

# VC - Sample Term Sheet

Between

[Investors] ("Investors")

and

[Founders] ("Founders")

(The Investors and the Founders are jointly referred to as the "Shareholders")

and

[The Company] ("Company")

(The Investors, the Founders and (where applicable) the Company are jointly referred to as the "Parties")

## A. The Investment

1. **Investment amount:** [Total amount.] ("Investment")

2. **Pre-money valuation:** [Amount.]<sup>1</sup>  
The pre-money valuation (fully diluted, including incentive programme(s) mentioned in clause 12, and fully converted) and the consequential pricing terms of the preference shares is subject to satisfactory due diligence and no material adverse change occurring in respect of the Company from the date of signature by all Parties of this Term Sheet until the date of the signing of final shareholders' and investment agreements by the Parties ("Signing") and the execution of all transactions contemplated in said agreements ("Closing").

3. **Company structure prior to Investment:** *Share classes, warrants etc.  
Pre-Investment cap table.*

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<sup>1</sup> If later tranches have been agreed pre-money valuation may vary in such tranches.

- 4. Investment structure, type of securities and subscription prices:**
- Whether the Investment is comprised of one or more tranches ("Tranche 1", "Tranche 2", etc.)*
- Subscription price for Tranche 1 ("Subscription Price 1"), Tranche 2 ("Subscription Price 2"), etc.*
- Whether payment of Tranche 2 etc. is subject to the Company's fulfilment in due time of Milestones.*
- Whether a new class of shares is issued and the main terms of such shares, see below.*
- Whether convertible loans are issued.*
- If convertible loans are issued:*
- The convertible loan shall include terms regarding interest, conversion price, adjustments in the event of increases of the share capital of the Company below market price etc., [anti-dilution rights], right to convert prior to a Liquidity Event etc., see below.
- Post-Investment cap table.*
- 5. [Milestones]:**
- Specification of individual milestones ("Milestones") and timing.*
- In the event the Parties disagree as to whether the Milestones have been achieved, the Party(ies) disagreeing with the decision of the Company's board of directors (the "Board") regarding such Milestone(s) shall be entitled to request that an independent expert is appointed with the view to reach a final decision as to whether the Milestones are met. The Parties agree to accept the decision of such expert. All costs related thereto shall be paid by the Party whose opinion is overruled by the expert.
- [Alternative:*
- If doubt arises whether the individual Milestones have been met, a majority of [majority] of the Investors shall be sufficient to make a decision that all Parties shall accept.]
- To the extent the Company fails to achieve Milestones as set out above, the Investors shall in their sole discretion have a right (but no obligation) to subscribe Tranche [2] at [Subscription Price 1].
- 6. Conditions precedent to Signing of the Investment Agreement:**
- The Investment is subject to
- (i) approval from the Investors' respective decision making bodies as well as completion by the Investors of satisfactory financial, technical, management, commercial, IPR, tax and legal due diligence reviews;
  - (ii) management and key employees entering into employment agreements in form and substance satisfactory to the Investors;
  - (iii) agreement on the business plan;
  - (iv) agreement on the structure of the organisation, including the identification of the first

- chairman of the Board;
- (v) transfer of all relevant intellectual property rights (“IPR”) used by the Company from the Founders (and others) to the Company, such IPR to be further identified during the due diligence investigations; and
- (vi) Further conditions.

**7. Closing:** *Main rule: Signing and Closing to occur simultaneously.*

- 8. Further conditions to Closing [if different from date of Signing]:**
- (i) No event, change or development which has or is reasonably likely to have a material adverse effect on the Company shall have occurred from the date of Signing until the date of Closing;
  - (ii) Representations and Warranties are true as of Closing, see below;
  - (iii) Fulfilment by the Founders and/or Company of such other conditions as may be set out in the final legal documentation; and
  - (iv) Further conditions.

**9. Due diligence:** The Founders and the Company’s advisors shall participate to the extent necessary in order to enable the Investors to carry out the due diligence reviews, including but not limited to giving the Investors and their advisors full access to all information and any relevant employees of the Company.

## B. Conditions

**1. Use of proceeds:** *Description of use of proceeds.*

**2. Exit:** The joint objective of the Shareholders is to increase the value of the shares of the Company and to realise such value at an Exit before [date].

An Exit is an event whereby all or a material part of the value of the Company is realised in consideration for cash or securities. An Exit may be carried out in various ways, including but not limited to:

- (i) an initial public offering of the Company’s shares (“IPO”);
- (ii) a trade sale of all or substantially all of the Company’s shares (for cash or share consideration) including a sale pursuant to the tag-along or drag-along provisions, see below;
- (iii) a sale or licensing of the Company’s activities, including a sale or licensing of all or substantially all of the Company’s assets or IPR (with subsequent shareholder

distribution);

- (iv) a merger; or
- (v) a combination of the above.

**3. Liquidation Preference:** In case of an Exit, liquidation, dividend payment, dissolution or winding up of the Company ("Liquidity Event"), the proceeds (cash, shares or other considerations) shall be distributed as follows:

- (i) Firstly, proceeds up to [x times] the subscription price per preference share plus interest hereon of [percentage] p.a. ("hurdle") from the date of payment of the subscription price.
- (ii) [Catch-up/no catch-up for ordinary shares].
- (iii) Any remaining proceeds shall be distributed pro rata amongst all Shareholders (according to nominal share values).

**4. Dividend payments:** Considering the objective of the Investment, neither the Founders nor the Investors have any expectations of future dividend payments from the Company, except in connection with an Exit according to clause 2 (iii) above or partial divestiture of Company assets or upon liquidation of the Company.

In case of any dividend payments from the Company, the Investors shall be entitled to a preference as if a Liquidity Event had occurred.

**5. Mandatory conversion:** All preference shares shall automatically be converted at a conversion price of [conversion price] into ordinary shares upon the closing of an IPO on recognised exchange(s) (with a list of the relevant exchange(s) to be agreed and set out in the definitive documents at Closing) with net proceeds in excess of [amount] and in which the share price is at least [x times] the [Subscription Price 1].

**6. Mandatory redemption:** If no Liquidity Event has occurred before [date] the Investors [subject to certain Investor majority] can to the extent permitted under applicable law require the Company to redeem the preference shares in three equal yearly instalments. The redemption amount shall be equal to [Subscription Price 1] plus an annual interest of [percentage] p.a. ("hurdle").

**7. Anti-dilution:** *Full ratchet:*  
If the Company issues any additional shares (including, but not limited to, all classes of shares, warrants, rights to subscribe for shares and securities convertible into any share class) for a consideration per share that is less than the subscription price per preference share (as adjusted for any change of nominal values of shares, e.g. share splits and similar events), the subscription price (as adjusted for share splits, consolidations of shares and similar events) of the preference shares issued subject to this Investment shall be adjusted on a full ratchet basis. The adjustment will be

made through the issuance of additional preference shares to the holders of preference shares at par value (i.e. DKK 1 per preference share of nominally DKK 1), so that the ownership of the Investors after the dilutive issuance shall be set equal to the ownership that the Investors would have had if the subscription price paid by the Investors (based on the Investment amount added for the avoidance of doubt the amount paid to subscribe for the anti-dilution shares) had been the same as the price of the dilutive issuance (*Attachment: Full ratchet – Example*).

or

*Weighted average:*

If the Company issues any additional shares (including, but not limited to all classes of shares, warrants, rights to subscribe for shares and securities convertible into any share class) for a consideration per share that is less than the subscription price per preference share (as adjusted for any change of nominal values of shares, e.g. share splits and similar events), the subscription price (as adjusted for share splits, consolidations of shares and similar events) of the preference shares issued subject to this Investment shall be adjusted on a weighted average basis. The adjustment will be made through the issuance of additional preference shares to the holders of preference shares at par value (i.e. DKK 1 per preference share of nominally DKK 1). Accordingly, the price per preference share shall be subject to an anti-dilution adjustment by which the pro rata share ownership of the Investors after the dilutive issue shall be set to equal the ownership that the Investors would have had if the dilutive issue had taken place at the same subscription price paid by the Investors (based on the Investment amount, added for the avoidance of doubt the amount paid to subscribe for the anti-dilution shares) (*Attachment: Weighted average – Example*).

[If the Company subsequent to the Investment makes an issue of shares in which the Investors are entitled to participate and the Investors elect not to do so (i.e. do not wish to “pay to play”) for at least [percentage] of their allocation, the Investors will lose their anti-dilution rights in respect of any preference shares they hold.]

Shares issued as a consequence of employee warrant programmes shall not trigger the above anti dilution [or “pay to play”] mechanisms.

**8. Voting rights:** All shares will have the right to one vote each.

**9. Board:** *Identification of rights of appointment and number of Board members.*

A Party/group of Parties with the right to appoint Board members shall lose this right if its/their combined shareholdings are reduced to less than [percentage].

**10. [Execution rights:]** Whether at the meetings of the Board or at the general meeting the vote of Shareholders or Board members representing [percentage] of the preference shares have the right to demand that the remaining Shareholders vote in favour of the following decisions:

1. Capital increases, which in the Investor/Investors' reasonable opinion are necessary for securing realisation of the business plan (as amended from time to time) or for securing the Company's continued operation, and provided, that (i) all Shareholders shall have pre-emptive rights to subscribe for the new shares pro rata to their holding of shares in the Company immediately prior to the capital increase, and (ii) the capital increase is carried out on market terms.
2. Sale of the Company's assets in an Exit.

**11. Protective provisions:** Any material general meeting decision [as defined in Appendix [number] attached hereto] shall require the vote of Shareholders representing [percentage] or more of [the preference shares/ordinary shares]. Any material decision to be made in meetings of the Board shall be made with a majority of [number] Board members.

**12. Incentive programme:** The Parties agree that the management [and the key employees] of the Company as part of an incentive programme shall be offered options/warrants to subscribe for [ordinary shares] in the Company. The options/warrants shall in no event exceed [percentage] of the outstanding share capital from time to time. The terms and conditions of said options/warrants shall be set out in the Investment Agreement.

**13. Information rights:** Management will deliver to the holders of at least [percentage] of the preference shares (i) monthly statements and audited annual financial statements prepared in accordance with international generally accepted accounting principles as soon as possible after the close of the relevant period, but in no case more than [30] days after the closing of the relevant period, and (ii) notice of any material adverse change or the commencement or threat of commencement of any material litigation or dispute, immediately upon the management becoming aware of such changes, commencement or threat.

**14. Pre-emptive rights:** Each Shareholder will have a pre-emptive right to maintain its proportionate interest in the Company's share capital by way of subscription for the necessary percentage of any new issue of shares in the Company. In case one or more of the Shareholders reject such offer, the remaining Shareholders will have increased pre-emptive rights on a pro rata basis.

Shares issued as a consequence of employee incentive programmes and/or execution of anti-dilution rights shall not trigger the pre-emptive rights.

**15. Right of first refusal:** Upon any transfer of shares - with the exception of certain permitted transfers and sales according to the tag-along or drag-along provisions set forth below - either by assignment, gift, legal action, liquidation or bankruptcy, the other Parties shall have right of first refusal to the shares offered in proportion to their holding of shares in the Company. To the extent not all offered shares are

acquired by the other Parties, the Parties accepting their pro rata share shall have a secondary right of refusal to any remaining shares on a pro rata basis.

- 16. Assignment rights:** In addition to customary assignment rights to 100% controlled entities for all Parties, the Investors may transfer or assign, in whole or in part, their rights and delegate their obligations under the agreements related to their shares in the Company to any of their affiliates which is controlled by, or is under common control by the Investors, provided that such an assignee agrees to be bound by the provisions of the shareholders' agreement. Further, customary venture capital fund assignment rights shall apply.
- 17. Obligation to hold shares:** The Founders undertake not to sell or transfer any of their shares in the Company for a period of [number] years from Closing ("lock-up"). This obligation shall terminate upon an IPO unless specifically agreed to in connection with an IPO. Likewise, if the Founders' shareholding in the Company is held through a holding company, the Founders shall not sell any shares in such personal holding company for the same time period.
- 18. Forced Exit or IPO:** It is the intention of the Parties to pursue an IPO or another Exit when and if this is commercially attractive. The Parties agree to use their best efforts to effect an IPO or other Exit prior to [date]. The Parties further agree that in the event that an IPO or other Exit has not been effected prior to [date], the Investors shall be entitled to require the Board of the Company to engage an internationally recognised investment bank in order to initiate and effect an IPO or a transfer of all of the shares or assets in the Company to a third party. This clause 18 shall not be subject to the tag-along and drag-along rights set out below.
- 19. Tag-along rights:** All Parties grant each other the right (as for the Founders; after the expiration of any lock-up period, see above) to participate in any sale of the Company's share capital in the same proportion and on the same terms and conditions as offered to the selling Party.
- 20. Investors' drag-along rights:** Investors [subject to certain Investor majority] shall have the right to cause all Shareholders to sell (for consideration in cash or listed shares) their shares to a bona fide third party on the same terms, provided that an offer is made for the whole Company.
- 21. Right of amendment:** Parties holding [percentage] or more of the shares of the Company may cancel the shareholders' agreement or change or amend the provisions of the shareholders' agreement with effect for all Parties provided always that such amendments do not unreasonably (In Danish: "utilbørligt") increase, or reduce, or amend the rights or obligations of any individual Shareholder or group of Shareholders, see the Danish Companies Act's section 80, or constitute resolutions that would require qualified majority according to section 79 of the Danish Companies Act.

**22. Non-competition:** The Founders and certain key employees of the Company are or will be bound by agreements restricting their ability to compete with the Company, hold any ownership interest in any competitor of the Company, solicit any employees of the Company or disclose confidential information of the Company.

As set out above, it shall be a condition to Closing that management [and the key employees] enters into employment agreements in form and substance satisfactory to the Investors, including assignment to the Company of all rights and inventions, including IPR, related to the Company's technology.

If a manager leaves the Company voluntarily or is terminated for cause, such manager will be subject to a one-year non-compete and non-solicitation agreement. The Company may choose to waive its rights related to this non-competition agreement on a case-by-case basis.

**23. Key man clauses:** The shareholders' agreement shall include key man clauses defining good and bad leaver scenarios according to which the departure of any key man under certain circumstances may trigger that shares and options owned by such key man are transferred to the other Shareholders. If so required by the other Parties the bad leavers will be subject to an obligation to sell shares at a price of not more than [percentage] of the market value, as determined by independent valuers, provided that the bad leaver and the other Parties cannot agree on a price for the bad leaver's shares.

**24. Representations and warranties:** The Founders will make customary representations and warranties as per Closing to the Investors concerning the Company subject to specific disclosures with respect to the individual representations and warranties. Special attention will be drawn to the Company's IPR, material commercial agreements and compliance with laws and regulations.

The right of the Investors to raise claims based on representations and warranties issued by the Founders shall expire [number] months after Closing, except for liability with respect to title which shall be unlimited in time and tax which shall expire 6 months after the end of the applicable statutory limitation period. Except for cases of gross negligence, fraud or wilful misconduct the aggregate liability of the Founders cannot exceed DKK [Investment amount]. Liabilities will be subject to customary de minimis, basket and cap provisions.

## C. Legally binding terms

**1. Validity:** This Term Sheet is solely an expression of the Parties' serious intentions and shall not constitute any legally binding obligations for the Parties with exception of the provisions below regarding expenses, confidentiality, exclusivity and governing law and venue.



- 2. Expenses:** All Investors' fees, costs and expenses (including fees, costs and expenses of external consultants or counsel) related to the due diligence, documentation and Closing, capped at DKK [amount], will be paid by the Company.

*[Broken deal costs:*

In case the negotiations end without the Parties having entered into agreements implying Investments from all Investors, the Investors agree to share the fees, costs and expenses to external consultants jointly appointed by the Investors pro rata to the stipulated disbursements from each Investor. The total amount of expenses to be shared by the Investors cannot exceed DKK [amount].

Irrespective of the above, any fees, costs and expenses above DKK [amount] and any fees, costs and expenses incurred by the individual Parties or the Company to external legal counsel or auditors shall be paid by such Party or the Company respectively. Accordingly, the Company shall pay the expenses associated with the Investment, including fees to the Company's lawyer and/or auditor with respect to drafting of relevant corporate documentation to be prepared in connection with the Investment.]

- 3. Confidentiality:** Except as already disclosed or as required by applicable law, none of the Parties hereto shall make any public disclosure or announcement concerning the fact that discussions are taking place, or concerning the existence of this Term Sheet, its contents or the status of the negotiations between the Investors and the Company without obtaining the prior written consent of the other Parties.
- 4. Exclusivity:** The Company and the Founders agree to an exclusivity period until [date], during which the Company and the Founders undertake not to solicit, encourage and/or otherwise work actively with any third party or to initiate or proceed with a capital injection whether by way of issue of shares or other securities in the Company or by way of the raising of loan capital (except in the ordinary course of business).
- 5. Law and venue:** This Term Sheet is governed by Danish law and any dispute arising from the Term Sheet is to be resolved by arbitration.

# Example 1

## Anti-dilution – full ratchet

The holders of preference shares shall be protected from dilution in the event that the Company subsequent to the date of the Investment issues additional equity securities at a subscription price below the subscription price paid in connection with the Investment (as adjusted for stock splits, stock dividends, reverse splits and similar transactions), other than options, shares and warrants issued pursuant to employee incentive plans approved by the Board of the Company.

If the Company issues securities as stated above at a subscription price lower than the subscription price of the Investment ("Dilutive Issuance"), each holder of preference shares shall be offered to subscribe, immediately after the issuance of equity securities at such lower price, for new preference shares at the par value thereof as specified below. The subscription shall have the effect that the ownership of the Investors after the Dilutive Issuance shall be set equal to the ownership that the Investors would have had if the subscription price paid by the Investors (based on the Investment amount added for the avoidance of doubt the amount paid to subscribe for the anti-dilution shares) had been the same as the price of the Dilutive Issuance.

The nominal value of the preference shares to be subscribed for at par value (n2) equals the product of the excess of the subscription price of the Investment (as adjusted for stock splits, stock dividends, reverse splits and similar transactions (p1) over the subscription price of the Dilutive Issuance (p2) and the number of the shares subscribed for under the Investment (n1) divided by the subscription price of the Dilutive Issuance (p2).

### Calculation of full ratchet anti-dilution

The dilution protection can be expressed in the following formula:

$$n2 = n1(p1 - p2)/(p2 - N)$$

N = the nominal value per share (par value)

n1 = the number of shares subscribed for under the Investment

n2 = the number of shares which may be subscribed for by the preference shareholders

p1 = the subscription price of the Investment

p2 = the subscription price of the Dilutive Issuance

## Example 2

### Anti-dilution – weighted average

The holders of preference shares shall be protected from dilution in the event that the Company subsequent to the date of the Investment issues additional equity securities at a subscription price below the subscription price paid in connection with the Investment (as adjusted for stock splits, stock dividends, reverse splits and similar transactions), other than options, shares and warrants issued pursuant to employee incentive plans approved by the Board of the Company.

If the Company issues securities as stated above at a subscription price lower than the subscription price of the Investment ("Dilutive Issuance"), each holder of preference shares shall be offered to subscribe, immediately after the issuance of equity securities at such lower price, for new preference shares at the par value thereof as specified below. The subscription shall have the effect that the pro rata share ownership of the Investors after the Dilutive Issuance shall be set to equal the ownership that the Investors would have had if the Dilutive Issuance had taken place at the same subscription price paid by the Investors (based on the Investment amount, added for the avoidance of doubt the amount paid to subscribe for the anti-dilution shares).

The number of preference shares that the holders of preference shares shall have the right to subscribe for, shall be calculated as set forth below.

### Calculation of weighted average anti-dilution

The weighted average anti-dilution shall be calculated in accordance with the formula below:

$$NS = N1 \times (P1 - Y) / (Y - NV)$$

and,

$$Y = [P1 \times N + N2 \times NIP] / (N + N2)$$

NS = the number of preference shares to be issued to the relevant holder of preference shares at the quota value

Y = the weighted subscription price after the Dilutive Issuance

P1 = the subscription price of the Investment

N1 = mean the total number of outstanding preference shares or share equivalents (e.g. warrants)

NIP = the price per share (or, if other securities are issued, the value of a share as indicated by the subscription price for the issued securities) in the Dilutive Issuance

N2 = the total number of shares and/or share equivalents to be issued in the Dilutive Issuance

N = the total number of shares and share equivalents outstanding prior to the Dilutive Issuance

NV = the quota value of the preference shares and equals the share capital of the company/total shares outstanding. This will be the subscription price of the shares which may be subscribed for by the preference shareholders.