

Term Sheet

MEXICO

A white outline map of Latin America is centered on a light gray background. The map shows the borders of Mexico, Central America, and South America. The word 'MEXICO' is printed in orange text over the map, positioned to the left of the country's outline.

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The Latin American Venture Capital Association produces localized Latin American versions of model legal documents on the basis of those drafted by the National Venture Capital Association and the British Venture Capital Association. These standardized documents aim to reflect best practices and educating industry newcomers on how investments can be structured, terms and terminology, and the broader investment process. Documents are intended to serve as a starting point only, should be tailored to meet specific requirements, and should not be construed as legal advice for any particular facts or circumstances. We strongly recommend that each reader seek independent advice from local counsel on the appropriate legal and tax structure of each specific investment.

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Term Sheet

MEXICO

based on the term sheet by the National Venture Capital Association

BAKER & MCKENZIE

TERM SHEET
FOR SERIES A PREFERRED STOCK FINANCING/ACQUISITION OF
[INSERT COMPANY NAME], S.A.P.I. DE C.V.
 [_____, 200__]

This Term Sheet summarizes the principal terms of the Series A Preferred Stock Financing/Acquisition of [_____] *sociedad anónima promotora de inversión de capital variable*, a [Mexican] corporation (the “Company”). In consideration of the time and expense devoted and to be devoted by the Investors with respect to this investment, the No Shop/Confidentiality and Counsel and Expenses provisions of this Term Sheet shall be binding obligations of the parties whether or not the financing/acquisition 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 and documentation that is satisfactory to the Investors. This Term Sheet shall be governed in all respects by the laws of Mexico.

Offering Terms

- Closing Date:* As soon as practicable following the parties’ execution of this Term Sheet and satisfaction of the Conditions to Closing, including the execution of definitive agreements (the “**Closing**”). *[provide for multiple closings if applicable]*
- Investors:* Investor No. 1: [_____] shares ([_]%), \$[_____]

Investor No. 2: [_____] shares ([_]%), \$[_____]

[as well other investors mutually agreed upon by the parties]
- Amount Raised:* \$[_____]
- Price Per Share:* \$[_____] per share (based on the capitalization of the Company set forth below) (the “Original Purchase Price”).
- Pre-Money Valuation:* The Original Purchase Price is based upon a fully-diluted pre-money valuation of \$[_____] and a fully-diluted post-money valuation of \$[_____].
- Capital Structure:* The minimum fixed capital of the Company shall be as set out in the applicable regulation.
- The maximum authorized capital of the Company shall be unlimited. The participation of the parties in the Company shall be divided in [_____] series of shares: the Series [_____] , the Series [_____] , the Series [_____] and the Series A Preferred.

Capitalization:

The Company's capital structure before and after the Closing is set forth below:

	Pre-Financing/Acquisition		Post-Financing/Acquisition	
	# of Shares	%	# of Shares	%
Security				
Common				
[Others]				
Series A Preferred				
Total				

BY-LAWS¹*Dividends:*

[*Alternative 1:* Non-cumulative dividends will be paid on the Series A Preferred in an amount equal to \$[_____] per share of Series A Preferred when and if declared by the Shareholders Meeting. Thereafter, the Series A Preferred participates with the Common Stock on a proportional basis.]

[*Alternative 2:* The Series A Preferred will carry an annual [__] % cumulative dividend [compounded annually]. Thereafter, the Series A Preferred participates with the Common Stock on a proportional basis.]²

[*Alternative 3:* Dividends will be paid on the Series A Preferred and Common Stock proportionally]

¹ The By-laws are contained in a public deed issued by a Mexican Notary Public which is in turn recorded at the Public Registry of Commerce corresponding to the corporate domicile of the Company. Among other things, the By-laws establish all of the rights, preferences, privileges and restrictions of the Preferred Stock.

² Another alternative is to give the Company the option to pay accrued and unpaid dividends in cash or in common shares valued at fair market value. The latter are referred to as "PIK" (payment-in-kind) dividends.

- Liquidation Preference:* In the event of any liquidation or winding up of the Company, the proceeds shall be paid as follows:
- [*Alternative 1 (non-participating Preferred Stock):* First pay [one] times the Original Purchase Price [plus accrued dividends] [plus declared and unpaid dividends] on each share of Series A Preferred. The balance of any proceeds shall be distributed to holders of Common Stock.]
- [*Alternative 2 (full participating Preferred Stock):* First pay [one] times 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 on a proportional basis.]
- [*Alternative 3 (cap on Preferred Stock participation rights):* First pay [one] times 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 on a proportional basis until the holders of Series A Preferred receive an aggregate of [_____] times the Original Purchase Price.]
- A restructure and a sale, lease, transfer or other disposition of all or substantially all of the assets of the Company will be treated as a liquidation event, thereby triggering payment of the liquidation preferences described above [unless the holders of [_____] % of the Series A Preferred elect otherwise].
- Voting Rights:* The Series A Preferred Stock shall vote together with the Common Stock on a proportional basis, except (i) the Series A Preferred as a class shall be entitled to elect [_____] [()] members of the Board (the “Series A Directors”), (ii) as provided under “Protective Provisions” below or (iii) as required by law.
- Protective Provisions- Shareholders Meeting:* So long as [insert fixed number, or %, or “any”] shares of Series A Preferred are outstanding, the Company will not, without the written consent of the holders of at least [_____] % of the Company’s Series A Preferred, either directly or otherwise resolve on:
- a) extension of the duration of the Company;
 - b) increases, reductions or other alterations of the fixed and/or variable capital of the Company;
 - c) amendment of the purpose of the Company;
 - d) change in the nationality of the Company;

- e) transformation of the corporate nature or status of the Company;
- f) issuance of preferred, limited or non-voting stock;
- g) amortization by the Company of its shares or the issuance of participating securities (“*acciones de goce*”);
- h) the issuance of bonds or debentures or other debt securities;
- i) the adoption, amendment, modification, supplement or change of the charter or By-laws (or to the relevant governing document) of the Company or the variation of any rights attached to any interest;
- j) the repurchase, redemption (otherwise than in accordance with the terms of redemption established at the time of issue of the relevant share capital), reorganization, consolidation, subdivision, cancellation, reduction of any of the interest of the Company;
- k) any voluntary liquidation, termination and/or winding-up of the Company, and any amalgamation, merger, spin-off, consolidation, reconstitution, continuation, voluntary insolvency proceeding, scheme of arrangement, composition with creditors, corporate reorganization or restructuring of the Company;
- l) the listing of any interest on a stock or securities exchange or the conversion of the Company into a public Company for listing purposes and the appointment of an underwriter for the purposes of providing the necessary advice to the Company;
- m) the granting of an option, warrant or other right for the purchase of or subscription of interest;
- n) create or authorize the creation of or issue any other security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to or on parity with the Series A Preferred, or increase the authorized number of shares of Series A Preferred;
- o) purchase or redeem or pay any dividend on any capital stock prior to the Series A Preferred;
- p) increase or decrease the size of the Board of Directors;

q) such other matters as may be required by law.³

Protective Provisions- Board of Directors:

[So long as [*insert fixed number, or %, or “any”*] shares of Series A Preferred are outstanding] the Company will not, without Board of Directors approval, which approval must include the affirmative vote of [____] of the Series A Director(s):

a) make any loan or advance to, or own any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Company;

b) make any loan or advance to any person, including, any employee or director, except advances and similar expenditures in the ordinary course of business or under the terms of a employee stock or option plan approved by the Board of Directors;

c) guarantee any indebtedness except for trade accounts of the Company or any subsidiary arising in the ordinary course of business;

d) make any investment other than investments in prime commercial paper, certificates of deposit in any [] bank having a net worth in excess of \$ [] or obligations issued or guaranteed by [], in each case having a maturity not in excess of [two years];

e) obtain debt financing and/or incur any aggregate indebtedness in excess of \$[____] that is not already included in a Board-approved budget, other than trade credit incurred in the ordinary course of business;

f) enter into or be a party to any transaction with any director, officer or employee of the Company or any “associate” of any such person [except transactions resulting in payments to or by the Company in an amount less than \$[] per year], [or transactions made in the ordinary course of business and pursuant to reasonable requirements of the Company’s business and upon fair and reasonable terms that are approved by a majority of the Board of Directors];

g) hire, fire, or change the compensation of the executive officers, including approving any option plans;

h) change the principal business of the Company, enter new lines of business, or exit the current line of business; or

³ Additional or different Protective Provisions will depend largely in the underlying business of the Company.

i) sell, transfer, license, pledge or encumber assets, technology or intellectual property, other than in the ordinary course of business.⁴

Optional Conversion:

The Series A Preferred converts 1:1 to Common Stock at any time at option of holder.

Future Contributions and Preemptive Rights:

The parties will have the obligation to make additional equity contributions in proportion to their respective percentages of ownership in the Company.

In the event any of the parties fails to pay for any such increases within thirty (30) calendar days from the date such payment is due, whether in full or in part, then any of the other parties, without prejudice to their right to declare a breach and any other rights they may have, shall have the right to proportionately subscribe and pay for any such increase in the capital of the Company, for which purpose, if necessary, the defaulting non-subscribing party will proportionately assign any preemptive rights to the other.

In case any of the parties fail to make the additional contributions, the non-defaulting party may, at its election:

a) [Make such additional contributions corresponding to the defaulting party, case in which, the percentage of participation owned by the defaulting party with a dilution factor of [_____] in the corresponding proportion.]

b) Grant a loan with an annual interest rate $TIIIE + [_____] (___)$ percentage points to the defaulting party in order for it to cover such contributions.

c) Grant a loan at an annual interest rate of $TIIIE + [_____] (___)$ percentage points to the Company.

The following issuances will not trigger any of the foregoing provisions:

(i) securities issuable upon conversion of any of 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; and (iv) shares of Common Stock (or options to purchase such shares of Common

⁴ Additional or different Protective Provisions will depend largely in the underlying business of the Company.

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.

Mandatory Conversion:

Each share of Series A Preferred will automatically be converted into Common Stock at the applicable conversion rate in the event of the closing of a [firm commitment] underwritten public offering with a price of [] times the Original Purchase Price (subject to adjustments for stock dividends, splits, combinations and similar events) and [net/gross] proceeds to the Company of not less than \$[], or (ii) upon the written consent of the holders of []% of the Series A Preferred.

Redemption Rights:

The Series A Preferred shall be redeemable from funds legally available for distribution at the option of holders of at least []% 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 all accrued but unpaid dividends]. 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)].

Sales Provisions:

Current shareholders are not entitled to transfer any interest in the Company except with the prior written consent of at least []% the Series A Preferred.

Any party may transfer all of its interest to any affiliated or subsidiary company pertaining to the same corporate group the party belongs to, who shall be subrogated in the position of the transferor, provided that, as a condition precedent to any such transfer, the transferee must execute and deliver to the other Party a deed of adherence pursuant to which the transferee expressly assumes all rights and obligations of the transferor.

Right of First Refusal:

Investors have a right of first refusal with respect to any shares of capital stock of the Company proposed to be sold by current shareholders of Company Common Stock. Before any such person may sell Common Stock, he will give the Investors an opportunity to participate in such sale on a basis proportionate to the amount of securities held by the seller and those held by the participating Investors.

Obligation to Sell:

Following the occurrence of any of the following events with

respect to a party (the “Affected Party”), the other party shall have the right and option to purchase the entire interest of the Affected Party in the Company.

i) Change of Control Event: in the case of either party, the fact that such party ceases to belong to the group it belongs and, as consequence thereof, holding in the Company remains not within the respective group.

ii) Insolvency Event: in the case of either party, the fact that such party enters into voluntary or involuntary liquidation or bankruptcy procedure or suspends payment of its debts.

iii) Failure to make capital contributions.

[Drag Along:

Holders of Preferred Stock and the current shareholders shall be required to enter into an agreement that provides that such stockholders will sell their shares in a transaction in which 50% or more of the voting power of the Company is to be transferred, approved by [the Board of Directors] [and the holders of a [majority][super majority] of the outstanding shares of Preferred Stock].

Board of Directors

At the Closing, the Board shall consist of [_____] members comprised of (i) [Names] as [the representatives designated by Series A Preferred shares, (ii) [Name] as the representative designated by the current shareholders, (iii) the person then serving as the Chief Executive Officer of the Company, and (iv) [_____] person(s) who are not employed by the Company and who are mutually acceptable [to the current shareholders and Series A Preferred shareholders].

[Deadlock

“Deadlock” means the failure of any [_____] successive duly convened meetings of the Board of Directors or Shareholders of the Company within a [_____] to resolve any of the matters whether such failure is due to voting abstention, negative voting or failure to attend a meeting. The parties may grant each other an option to, as the case may be, either acquire or sell all of their respective interest in the Company]:

STOCK PURCHASE AGREEMENT

Representations and Warranties: Standard representations and warranties by the current

shareholders/sellers.

Conditions to Closing:

Standard conditions to Closing, which shall include, among other things, satisfactory completion of financial and legal due diligence, qualification of the shares under applicable laws, the modification and notarization of the By-laws, secure consents and authorizations and an opinion of counsel to the Company.

Counsel and Expenses:

[Investor/Company] counsel to draft closing documents. The parties to pay each to their corresponding counsel all legal and administrative costs of the financing/acquisition [at Closing].

Company Counsel: [_____

 _____]

Investor Counsel: [_____

 _____]

Indemnity:

Standard indemnity provisions including caps on indemnities, years of survival of representation and warranties, basket for indemnification events and procedures with third parties.

SHAREHOLDERS AGREEMENT⁵

Future Contribution Rights

All parties shall have a pro rata right, based on their percentage equity ownership in the Company to participate in subsequent issuances of equity securities of the Company.

To the extent the Company decides to obtain loans to finance additional capital requirements, the parties recognize that equity contributions contemplated may be reduced accordingly.

Debt Financing

Debt financing shall be non-recourse to the parties. The parties will work together to raise the necessary debt financing. The terms and conditions of any debt financing would require the Board of Directors' approval pursuant to the provisions of By-laws.

Registration Rights:

The Company shall adopt the [*Sociedad Anónima Promotora de Inversión Bursátil*][*Sociedad Anónima Bursátil*] legal regime, and

⁵ It is customary practice in Mexico that many of the provisions of the By-laws are also reflected in the Shareholders Agreement. If it is the case, such provisions shall be identical so as to avoid any potential interpretation issues.

adopt all the necessary steps to register its shares in the National Securities Registry and in a national or foreign Stock Exchange.

Registrable Securities: Common and Preferred Shares will be deemed registrable securities.”

Non-Competition and Non-Solicitation and Agreements: Each current shareholder will enter into a [] year non-competition and non-solicitation agreement in a form reasonably acceptable to the Investors.

Non-Disclosure: Each current shareholder, employee and consultant with access to Company confidential information/trade secrets will enter into a non-disclosure and proprietary rights assignment agreement in a form reasonably acceptable to the Investors.

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

[Immediately prior to the Series A Preferred Stock investment, [_____] shares will be added to the option pool creating an unallocated option pool of [_____] shares.]

Key Personnel: Key personnel shall initially be _____, _____ and _____ (the “**Key Personnel**”). Key Personnel shall be required to devote their time to the business and affairs of the Company.

Key Personnel Insurance: Company to acquire life insurance on Key Personnel in an amount satisfactory to the Board. Proceeds payable to the Company.

OTHER MATTERS

[Existing Preferred Stock: The terms set forth for the Series [] Stock are subject to a 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.]

No Shop/Confidentiality: The current shareholders agree to work in good faith expeditiously towards a closing. The Company and the current shareholders agree that they will not, for a period of [six] weeks from the date these terms are accepted, take 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. [In the event that the current shareholders breach this no-shop obligation and, prior to [_____] , closes any of the above-referenced transactions [without providing the Investors the opportunity to invest on the same terms as the other parties to such transaction], then the current shareholders jointly and severally shall pay to the Investors \$[_____] upon the closing of any such transaction as liquidated damages.]⁶ The Company and the current shareholders will not disclose the terms of this Term Sheet to any person other than officers, members of the Board of Directors and the Company’s accountants and attorneys and other potential Investors acceptable to [_____] , as lead Investor, without the written consent of the Investors.

Expiration:

This Term Sheet expires on [_____] , 200[___] if not executed by the parties by that date.

EXECUTED THIS [___] DAY OF [_____] , 200[___].

[SIGNATURE BLOCKS]

⁶ It is unusual to provide for such “break-up” fees in connection with a venture capital financing, but might be something to consider where there is a substantial possibility the Company may be sold prior to consummation of the financing/acquisition.