nature of Transaction Documents; receipt of all necessary approvals.
- *Consents; No Conflicts.* Identification of all necessary consents, approvals or waivers in connection with the Transaction; no violation of law or material contract; etc.
- *Company Reports; Financial Statements.* Accuracy and completeness of financial statements; accuracy and collectibility of receivables; etc.
- *No Undisclosed Liabilities.* No material liabilities other than as disclosed in financial statements or otherwise disclosed to ABC.
- *Absence of Certain Changes.* Absence of material changes or circumstances with respect to the XYZ Group Companies and any subsidiaries since the date hereof.
- *Title to Properties.* Good, valid and free title to real and material personal property; validity of leases other than as disclosed.
- *Intellectual Property.* Validity of intellectual property owned or used by the XYZ Group Companies; no infringement by the XYZ Group Companies or upon the XYZ Group Companies' intellectual property; no challenge to ownership by the XYZ Group Companies of its intellectual property.
- *Litigation.* No litigation commenced or threatened against, or affecting, the XYZ Group Companies, except as disclosed or as is not likely to have a material adverse effect.
- *Compliance with Laws; Regulatory Approvals.* Compliance by the XYZ Group Companies with applicable laws and regulations, including certain environmental laws and foreign corruption laws; adequacy of licenses to conduct business; regulatory approvals required for Transaction.



- *Taxes.* Customary representations with respect to tax liability and reporting of XYZ; status of audits and open returns; tax sharing agreements; tax withholdings; status of tax attributes.
- *Employment Matters.* Customary representations and warranties with respect to XYZ's employee benefit plans, employment agreements, option plans, etc.
- *Environmental Matters.* Compliance with applicable environmental laws and regulations; receipt of all necessary regulatory approvals and licenses for conduct of business; no conditions or circumstances which are reasonably likely to give rise to environmental liabilities.
- *Contracts.* Identification and status of material contracts; status of relationships with counter parties under material contracts; enforceability of material contracts; no breach by any party to material contract.
- *Indebtedness.* Identification of material funded debt or guarantees; no default under funded debt or guarantees.
- *Relations with Suppliers and Customers.* Status of XYZ's relationships with its suppliers and customers.
- *Corporate Controls.* No unlawful payments to government officials or similar activities.
- *Insurance.* Adequacy and enforceability of insurance maintained by XYZ.
- *Accuracy of Information.* Accuracy and completeness of information provided by XYZ to ABC and that contained in the Transaction Documents.
- *Working Capital.* Minimum working capital amount to be agreed prior to entering into the Transaction Documents.
- *EBITDA.* Earnings before interest, taxes, depreciation and amortization as defined under GAAP and specifically an amount for fiscal year ending [\_\_\_\_\_].