

**TERM SHEET**  
**FOR SERIES [A] PREFERRED STOCK FINANCING OF**  
**[COMPANY]**

[Date]

This Term Sheet summarizes the principal terms of the Series [A] Preferred Stock financing of [company's full name], a [Mexican] corporation ("[ ]" or the "Company"). In consideration of the time and expense devoted and to be devoted by the Investors (defined below) with respect to this investment, the No Shop / Confidentiality provisions of this Term Sheet shall be binding obligations of the Company whether or not the financing is consummated. No other legally binding obligations will be created until definitive agreements are executed and delivered by all parties. This Term Sheet is not a commitment to invest, and is conditioned on the completion of due diligence, legal review, documentation that is satisfactory to both parties and other Conditions to Closing as stated henceforth.

**Offering Terms**

***Investors:***

The investors shall participate in the following amounts (collectively, the "Investors"):

[Investor No. 1]: [MXN/USD] \$[ ]

[Investor No. 2]: [MXN/USD] \$[ ]

[Investor No. 3]: [MXN/USD] \$[ ]

Other investors mutually agreed upon by the Investors and the Company: [MXN/USD] \$[ ]

***Securities:***

Series [A] Convertible Preferred Stock ("Series [A] Preferred").

***Investment:***

An aggregate of up to [MXN/USD] \$[ ], [including [MXN/USD] \$[ ] from the conversion of principal and interest on bridge notes]<sup>1</sup>.

[Disbursement of the investment in the Series [A] Preferred shall be made in installments which will be agreed based upon the achievement of specific milestones according to the schedules in Exhibit B. These milestones

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<sup>1</sup> Modify this provision to account for conversion of convertible notes.

and disbursement schedules shall be contained in the final closing documents.]<sup>2</sup>

***Use of Proceeds:***

The Company intends to use the proceeds of this offering to [\_\_\_\_\_].

***Closing Date:***

As soon as practicable following the Company's acceptance of this Term Sheet and satisfaction of the Conditions to Closing (the "Closing").

***Valuation:***

The Original Purchase Price is based upon a fully-diluted pre-money valuation of [MXN/USD] \$[\_\_\_\_\_] and a fully diluted post-money valuation of [MXN/USD] \$[\_\_\_\_\_], inclusive of the Option Pool as outlined below.

***Price per Share:***

[MXN/USD] \$[\_\_\_\_\_] per share (based on the capitalization of the Company set forth below) (the "Original Purchase Price").

***Option Pool:***<sup>3</sup>

The pre-Closing capitalization shall include a new unallocated employee option pool representing [15%] of the fully-diluted post-Closing capitalization (which assumes the issuance of Series [A] Preferred Stock and the increase to the Option Pool described herein).

All employee options to vest as follows: [25%] after one year, with remaining vesting monthly over next [36 months].

***Capitalization:***

The Company's capital structure before and after the Closing is set forth in the pro forma Capitalization Table attached as Exhibit A (the "Capitalization Table"). To the extent the Capitalization Table does not accurately describe the capitalization of the Company as of immediately prior to the Closing, the Original Purchase Price shall be appropriately adjusted as necessary to reflect the pre-money valuation and unallocated Option Pool. For purposes of the above calculation and any other reference to "fully-diluted" in this Term Sheet, "fully-diluted" assumes the conversion of all outstanding Preferred Stock of the Company, the exercise of all authorized and currently existing stock options and warrants of the

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<sup>2</sup> This provision is optional and should be included for staged investments or investments dependent on the achievement of milestones by the Company.

<sup>3</sup> Industry standard that the option pool is executed pre-financing. Standard size of option pool ranges from 10-20% of post-money capitalization

Company, and any increases to the Company’s existing option pool prior to the Closing.

***[Syndication Rights:<sup>4</sup>***

[Investor(s)] will have the right to syndicate its investment amount to other investors mutually agreed upon by [Investor(s)] and the Company.]

***[Upside Sharing:<sup>5</sup>***

In order to provide an additional upside potential to the current shareholders of the Company (the “Original Owners”), the Investors will grant to the Original Owners the option to acquire from the Investors [ ] shares on a pro-rata basis after the [fifth] anniversary of the Closing, at the following price per share:

Insert table with price per share per year starting in year five

In case of a liquidity event before the [second] anniversary of the Closing, the above option to acquire [ ] shares from the Investors can be exercised by the Original Owners at the following price per share:

Insert table with price per share per year for years 1 and 2]

**Terms of Series [A] Preferred**

***[Seniority:***

The Series [A] Preferred shall rank senior to existing shares prior to the Closing, with respect to dividends, liquidation and dissolution.]

***[Dividends:<sup>6</sup>***

Each share of Series [A] Preferred will carry an annual [8%] [cumulative / non-cumulative], [non-compounding / compounding] dividend based on the cash amount invested into the Series [A] Preferred, payable on a liquidation or redemption [or conversion<sup>7</sup>]. Dividends on Series [A] Preferred will be paid prior to any dividends on any other class of shares. The Series [A] Preferred will participate in any dividends paid to all other classes of shares on a pro rata, as-if converted basis. No dividends will be paid to any

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<sup>4</sup> Insert when [Investor(s)] is sole investor and is investing a considerable amount.

<sup>5</sup> To be considered on a case by case basis. Note that this clause is not standard and not used in venture capital deals.

<sup>6</sup> It is [Investor(s)] preference to offer cumulative but non-compounding dividends. Dividends provision is not very common in Mexico – entrepreneur might be resilient. Use it as point of negotiation.

<sup>7</sup> In some cases, accrued and unpaid dividends are payable on conversion as well as upon a liquidation event. Most typically, however, dividends are not paid if the preferred is converted.

other class of shares without majority approval of the Series [A] Preferred.]

**Liquidation Preference:**<sup>8</sup>

In the event of any liquidation, dissolution or winding up of the Company, the proceeds shall be paid as follows:

[Alternative 1 (non-participating Preferred Stock): First, pay [1.0x] the Original Purchase Price [plus accrued dividends<sup>9</sup>] [plus declared and unpaid dividends<sup>10</sup>] on each share of Series [A] Preferred (or, if greater, the amount that the Series [A] Preferred would receive on an as-converted basis). The balance of any proceeds shall be distributed pro rata to holders of Common Stock.]

[Alternative 2 (full participating Preferred Stock): First, pay [1.0x] the Original Purchase Price [plus accrued dividends] [plus declared and unpaid dividends] on each share of Series [A] Preferred. Thereafter, the Series [A] Preferred participates with the Common Stock pro rata on an as-converted basis.]

[Alternative 3 (cap on Preferred Stock participation rights): First, pay [1.0x] the Original Purchase Price [plus accrued dividends] [plus declared and unpaid dividends] on each share of Series [A] Preferred. Thereafter, Series [A] Preferred participates with Common Stock pro rata on an as-converted basis until the holders of Series [A] Preferred receive an aggregate of [\_\_x] the Original Purchase Price (including the amount paid pursuant to the preceding sentence).]

A merger or consolidation (other than one in which stockholders of the Company own a majority by voting power of the outstanding shares of the surviving or acquiring corporation) and a sale, lease, transfer, exclusive license or other disposition of all or substantially all of the assets of the Company will be treated as a liquidation event (a “Deemed Liquidation Event”), thereby triggering payment of the liquidation preferences described above.

**Voting Rights:**

The Series [A] Preferred will vote together with [Existing Preferred Stock and] the Common Stock on as-converted

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<sup>8</sup> Market standard and [Investor(s)] strong preference is Alternative 1 (non-participating), but on a case by case basis, Alternatives 2 or 3 may be considered. Modify this provision to account for stacked preference if there are existing series of Preferred Stock (see Pangea Term Sheet for reference).

<sup>9</sup> Insert when dividends are cumulative (same in Alternatives 2 and 3).

<sup>10</sup> Insert when dividends are non-cumulative (same in Alternatives 2 and 3).

basis, and not as a separate class except as specifically provided herein or as otherwise required by law.

***[Redemption Rights:<sup>11</sup>***

The Series [A] Preferred shall be redeemable at the option of holders of at least [51%] of the Series [A] Preferred commencing any time after the [fifth] anniversary of the Closing at a price equal to the Original Purchase Price [plus accrued dividends<sup>12</sup>] [plus declared and unpaid dividends<sup>13</sup>]. Redemption shall occur in [3] equal [annual] portions. Upon a redemption request from the holders of the required percentage of the Series [A] Preferred, all Series [A] Preferred shares shall be redeemed [(except for any Series [A] holders who affirmatively opt-out)].

***Optional Conversion:***

The Series [A] Preferred initially converts [1:1] to Common Stock at any time at option of holder, subject to adjustments for stock dividends, splits, combinations and similar events and as described below under Anti-dilution Provisions.

***Anti-dilution Provisions:***

In the event that the Company issues additional securities at a purchase price less than the then current Series [A] Preferred Stock conversion price, such conversion price shall be adjusted on a [broad-based weighted average<sup>14</sup>] basis, subject to customary exclusions.

The following issuances shall not trigger anti-dilution adjustment:

- (i) Securities issuable upon conversion of any of the Series [A] Preferred, or as a dividend or distribution on the Series [A] Preferred;
- (ii) Securities issued upon the conversion of any debenture, warrant, option, or other convertible security;
- (iii) Common Stock issuable upon a stock split, stock dividend, or any subdivision of shares of Common Stock;

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<sup>11</sup> Redemption rights allow Investors to force the Company to redeem their shares at cost (and sometimes investors may also request a small guaranteed rate of return, in the form of a dividend). In practice, redemption rights are not often used; however, they do provide a form of exit and some possible leverage over the Company. We should try to avoid including redemption rights, however, if previous rounds of financing of the Company include them, then they should be considered.

<sup>12</sup> Insert when dividends are cumulative.

<sup>13</sup> Insert when dividends are non-cumulative.

<sup>14</sup> Market standard and [Investor(s)] preference is to structure a broad-based weighted average anti-dilution (which takes the fully-diluted number of outstanding shares in the calculation), but can also be on a narrow-based weighted average or full-ratchet basis.

- (iv) Shares of Common Stock (or options to purchase such shares of Common Stock) issued or issuable to employees or directors of, or consultants to, the Company pursuant to any plan approved by the Company's Board of Directors including at least [1] Series [A] Director(s).

***Protective Provisions:***

In addition to any other vote or approval required under the Company's Bylaws, [including the existing protective provisions for the holders of the Existing Preferred Stock<sup>15</sup>], the Company will not, without the written consent of the holders of a majority of the Series [A] Preferred (voting together as a single class on an as-converted basis), either directly or by amendment, merger, consolidation, or otherwise:

- (i) Liquidate, dissolve or wind up the affairs of the Company, or effect any merger or consolidation or any other Deemed Liquidation Event;
- (ii) Create or authorize the creation of or issue any new class or series of stock or any other security convertible into or exercisable for any equity security (by reclassification, amendment or alteration of any existing security, or otherwise), having rights, preferences or privileges senior to or on parity with the Series [A] Preferred Stock;
- (iii) Amend, alter or repeal any provision of the Bylaws;
- (iv) Increase or decrease the authorized number of shares of Common Stock or Preferred Stock (or any series thereof);
- (v) Redeem or repurchase of any Common Stock or Preferred Stock;
- (vi) Increase or decrease the size of the Board of Directors;
- (vii) Purchase or redeem or pay any dividend with respect to any capital stock other than stock repurchased at cost from service providers of the Company upon termination and other than the exercise by the Company of contractual rights of first refusal over such stock;
- (viii) Become obligated under any loan or guarantee of indebtedness (other than indebtedness to

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<sup>15</sup> To be included only if the Company has outstanding Preferred Stock.

- financial institutions) in excess of [MXN/USD] \$[ ] in the aggregate;
- (ix) Create or hold capital stock in any subsidiary that is not a wholly-owned subsidiary or dispose of any subsidiary stock or all or substantially all of any subsidiary assets;
  - (x) Cease to engage in a business that is substantially similar to the business engaged in, or contemplated to be engaged in, as of the Closing;
  - (xi) Engage in, or consummate, any sale, lease, assignment, transfer, exchange or other conveyance (including by exclusive license or otherwise) of all or substantial all of the assets of the Company in a single transaction or series of related transactions.

***Right to Participate Pro Rata in Future Rounds:***

All Investors shall have a pro rata right, based on their percentage equity ownership in the Company (assuming the conversion of all outstanding Preferred Stock into Common Stock and the exercise of all options outstanding under the Company's stock plans), to participate in subsequent issuances of equity securities of the Company (excluding those issuances listed at the end of the Anti-dilution Provisions section of this Term Sheet). In addition, should any Investor choose not to purchase its full pro rata share, the remaining Investors shall have the right to purchase the remaining pro rata shares.

***Drag-Along:***

Holders of Series [A] Preferred Stock, [holders of the Existing Preferred Stock<sup>16</sup>], existing holders of Common Stock and all future holders of greater than [1%] of Common Stock (assuming conversion of Preferred Stock and whether then held or subject to the exercise of options) shall be required to enter into an agreement with the Investors that provides that such stockholders will vote their shares in favor of a Deemed Liquidation Event or transaction in which [50%] or more of the voting power of the Company is transferred and which is approved by (i) the Board of Directors and (ii) the holders of a majority of the outstanding shares of Series [A] Preferred Stock, voting together as a single class on an as-converted basis, subject to customary exceptions.

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<sup>16</sup> To be included only if the Company has outstanding Preferred Stock.

***Right of First Refusal of Founders Shares:***<sup>17</sup>

Company first and Investors second (to the extent assigned by the Board of Directors,) will have a right of first refusal with respect to any shares of capital stock of the Company proposed to be transferred by Founders [and future employees holding greater than [1]% of the Company Common Stock (assuming conversion of Preferred Stock and whether then held or subject to the exercise of options)], with a right of oversubscription for Investors of shares unsubscribed by the other Investors.

Founders are [Mr. / Mrs.] [\_\_\_\_\_] and [Mr. / Mrs.] [\_\_\_\_\_].

***Right of Co-Sale (Tag-Along):***<sup>18</sup>

Before any Founder may sell any shares of capital stock, [he / she] will give the Investors an opportunity to participate in such sale on a basis proportionate to the amount of securities held by the sellers and those held by the participating Investors. [In addition, before any other shareholder of the Company may sell any shares of capital stock exceeding [20]% of the Company Common Stock (assuming conversion of Preferred Stock and whether then held or subject to the exercise of options), [he / she] will give the Investors an opportunity to participate in such sale on a basis proportionate to the amount of securities held by the sellers and those held by the participating Investors.<sup>19</sup>]

***Right of First Offer:***

Each Investor will have a right of first offer with respect to any shares of capital stock of the Company proposed to be transferred by other shareholders of the Company. The time allowed for any stockholder to exercise the right of first offer contemplated herein shall be within [30] calendar days following the notice given by the sellers.

***Information Rights / Visitation and Meetings:***

Each [Major<sup>20</sup>] Investor will be granted access to Company facilities and personnel during normal business hours and with reasonable advance notification. The Company will deliver to each [Major] Investor (i) annual, quarterly and monthly financial statements, in each case prepared in accordance with generally accepted accounting principles as soon as practicable but not less than 120 days following

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<sup>17</sup> It is important to note that ROFR does not apply to transfers by Investors, it only applies to transfers of shares by Founders and management.

<sup>18</sup> Always applies to sale of stock by Founders as Investors do not want these individuals to dispose their shares in the Company while they remain as investors.

<sup>19</sup> To be considered on a case by case basis, depending on [Investor(s)] fully-diluted stake in the Company (i.e., will want to include this provision if we have a minority stake).

<sup>20</sup> To be considered on a case by case basis.

the end of the fiscal year, 45 days following the end of a fiscal quarter and 15 days following the end of the month, respectively, [and annual financial statements shall be audited by an independent nationally recognized accounting firm]; (ii) 30 days prior to the end of each fiscal year, a comprehensive operating budget forecasting the Company's revenues, expenses and cash position on a month to month basis for the upcoming fiscal year; and (iii) promptly following the end of each quarter, an up-to-date capitalization table. [A "Major Investor" means any Investor who holds at least 10% of the outstanding shares of Preferred Stock.]

Furthermore, [Investor(s)] reserves the right to convene the Company's management to no less than [3] meetings and events per year (LP Meetings, [Investor(s)] Entrepreneur Meetings, speaking engagements and other events within reasonable bounds).

***[Existing Preferred Stock:<sup>21</sup>***

The terms set forth above for the Series [A] Preferred are subject to review of the rights, preferences and restrictions for the Existing Preferred Stock. Any changes necessary to conform the Existing Preferred Stock to this Term Sheet will be made at the closing.]

**Other Matters**

***Board of Directors:***

The Company's Board of Directors shall consist of [5] members: [2] nominated by the Common stockholders, one of which shall be the CEO, initially [Mr. / Mrs.] [\_\_\_\_]; [2] nominated by the Series [A] Preferred stockholders, one of which shall be designated by [Investor(s)]; and [1] industry expert nominated jointly by the Common and Series [A] Preferred stockholders.

***Representations and Warranties:***

Standard representations and warranties by the Company.

***[Key Man Clause:<sup>22</sup>***

Mr. [\_\_\_\_] will commit to devote substantially all of his professional business time and effort to the proper operation of the Company during a period of no less than [5] years post-Closing.]

***[Management Vesting:<sup>23</sup>***

Upon Closing, [25%] of management's Common Stock will vest immediately and the balance of the Common

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<sup>21</sup> To be included only if the Company has outstanding Preferred Stock.

<sup>22</sup> To be considered on a case by case basis.

<sup>23</sup> Might be very aggressive – to be considered on a case by case basis.

Stock shall vest over [4] years on a monthly basis. Management shall not sell or hypothecate more than [10%] of their shares until the earlier of a sale of the Company or the Investors' shares have been redeemed in full.]

***[CEO Removal:<sup>24</sup>***

In the event that the Company does not meet the financial and operating results of the annual business plan approved by the Board of Directors, [Investor(s)]<sup>25</sup> will have the right to remove and replace the Company's Chief Executive Officer.]

***Conditions to Closing:***

The Closing will occur upon the satisfaction of customary closing conditions, including, but not limited to:

- (i) Completion of legal documentation satisfactory to the Investors and the Company;
- (ii) Satisfactory completion of financial and legal due diligence;
- (iii) [Transformation of the Company into a SAPI legal entity;]
- (iv) Approval by the Investment Committees of the Investors.

***Right to Conduct Activities:***

The Company and each Investor hereby acknowledge that some or all of the Investors are professional investment funds, and as such invest in numerous portfolio companies, some of which may be competitive with the Company's business. No Investor shall be liable to the Company or to any other Investor for any claim arising out of, or based upon (i) the investment by any Investor in any entity competitive to the Company, or (ii) actions taken by any partner, officer, or other representative of any Investor to assist any such competitive company, whether or not such action was taken as a board member of such competitive company, or otherwise; provided, however, that nothing herein shall relieve any Investor or any other party from liability associated with misuse or unauthorized disclosure of the Company's confidential information.

***No Shop / Confidentiality:***

The Company agrees to work in good faith expeditiously towards a closing. The Company agrees that it will not, for a period of [60] days from the date of this Term Sheet, take

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<sup>24</sup> To be considered on a case by case basis.

<sup>25</sup> Add name of other investor if necessary.

any action to solicit, initiate, encourage or assist the submission of any proposal, negotiation or offer from any person or entity other than the Investors relating to the sale or issuance, of any of the capital stock of the Company or the acquisition, sale, lease, license or other disposition of the Company or any material part of the stock or assets of the Company and shall notify the Investors promptly of any inquiries by any third parties in regards to the foregoing. The Company will not disclose the terms of this Term Sheet to any person or entity other than officers, members of the Board and the Company's accountants and attorneys and other potential investors acceptable to [Investor(s)]<sup>26</sup>, as lead Investor, without the written consent of the [Investor(s)].

***Expiration:***

This Term Sheet expires on [\_\_\_\_\_, 20\_\_] if not accepted by the Company by that date.

***Counsel and Expenses:***

[Investor / Company<sup>27</sup>] counsel to draft Closing documents. Company to pay all legal and administrative costs of the financing at Closing, including reasonable fees and expenses (not to exceed USD [\$30,000]) of the Investors' counsel.

[If the completion of a specialized due diligence (e.g., technological due diligence) is deemed necessary by the Investors and such due diligence is beneficial to the Company, then the Company will pay the costs associated to the specialized due diligence.<sup>28</sup>]

Except for the No Shop / Confidentiality provision of this Term Sheet (which shall be binding on the Company), this Term Sheet is non-binding and is intended solely as a summary of the terms that are currently proposed by the parties. The parties acknowledge that they neither intend to enter, nor have they entered, into any agreement to negotiate a definitive agreement pursuant to this Term Sheet, and either party may, at any time prior to execution of such definitive agreement, propose different terms from those summarized herein or unilaterally terminate all negotiations pursuant to this Term Sheet without any liability whatsoever to the other party.

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<sup>26</sup> Add name of other investor if necessary.

<sup>27</sup> It is [Investor(s)] preference to decide legal counsel.

<sup>28</sup> To be included only if specialized due diligence is needed and such due diligence will be of value to the Company.

**Acknowledged and agreed:**

**[Company]**

By: \_\_\_\_\_

Name: [Print name]

Title: [Print title]

Date: \_\_\_\_\_

**[Investor(s)]**

By: \_\_\_\_\_

Name: [Print name]

Title: [Print title]

Date: \_\_\_\_\_

**[Investor No. 2]**

By: \_\_\_\_\_

Name: [Print name]

Title: [Print title]

Date: \_\_\_\_\_

**EXHIBIT A**  
**PRE AND POST-CLOSING CAPITALIZATION**

<b>Security</b>	<b>Pre-Financing</b>		<b>Post-Financing</b>	
	<b># of Shares</b>	<b>%</b>	<b># of Shares</b>	<b>%</b>
<b>Common – Founders</b>				
<b>Common – Option Pool</b>				
<b>Issued</b>				
<b>Unissued</b>				
<b>[Common – Warrants]</b>				
<b>Series A Preferred</b>				
<b>Total</b>				

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**EXHIBIT B**  
**MILESTONES & DISBURSEMENT SCHEDULES**