



Angel Investing Legal Standards 23 March 2012

This is a half-day interactive workshop on the legal standards commonly used by experienced angels for early stage venture investing. The workshop will combine both seminar teaching as well as in-depth discussions on the terms and clauses commonly found in agreements.

Any entrepreneur or angel investor who is keen to sharpen their skills to negotiate, execute and complete successful early stage deals as well as deepen their understanding of the intricacies of key agreements would benefit from this focused training led by **Wong Meng Weng**, Deputy Chairman of BANSEA and co-founder of JFDI and **Joshua Tan**, our BANSEA Member who is also a legal professional and Specialist Mentor at JFDI.

The workshop aims to present an in-depth look into the legal documentation necessary for startups and angels to be familiar with so as to develop angel-entrepreneur relationships that would lead to success. It is relevant for participants who have attended the earlier BANSEA workshop on Angel Investing Legal Standards 101 as well as entrepreneurs, angel investors and investment executives who already have some basic knowledge about angel investing and related legal documents.

Agenda of Workshop

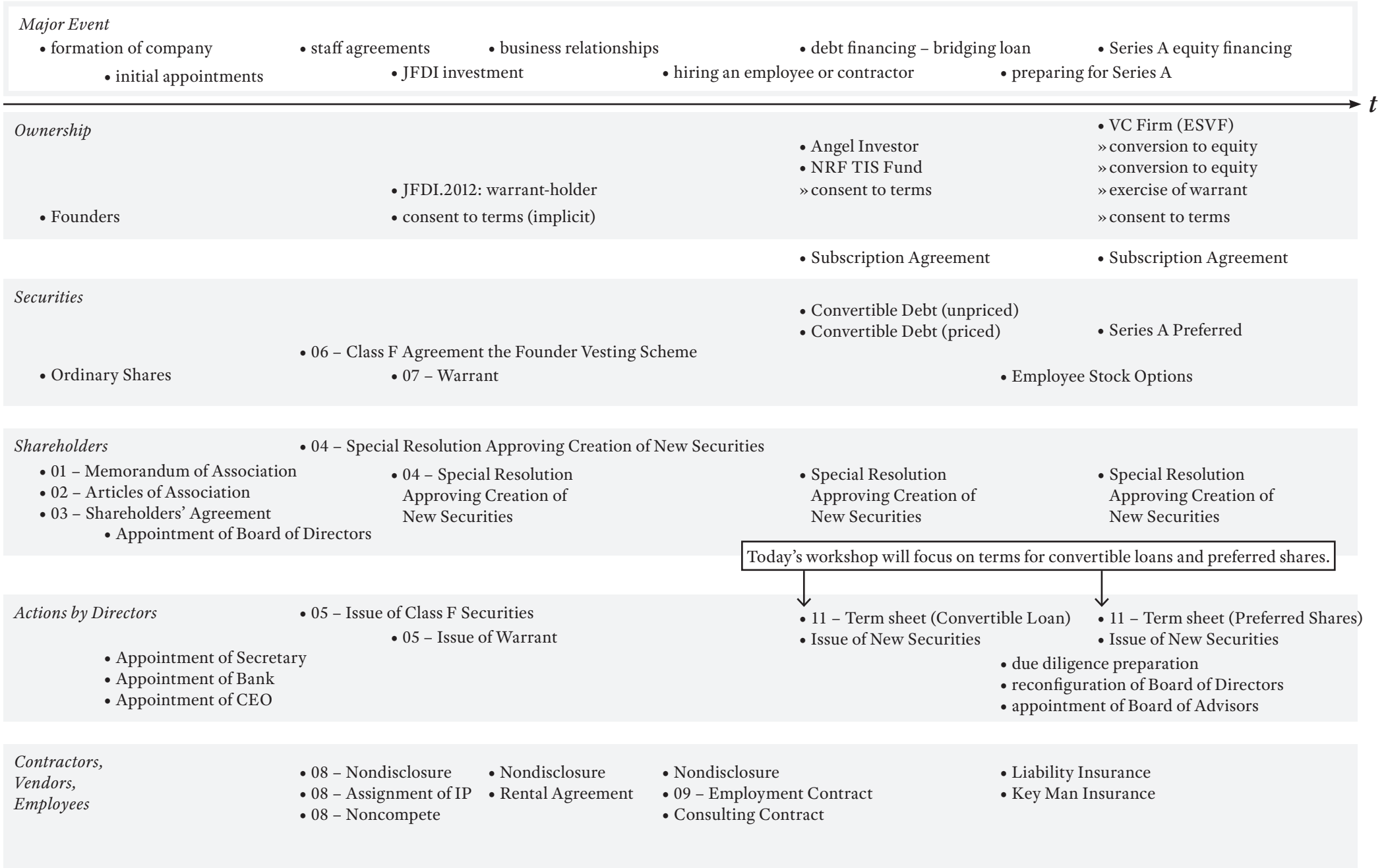
1:45-2:00pm Registration
2:00-3:15pm Part 1
3:15-3:45pm Refreshments
3:45-5:30pm Part 2

- **Part 1: Agreements for Founders, Directors, Advisors and Staff**
 - Memorandum & Articles of Association
 - Shareholders' Agreement for founders & directors
 - "Volunteer Agreement": Assignment of IP, Noncompete, and Nondisclosure
 - Employment Agreement

- **Part 2: In-depth look at Investment Terms and Subscription Agreement**
 - Core principles
 - Structure of company and ownership interests
 - Mechanics of financial terms
 - Convertible Debt versus Series A Preferred
 - Investor rights provisions

Workshop Trainers:

Mr Wong Meng Weng, Deputy Chairman of BANSEA
Mr Joshua Tan, BANSEA Member & Director of Legal Solutions LLC



MEMORANDUM OF
ASSOCIATION

Porridge Pte. Ltd.

This is a model document intended for educational purposes only.

Actual contracts should be prepared with the assistance of a lawyer.

An updated version of this document is available at
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JOYFUL FROG DIGITAL INCUBATOR

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THE COMPANIES ACT (CAP. 50)
A Private Company Limited by Shares

MEMORANDUM OF ASSOCIATION
 PORRIDGE PTE. LTD.
(Incorporated in the Republic of Singapore)
 20121234567n

- 1 The name of the company is Porridge Pte. Ltd.
- 2 The Registered Office of the Company will be situated in the Republic of Singapore.
- 3 The liability of the members is limited.
- 4 Subject to the provisions of the Companies Act, Cap. 50 and this Memorandum and Articles of Association, the Company has full capacity, rights and powers to carry on or undertake any business or activity and to do any act or enter into any transactions and/or arrangements.
- 5 The share capital of the company is S\$10.
- 6 We, the several persons whose names, addresses and occupations are hereunto subscribed are desirous of being formed into a company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Name and Address	Number of Shares taken	Signature
Smoochy	1	
Legs	1	
Panama	1	
Ponder	1	

ARTICLES OF
ASSOCIATION

Porridge Pte. Ltd.

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CLASS F PREFERENCE SHARES

- 46 The Company may issue preference shares in the capital of the Company (“**Class F Shares**”), at an issue price of \$1 each or such other amount as the Directors may determine, which shall carry the following rights, benefits and privileges and be subject to the following restrictions:
- 46.1 **As regards issue.** Class F Shares may be issued with the sanction of an ordinary resolution pursuant to agreements between the Company and individual holders (“**Class F Agreements**”), the terms of which the Directors may determine.
- 46.2 **As regards redemption and restriction.** The Company shall have the right to redeem Class F Shares. Redemption may occur at the issue price or such other price as the Directors may determine. The redemption right may be limited by Class F Agreements. Class F Shares which are subject to this right of redemption shall be known as Restricted F Shares. Class F Shares over which the Company has waived its right of redemption shall be known as Unrestricted F Shares.
- 46.3 **As regards conversion.** A Holder of Unrestricted F Shares shall have the right to convert those shares to ordinary shares at a one-for-one ratio at any time. Restricted F Shares may be converted only with the sanction of a special resolution of the Ordinary Shareholders.
- 46.4 **As regards automatic conversion.** In the event of a trade sale, in which 75% or more of the issued Ordinary share capital of the Company is sold to a third party buyer (a “**Trade Sale**”),
- 46.4.1 all Unrestricted Class F Shares shall automatically convert to ordinary shares at a one-for-one ratio, and
- 46.4.2 all Restricted Class F Shares shall be dealt with according to the Class F Agreements governing those shares or (if those agreements are silent on the matter) at the absolute discretion of the Directors.
- 46.5 **As regards voting.** Other than as provided for under the Act, the Holders of Unrestricted F Shares shall be entitled to vote on any matter in a general meeting of the Company, *pari passu* with holders of ordinary shares, and in the case of a poll their votes shall be counted according to the number of ordinary shares they would hold if all their Unrestricted F Shares were converted.
- 46.6 **As regards income.** The Holders of Class F Shares shall not be entitled to participate in the profits of the Company available for distribution by way of dividend or otherwise.
- 46.7 **As regards surplus profits and assets.** The Holders of Class F Shares shall have no right to participate in the profits or assets of the Company beyond the rights conferred under this Article.
- 46.8 **As regards transfers, registration, register and replacement.** Class F Shares will be in registered form and the Company shall maintain a register thereof. The provisions of these Articles relating to the registration, transfer, transmission, certificates and replacement thereof applicable to ordinary shares shall apply *mutatis mutandis* to Class F Shares subject to the terms of the Agreement.
- 46.9 **As regards pre-emptive rights.** Notwithstanding Article 44, the Company may issue new Class F Shares without first offering the new shares to existing Members.

- 46.10 **As regards substitution securities.** In the event of a Trade Sale, Change of Control event (as defined under “Additional Definitions” below), winding-up, or dissolution of the Company pursuant to reconstruction, amalgamation, merger or consolidation, the resultant corporate entity responsible for the liabilities of the Company with respect to Class F Shares shall issue such securities in substitution and replacement of Class F Shares and on such terms as shall be approved by at least 51% of all then existing Holders of Class F Shares unless the terms of such securities in substitution are no less favourable than the terms of Class F Shares in which case the approval by Holders of Class F Shares shall not be required.
- 46.11 Save as provided above, there are no other anti-dilution or protective provisions in respect of the Class F Shares.
- 46.12 In the event of any conflict or inconsistency between the provisions of this Article and the other provisions of these Articles, then the provisions of this Article shall prevail.

GENERAL MEETINGS

- 47 Without prejudice to the Company’s rights to dispense with annual general meetings under the Act, the Company shall hold, once in every calendar year, an annual general meeting, at such time and place as may be determined by the Directors. Not more than fifteen (15) months shall be allowed to elapse between any two such annual general meetings. All general meetings (other than the annual general meetings) shall be called extraordinary general meetings.
- 48 Any Director may call an extraordinary general meeting whenever he thinks fit, and extraordinary general meetings shall be convened on such requisition, or in default may be convened by such requisitionists, as provided by the Act.
- 49 Subject to the provisions of the Act relating to the convening of general meetings to pass special resolutions, and any agreements for shorter notice, at least fourteen (14) days’ notice (exclusive of both the day on which the notice is served or deemed to be served and the day for which notice is given) specifying the place, the day and the hour of meeting, and in the case of special business, the general nature of such business shall be given in the manner provided in these Articles to such persons as are entitled to receive notices of general meetings from the Company. The accidental omission to give such notice to, or the nonreceipt of such notice by, any such person shall not invalidate any resolution passed or proceeding held at any such general meeting.

PROCEEDINGS AT GENERAL MEETINGS

- 50 All business shall be deemed special that is transacted at any extraordinary general meeting, and all that is transacted at an annual general meeting shall also be deemed special, with the exception of declaring a dividend, the consideration of the accounts and balance sheets, the reports of the Directors and Auditor and any other documents annexed to the balance sheets, the appointment of Directors in the place of those retiring, the fixing of the remuneration of the Directors and the appointment and fixing of the remuneration of the Auditor.

SHAREHOLDERS' AGREEMENT

Porridge Pte. Ltd.

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THIS AGREEMENT is dated the 28th day of February 2012

BETWEEN:—

- (1) JFDI.2012 (Pte. Ltd.), a private limited company incorporated in Singapore with its registered office at Prima Management Services Pte. Ltd. (55 Ubi Avenue 3 #04-00, Singapore 408864)

(the “**Investor**”);

- (2) Smoochy
Legs
Prince
Toady

(each being a “**Founder**” and collectively, the “**Founders**”); and

- (3) Porridge Pte. Ltd (20121234567N), a private company limited by shares incorporated in Singapore with its registered office at Prima Management Services Pte. Ltd. (55 Ubi Avenue 3 #04-00, Singapore 408864) (the “**Company**”)

(Collectively, the “**Parties**” and each a “**Party**”).

WHEREAS:-

- (A) The Company is a private company limited by shares incorporated in Singapore under the Companies Act (Cap. 50), and having a company registration number of 20121234567N.
- (B) As at the date of this Agreement, the Company has an issued and paid-up share capital of S\$10 divided into 8 Ordinary Shares.
- (C) Pursuant to a Founder Agreement dated 30 February 2012 between the Investor and the Founders, and in conjunction with
a “**Class F Agreement**” dated 28 February 2012 between the Founders and the Company, by which the Founders subscribe to 160 convertible preference shares whose rights of redemption are governed by a vesting schedule described therein; and
a “**Warrant**” issued on 28 February 2012 by the Company to the Investor which upon exercise shall cause 42 Ordinary Shares to be issued to the Investor, which shares shall represent 20% of the enlarged fully-diluted share capital of the Company immediately following the issue and allotment of such Ordinary Shares;
- (D) To regulate the relationship of the Shareholders (as defined below) *inter se* as present and prospective shareholders of the Company and in the conduct of the business and affairs of the Company in the spirit of mutual confidence and co-operation, the Parties have agreed to enter into this Agreement on the terms and conditions hereinafter set out.

NOW IT IS HEREBY AGREED as follows:-

DEFINITIONS

1 In this Agreement and in the Recitals abovementioned, unless the context otherwise requires:-

<i>Act</i>	means the Singapore Companies Act (Cap. 50) and includes any provision thereof as from time to time modified or re-enacted;
<i>Agreement</i>	(also <i>Shareholders' Agreement</i>) means this Agreement and shall include all modifications and supplements thereto from time to time in force;
<i>Articles</i>	means the Articles of Association of the Company;
<i>Board</i>	means the board of Directors for the time being of the Company;
<i>Business</i>	means the business of the Company which is high-tech software product and service development;
<i>Change of Control</i>	is as defined in the Articles;
<i>Control</i>	means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, whether through the ownership of voting securities, by contract, or otherwise and derivative terms thereof (including "Controlling", "Controlled by" and " <i>under common Control with</i> ") shall also bear such meaning as aforesaid. For the purpose of this definition, the holding of an interest (within the meaning of the Act) of more than 50% of the equity share capital of the relevant corporation shall be deemed to be "Control" of this corporation;
<i>Deed of Ratification</i>	means a deed of ratification and accession whereby the signatory thereof enters into, becomes a party to and undertakes to be legally bound by the terms of this Agreement;
<i>Director</i>	means a director of the Company for the time being, including where applicable an alternate director;
<i>External Investor</i>	means a debt-, warrant-, option-, or equity-holder other than the Founders and JFDI.2012;
<i>External Financing</i>	means a fund-raising event which involves an External Investor and which raises at least S\$100,000;
<i>Investor</i>	means JFDI.2012 (Pte. Ltd.);
<i>Investment</i>	means the amount invested in the Company by the Investor in the form of the Warrant;
<i>Trade Sale</i>	means a sale of 75% or more of the issued Ordinary share capital of the Company to a third party buyer;
<i>Memorandum</i>	means the Memorandum of Association of the Company;

<i>Ordinary Shares</i>	means the ordinary shares in the capital of the Company;
<i>Shareholders</i>	means the Founders named in the Memorandum and shall include any other person who holds Shares in the Company and who has executed a Deed of Ratification and thereby become bound by the terms of this Agreement and "Shareholder" means such one of them as the case may be;
<i>Shares</i>	means shares in the capital of the Company whether ordinary or preferred;
<i>S\$ or \$</i>	means the lawful currency for the time being of the Republic of Singapore; and

Except where the context otherwise requires, words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include bodies corporate or unincorporated, any state or any agency thereof and any other entity.

Headings, marginal sidenotes, and graphic art are for ease of reference only and have no legal effect. Reference to Clauses are to Clauses of this Agreement and references to this Agreement includes any amendments or supplementals thereto.

Except where the context otherwise requires, references to any person include its successors and permitted assignees.

References in this Agreement to a time of day are to Singapore time.

Any document expressed to be in the "approved form" means a document in the form or substantially in the form approved by (and signed for identification by or on behalf of) the Parties.

Except where the context otherwise requires, Clauses which refer to the "Company" shall apply *mutatis mutandis* to subsidiaries or successors of the Company which may from time to time be established.

Any reference in this Agreement to a Shareholder procuring and derivative terms thereof (including "**shall procure**"), shall only oblige the Shareholder to exercise its voting rights in the Company to vote in favour of the Company performing its obligation as required.

This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of Singapore.

FOUNDER STOCK VESTING SCHEME

- 2 The Company shall issue and the Shareholders may subscribe to Class F Shares as described in the Class F Agreement. These shares provide a mechanism for:
- 2.1 recognizing different degrees of commitment and different levels of contribution from each Founder;
 - 2.2 respecting the need of each Founder to balance compensation between cash and equity; and
 - 2.3 amicably resolving scenarios in which one or more Founders leave the company.
- 3 Article 44 of the Articles of Association confers pre-emptive rights on the Shareholders. The Shareholders shall waive these pre-emptive rights with regard to the issue of new Class F Shares provided that such issue occurs pursuant to a Compensation Adjustment and at the Discretionary Subscription Price as described in the Class F Agreement.

SHARE VALUATION POLICY

- 4 For purposes of calculating the valuation of the company, Class F shares shall contribute to the fully-diluted capitalization value, and shall be valued on an as-if-converted basis.
- 5 For purposes of transferring shares among the Shareholders, an ordinary share of the company shall be valued
- 5.1 if an External Financing occurred less than 1 year ago, at 25% less than the valuation agreed therein;
 - 5.2 if an External Financing has not occurred, or has occurred more than 1 year prior to the date of the transfer of shares, then as the shareholders agree amongst themselves.
- 5.3 Variation from this rule shall require the approval of the Directors. If the Directors do not give their approval to a variant valuation they may refuse to register the transfer.

DISPUTE RESOLUTION

- 6 Founders will attempt to settle disputes amongst themselves.
- 7 Should a schism divide the Shareholders, it is anticipated that the majority of the Shareholders will exercise the Company's right of redemption on the unvested shares of the minority, as provided by the Class F Agreements.
- 8.1 If a dispute, controversy or claim arises out of or relates to this contract, or breach, termination or invalidity thereof, and if such dispute, controversy or claim cannot be settled and resolved through negotiation, the parties agree first to try in good faith to settle such dispute, controversy or claim through mediation.
- 8.2 Any issue or claim not resolved by mediation shall be referred to and finally resolved by arbitration in Singapore.
- 8.3 The mediator and if necessary, the arbitrator, shall be mutually agreed to by the parties and shall be a professional arbitrator or mediator (as the case may be) of The Arbitration Chambers. Failing such agreement, the mediator or arbitrator shall be appointed by The Arbitration Chambers.

DRAG-ALONG RIGHTS

- 9 If a Trade Sale is approved by 75% or more of voting shares (subject to any protective provisions that happen to be held by subsequent Preferred Shareholders or creditors) then the minority shareholders shall give their consent to such a sale.

TAG-ALONG RIGHTS

- 10 Should one or more Shareholders offer to sell their shares to a third Party or Parties such that the new Parties would hold more than 25% of the voting stock of the company, those Shareholders must offer all other Shareholders an opportunity, calculated *pro rata*, to sell their shares also.

NEW PARTIES

- 10.1 New Shareholders shall be required to execute a Deed of Ratification and be bound by this Agreement.
- 10.2 While the Investor at the date of the signing of this Agreement is a Warrant-holder and not a Shareholder, by exercise of that Warrant whether in whole or in part, the Investor shall be deemed to have ratified and acceded to this Agreement and agrees to be bound by the terms of this Agreement.

TRANSFERABILITY OF RIGHTS

- 11 The Articles of Association give shareholders pre-emptive rights (on the issue of new securities) and rights of first refusal (to purchase existing securities). These rights shall be transferable on a commercial basis, so that if a deal is oversubscribed, each founder can delegate their position to one or more favourite investors.

RELATED COMPANIES AND EXISTING PROPRIETARY ASSETS

- 12 Pursuant to the Founder Agreement, should one or more Founders control a existing business whose proprietary assets will be used in the Company's current Business, then those Founders shall procure the transfer of those assets, a controlling equity stake in that existing business, or a perpetual, irrevocable, royalty-free, exclusive, worldwide license to the Company for a nominal fee.

ALTERATIONS DUE TO EXTERNAL FINANCING

- 13 A prospective investor may seek to alter both this Agreement and the Articles of Association as a condition of External Financing.

HUMILITY

- 14 The Founders acknowledge that the business may outgrow them, and that their primary commitment is to the success of the business. Should, one day, other leadership and management be better suited, the Founders agree to be reminded of this commitment.

REGARDING DEATH AND DISABILITY

- 15 As soon as practical, after or in preparation for an External Financing, the Company shall purchase insurance, such that in the event of Death or Disability of a Founder, the Company can afford to
- 15.1 continue operations in the absence of that Founder, and
 - 15.2 offer to that Founder or his Estate a redemption of the Founder's securities at fair market value.

Should the Company not raise External Financing, but recognize revenue of at least \$100,000, then this provision shall apply with equal force.

SIGNATURES

Intending to be bound by this Agreement, the Parties now set their hands.

Smoochy

Legs

Prince

Toady

Hugh Mason
Director
JFDI.2012 (Pte. Ltd.)

**MEMBERS'
RESOLUTIONS**

Porridge Pte. Ltd.

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THE COMPANIES ACT (CAP. 50)
A Private Company Limited by Shares

RESOLUTIONS OF THE MEMBERS
PORRIDGE PTE. LTD.
(Incorporated in the Republic of Singapore)
20121234567N

Resolutions in Writing Passed Pursuant to Article 60 of
the Company's Articles of Incorporation

CLASS F AGREEMENTS WITH MEMBERS OF THE COMPANY

Resolved, that the Directors negotiate Class F Agreements with all Members of the Company, whose names for convenience of reference are listed below, and execute those agreements on behalf of the company.

- Smoochy
- Legs
- Prince
- Toady

CLASS F SHARES

Resolved, that the Company issue Class F Shares pursuant to the above Agreements.

JFDI.2012 WARRANT

Resolved, that the Directors issue a Warrant for Ordinary Shares to JFDI.2012 (Pte. Ltd.) for \$15,000.

SIGNATURES

Smoochy

Legs

Prince

Toady

CLASS F AGREEMENT

Porridge Pte. Ltd.

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CLASS F AGREEMENT

THIS AGREEMENT is dated the 28th day of February 2012

BETWEEN:-

- (1) Smoochy
Legs
Prince
Toady
(each being a “**Holder**” and collectively, the “**Holders**”); and
- (2) Porridge Pte. Ltd. (20121234567N), a private company limited by shares incorporated in Singapore with its registered office at Prima Management Services Pte. Ltd. (55 Ubi Avenue 3 #04-00, Singapore 408864) (the “**Company**”)

(Collectively, the “**Parties**” and each a “**Party**”).

WHEREAS:-

- (A) The Company is a private company limited by shares incorporated in Singapore under the Companies Act (Cap. 50) on 25 November 2011, and having company registration number 20121234567N.
- (B) The Company’s Articles of Association define Class F Preference Shares.
- (C) The Company proposes to issue Class F Preference Shares to each Holder and each Holder has agreed to subscribe for the Class F Preference Shares on the terms and conditions below.
- (D) This Agreement records and sets out the terms and conditions upon and subject to which the Company will create and issue the Class F Preference Shares and each Holder will subscribe for the same.

NOW THIS AGREEMENT WITNESSETH as follows:-

DEFINITIONS

In the Agreement (including the Recitals and the Schedules), except to the extent that the context otherwise requires, the following terms shall have the meanings set forth below:

<i>Act</i>	means the Companies Act (Cap. 50) of Singapore and includes any provision thereof as from time to time modified or re-enacted;
<i>Articles</i>	means the Articles of Association of the Company;
<i>Board</i>	means the board of Directors for the time being of the Company;
<i>Change of Control</i>	is as defined in the Articles;
<i>Company Secretary</i>	is at the date of this Agreement an appointment held by Prima Management Services Pte. Ltd. (55 Ubi Avenue 3 #04-00, Singapore 408864);

<i>Vest / Vesting</i>	in relation to a Share means the waiver of the Company's Redemption Right over that Share;
<i>Vested / Unrestricted</i>	in relation to a Share means that the Company has waived its right of redemption in regard to that Share;
<i>Unvested / Restricted</i>	in relation to a Share means that the Company possesses a right of redemption over that Share;
<i>External Investor</i>	means a debt-, warrant-, option-, or equity-holder other than the Founders and JFDI.2012 (Pte. Ltd.);
<i>External Financing</i>	means a fund-raising event which involves an External Investor and which raises at least S\$100,000;

Except where the context otherwise requires, words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include bodies corporate or unincorporated, any state or any agency thereof and any other entity.

Headings, marginal sidenotes, and graphic art are for ease of reference only and have no legal effect. Reference to Clauses are to Clauses of this Agreement and references to this Agreement includes any amendments or supplementals thereto.

Except where the context otherwise requires, references to any person include its successors and permitted assignees. Clauses which refer to the "Company" shall apply *mutatis mutandis* to subsidiaries or successors of the Company which may from time to time be established. For purposes of this Agreement, employment with the Company shall include employment with a parent or subsidiary of the Company.

References in this Agreement to a time of day are to Singapore time.

1 PURCHASE OF SHARES

The Company shall issue and sell to the Holder, and the Holder shall purchase from the Company, subject to the terms and conditions set forth in this Agreement, Class F Preference shares (the "Shares") of the Company, at a purchase price of S\$0.06250 per share (the "Issue Price"). The aggregate purchase price for the Shares shall be paid by the Holder in cash or cheque. The number of Shares purchased by each Holder shall be the total of the numbers shown in the *Restricted* and *Unrestricted* columns in the table below. Upon receipt of payment by the Company, the Company shall issue to the Holder one or more certificates in the name of the Holder for that number of Shares purchased by the Holder. The Holder agrees that the Shares shall be subject to the purchase options and restrictions on transfer set forth in this Agreement and in the Articles of Association.

For convenience of reference the table below indicates in the column titled *Ordinary* the number of ordinary shares presently held by each Holder.

2 REDEMPTION

2.1 Subject to Sections 2.2, 2.3, and 2.4 below,

- 2.1.1 in the event that the Holder is discharged by the Company from employment or volunteership, with Cause (as defined below) and prior to a Change of Control event, the Company shall have the right and option (the “**Redemption Right**”) to purchase from the Holder, at a price per share equal to the Issue Price (the “**Redemption Price**”), up to the total number of Shares that have not vested according to the following vesting schedule (the “**Restricted Shares**”).
 - 2.1.2 the number of shares in the *Restricted* column of the above table shall initially be subject to the Redemption Right.
 - 2.1.3 the number of shares in the *Unrestricted* column of the above table shall not be subject to the Redemption Right; they shall be deemed vested upon issue.
 - 2.1.4 the number of shares in the *Cliff* column of the above table shall vest on the last business day of April 2012.
 - 2.1.5 thereafter, the number of shares in the *Monthly* column of the above table shall vest on the last business day of each month, starting with May 2012, until such time as all Shares are fully vested.
- 2.2 For purposes of this Agreement, “**Cause**” shall mean
- 2.2.1 any act or omission which constitutes a material breach by the Holder of the terms of
 - 2.2.2.2 this Agreement,
 - 2.2.3.3 the Holder’s Volunteer Agreement or Employment Agreement as the case may be, or
 - 2.2.4.4 any other written and signed agreement between the Holder and the Company,
which breach remains uncured by the Holder for a period of thirty (30) days following the Holder’s receipt of a written notice of breach from the Company, specifying the act or omission upon which the Company’s claim of breach is based;
 - 2.2.5 the commission by the Holder of an arrestable offence, a criminal act in connection with an arrestable offence, or any dishonest or wrongful act involving fraud;
 - 2.2.6 the commission by the Holder of an act of moral turpitude which may adversely effect the reputation or business of the Company as reasonably determined by the Board; or
 - 2.2.7 the Holder’s willful or continuing failure to perform the Holder’s duties reasonably assigned during the course of employment or volunteership.
- 2.3 For purposes of this Agreement, the term “**Good Reason**” shall mean termination due to a material breach by the Company of the Holder’s Volunteer Agreement or Employment Agreement, as the case may be, which breach remains uncured by the Company, if curable, for a period of thirty (30) days following receipt of a written notice of breach from the Holder, specifying the act or omission upon which the Holder’s claim of breach is based.
- 2.4 Termination for Good Reason shall be deemed to be termination by the Company without Cause under this Agreement.

3 EXERCISE OF REDEMPTION RIGHT

- 3.1 The Company may exercise the Redemption Right with respect to Restricted Shares by delivering or mailing to the Holder (or his estate), within 60 days after the termination of the employment or volunteership of the Holder with the Company, a written notice of exercise of the Redemption Right. Such notice shall specify the number of Shares to be purchased. If and to the extent the Redemption Right is not so exercised by the giving of such a notice within such 60-day period, the Redemption Right shall automatically expire and terminate effective upon the expiration of such 60-day period.
- 3.2 The Company shall pay to the Holder the aggregate Redemption Price for such repurchased Shares against delivery of the certificate or certificates representing the Shares to be purchased by the Company. The written notice to the Holder shall specify the address at, and the time and date on, which payment of the Redemption Price for such repurchased Shares is to be made (the “Closing”). The date specified shall not be less than ten (10) days nor more than sixty (60) days from the date of the mailing of the notice, and the Holder or his or her successor in interest with respect to the Shares to be so repurchased shall have no further rights as the owner thereof from and after the date specified in the notice. At the Closing, the Redemption Price for such repurchased Shares shall be delivered to the Holder or his or her successor in interest and the Shares being purchased, duly endorsed for transfer, shall, to the extent that they are not then in the possession of the Company, be delivered to the Company by the Holder or his or her successor in interest.
- 3.3 After the time at which the Redemption Right is exercised with respect to any Shares, the Company shall not pay any dividend to the Holder on account of such Shares or permit the Holder to exercise any of the privileges or rights of a stockholder with respect to such Shares.
- 3.4 The Redemption Price may be payable, at the option of the Company, in cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company or in cash (by cheque) or both. Notwithstanding the foregoing, if the Holder has outstanding one or more loans for the purchase of the Shares in favor of the Company, then unless otherwise agreed by the Holder and the Company, the Company shall exercise the Redemption Right in full and shall apply the payment of all amounts owed upon such exercise to the payment of such loans, in proportion to the face amount of such loans.
- 3.5 The Company shall not purchase any fraction of a Share upon exercise of the Redemption Right, and any fraction of a Share resulting from a computation made pursuant to this Agreement shall be rounded to the nearest whole Share (with any one-half Share being rounded upward).

4 ACCELERATION

4.1 **Acceleration prior to acquisition.**

In the absence of a Change of Control event,

4.1.1 termination without cause or resignation in response to a hostile work environment shall entail full acceleration of unvested shares causing all outstanding Restricted Shares to become Unrestricted Shares; and

4.1.2 termination with cause or voluntary resignation shall, unless the Directors resolve otherwise, entail redemption of Restricted Shares.

4.2 **Acceleration post acquisition for stock.**

Subsequent to a Change of Control event in which the Company is acquired primarily for stock, and in which the vesting schedule is substantially preserved in the acquiring entity's stock repurchase or stock option plan,

4.2.1 termination without cause or resignation in response to a hostile work environment shall entail full acceleration of unvested shares causing all outstanding Restricted Shares to become Unrestricted Shares; and

4.2.2 termination with cause or voluntary resignation shall, unless the Directors of the acquiror resolve otherwise, entail redemption or forfeiture of the unvested portion.

4.3 **Acceleration post acquisition for cash.**

Subsequent to a Change of Control event in which the Company is acquired primarily for cash, the Restricted Shares shall form part of the fully diluted capitalization, and cash corresponding to the unvested portion shall be escrowed on a *pro rata* basis. Cash shall be released from escrow *mutatis mutandis* with the vesting scheme.

4.4 **Acceleration post acquisition for cash and stock.**

In the event the Company is acquired for both cash and stock, the above sections 4.2 and 4.3 shall apply in *pro rata* fashion.

5 COMPENSATION ADJUSTMENT

The Directors intend to permit a Holder who is also an employee or consultant to balance his compensation from time to time in favour of cash or equity according to preference and circumstance. Accordingly, the Holder may in any given month, with the approval of the Directors, elect to subscribe for additional Unrestricted F Shares at the Discretionary Subscription Price (defined below) up to the maximum amount of his monthly pay.

6 DISCRETIONARY SUBSCRIPTION PRICE

6.1 Subsequent to the initial issue of 28 February 2012, Class F Shares may be issued pursuant to section 5 at a “**Discretionary Subscription Price**”, which shall be the greater of

6.1.1 the highest price of any previous issue of Class F Shares,

6.1.2 in the event that a valuation was placed on the Company in the course of an External Financing event, a price consistent with that set for transfers among shareholders as described under Share Valuation Policy in the Shareholders’ Agreement, or

6.1.3 a price determined by the Board.

6.2 In the event Class F Shares are issued at a price other than provided above, the pre-emption rights waived by the Shareholders in Clause 3 of the Shareholders’ Agreement shall return with full force and Shareholders shall enjoy their pre-emptive rights with respect to the new issue.

7 REPURCHASE OF VESTED SHARES

In the event of the Holder’s termination of employment for Cause, the Company shall have the option, but not the obligation, to repurchase all or any part of the Holder’s Vested Shares. In the event the Company does not, upon any such termination of employment of the Holder, exercise its option pursuant to this section, the restrictions set forth in the balance of this Agreement shall not thereby lapse, and the Holder for himself or herself, his or her heirs, legatees, executors, administrators and other successors in interest, agrees that the Shares shall remain subject to such restrictions. The following provisions shall apply to a repurchase under this Section:

7.1 The per-share repurchase price of the Vested Shares to be sold to the Company upon exercise of its option under this Section shall be equal to the Redemption Price.

7.2 The Company’s option to repurchase the Holder’s Shares in the event of termination of employment shall be valid for a period of sixty (60) days commencing with the date of such termination of employment.

7.3 In the event the Company shall be entitled to and shall elect to exercise its option to repurchase the Holder’s Vested Shares under this Section, the Company shall notify the Holder, or in case of death, his or her representative, in writing of its intent to repurchase the Vested Shares. Such written notice may be mailed by the Company up to and including the last day of the time period provided for in the clause above.

7.4 The written notice to the Holder shall specify the address at, and the time and date on, which payment of the repurchase price is to be made (the “**Closing**”). The date specified shall not be less than ten (10) days nor more than sixty (60) days from the date of the mailing of the notice, and the Holder or his or her successor in interest with respect to the Vested Shares shall have no further rights as the owner thereof from and after the date specified in the notice. At the Closing, the repurchase price shall be delivered to the Holder or his or her successor in interest and the Vested Shares being purchased, duly endorsed for transfer, shall, to the extent that they are not then in the possession of the Company, be delivered to the Company by the Holder or his or her successor in interest.

8 FAILURE TO DELIVER SHARES; EFFECT OF PROHIBITED TRANSFER

In the event that the Holder or his or her successor in interest fails to deliver the Shares to be repurchased by the Company under this Agreement, the Company may elect

8.1 to establish a segregated account in the amount of the repurchase price, such account to be turned over to the Holder or his or her successor in interest upon delivery of such Shares, and

8.2 immediately to take such action as is appropriate to transfer record title of such Shares from the Holder to the Company and to treat the Holder and such Shares in all respects as if delivery of such Shares had been made as required by this Agreement. The Holder hereby irrevocably grants the Company a power of attorney which shall be coupled with an interest for the purpose of effectuating the preceding sentence. The Company shall not be required

8.2.1 to transfer on its books any of the Shares which shall have been sold or transferred in violation of any of the provisions set forth in this Agreement, or

8.2.2 to treat as owner of such Shares or to pay dividends to any transferee to whom any such Shares shall have been so sold or transferred.

9 RESTRICTIONS ON TRANSFER

The provisions of the Articles of Association and of the Shareholders' Agreement relating to the registration, transfer, transmission, certificates and replacement thereof applicable to ordinary shares shall apply *mutatis mutandis* to Class F Preference Shares.

10 RESTRICTIVE LEGENDS

All certificates representing Shares shall have affixed thereto legend in substantially the following form, in addition to any other legends that may be required by law:

The shares of stock represented by this certificate are subject to restrictions on transfer and an option to purchase set forth in a certain Class F Agreement between the corporation and the registered owner of these shares (or his predecessor in interest), and such Agreement is available for inspection without charge at the office of the Secretary of the corporation.

11 ADJUSTMENTS FOR STOCK SPLITS, STOCK DIVIDENDS, ETC

11.1 If from time to time there is any stock split, stock dividend, stock distribution or other reclassification of the Ordinary Shares of the Company, any and all new, substituted or additional securities to which the Holder is entitled by reason of his ownership of the Shares shall be immediately subject to the purchase and repurchase options, the restrictions on transfer and the other provisions of this Agreement in the same manner and to the same extent as the Shares, and the Redemption Price shall be appropriately adjusted.

11.2 If the Shares are converted into or exchanged for, or stockholders of the Company receive by reason of any distribution in total or partial liquidation, securities of another corporation, or other property (including cash), pursuant to any merger of the Company or acquisition of its assets (including as a consequence of a Change of Control), then the rights of the Company under this Agreement shall inure to the benefit of the Company's successor and this Agreement shall apply to the securities or other property received upon such conversion, exchange or distribution in the same manner and to the same extent as to the Shares.

12 CONVERSION

Pursuant to Article 46.3 of the Articles of Association, Unrestricted Shares may be converted at any time to Ordinary Shares at the option of the Holder.

12.1 To effect conversion, a Holder shall simply give written notice to the Board of Directors and the Company Secretary indicating the number of shares to be converted and the effective date of conversion. If the Holder desires updated share certificates he should enclose his existing certificate or certificates with that notice.

12.2 In the event of a Change of Control or a winding-up of the Company, all Unrestricted Shares shall be deemed to have been converted to Ordinary Shares on the business day prior to the event and the Holder shall be entitled to all the rights of an ordinary shareholder during the course of, and subsequent to, that event.

13 NO RIGHTS TO EMPLOYMENT

Nothing contained in this Agreement shall be construed as giving the Holder any right to be retained, in any position, as an employee of or volunteer with the Company.

14 SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each other provision of this Agreement shall be severable and enforceable to the extent permitted by law.

15 WAIVER

Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board of Directors of the Company.

16 BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Company and the Holder and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth above.

17 NOTICE

All notices required or permitted hereunder shall be in writing and deemed effectively given according to the Articles.

18 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, relating to the subject matter of this Agreement.

19 AMENDMENT

This Agreement may be amended or modified only by a written instrument executed by both the Company and the Holder.

20 GOVERNING LAW

20.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of Singapore.

20.2 If a dispute, controversy or claim arises out of or relates to this agreement, or breach, termination or invalidity thereof, and if such dispute, controversy or claim cannot be settled and resolved through negotiation, the parties agree first to try in good faith to settle such dispute, controversy or claim through mediation.

20.3 Any issue or claim not resolved by mediation shall be referred to and finally resolved by arbitration in Singapore.

20.4 The mediator and if necessary, the arbitrator, shall be mutually agreed to by the parties and shall be a professional arbitrator or mediator (as the case may be) of The Arbitration Chambers. Failing such agreement, the mediator or arbitrator shall be appointed by The Arbitration Chambers.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Smoochy

Legs

Prince

Toady

CONSENT OF SPOUSE

I am the spouse of a Holder named in the Class F Agreement (the “**Agreement**”) to which this Consent is attached. Capitalized terms not defined herein will have the meaning set forth in such agreement.

I have read and understand the Agreement. I acknowledge that, by execution hereof, I am bound by the Amended and Restated Stock Restriction Agreement as to any and all interests I may have in the Restricted Stock. In particular, I understand and agree that the Restricted Stock (including any interest that I may have therein) is subject to certain repurchase rights in the Company and certain restrictions on transfer.

I also agree with my spouse and the Company that if my spouse and I ever get divorced or enter into any marital property settlement agreement, or if my spouse or I ever seek a decree of separate maintenance, to the extent my spouse has or can obtain assets other than the Restricted Stock in amounts and of value sufficient to settle or satisfy any marital property claims I may have in the value of the Restricted Stock, I will accept such other assets in settlement of those claims.

I agree that I will not do anything to try to prevent the operation of any part of the Agreement. I acknowledge that I have had an opportunity to obtain independent counsel to advise me concerning the matters contained herein.

VOLUNTEER AGREEMENT

Porridge Pte. Ltd.

This is a model document intended for educational purposes only.

Actual contracts should be prepared with the assistance of a lawyer.

An updated version of this document is available at
bit.ly/bansea-legals

JOYFUL FROG DIGITAL INCUBATOR

Blk 71 Ayer Rajah Crescent
#02-22 Singapore 139951

23 March 2012 11:49 AM SGT
version 1.3.0

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THIS AGREEMENT is dated the 23rd day of March 2012

BETWEEN:—

- (1) Smoochy
Legs
Prince
Toady

(each being a “**Volunteer**” and collectively, the “**Volunteers**”); and

- (2) Porridge Pte. Ltd., a private company limited by shares incorporated in Singapore with its registered office at Prima Management Services Pte. Ltd. (55 Ubi Avenue 3 #04-00, Singapore 408864) and having a company registration number of 20121234567N (the “**Company**”)

(Collectively, the “**Parties**” and each a “**Party**”).

WHEREAS:-

- (C) Each Volunteer desires to contribute to the Company without compensation or expectation of compensation beyond reimbursement;
- (D) The Company and the Volunteers now enter into this Agreement to confirm ownership of the Achievements of Work (as defined below) that may be created during the Volunteer’s term of service with the Company and to regulate other matters concerning intellectual property rights and confidentiality

NOW IT IS HEREBY AGREED as follows:-

DEFINITIONS

- 1 In this Agreement and in the Recitals abovementioned, unless the context otherwise requires:-

Affiliated Corporation in relation to any persons or corporation means a corporation that directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with that first-mentioned person or corporation;

Competitor means any third party engaged in or carrying on business activities which are similar to or competitive with the Business, as determined by the Board;

Company shall include its successors, assigns and respective legal representatives;

Company Business means the business and undertakings of the Company which the Company may now or hereafter engage, comprising, amongst other things, all the businesses, services, undertaking, assets and activities of, related to, or arising from, Porridge Pte. Ltd., which is the development and deployment of high-tech software and services, including but not limited to all of the Company’s actual or demonstrably anticipated research and development activities.

Company-owned Achievements means Achievements of Work and all other Achievements assigned to the Company pursuant to this Agreement.

Achievements means all inventions, discoveries, designs, processes, formulae, innovations, developments and improvements, whether or not patentable; all types of works (including but not limited to computer software, articles, reports, drawings, technical drawings, blueprints, advertisements, sales materials and logos), whether or not registrable or copyrightable; know-how; and trade secrets.

Achievements of Work means all Achievements that are conceived, created, developed, reduced into practice or expressed in a tangible form by the Volunteer (solely or jointly with other persons) during the Volunteer's period of service with the Company (including any period of employment prior or subsequent to the date of this Agreement) and that fulfil at least one of the following two conditions:

- i. relate to any aspect of the Company Business;
- ii. constitute works of employment, invention-creations of employment or other technological results of employment under applicable laws and regulations.

Intellectual Property Rights includes the full benefit (subject to the obligations) of all patents, trademarks and other marks, registered designs (and applications for all the same), copyrights, trade and business names, supply distributorship agency and other like agreements, inventions, discoveries, improvements, designs, techniques, computer programs and other confidential processes and information and knowhow and any licences in connection with any of the same and full right to all intellectual property and legal protection relating to the same and in every case (unless the context otherwise requires) of or belonging to the Company;

and other terms have their meaning as defined in the Articles of Association and the Shareholders' Agreement concurrently executed by the Parties.

NO EMPLOYMENT RELATIONSHIP ASSUMED

- 3 The Volunteers are volunteering their time and energy in behalf of the Company for their own reasons and expect no salary compensation during the Term of this Agreement.

TERM

- 4 This Agreement shall be effective upon execution and shall remain in full force and effect until the last day of May 2012, or of any subsequent employment agreement, whichever is later.

NON-COMPETITION

- 5.1 The Volunteers shall not and shall procure that their Affiliated Corporations shall not do or permit to be done any of the following:
- 5.1.1 either solely or jointly with or on behalf of any person directly or indirectly carry on or be engaged or interested in or otherwise manage or assist any business which is substantially similar or materially identical to the Business of the Company up to the expiration of a twelve (12) month period after the termination of this Agreement or the termination of their directorship or volunteership, whichever is the earlier;
 - 5.1.2 solicit or entice away or endeavour to solicit or entice away any director or employee of the Company at any time during the duration of this Agreement or for a period of twelve (12) months after such director or employee has terminated their directorship or employment in the Company; or
 - 5.1.3 cause or permit any person directly or indirectly under its Control to do any of the foregoing acts or things.
- 5.2 Each undertaking contained in the clause above shall be read and construed independently of the other covenants therein contained so that if one or more should be held to be invalid as an unreasonable restraint of trade or for any other reason whatsoever then the remaining covenants shall be valid to the extent that they are not held to be so invalid.
- 5.3 While the covenants in that clause above are considered by the Parties to be reasonable in all the circumstances, if one or more should be held invalid as an unreasonable restraint of trade or for any other reason whatsoever but would have been held valid if part of the wording thereof had been deleted or the period thereof reduced or the range of activities or area dealt with thereby reduced in scope, the said covenants shall apply with such modifications as may be necessary to make them valid and effective.

DISCLAIMER AND ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS

- 5.4 All Achievements of Work shall be the sole property of the Company, and all copyright in the Achievements of Work, all patent application rights and all patents granted in respect of the Achievements of Work, and all other industrial property rights and intellectual property rights in the Achievements of Work shall belong to the Company in all countries and regions of the world, with the exception of the Volunteer's right to claim authorship and the right not to suffer false attribution of authorship that can only vest in the Volunteer according to law.
- 5.5 With respect to Achievements in which the Volunteer, now or at any time during the term of employment, has any rights or interests (including ownership and other rights and interests), the Volunteer hereby assigns to the Company all such rights and interests. The Volunteer represents and warrants that the provisions of this Agreement apply to all Achievements in which the Volunteer has any rights or interests, and the Volunteer hereby releases the Company and its successors, assigns, affiliates, licensees, directors, Volunteers and agents (collectively, "Affiliates") from all liability to the Volunteer based on the use or disclosure of any such Achievements by the Company or any Affiliate.

- 5.6 The Volunteer represents and warrants that he has attached to this Agreement, as Exhibit A, a list describing with particularity all inventions, original works of authorship, developments, improvements and trade secrets which were made by him prior to the term of employment with the Company (collectively referred to as "Prior Inventions"), which belong solely to him or belong to him jointly with another, which may relate in any way to the Company Business and which are not assigned to the Company under this Agreement, or if no such list is attached, the Volunteer represents and warrants that there are no such Prior Inventions. If, in the course of the term of employment with the Company, I incorporate into a Company product, process or machine a Prior Invention owned by me or in which I have an interest, the Company is hereby granted and shall have an exclusive, royalty-free, irrevocable, perpetual, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, sell and otherwise distribute such Prior Invention as part of or in connection with such product, process or machine.
- 5.7 Notwithstanding the provisions of Article 3.2, the Volunteer shall not be required to assign to the Company any Achievements that fulfill all of the following conditions:
- 5.7.1 that the Volunteer created entirely on his/her own time, without using any of the Company's equipment, supplies, facilities or trade secrets;
 - 5.7.2 that do not relate in any way, directly or indirectly, to the Company Business; and
 - 5.7.3 that do not result, directly or indirectly, from any work that the Volunteer performs for the Company.
- 5.8 The Volunteer shall disclose to the Company in confidence all such Achievements, whether created solely by the Volunteer or jointly with other persons, during the term of employment, that the Volunteer considers to be his/her property and not subject to the provisions of this Agreement, together with such supporting documents as the Company may reasonably request.
- 5.9 The Volunteer further agrees that, except as expressly provided in this Agreement or as otherwise agreed in writing by the Company, he or she has no right to, and will not directly or indirectly:
- 5.9.1 reproduce, adapt, modify, translate, manufacture, market, publish, distribute, sell, license or sublicense, transfer, rent, lease, transmit, broadcast, display or use the Company-owned Achievements or any portion or copy thereof in any form;
 - 5.9.2 create derivative works from, provide access electronically to, or enter into computer memory the Company-owned Achievements or any portion or copy thereof in any form;
 - 5.9.3 apply for, or apply to register, any patent, copyright, trademark or other industrial property right or intellectual property right in or related to the Company-owned Achievements, in China or any other country or region;
 - 5.9.4 cause other persons to do any of the above.

- 5.10 Where applicable laws and regulations require that certain rights in any Company-owned Achievement must vest in the Volunteer and do not permit the parties contractually to agree otherwise with respect to such vesting, the parties hereto agree to handle the matter in accordance with the following provisions:
- 5.10.1 Where applicable laws and regulations permit the assignment of all or part of such rights, the Volunteer shall assign such rights to the Company to the fullest extent possible.
- 5.10.2 If, under applicable laws and regulations, the Volunteer is unable to assign all or any part of such rights to the Company, or if approval of such assignment is required from a government authority and such approval is not granted, the Volunteer hereby licenses to the Company such rights as cannot be assigned, in order that the Company and its successors shall have the complete right to use and right to exploit the Company-owned Achievement (and modified and derivative works). The license of rights under this clause (2) shall be perpetual, free of charge, irrevocable, exclusive (excluding both the Volunteer and all third parties), worldwide and transferable, and the Company shall have the right to sub-license.
- 5.10.3 The Volunteer agrees not to exercise any rights in the Company-owned Achievement that by law cannot be assigned or licensed to the Company pursuant to clauses (1) or (2) above, including but not limited to right to claim authorship and the right not to suffer false attribution of authorship, except with the prior written consent of the Company.
- 5.11 The Volunteer agrees that any Achievement that the Volunteer discloses to a third person or describes in a patent application or a copyright registration application (filed by the Volunteer or on behalf of the Volunteer) within one (1) year following termination of service shall be deemed to be a Company-owned Achievement subject to the terms and conditions of this Agreement, unless the Volunteer proves that such Achievement was conceived, created or developed, and first reduced into practice or expressed in a tangible form, by the Volunteer following termination of service.
- 5.12 Notwithstanding the above, any Intellectual Property Rights developed by each Volunteer over material which is not connected to the business of the Company, or over which the Company can not reasonably expect to assert a proprietary right, or which continue the Volunteer's contribution to an open-source or free software project begun prior to this agreement, shall be considered the property of that Volunteer.

CONFIDENTIALITY

- 5.13 With respect to technical information (such as methods, know-how, formulae, compositions, processes, discoveries, machines, models, devices, specifications, inventions, computer programs, research projects and similar items), business information (such as information about costs, profits, purchasing, market, sales or customer lists), information about future developments (such as research and development or future marketing or merchandising), and other secret or proprietary information or data ("**Confidential Information**") that the Company provides to the Volunteer or that the Volunteer otherwise has access to during the term of service, the Volunteer undertakes to use the Confidential Information only for the fulfillment of his or her job-related duties as assigned by the Company and promptly to return the Confidential Information and all copies thereof to the Company upon request. The Volunteer further agrees not to disclose or convey any Confidential Information to any third persons without prior, written authorization from the Company.

- 5.14 All records, computer programs, computer-stored information, computer disks and other media, files, drawings, sketches, blueprints, manuals, letters, notes, notebooks, reports, memoranda, customer lists, other documents, equipment and the like relating in any way to the Company Business, whether or not prepared by the Volunteer, shall remain the Company's sole property, and shall not be removed from the Company's premises without the Company's prior, written consent. The Volunteer shall not make unauthorized copies of any such information or items. Upon termination of service, or otherwise upon the Company's request, the Volunteer shall promptly return to the Company all tangible forms of such information or items, and all copies and extracts thereof. The Volunteer agrees not to make or retain any copies or extracts of any such information or items, and agrees to provide written confirmation to the Company upon termination of service or otherwise upon the Company's request.
- 5.15 The Volunteer agrees to obtain the written consent of the Company prior to any publication, written or oral, of any information regarding any aspect of the Company's business, customers, suppliers, Volunteers, shareholders, directors or managers. The Volunteer acknowledges that the Company shall have the authority to decide whether or not such information may be published and the Company may exercise such authority without any liability to the Volunteer.
- 5.16 The Volunteer recognises that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out my work for the Company consistent with the Company's agreement with such third party.
- 5.17 The Volunteer's obligations under this Article 5 shall survive the expiration or termination of this Agreement and the termination of the service relationship between the Company and the Volunteer.

OTHER UNDERTAKINGS

- 5.18 The Volunteer represents and warrants to the Company that he/she has not concluded any agreement with any other person that would preclude the Volunteer's full compliance with the terms and conditions of this Agreement.
- 5.19 The Volunteer represents and warrants to the Company that he/she has not brought, will not bring, and will not use in the performance of his/her duties with the Company or induce the Company to use, any inventions or proprietary or confidential information of a former employer without that employer's written consent. The Volunteer agrees not to disclose to the Company any trade secrets of any former employer. The Volunteer further represents and warrants to the Company that his/her service with the Company will not cause him/her to violate any obligation to any other person or disclose any confidence of any other person.
- 5.20 Without prejudice to the Volunteer's non-compete and non-solicitation undertakings set forth in this Agreement which shall prevail over this Article 5.20 in the event of a conflict, the Volunteer agrees that, during the term of service or employment with the Company, he/she will not engage in any activity that competes with the Company Business, including, but not limited to, forming a business entity that may compete with the Company Business.

- 5.21 If under applicable laws and regulations, approvals, registrations or other procedures are required for the provisions of this Agreement to become effective, or approvals or other procedures are necessary for the Volunteer to perform its obligations hereunder, then the Volunteer undertakes to assist the Company in carrying out the relevant procedures and to sign all necessary documents.
- 5.22 The Volunteer undertakes to provide without compensation, during and after the term of service with the Company, all assistance requested by the Company (the Company will reimburse actual costs) to protect and secure the Company's rights and interests in all Company-owned Achievements and any copyrights, patents, trademarks or other intellectual property rights relating thereto, including but not limited to signing documents and giving testimony required in the course of the Company applying for or maintaining any patent or copyright, or in the course of any litigation or other legal proceeding related to any Company-owned Achievements, anywhere in the world.

For example but without limiting the generality of the foregoing, the Volunteer agrees to execute all applications, specifications, oaths, assignments, recordations, and all other instruments which the Company shall deem necessary in order to apply for, obtain, maintain and transfer such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Company-owned Achievements, and any copyrights, patents, or other intellectual property rights relating thereto and that his obligation to execute or cause to be executed, when it is in his power to do so, any such instrument or papers shall continue after the termination of this Agreement until the expiration of the last such intellectual property right to expire in any country of the world. If the Company is unable because of the Volunteer's mental or physical incapacity or unavailability or for any other reason to secure the Volunteer's signature to apply for or to pursue any application for any Singapore or foreign patents or copyright registrations covering the Company-owned Achievements, then the Volunteer hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as his agent and attorney in fact, to act for and on his behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent or copyright registrations thereon with the same legal force and effect as if originally executed by the Volunteer. The Volunteer hereby waives and irrevocably quits claim to the Company any and all claims, of any nature whatsoever, which the Volunteer now or hereafter has for infringement of any and all rights assigned to the Company.

MISCELLANEOUS

- 5.23 This Agreement shall be governed by the laws of Singapore without regard to the principles of conflict of laws. In the event a dispute arises in connection with this Agreement, the parties shall attempt in the first instance to resolve such dispute through friendly consultations. If the dispute is not resolved through consultations within thirty (30) days after one party has served a written notice on the other party requesting the commencement of consultations, then either party may directly commence legal proceeding in a court of competent jurisdiction.
- 5.24 The Volunteer acknowledges that, in executing this Agreement, he has had the opportunity to seek the advice of independent legal counsel, and he has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation hereof.
- 5.25 Where any part of this Agreement is invalid, the other parts of this Agreement shall continue in full force and effect.

- 5.26 This Agreement shall be binding on the parties and their respective successors and assigns.
- 5.27 To be effective, all amendments to this Agreement require a written agreement signed by both parties.
- 5.28 Any subsequent change or changes in the Volunteer's duties, obligations, rights or compensation, including without limitation termination of the Volunteer Agreement, will not affect the validity or scope of this Agreement.
- 5.29 This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior discussions between them.
- 5.30 This Agreement is signed in the English language.
- 5.31 The provisions of this Agreement shall survive the termination of term of employment with the Company and the assignment of this Agreement by the Company to any successor in interest or other assignee.
- 5.32 This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document..

SIGNATURES

Smoochy

Legs

Prince

Toady

EMPLOYMENT AGREEMENT

Porridge Pte. Ltd.

This is a model document intended for educational purposes only.

Actual contracts should be prepared with the assistance of a lawyer.

An updated version of this document is available at
bit.ly/bansea-legals

JOYFUL FROG DIGITAL INCUBATOR

Blk 71 Ayer Rajah Crescent
#02-22 Singapore 139951

23 March 2012 11:48 AM SGT
version 1.3.0

THIS EMPLOYMENT AGREEMENT is made on _____, 20____ (“**Effective Date**”) **BETWEEN:**

(A) _____ (Company Registration Number XXX) (the "**Company**")

Registered office: _____

(B) _____ (the "**Employee**")

Identity Card Number: _____

Residential Address: _____

WHEREAS the Company has agreed to employ the Employee and the Employee has agreed to serve the Company as [Chief Executive Officer] or such other senior role as shall be determined by the Board of Directors, by providing the Company, and its subsidiaries (collectively the "**Group**" and each a "**Group Company**") with the services hereinafter described on the terms and conditions set out below.

ARTICLE 1 EMPLOYMENT, TERM, AND DUTIES

- 2 **Employment.** Subject to the terms of this Agreement, the Company agrees to employ the Employee and the Employee hereby accepts such employment in accordance with the terms hereof.
- 3 **Term.** The term of the Employee's employment shall commence on the Effective Date and continue until terminated in accordance with this Agreement or as prescribed by law ("**Term of Employment**").
- 4 **Duties.** During the Term of Employment, the Employee shall have the duties specified in Annex A and shall perform such other duties as may be assigned to the Employee from time to time by the Company (the "**Duties**").
- 5 **Full-time Employment.** The Employee shall devote his/her full time and best efforts, talents, knowledge and experience to the Duties, and shall perform the Duties in such locations as the Group's business needs may dictate.

ARTICLE 6 COMPENSATION AND BENEFITS

- 7 **Salary.** During the Term of Employment, the Company shall pay the Employee a monthly salary specified in Annex A ("**Salary**"). The Company shall review the Employee's performance and the Salary annually or from time to time, and determine in its sole discretion any adjustments to the Employee's Salary on a prospective basis (including a reduction in the Salary). Such adjusted salary then shall become the Employee's "Salary" for the purposes of this Agreement.
- 8 **Bonus and Other Compensation.** The Employee may also be entitled to additional compensation in the form of bonus or options to acquire shares in the Company as set forth in Annex A. Terms and conditions of any bonuses or any other compensation not covered in this Agreement, if any, shall be set forth in an addendum to this Agreement executed by the Company and the Employee.
- 9 **Vacation, Sick Leave and Holiday Benefits.** The Employee shall be entitled to paid vacation, sick leave and public holidays as may be mandated by law or made available by the Company under its policy in effect from time to time. The Employee shall be initially entitled to the number of vacation days per calendar year set forth on Annex A. In the event that The Employee does not take all of the vacation time authorized in a calendar year, such vacation days not taken shall not accrue and carry over to subsequent years unless the Employee's failure to take such days was due to a request made by the Company. The number of vacation days the Employee is entitled to will be subject to review and adjustment by the Company from time to time.

10 Severance Pay. If any severance pay is mandated by law, the Employee shall be entitled to such severance pay in the amount mandated by law when his/her employment is terminated. Notwithstanding any provisions to the contrary herein, the Employee shall not be entitled to any severance pay if the Employee's employment is terminated (i) by the Company for "Cause" or without cause under Article 3, or (ii) by the Employee for any reason.

11 Taxes. The Employee shall be responsible for paying any and all income taxes and other taxes and charges imposed on the Employee's Salary and any other compensation. The Employee shall also be responsible for paying any penalty imposed by the relevant authorities as a result of non-payment or late payment of such taxes or charges. The Company shall have the right to withhold from the Employee compensation any and all sums required for any tax or social security programs as may be mandated by law.

ARTICLE 12 TERMINATION

13 Termination. The Employee's employment may be terminated during the term of this Agreement only in accordance with this Article 3. The Employee shall be paid any accrued but unpaid Salary through the date of termination and any severance pay, if and only if mandated by law.

14 Termination by the Company for Cause. The Company may terminate the Employee's employment for "**Cause**" (as hereinafter defined). In the event of termination for Cause, the Company shall have no further obligations or liabilities to the Employee other than to pay the Employee any accrued but unpaid Salary through the date of termination. For purposes of this Agreement, the term Cause means:

- (i) any conviction of the Employee for any felony under the laws of any applicable jurisdiction;
- (ii) any conviction of the Employee for any misdemeanor under the laws of any applicable jurisdiction which results in the incarceration of the Employee for a period of more than seven (7) consecutive days;
- (iii) any material breach by the Employee of this Agreement or the material and willful failure of the Employee to comply with any lawful directive of the Company, or
- (iv) dishonesty, gross negligence or malfeasance by the Employee in the performance of the Duties hereunder.

In case of termination by the Company for any of the Causes listed above, the Company shall not be required to provide any prior notice of termination.

15 Termination by the Company without Cause. The Company may terminate this Agreement at any time, without cause, upon six (6) months written notice to the Employee.

3.4 Termination by the Employee. Five (5) years from the Effective Date, the Employee may terminate this Agreement at any time upon six (6) months written notice to the Company.

3.5 Notwithstanding any provision in this Agreement, the provisions relating to non-competition and non-solicitation shall continue to apply after the termination of this Agreement.

ARTICLE 16 COVENANTS AND RESTRICTIONS

17 Intellectual Property Rights and Confidential Information. The Employee agrees to enter into, contemporaneous with the entry of this Agreement, an Intellectual Property Rights and Confidentiality Agreement with the Company, and hereby undertakes to abide by the terms and conditions thereof.

- 18 Non-Competition and Non-Solicitation. The Employee agrees that during the Term of Employment, and for and during a period of two (2) years following termination of his employment for any reason or no reason whatsoever, he shall not:
- (i) participate or engage in any business that competes with that of any Group Company, either directly or indirectly as an owner, partner, director, officer, consultant, advisor, independent contractor or in whatever other capacity. This restriction, however, does not apply to ownership of publicly traded securities of any competing business, provided that such ownership shall not exceed one percent (1%) of the total stocks the competing public company in question.
 - (ii) directly or indirectly solicit or entice or endeavor to solicit or entice away from any Group Company any director, officer, manager, agent, adviser, servant of or consultant to any Group Company whether or not such person would commit any breach of his contract of employment or services by reason of leaving the service of the relevant Group Company;
 - (iii) directly or indirectly solicit to procure order from or do business with any person firm or company who during the Term of Employment, is a proposed or actual customer, supplier or partner of any Group Company in connection with the business of such Group Company; and
 - (iv) directly or indirectly seek to divert, reduce or dissuade from continuing to do business with or entering into business with any Group Company, any supplier, customer, or other person or entity that has a business relationship with a Group Company or with which a Group Company is actively planning or pursuing a business relationship.
- 19 Irreparable Harm. The Employee acknowledges that (i) the Employee's compliance with this Article 4 is necessary to preserve and protect the proprietary rights, confidential information and goodwill of the Company; (ii) any failure by the Employee to comply with the provisions of this Article 4 will result in irreparable and continuing injury for which there will be no adequate remedy at law; and (iii) in the event that the Employee should fail to comply with the terms and conditions of this Article 4, the Company shall be entitled, in addition to legal remedies, to equitable reliefs, including, but not limited to, the issuance of an injunction and/or temporary restraining order, as may be necessary to cause the Employee to comply with this Agreement. The Employee expressly acknowledges that the compensation he receives pursuant to this Agreement has included the consideration for all his obligations under this Article 4 and that compliance with this Article 4 does not limit or otherwise adversely affect his/her ability to earn a livelihood.
- 20 Survival. This Article 4 shall survive the termination of this Agreement.

ARTICLE 21 GENERAL PROVISIONS

- 22 Obligations Upon Termination. In the event of any termination of his employment for whatever reason, the Employee will promptly deliver to the Company all and any records, computer programs, computer-stored information, computer disks and other media, files, drawings, sketches, blueprints, manuals, letters, notes, notebooks, reports, memoranda, customer lists, other documents, equipment and the like, including reproductions of any of the aforementioned items, relating in any way to the Company and/or its subsidiaries, affiliates, successors, or assigns, in the Employee's possession or under the Employee's control and sign a certificate in the form set forth in Annex B certifying such delivery. This Article 5.1 shall survive the termination of this Agreement.
- 23 Modifications. No modification, amendment or waiver of this Agreement, nor consent to any departure from any of the terms or conditions hereof, shall be effective unless in writing and signed by the parties hereto. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor

in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision.

- 24 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter hereof. All the terms and conditions of the Employee's employment with the Company are set forth in this Agreement and the schedules, annexes and addendums hereto, and the Employee is not entitled to any compensation or benefits in relation to his/her employment with the Company not set forth in this Agreement.
- 25 Governing Law. This Agreement shall be governed by the laws of Singapore without regard to the principles of conflict of laws. In the event a dispute arises in connection with this Agreement, the parties shall attempt in the first instance to resolve such dispute through friendly consultations. If the dispute is not resolved through consultations within thirty (30) days after one party has served a written notice on the other party requesting the commencement of consultations, then either party may directly commence legal proceeding in a court of competent jurisdiction.
- 5.5 Severability. Where any part of this Agreement is invalid, the other parts of this Agreement shall continue in full force and effect.
- 5.6 Successors and Assigns. This Agreement shall be binding on the parties and their respective successors and assigns.
- 5.7 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.
- 5.8 Governing Language. This Agreement is signed in the English language.
- 5.9 Independent counsel etc. The Employee acknowledges that, in executing this Agreement, he has had the opportunity to seek the advice of independent legal counsel, and he has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation hereof.

* * * * *

ANNEX A

This Annex is a part of the Employment Agreement (the "**Agreement**") made as of the Effective Date below between the individual named below (the "**Employee**") and _____ (the "**Company**").

1. **Effective date:** [DATE OF AGREEMENT]
2. **Employee Name:** [ENGLISH AND CHINESE NAME OF INDIVIDUAL]
3. **ID# /**
4. **Current Address:** [ADDRESS]
5. **Duties:**

- (A) The Employee hereby undertakes with the Company that during the Term of Employment, he shall use his best endeavours to carry out his duties hereunder and to protect, promote and act in the best interests of the Group.
- (B) The Employee in his office as [Chief Executive Officer] or such senior role as shall be determined by the board of directors of the Company shall:-
 - (i) devote his time and efforts exclusively and diligently to the interests and affairs of the Group in the discharge of his duties in relation to the Group generally;
 - (ii) in the discharge of such duties and in the exercise of such powers, comply with all and any lawful directions and instructions from time to time made or given to him by the board of directors of the Company according to the best of his skill and ability and comply with all resolutions and regulations from time to time passed or made by the board of directors of the Company;
 - (iii) in pursuance of his duties hereunder, perform such services for the Group and (without further remuneration unless otherwise agreed) accept such offices in the Group as the board of directors of the Company may from time to time require and without limiting the generality of this Clause, act as a director of the Company and of each of its subsidiaries; and
 - (iv) faithfully and diligently perform such duties and exercise such powers as are consistent with his office in relation to the Company and the Group.
- (C) The Employee shall at all times give promptly to the board of directors of the Company (in writing if so requested) all such information as the board may reasonably require in relation to his conduct of the business of the Company and the other Group Companies in so far as such information is or ought to be within the knowledge of the Employee and provide such explanations as the board of directors of the Company may require in connection therewith.
- (D) The Employee shall carry out his duties and exercise his powers jointly with any other director or executive or manager as shall from time to time be appointed by the Board to act jointly with the Employee and the board of directors may at any time require the Employee to cease performing or exercising any of his duties or powers under this Agreement without assigning any reason therefor, providing that is in the best interests of the Group. If the Employee is also a director of any Group Company, then termination of such appointment as director does not automatically terminate this Agreement unless this Agreement is terminated in accordance with the terms herein.
- (E) The normal office hours of the Group are [9:00 a.m. to 6:00 p.m., Monday through Friday]. The Employee may be required to work outside these normal hours without additional remuneration or overtime pay.

- (F) The Employee shall be required to carry out his duties in Singapore or such other parts of the world as the Board may request or as the interests, needs, business and opportunities of the Group will require or be deemed advisable by the board of directors of the Company.

6. Compensation and Benefits

- (A) A fixed salary at the rate of [SGD][.⁠⁠⁠] (or equivalent currency) per annum payable by 12 equal monthly instalments of [SGD][\$.⁠⁠⁠] (or a pro rata amount for an incomplete month, on the basis of the actual number of days of the relevant month and the actual number of days lapsed), each such instalment being payable on the last day of each calendar month and such salary shall be reviewed annually by the board of directors of the Company;
- (B) The Employee may be entitled at the discretion of the board of directors of the Company to be granted options in subsequent years on such terms and conditions as the board of directors of the Company may in its discretion determine to acquire shares in the Company under the Company's employee incentive plan.
- (C) For the avoidance of doubt, the Employee shall be responsible for all of his liabilities for personal taxation anywhere in the world, including, without limitation, Singapore in respect of remuneration received under this Agreement.
- (D) Vacation Days per year: []

* * * * *

[Signature Page Follows]

ANNEX A - ACKNOWLEDGED BY

EMPLOYEE

[NAME OF COMPANY]

Signature: _____

Signature: _____

Name: _____

Title: _____

Name: _____

ANNEX B: TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, nor have I failed to return, records, computer programs, computer-stored information, computer disks and other media, files, drawings, sketches, blueprints, manuals, letters, notes, notebooks, reports, memoranda, customer lists, other documents, equipment and the like, including reproductions of any of the aforementioned items, relating in any way to [name of Company] and/or its subsidiaries, affiliates, successors, or assigns.

I further certify that I have complied with all the terms of the Intellectual Rights and Confidentiality Agreement with [name of Company], including the reporting of any Achievements of Employment (as defined therein) conceived or made by me (solely or jointly with others) covered by that Agreement.

Date: _____

Employee's Signature

[NAME OF EMPLOYEE]

IN WITNESS WHEREOF, each of Employee and the Company has executed this Agreement, Annex A and Annex B, as the case may be, on the date first above written

EMPLOYEE

[Name of Company]

Signature: _____

Signature: _____

Name: _____

Title: _____

Name: _____

**TERM SHEET
TEMPLATES
FROM Y COMBINATOR**

Porridge Pte. Ltd.

This is a model document intended for educational purposes only.

Actual contracts should be prepared with the assistance of a lawyer.

An updated version of this document is available at
bit.ly/bansea-legals

JOYFUL FROG DIGITAL INCUBATOR

Blk 71 Ayer Rajah Crescent
#02-22 Singapore 139951

23 March 2012 1:37 PM SGT
version 1.3.0

Y COMBINATOR SERIES AA MODEL TERM SHEET

This Memorandum of Terms and all of the Series AA financing documents on this website have been prepared by Wilson Sonsini Goodrich & Rosati for informational purposes only and do not constitute advertising, a solicitation, or legal advice. Transmission of such materials and information contained herein is not intended to create, and receipt thereof does not constitute formation of, an attorney-client relationship. Internet subscribers and online readers should not rely upon this information for any purpose without seeking legal advice from a licensed attorney in the reader's state. The information contained in this website is provided only as general information and may or may not reflect the most current legal developments; accordingly, information on this website is not promised or guaranteed to be correct or complete. Wilson Sonsini Goodrich & Rosati expressly disclaims all liability in respect to actions taken or not taken based on any or all the contents of this website. Further, Wilson Sonsini Goodrich & Rosati does not necessarily endorse, and is not responsible for, any third-party content that may be accessed through this website.

[NAME OF ISSUER]

MEMORANDUM OF TERMS

This Memorandum of Terms represents only the current thinking of the parties with respect to certain of the major issues relating to the proposed private offering and does not constitute a legally binding agreement. This Memorandum of Terms does not constitute an offer to sell or a solicitation of an offer to buy securities in any state where the offer or sale is not permitted.

THE OFFERING

Issuer: [_____] , a Delaware corporation (the “**Company**”)

Securities: Series AA Preferred Stock (the “**Preferred**”)

Valuation of the Company: \$[_____] pre-money

Amount of the offering: \$[_____]

Number of shares: [_____] shares

Price per share: \$[_____]

TERMS OF THE PREFERRED

Liquidation preference: In the event of a liquidation, dissolution or winding up of the Company, the Preferred will have the right to receive the original purchase price prior to any distribution to the common stock. The remaining assets will be distributed *pro rata* to the holders of common stock. A sale of all or substantially all of the Company's assets or a merger or consolidation of the Company with any other company will be treated as a liquidation of the Company.

Conversion: The Preferred may be converted at any time, at the option of the holder, into shares of common stock. The conversion rate will initially be 1:1, subject to customary adjustments.

Automatic conversion:

Each share of Preferred will automatically convert into common stock, at the then applicable conversion rate, upon (i) the closing of a firmly underwritten public offering of common stock, or (ii) the consent of the holders of at least a majority of the then outstanding shares of Preferred.

General voting rights:

Each share of Preferred will have the right to a number of votes equal to the number of shares of common stock issuable upon conversion of each such share of Preferred. The Preferred will vote with the common stock on all matters except as specifically provided herein or as otherwise required by law.

Protective provisions:

So long as any of the Preferred is outstanding, consent of the holders of at least 50% of the Preferred will be required for any action that: (i) alters any provision of the certificate of incorporation if it would adversely alter the rights, preferences, privileges or powers of the Preferred; (ii) changes the authorized number of shares of Preferred; or (iii) approves any merger, sale of assets or other corporate reorganization or acquisition.

INVESTOR RIGHTS

Right to maintain proportionate ownership:

Each holder of at least [_____] shares of Preferred will have a right to purchase its *pro rata* share of any offering of new securities by the Company, subject to customary exceptions. The *pro rata* share will be based on the ratio of (x) the number of shares of Preferred held by such holder (on an as-converted basis) to (y) the Company's fully-diluted capitalization (on an as-converted and as-exercised basis). This right will terminate immediately prior to the Company's initial public offering or five years after the financing.

Information rights:

As soon as practicable, the Company will deliver to each holder of at least [_____] shares of Preferred, (i) unaudited annual financial statements and (ii) unaudited quarterly financial statements. The information rights will terminate upon an initial public offering.

Other Matters:

Market stand-off. Holders of Preferred will agree not to effect any transactions with respect to any of the Company's securities within 180 days following the Company's initial public offering, provided that all officers, directors and 1% stockholders of the Company are similarly bound.

(Signature page follows)

CONFIDENTIAL

This Memorandum of Terms may be executed in counterparts, which together will constitute one document. Facsimile signatures shall have the same legal effect as original signatures.

[INSERT COMPANY NAME]

[INSERT NAME OF INVESTOR]

Signature

Signature

Print name

Print name

Print title

Print title

Date

Date

TERM SHEET
TEMPLATES
FROM NEW ZEALAND

Porridge Pte. Ltd.

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JOYFUL FROG DIGITAL INCUBATOR

Blk 71 Ayer Rajah Crescent
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23 March 2012 1:37 PM SGT
version 1.3.0

Term Sheet Templates for Early Stage Investments

- Ordinary Shares
- Preferred Shares
- Convertible Loan

October 2006



**Simpson
Grierson**

TERM SHEET

FOR ISSUE OF ORDINARY SHARES BY

[] LIMITED

(Company)

General notes: *This term sheet applies if the investment is in ordinary shares. Refer to alternative term sheets if preferred terms required or if the investment is structured as a loan convertible to equity. The more optional provisions appear in italics and instructions appear in bold italics. Refer to footnotes at the bottom of each page for comments on some of the optional provisions.*

This document (**Term Sheet**) summarises the principal terms of a proposed investment in the Company (**Investment**). This Term Sheet is not legally binding except for the terms stated in part B of this Term Sheet and there will be no obligation to issue or subscribe for shares in the Company until a binding investment agreement (**Investment Agreement**) is signed by the parties.

PART A: INVESTMENT TERMS (non-binding)

Business: The [proposed] business of the Company relating to [describe business] (**Business**).

Amount of investment: [Up to¹] \$ [] [(subject to achievement of milestones)] (**Investment Amount**).

[Minimum Available Investment]: The minimum amount available for investment by the Investor[s] must be \$ []².

Investor[s]: [Insert name(s) of investor[s]] or [The persons identified in Appendix 2 [and other members of the [] investment syndicate who agree to participate in the Investment]³] (**Investor[s]**).

Key People: [Insert names of founder(s)/key people] (**Key People**⁴).

Pre-money valuation: The investment is based on a pre-financing valuation of \$ [].

Type of Shares: [Series A⁵] ordinary shares (**Shares**).

Issue Price: \$ [] per Share.

Number of Shares: [Up to] [].

¹ Words "up to" generally apply if investment is tranching and milestones or conditions apply for subsequent payments.

² Applicable if investment is by a syndicate and either, indicative commitments are yet to be received for the full Investment Amount or there is potential for some Investors to withdraw while others proceed (e.g. if they are not happy with the outcome of due diligence etc).

³ Applicable for a syndicate investment where all of the participants are yet to be confirmed.

⁴ The term "Founders" is more common than "Key People", but latter term may be more accurate in indicating the people and who are important who may not be limited to the original founders of the Company (see later provisions relating to conditions precedent and restrictions on share transfers).

⁵ May be appropriate to distinguish from other ordinary shares to the extent shares confer some special rights (e.g. anti-dilution, drag and forced liquidation).

Term Sheet Templates

This folder includes three term sheet templates which New Zealand Venture Investment Fund Limited engaged Simpson Grierson to prepare to provide a resource available to all early stage investors and to promote greater consistency in the terms and documentation used.

The term sheets contain key investment terms which should be considered by an early stage investor, whether they be an angel, venture capitalist or other type of early stage investor.

Ordinary Shares Template

The first term sheet is for an investment in ordinary shares which will rank equally with the other ordinary shares issued by the company. Angel groups typically invest in ordinary shares (although some will seek terms which are closer to the terms typically sought by venture capital investors, in which case they may invest in preferred shares).

Preferred Shares Template

The second term sheet is for preferred shares and incorporates variable terms commonly sought by venture capital investors in New Zealand and overseas. The preferences include preferential dividend rights, liquidation preferences and redemption rights. In some cases all of these preferences will apply, while in others, the preferred shares will only have some of these preferences. The preferred shares are invariably convertible to ordinary shares at the option of the investor and have all of the rights of ordinary shares in addition to the preference rights.

Convertible Loan Template

The third term sheet is for a convertible loan. Often an earlier stage investor will provide some initial funds under a convertible loan while the business case and

plan for a more substantial investment is being developed or pending satisfaction of a condition precedent to the more substantial investment. The convertible loan may be secured or unsecured, and may convert to either ordinary shares or preferred shares. Where a more substantial investment is intended to follow the convertible loan, the loan will convert to the same class of shares as that more substantial investment.

Variables And Options

All of the term sheets contain a number of variables and options. They also contain footnotes to provide guidance on options which may not be self evident.

The templates seek to strike a balance between workable plain English documents and adequate coverage of most of the key variables of terms typically included in those term sheets. They do not contain exhaustive examples of possible terms or the potential variations of those terms, but rather represent what we regard as most typical.

We would be very happy to assist you with any queries you may have in respect of the use of the term sheets or the options contained in them. We can also assist you with the substantive investment documentation which reflects the terms contained in the term sheets.

Contact

If you require assistance, please contact Andrew Lewis at Simpson Grierson:

DDI: +64 9 977 5035

Email: andrew.lewis@simpsongrierson.com

- Capital Structure:** The capitalisation of the Company immediately prior to investment and after investment of the Investment Amount will be as set out in the table in Appendix 1 (**Capitalisation Table**).
- Conditions Precedent:
(for Investor['s][s'] benefit)**
- Due diligence being completed to the satisfaction of the Investor[s].
 - Agreement to a business plan which comprises an agreed budget (**Agreed Business Plan**).
 - *[Agreement on milestones which must be achieved for disbursement of post Settlement Date tranches of the Investment Amount (**Milestones**)].*
 - Final approval of each Investor's [board] or [Investment Committee] (as applicable).
 - Completion of the Investment Agreement and all existing holders of shares or options in the Company agreeing it supersedes any existing agreements between them.
 - Capitalisation of all outstanding loans *[other than the loan(s) of \$ from []]* and that capitalisation resulting in the pre-investment capitalisation shown in the Capitalisation Table.
 - Completion of employment or contractor agreements(s) with the [Key People] [[] and []] on terms acceptable to the Investor[s] (and which include suitable non compete covenants).
 - All relevant officers, consultants and contractors (including all Key People assigning (in a form acceptable to the Investor[s]) all intellectual property linked to the Business or proposed future business.
 - Agreement on the identity of [*insert number*] [an] [*independent director*][s] [and] [*a chairman*].
 - Agreement on the parameters of an employee share option plan for the key officers, employees and contractors of the Company (including the Key People) to purchase up to [] % of the Company's post money capital (**ESOP**).
 - Evidence that any third party consents or other authorisations required to complete the investment have been obtained.
 - [*Insert any other specific conditions precedent*⁶].

⁶ Consider other specific conditions precedent which should be specified (e.g. members of investment syndicate making commitments equivalent to at least the minimum required investment). However in this respect there is sufficient protection for Investors in the general due diligence condition and the non-binding nature of Term Sheet.

Anticipated Settlement Date:

[*Insert date*] or [5] business days after satisfaction of all conditions precedent in the Investment Agreement (actual settlement date being referred to as **Settlement Date**)

Disbursement of Investment Amount:

The Investment Amount will be subscribed for Shares [*in one sum on the Settlement Date*] **or** [*in the instalments as specified in the Agreed Budget (and applied solely to expenditure as specified in the Agreed Budget or otherwise approved by the Investor[s])*] **or** [*as follows*]:

- [\$] on Settlement Date;
- [\$] when [*insert Milestone etc*]

[*provided each instalment will be at the Investor['s][s'] option if a Milestone due by the relevant date has not been achieved*]⁷.

[Anti-dilution:

*The number of shares held by the Investor[s] will be increased (by the issue of further shares at nominal consideration to the Investor[s]) on a [full] [weighted average] ratchet basis if any new shares are issued at a price less than the issue price for the Shares (other than pursuant to an approved ESOP [or a rights issue in which the Investor[s] participate pro-rata])*⁸.

Board:

The Board will initially consist of:

Chairperson [(no casting vote)] []

Investor['s][s] representative(s) []

[Founders] [Other shareholders] representative(s): []

Independent director(s) []

The Board will meet [*monthly*]

[*The Chairman will be paid \$[] per annum/meeting*], [*any independent directors will be paid \$[] per annum/meeting*] and [*the [Investor] [other] directors will be paid \$[] per annum/meeting*]⁹ [*but otherwise attendance at Board meetings will not be remunerated*].

Protective Provisions:

Prior approval of the Investor director(s) is required for any of the following in relation to the Company:

- issues of equity, options or any instruments

⁷ Of the 3 variables, the latter 2 options which allow for tranching will usually be preferred with third option being most preferred from Investor['s][s] perspective as payments are contingent on milestones.

⁸ Anti-dilution protection is standard for preference shares but should also be considered for ordinary shares. Full ratchet will effectively reprice the Investor['s][s] shares (by issuing additional shares to the Investor[s]) at the lower issue price of the "down round" while a weighted average ratchet will reprice at the weighted average of each price (accordingly to respective amounts subscribed). Full ratchet is most favourable for the Investor[s]. Another issue is whether anti-dilution protection extends to a rights issue offered pro-rata to all shareholders if the Investors do not take up their pro-rata share (or whether they have to "pay to play").

⁹ Usually the only directors fees will be (at most) a modest meeting fee will be paid to the Investor directors only.

convertible to equity (other than issues already contemplated by the Investment Agreement);

- any [*major*] transaction or transaction involving the disposal of a material proportion of the Company's assets;
- any transaction or arrangement likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities not specifically identified in the Agreed Business Plan, the value of which is greater than [\$10,000];
- any other material departure from the Agreed Business Plan;
- any transactions with a related party of the Company or any shareholder or officer;
- any borrowings, guarantees, indemnities or other contingent commitments;
- appointment or removal of the CEO, CFO or any other Key Person [*or any other employee*];
- approval of subsequent budgets and business plans or any material amendments to or departures from the Agreed Business Plan, or
- any change to accounting policies [*or the auditor*].

Financial statements, reporting:

Unaudited [*monthly and*] quarterly statements and [*un*]audited annual accounts, in all cases accompanied by reports covering all material aspects of the Company's progress.

Pre-emptive rights and Drag and Tag along:

In addition to usual pre-emptive rights, drag and tag along rights will apply if any shareholder(s) wish to sell more than [50%] of the Company shares [*including a majority of the Investor[s]'s shares*]¹⁰ (in aggregate) to a third party [*or if the Investor[s] wish to sell all of their shares,*]¹¹ so:

- the selling shareholders may require the minority to sell all of their shares on the same terms; or
- the other shareholders may require the selling shareholder(s) to obtain an equivalent offer from the purchaser to acquire the shares of the other shareholders;

Tag along rights will apply as between the Investor[s] for any sale of Company's Shares by any one of them.

¹⁰ If the Investor[s] held less than 50%, may require this protection against being "dragged" by other shareholders.

¹¹ Consider if the Investor[s] should have the right to "drag" other shareholders for desired exit, irrespective of whether they hold more than 50% of the shares or whether they need sufficient support from ordinary shareholders to achieve a 50% threshold. Also consider whether 50% is the appropriate threshold or whether it should be higher.

Key People Escrow:

Except with the consent of the Investor directors the Key People are not permitted to dispose of any shares for a period of [3] years from Settlement Date, with the exception of:

- a sale in an IPO or other transaction approved by the Investor[s] where the Investor[s] have the opportunity to sell on identical terms; or
- a transfer to their respective wholly owned and controlled entities or to immediate family.

Key Man Insurance

The Company will procure and maintain (for the Company's benefit) key man life insurance policies in the amount of [\$1,000,000] on the [life][lives] of [] [each of the Key People].

Warranties

Without limiting usual warranties for similar investments as will be contained in the Investment Agreement, the Company [and [Key People] [or name warrantors] will warrant that (except as disclosed [and to the best of their knowledge and belief])¹².

- all intellectual property and other rights necessary to pursue the Business are the full legal, beneficial and unencumbered property of the Company;
- the Company has no actual or contingent liabilities not specified in the statement of financial position provided to the Investor[s] and such statement provides a true and fair view of the Company's position; and
- all other information provided to the Investor[s] is true, accurate and complete in all material respects.

[The maximum liability of each individual warrantor will not exceed \$50,000].¹³

Forced Liquidation Process/Redemption:

If the Company has not carried out either an IPO or trade sale within 5 years from the Settlement Date (or such longer period as the Investor[s] and the Company may agreed) the Investor[s] may require the Company to commence a liquidation process by way of public offering, trade sale or liquidation.

[Other key terms:

Insert other key terms as required e.g. will Investor[s] have rights relating to further capital raisings?

¹² Consider carefully whether a knowledge qualifier is acceptable for all 3 warranties mentioned. Preference is to leave this out of term sheet and deal with the issue on a warranty by warranty basis in the Investment Agreement negotiation.

¹³ A dollar cap is usual if individuals are required to join in warranties.

PART B: LEGALLY BINDING TERMS

Exclusive Period: For a period of [90] days from the date of signing this Term Sheet, (**Exclusivity Period**) none of the Company, its shareholders, directors, officers, contractors or employees will conduct any discussions whatsoever with any third party regarding any investment in the Company, except as may be approved by the Investor[s] in their discretion.

[Broken Deal Fee: *If the Investment is offered within the Exclusivity Period pursuant to an Investment Agreement which contains the terms of this Term Sheet (and is otherwise in the Investor['s][s'] usual form) but is declined by the Company or if the Company breaches the preceding exclusivity requirement, the Company will pay [\$] to the Investor[s] as full compensation for all costs (including opportunity costs) incurred by the Investor[s]].*

Confidentiality: The contents of this Term Sheet, and the fact that one has been issued, may only be disclosed by the Company to its shareholders, directors and advisers or other person(s) approved by the Investor[s] (on a need to know basis).

[Guarantee: [] [and] guarantee the Company's obligations in this Part B].

[Investor['s][s'] Representative[s]: [] [and] represent(s) [he/she has] [they have] authority to bind [*insert relevant Investor[s] they represent*] in respect of all matters relating to the Investment]]¹⁴.

To confirm your acceptance of this Term Sheet, please sign and date the duplicate of this Term Sheet and return it to me.

SIGNED on behalf of the Investor[s] [by the Investor['s][s'] Representative[s]]:

Name: **Name:**

Date: **Date:**

Signature **Signature**

¹⁴ May be applicable for an investor syndicate.

Signed on behalf of [] Limited by:

Director	Director:
----------	-------	-----------	-------

Date:	Date:
-------	-------	-------	-------

Signature	Signature
-----------	-------	-----------	-------

[Signed on behalf of *[insert Guarantors]*]

Name:	Name:
-------	-------	-------	-------

Date:	Date:
-------	-------	-------	-------

Signature	Signature
-----------	-------	-----------	-------

APPENDIX 1
Capitalisation Table

Class of Security	Pre-money (Term Sheet signing)		Post-money at Target			
	Shares	%age	Cash-in	\$ per share	Share	%age
Shares						
Founders	[]	[]%	\$()	[]	[]	[]
Investor[s]			Up to \$()	[]	Up to []	[]
Options						
ESOP	[]	[]			[]	[]
Others?	[]	[]			[]	[]
Total fully-diluted		100%	[\$]			100%

APPENDIX 2
Committed Investor[s]

Investor	Amount

TERM SHEET

FOR ISSUE OF PREFERRED SHARES BY

[] LIMITED

(Company)

General notes: *This term sheet applies for an investment in preferred shares which confers preferential dividend rights and the right to return of capital in priority to the ordinary shares. Refer to alternative terms sheets if the investment is in ordinary shares or is structured as a loan convertible to equity. The more optional provisions appear in italics and instructions appear in bold italics. Refer to footnotes at the bottom of each page for comments on some of the optional provisions.*

This document (**Term Sheet**) summarises the principal terms of a proposed investment in the Company (**Investment**). This Term Sheet is not legally binding except for the terms stated in part B of this Term Sheet and there will be no obligation to issue or subscribe for shares in the Company until a binding investment agreement (**Investment Agreement**) is signed by the parties.

PART A: INVESTMENT TERMS (non-binding)

Business: The [proposed] business of the Company relating to [**describe business**] (**Business**).

Amount of investment: [Minimum Amount] \$ []
[Maximum Amount] \$ [] (where the investment can proceed at any amount between the Minimum Amount and Maximum Amount specified by the Investors before the Settlement Date and the final investment amount can be increased by the Investors at any time within [period] from the Settlement Date to any amount not exceeding the Maximum Amount)^{1]}
[such amount[s] being subject to achievement of milestones]^{2]}
(**Investment Amount**).

Investor[s]: [**Insert name(s) of investor[s]**] or [The persons identified in Appendix 2 [and other members of the [] investment syndicate who agree to participate in the Investment]^{3]} (**Investor[s]**).

Key People: [**Insert names of founder(s)/key people**] (**Key People**)⁴.

Pre-money valuation: The investment is based on a pre-financing valuation of \$[].

Type of Shares: Preferred voting shares (**Shares**).

Issue Price: \$[] per Share.

Number of Shares: [Up to] [].

¹ Applicable if investment is by a syndicate and either, indicative commitments are yet to be received for the full Investment Amount, or, there is potential for some Investor[s] to withdraw while others proceed (e.g. if they are not happy with the outcome of due diligence etc). Allow investment to proceed at any amount more than the minimum and for Investors to increase the committed investment amount at any time prior to expiry of a specified period after settlement.

² Applicable if investment is tranching and milestones or conditions apply for subsequent payments.

³ Applicable for a syndicate investment where all of the participants are yet to be confirmed.

⁴ The term "Founders" is more common than "Key People", but latter term may be more accurate in indicating the people who are important and who may not be limited to the original founders of the Company (see later provisions relating to conditions precedent and restrictions on share transfers).

- Capital Structure:** The capitalisation of the Company immediately prior to investment and after investment of the Investment Amount will be as set out in the table in Appendix 1 (**Capitalisation Table**).
- Conditions Precedent: (for Investor['s][s'] benefit):**
- Due diligence being completed to the satisfaction of the Investor[s].
 - Agreement to a business plan which comprises an agreed budget (**Agreed Business Plan**).
 - *[Agreement on milestones which must be achieved for disbursement of post Settlement Date tranches of the Investment Amount (**Milestones**)].*
 - Final approval of each Investor[s] [s] [board] or [Investment Committee] (as applicable).
 - Completion of the Investment Agreement and all existing holders of shares or options in the Company agreeing it supersedes any existing agreements between them.
 - Capitalisation of all outstanding loans *[other than the loan(s) of \$ from []]* and that capitalisation resulting in the pre-investment capitalisation shown in the Capitalisation Table.
 - Completion of employment or contractor agreements(s) with the *[Key People] [] []* on terms acceptable to the Investor[s] (and which include suitable non compete covenants).
 - All relevant officers, consultants and contractors (including all Key People assigning (in a form acceptable to the Investor[s]) all intellectual property linked to the Business or proposed future business.
 - Agreement on the identity of *[insert number] [an] [independent director[s] [and] [a chairman]*.
 - Agreement on the parameters of an employee share option plan for the key officers, employees and contractors of the Company (including the Key People) to purchase up to [%] of the Company's post money capital (**ESOP**).
 - Evidence that any third party consents or other authorisations required to complete the investment have been obtained.
 - ***[Insert any other specific conditions precedent⁵].***

⁵ Consider other specific conditions precedent which should be specified (e.g. members of investment syndicate making commitments equivalent to at least the minimum required investment). However in this respect there is sufficient protection for Investor[s] in the general due diligence condition and the non-binding nature of Term Sheet.

Anticipated Settlement Date: *[Insert date]* or [5] business days after satisfaction of all conditions precedent in the Investment Agreement (actual settlement date being referred to as **Settlement Date**).

Disbursement of Investment Amount: The Investment Amount will be subscribed for Shares *[in one sum on the Settlement Date]* or *[in the instalments as specified in the Agreed Budget (and applied solely to expenditure as specified in the Agreed Budget or otherwise approved by the Investor[s])]* or *[as follows:*

- [\$] on Settlement Date;
- [\$] when *[insert Milestone etc]*

*[provided each instalment will be at the Investor[s][s]] option if a Milestone due by the relevant date has not been achieved]*⁶.

Preferred Dividend: The Shares will have priority for an annual dividend equivalent to []% of the amount subscribed for the Shares (which will compound until paid) (**Preferred Dividend**) *[and will also participate pro-rata in any further dividend paid on the ordinary Shares]*⁷.

Liquidity Event Preference: If the Company is liquidated or a significant liquidity event occurs (including a merger or Share issue resulting in a change of control or a sale of a majority of the Company's assets) the Shares will receive (in preference to any distribution to the ordinary shareholders and in addition to payment of any outstanding Preferred Dividends) *[insert number if multiple preference applies times]* the total amount subscribed for the Shares (**Preference Amount**)⁸. *[The ordinary shareholders will then receive an amount equivalent to \$[] per Share]*⁹ *[and any balance available for distribution will be distributed pro-rata to [all shareholders including the Investor[s]] [the ordinary shareholders]*¹⁰.

Conversion: The Shares may be converted on a 1 for 1 basis to ordinary Shares (subject to any anti-dilution adjustment as below) at any time at the option of the holder(s) and will automatically convert *[when the Preference Amount has been paid]* *[if the Investor[s] would receive more than the Preference Amount in a distribution if the Shares were ordinary shares]*¹¹.

Anti-dilution: The conversion price will be subject to a proportionate

⁶ Of the 3 variables, the latter 2 options which allow for tranching will usually be preferred with third option being most preferred from Investor[s][s] perspective as payments are contingent on milestones.

⁷ A preferred dividend may apply in addition to, or in lieu of, the entitlement to participate in any ordinary dividends. However early stage companies will not usually pay dividends, this is largely academic and the accumulated preferred dividends will just be added to the liquidity event preference.

⁸ A one time preference is more usual. However up to 3 times is not uncommon, particularly if there is insufficient value in the existing business to justify the shareholding percentage being retained by the ordinary shareholders. Other relevant factors include the value add the Investor[s] will provide and the counter-balancing effect of the ESOP.

⁹ A catch-up for ordinary shareholders is usual if the preference Shares also participate in the residue (see comment in 10), particularly if a multiple preference applies.

¹⁰ The liquidity event preference will usually be structured so the preference Shares either get:
(a) the higher of the Preference Amount or the pro-rata distribution which would apply if all Shares are treated equally; or
(b) both (i.e. the Preference Amount and a pro-rata distribution of the residue).

¹¹ The first option applies if 10(a) applies while the second option applies for 10(b).

TEMPLATE TERM SHEET
FOR PREFERRED SHARES

adjustment for any Share splits, Share dividends or similar capital adjustments and will be adjusted on a [full] [weighted average]¹² ratchet basis for any Share issue at an issue price less than the issue price for the Shares (other than pursuant to the approved ESOP [or a rights issue in which the Investor[s] participate pro-rata].

Board:

The Board will initially consist of:

Chairperson [(no casting vote)]: []

Investor['s][s'] representative(s): []

[Founders] [Other shareholders]: []
representative(s)

Independent director(s): []

The Board will meet [monthly]

[The Chairman will be paid \$[] per annum/meeting], [any independent directors will be paid \$[] per [annum/meeting] and] [the [Investor] [other] directors will be paid \$[] per [annum/meeting]¹³ [but otherwise attendance at Board meetings will not be remunerated].

Protective Provisions:

Prior approval of the Investor director(s) is required for any of the following in relation to the Company:

- issues of equity, options or any instruments convertible to equity (other than issues already contemplated by the Investment Agreement);
- any [major] transaction or transaction involving the disposal of a material proportion of the Company's assets;
- any transaction or arrangement likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities not specifically identified in the Agreed Business Plan, the value of which is greater than [\$10,000];
- any transactions with a related party of the Company or any shareholder or officer;
- any borrowings, guarantees, indemnities or other contingent commitments;
- appointment or removal of the CEO, CFO or any other Key Person [or any other employee];

¹² Full ratchet will effectively reprice the Investor[s] Shares on conversion at the lower issue price of the "down round" while a weighted average ratchet will reprice at the weighted average of each price (accordingly to respective amounts subscribed). Full ratchet is most favourable for the Investor[s]. Another issue is whether anti-dilution protection extends to a rights issue offered pro-rata to all shareholders if the Investor[s] do not take up their pro-rata Share.

¹³ Usually the only directors fees will be (at most) a modest meeting fee will be paid to the investor directors only.

- approval of subsequent budgets and business plans or any material amendments to or departures from the Agreed Business Plan; or
- any change to accounting policies *[or the auditor]*.

**Financial Statements,
Reporting:**

Monthly cashflow statements, quarterly statements and [un]audited annual accounts, accompanied by reports covering all material aspects of the Company's progress *[in the case of the quarterly and annual statements]*.

**Pre-emptive rights and
Drag and Tag along:**

In addition to usual pre-emptive rights, drag and tag along rights will apply if any shareholder(s) wish to sell more than [50%] of the Company Shares *[including a majority of the Investor[s]'s] Shares*¹⁴ (in aggregate) to a third party *[or if the Investor[s] wish to sell all of their Shares,]*¹⁵ so:

- the selling shareholders may require the minority to sell all of their Shares on the same terms; or
- the other shareholders may require the selling shareholder(s) to obtain an equivalent offer from the purchaser to acquire the Shares of the other shareholders.

Tag along rights will apply as between the Investor[s] for any sale of Company's Shares by any one of them.

Key People Escrow:

Except with the consent of the Investor directors the Key People are not permitted to dispose of any Shares for a period of [3] years from Settlement Date, with the exception of:

- a sale in an IPO or other transaction approved by the Investor[s] where the Investor[s] have the opportunity to sell on identical terms; or
- a transfer to their respective wholly owned and controlled entities or to immediate family.

Key Man Insurance:

The Company will procure and maintain (for the Company's benefit) key man life insurance policies in the amount of [\$1,000,000] on the life of *[each of the Key People]*.

Warranties:

Without limiting usual warranties for similar investments as will be contained in the Investment Agreement, the Company *[and Key People]* ***[or name warrantors]*** will warrant that (except as disclosed *[and to the best of their knowledge and belief]*¹⁶):

- all intellectual property and other rights necessary to pursue the Business are the full legal, beneficial and unencumbered property of the Company;

¹⁴ If Investor[s] held less than 50%, may require this protection against being "dragged" by other shareholders.

¹⁵ Consider if Investor[s] should have the right to "drag" other shareholders for desired exit, irrespective of whether they hold more than 50% of the Shares or whether they need sufficient support from ordinary shareholders to achieve a 50% threshold. Also consider whether 50% is the appropriate threshold or whether it should be higher.

¹⁶ Consider carefully whether a knowledge qualifier is acceptable for all 3 warranties mentioned. Preference is to leave this out of term sheet and deal with the issue on a warranty by warranty basis in the Investment Agreement negotiation.

- the Company has no actual or contingent liabilities not specified in the statement of financial position provided to the Investor[s] and such statement provides a true and fair view of the Company's position; and
- all other information provided to the Investor[s] is true, accurate and complete in all material respects.

[The maximum liability of each individual warrantor will not exceed [\$50,000]¹⁷.

**Forced Liquidation
Process/Redemption:**

If the Company has not carried out either an IPO or trade sale within 5 years from the Settlement Date (or such longer period as the Investor[s] and the Company may agree) the Investor[s] may require the Company to commence a liquidation process by way of public offering, trade sale or liquidation.

[Other Key Terms:

Insert other key terms as required e.g. will Investor[s] have rights relating to further capital raisings?

PART B: LEGALLY BINDING TERMS

Exclusive Period:

For a period of [90] days from the date of signing this Term Sheet, (**Exclusivity Period**) none of the Company, its shareholders, directors, officers, contractors or employees will conduct any discussions whatsoever with any third party regarding any investment in the Company, except as may be approved by the Investor[s] in their discretion.

[Broken Deal Fee:

If the Investment is offered within the Exclusivity Period pursuant to an Investment Agreement which contains the terms of this Term Sheet (and is otherwise in the Investor['s][s'] usual form) but is declined by the Company or if the Company breaches the preceding exclusivity requirement, the Company will pay [\$] to the Investor[s] as [full] compensation for all costs (including opportunity costs) incurred by the Investor[s].

Confidentiality:

The contents of this Term Sheet, and the fact that one has been issued, may only be disclosed by the Company to its shareholders, directors and advisers or other person(s) approved by the Investor[s] (on a need to know basis).

[Guarantee

[] [and] guarantee the Company's obligations in this Part B).

**[Investor['s][s']
Representative**

[] [and] represent(s) [he/she has] [they have] authority to bind [insert relevant Investor[s] they represent] in respect of all matters relating to the Investment]]¹⁸.

The parties respectively acknowledge the intended investment terms described in Part A and agree to be bound by the terms in Part B.

SIGNED on behalf of the Investor[s] [by the Investor['s] [s'] Representative]:

¹⁷ A dollar cap is usual if individuals are required to join in warranties.

¹⁸ May be applicable for an investor syndicate.

TEMPLATE TERM SHEET
FOR PREFERRED SHARES

Name: Name:

Date: Date:

Signature Signature

Signed on behalf of [] Limited by:

Director Director:

Date: Date:

Signature Signature

[Signed on behalf of *[insert Guarantors]*

Name: Name:

Date: Date:

Signature Signature]

APPENDIX 1
Capitalisation Table

Class of Security	Pre-money (Term Sheet signing)		Post-money at Target			
	Shares	%age	Cash-in	\$ per share	Share	%age
Shares						
Existing Shareholders (ordinary)						
<i>List</i>	[]	[]%	Up to \$[]	[]	Up to []	[]
	[]	[]%	Up to \$[]'	[]	Up to []	[]
	[]	[]%	Up to \$[]	[]	Up to []	[]
Investor[s] (preferred)						
<i>List</i>	[]	[]%	Up to \$[]	[]	Up to []	[]
	[]	[]%	Up to \$[]	[]	Up to []	[]
	[]	[]%	Up to \$[]	[]	Up to []	[]
Options						
ESOP	[]	[]			[]	[]
Others?	[]	[]			[]	[]
Total fully-diluted		100%	[\$]			100%

APPENDIX 2
Committed Investor[s]

Investor	Amount

TERM SHEET

FOR ISSUE OF CONVERTIBLE LOAN BY

[] LIMITED

(Company)

General notes: This term sheet applies if an investment is initially structured as a loan convertible to equity. Refer to alternative term sheets for ordinary or preference shares (one of which will usually be attached to describe equity terms which will take effect on conversion). The more optional provisions appear in italics and instructions appear in bold italics. Refer to footnotes at the bottom of each page for comments on some of the optional provisions.

This document (**Term Sheet**) summarises the principal terms of a proposed loan to the Company (**Loan**). This Term Sheet is not legally binding except for the terms stated in part B of this Term Sheet and there will be no obligation to proceed with the loan until a binding agreement (**Loan Agreement**) is signed by the parties.

PART A: LOAN TERMS (non-binding)

Business: The [proposed] business of the Company relating to [**describe business**] (**Business**).

Amount of Loan: [Up to¹] \$ []
[(subject to achievement of milestones)] (**Loan**).

Lender[s]: [**Insert name(s) of investor[s] or [The persons identified in Appendix 1 [and other members of the [] investment syndicate who agree to participate in the Loan]²**] (**Lender[s]**).

Key People: [**Insert names of founder(s)/key people**] (**Key People**³).

Purpose of Loan: The purpose of the Loan is to [**describe purpose of Loan**]. The Company may only use the Loan for this purpose.

Term: The Loan (if not converted) is repayable on demand after [] months from the Settlement Date.

Interest: Interest will only be payable if the Loan is not converted and if demanded by the Lender at the rate of []%⁴.

Conversion: The Loan may be converted [*in whole*] [*in part*] at the Lender[’s][s’] option at any time into [*preferred*] [*ordinary*] shares at the conversion rate (**Conversion Rate**) as set out below:

$$X = (1 + [\textit{Insert fraction}^5]/12)^n \times y$$

1 Words "up to" generally apply if loan is tranching and milestones or conditions apply for subsequent payments.

2 Applicable for a syndicate investment where all of the participants are yet to be confirmed.

3 The term "Founders" is more common than "Key People", but latter term may be more accurate in indicating the people and who are important who may not be limited to the original founders of the Company (see later provisions relating to conditions precedent and restrictions on share transfers).

4 The conversion formula compensates the Lender[s] for the time value of money if the Loan is converted. The Lender[s] will prefer not to be treated as having derived interest income if conversion occurs, however tax advice should be sought whether this conversion treatment excludes this.

Where:

x is the number of shares to be issued

n is the number of months (rounded up to the nearest month)
that the amount of principal of the Loan being converted has
been outstanding

y is the amount of Loan principal being converted.

[The Conversion Rate is subject to adjustment as set out in the
anti dilution paragraph below.]

The [**preferred**] [**ordinary**] shares will be issued on the terms
set out in **Appendix 1**⁶.

First ranking general security agreement over the Company in
the Lender[s][s'] usual form (**Security**).

Security:

**Conditions Precedent:
(for Lender[s][s'] benefit)**

- Execution of a term sheet for [**preferred**] [**ordinary**] shares substantially in the form attached as Annexure A.
- Approval of an agreed budget for application of the Loan (**Agreed Budget**).
- [*Agreement on milestones which must be achieved for disbursement of post Settlement Date tranches of the Loan (Milestones)*].
- Final approval of each Lender[s][s'] [*board*] **or** [*Investment Committee*] (as applicable).
- Completion of the Loan Agreement and Security and all documents required to give full effect to these documents.
- Completion of employment or contractor agreements(s) with the [*Key People*] [*]* and [*]* on terms acceptable to the Lender[s] (and which include suitable non compete covenants).
- All relevant officers, consultants and contractors (including all Key People assigning (in a form acceptable to the Lender[s]) all intellectual property linked to the Business or proposed future business.
- Agreement on the identity of [**insert number**] [*an*] [*independent director[s]*] [*and*] [*a chairman*] for the company.
- Evidence that any third party consents or other authorisations required to complete the Loan have been obtained.
- [**Insert any other specific conditions**

⁵ The fraction inserted will be equivalent to the interest rate percentage which applies if the Loan is repaid - e.g. if the interest rate is 15%, it will be 0.15.

⁶ Usually these terms will be set out in a term sheet for the relevant type of shares.

*precedents*⁷].

Anticipated Settlement Date:

[*Insert date*] or [5] business days after satisfaction of all conditions precedent in the Loan Agreement (actual settlement date being referred to as **Settlement Date**).

Drawdown of Loan Amount:

The Loan Amount will be drawn down [*in one sum on the Settlement Date*] **or** [*in the instalments as specified in the Agreed Budget (and applied solely to expenditure as specified in the Agreed Budget or otherwise approved by the Lender[s])*] **or** [*as follows*]:

- [\$] on Settlement Date;
- [\$] when [*insert Milestone etc*]

[*provided each instalment will be at the Lender[s][s'] option if a Milestone due by the relevant date has not been achieved*]⁸.

[Anti-dilution:

*The conversion price of the Loan will be subject to adjustment on a [full] [weighted average] ratchet basis for issues of new equity in the Company at an issue price less than \$[] per share (other than pursuant to an approved ESOP)*⁹.]

Observation Rights:

The Lender[s] shall be entitled to send observer(s) to attend meetings of the Company's board (**Board**) (and to receive all information provided for or at such meeting), the Board on any such occasion to request a closed session in the event of a conflict of interest. If required by the Board, any observer must enter into a confidentiality agreement acceptable to the Company.

Protective Provisions:

Prior approval of the Lender[s][s'] director(s) is required for any of the following in relation to the Company:

- issues of equity, options or any instruments convertible to equity (other than issues already contemplated by the Loan Agreement);
- any [*major*] transaction or transaction involving the disposal of a material proportion of the Company's assets;
- any transaction or arrangement likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities not specifically identified in the Agreed Budget, the value of which is greater than [\$10,000];

⁷ Consider other specific conditions precedent which should be specified (e.g. members of investment syndicate making commitments equivalent to at least the minimum required Loan). However there is sufficient protection for lender[s] in the general due diligence condition and the non-binding nature of Term Sheet.

⁸ Of the 3 variables, the latter 2 options which allow for tranching will usually be preferred with third option being most preferred from Lender[s][s'] perspective as payments are contingent on milestones.

⁹ Anti-dilution protection is standard for preference shares but should also be considered for ordinary shares. Full ratchet will effectively reprice the Lender[s][s'] shares (by issuing additional shares to the Lender[s] if they convert) at the lower issue price of the "down round", while a weighted average ratchet will reprice at the weighted average of each price (accordingly to respective amounts subscribed). Full ratchet is most favourable for the Lender[s].

- any material change in the Company's share ownership or control;
- any material transaction with a related party of the Company or any shareholder or officer;
- any borrowings, guarantees, indemnities or other contingent commitments or the granting of any security over the Company's assets;
- appointment of removal of the CEO, CFO or any other Key Person *[or any other employee]*;
- approval of or any material amendments to or departures from the Agreed Budget, subsequent budgets and business plans; or
- any change to the Company's constitution.

**Financial Statements,
Reporting:**

Monthly cashflow statements, quarterly statements and *[un]audited* annual accounts, accompanied by reports covering all material aspects of the Company's progress *[in the case of the quarterly and annual statements]*.

Warranties:

Without limiting usual warranties for similar loans as will be contained in the Loan Agreement, the Company *[and [Key People] [or name warrantors]* will warrant that (except as disclosed *[and to the best of their knowledge and belief]*¹⁰):

- all intellectual property and other rights necessary to pursue the Business are the full legal, beneficial and unencumbered property of the Company;
- the Company has no actual or contingent liabilities not specified in the statement of financial position provided to the Lender[s] and such statement provides a true and fair view of the Company's position; and
- all other information provided to the Lender[s] is true, accurate and complete in all material respects.

*[The maximum liability of each individual warrantor will not exceed \$50,000].*¹¹

[Other Key Terms:

Insert other key terms as required e.g. will Lender[s] have rights relating to subsequent capital raisings?

10 Consider carefully whether a knowledge qualifier is acceptable for all 3 warranties mentioned. Preference is to leave this out of term sheet and deal with the issue on a warranty by warranty basis in the Investment Agreement negotiation.

11 A dollar cap is usual if individuals are required to join in warranties.

PART B: LEGALLY BINDING TERMS

Exclusive Period: For a period of [30] days from the date of signing this Term Sheet (**Exclusivity Period**), none of the Company, its shareholders, directors, officers, contractors or employees will conduct any discussions whatsoever with any third party regarding any investment in the Company, except as may be approved by the Lender[s] in their discretion.

[Broken Deal Fee: *If the Loan is offered within the Exclusivity Period pursuant to a Loan Agreement which contains the terms of this Term Sheet and is otherwise in the Lender[s]'s usual form but is declined by the Company or if the Company breaches the preceding exclusivity requirement, the Company will pay [\$] to the Lender[s] as full compensation for all costs (including opportunity costs) incurred by the Lender[s].*

Confidentiality: The contents of this Term Sheet, and the fact that one has been issued, may only be disclosed by the Company to its shareholders, directors and advisers or other person(s) approved by the Lender[s] (on a need to know basis).

[Guarantee: [] [and] guarantee the Company's obligations in this Part B].

[Lender[s]'s] Representative: [] [and] represent(s) [he/she has] [they have] authority to bind [insert relevant Lender[s] they represent] in respect of all matters relating to the Loan¹².

To confirm your acceptance of this Term Sheet, please sign and date the duplicate of this Term Sheet and return it to me.

SIGNED on behalf of the Lender[s] [by the Lender[s]'s] Representative[s]:

Name: **Name:**

Date: **Date:**

Signature **Signature**

Signed on behalf of [] Limited by:

Director **Director:**

Date: **Date:**

Signature **Signature**

12 May be applicable for an investor syndicate.

TEMPLATE TERM SHEET
FOR CONVERTIBLE LOAN

[Signed on behalf of *[insert Guarantors]*]

Name:

Name:

Date:

Date:

Signature

Signature

APPENDIX 1
Committed Lender[s]

Lender	Amount

APPENDIX 2
[Preferred] [Ordinary] Share Terms

(See attached Term Sheet)