

[COMMENT: Confidentiality legends can be important]

[COMMENT: Note the date code above.]

Nonbinding discussion draft: Term sheet for exclusive license of certain IP assets

Subject to Due Diligence [COMMENT: This is typical.]

Parties:

“**Buyer**”: Buyer Inc., a Texas corporation

“**Owner**”: Owner Inc. a Delaware corporation

Introduction

[COMMENT: Normally I'd do automatic numbering of the headings and subheadings. But in this case, the client sent me the very-first draft of the document (which I edited extensively, and we edited more during a Teams “page turn” markup call). So I just turned on line numbering, instead of spending billable time on heading numbering.]

This term sheet outlines the principal terms and conditions under which, upon the parties’ signing of a final agreement, Buyer would exclusively license [COMMENT: Note the use of the subjunctive “would.”] certain intellectual property (IP) assets of Owner (the “**Transaction**”).

[COMMENT: Note how the defined term “Transaction” is in bold-faced type and quotation marks, for easier scanning to find its definition.]

Except as otherwise stated in this term sheet, the parties do not intend to be bound concerning the Transaction unless and until all parties have signed and delivered a final, definitive written agreement (a “**License Agreement**”) that sets out all agreed, material terms. [COMMENT: The border around this paragraph is for “conspicuousness”, to emphasize the non-binding nature of this term sheet — that can sometimes make a difference in court.]

21 Overview of the Transaction

22 **License:** In the License Agreement, Owner would grant Buyer (or a designated Buyer
23 affiliate) a **perpetual, worldwide, royalty-bearing, irrevocable** (*except for nonpayment*
24 *after notice and failure to cure*) **exclusive license** to the IP Assets (defined below) (the
25 “**License**”), under all intellectual property rights owned or otherwise assertable by Owner. ¹

26 [COMMENT: Note the footnote — they can be useful in term sheets and even in contracts.]

27 **IP Assets:** The License would be for all Owner intellectual property assets related to
28 Owner’s “[OMITTED] AI” software [COMMENT: AI-related deals are getting increasingly common in
29 many areas of business.] for [OMITTED] as offered on Owner’s Website at [OMITTED] (the
30 “**Product**”), including but not limited to the following:

- 31 • Source code
- 32 • Training data sets
- 33 • Technical documentation
- 34 • The web site
- 35 • Any and all IP related to the software

36 **Scope of License:**

- 37 • Buyer would be able to do anything that Owner would be entitled to do as owner —
38 this includes, for example, making, using, providing access to, distributing (via any

¹ Such IP rights include, for example, rights under laws concerning copyrights; trade secrets; patents; and trademarks.

- 39 existing- or future medium), improving, translating, and creating derivative works
40 based on the IP Assets, singly and/or in combination. [COMMENT: Note the BLUF (Bottom
41 Line Up Front) preface to this paragraph — *in very-plain business language*, followed by IP legalese.]
- 42 • Owner would cease granting customer licenses, referring all opportunities to Buyer.
 - 43 • New licenses to customers would be on “Buyer paper” (license agreement terms).
44 [COMMENT: In this context, “Buyer paper” is jargon for Buyer’s contract forms.]
 - 45 • Owner would credit all post-contract revenues from Owner’s existing customers to
46 Buyer’s payment obligations.
 - 47 • License would end if Buyer did not hit “Lifetime Royalty Cap” (defined below)
48 [COMMENT: I’m using a defined term here to comply with the “D.R.Y.” Rule — don’t repeat yourself for
49 numbers that could be revised, because you don’t want inconsistent statements.] AND did not
50 exercise option to xxx (see below for each).

51 **Knowledge transfer:**

- 52 Buyer and Owner would jointly agree [COMMENT: An “agreement to agree” is unenforceable, but for a
53 nonbinding term sheet it’s OK.] to a professional-level [COMMENT: Adding any kind of standard of
54 performance would increase the chances of enforceability.] knowledge transfer process and timeline
55 sufficient to ensure the success of this transfer.

56 **Royalty payments; option to purchase**

- 57 • **Definition: Target Percentage (for Buyer payments; see below):** [OMITTED]

- 58 • Once the aggregate of \$XXX in running royalties (“**Lifetime Royalty Cap**”) has been
59 paid, then [OMITTED].
- 60 • For emphasis: [OMITTED]

61 **Audit right:** Owner may have annual, commercially-reasonable audits done to confirm

62 Buyer’s royalty obligations, as follows: [COMMENT: This is “hamburger for the guard dog.”]

- 63 • Auditor: Independent accounting firm reasonably acceptable to Buyer
- 64 • True-up after audit
- 65 • Owner pays audit expenses, except Buyer pays if audit reveals (i) discrepancy
66 favoring Buyer greater than 7% for period audited, or (ii) fraud or material breach by
67 Buyer

68 **Option to xxx:**

- 69 • Option begins on the date (if any) that the exclusive license agreement is signed.
- 70 • Option ends on the date (if any) two years after EOQ of hitting Lifetime Royalty Cap.
- 71 [COMMENT: Always at least think about whether a particular right or obligation should “sunset.”]
- 72 • Option allows Buyer to [OMITTED]

73 Owner warranties in license agreement

74 The following warranties would be subject to any agreed exceptions stated in a
75 schedule: [COMMENT: It’s standard practice to use a schedule of exceptions to warranties.]

- 76 • Owner's employees and contractors have signed appropriate written agreements re:
77 IP rights and non-compete
- 78 • No trade-secret misappropriation or copyright infringement
- 79 • Owner & its management not aware [COMMENT: A flat-out warranty of no patent infringement
80 is tough for Owner to make, so let's just ask for a "we don't know of any" instead.] of any potential
81 patent infringement
- 82 • No third party has asserted IP infringement or competing ownership claims
83 [COMMENT: This would allow for fraud detection if a problem turned up later.]
- 84 • Performance warranties for IP Assets?
- 85 • "Schedule 1": A complete list of third-party assets used in IP Assets (incl. FLOSS:
86 free / libre open-source software)?

87 Conditions Precedent

88 The following conditions would need to be fulfilled or formally waived in writing before
89 signing the License Agreement:

- 90 • Completion of due diligence to Buyer's satisfaction in Buyer's sole discretion
- 91 • Written approval of the transaction by the board of directors of both Buyer and
92 Owner
- 93 • Written approval by Owner's shareholders [COMMENT: This relates to a particular aspect of
94 the potential Transaction.]

95 Confidentiality

96 Both parties agree to keep the terms of this Term Sheet and any related discussions
97 confidential. [COMMENT: Normally a confidentiality provision would be more extensive than this. Buyer
98 might also want Owner to commit to a “no-shop” clause.]

99 Miscellaneous

100 The License Agreement would also address the following:

- 101 • Amendments and waiver: In signed writings only

102 Governing law: Texas. [COMMENT: Buyer is a Texas corporation but has operations all over; another
103 possibility would be Delaware law.]

- 104 • Buyer may assign the License and/or the Option in connection with a sale or other
105 disposition of substantially all the assets of Buyer’s business that relate to the IP
106 Assets. [COMMENT: Assignability of contracts can be strategically crucial.]

- 107 • Buyer may also assign the License and/or the Option to an “affiliate” that controls,
108 is controlled by, or is under common control with Buyer, as defined in SEC
109 regulations. [COMMENT: This provides Buyer with more flexibility in its corporate-family
110 arrangements.]

- 111 • Buyer may not otherwise assign the License nor the Option except with the prior
112 written consent of all of Owner, Alice, and Bob, with such consent not to be
113 unreasonably withheld, delayed, or conditioned. [COMMENT: This is another “hamburger
114 for the guard dog” provision.]

115 • Termination for breach after notice and cure period

116 • Termination “at will” by Buyer?

117 *[END OF DOCUMENT]*

118 [COMMENT: This avoids reduces the chance of someone
119 surreptitiously inserting text in the remaining blank space