ESOP SCHEDULE
SHARE OR OPTION GRANTS

Explanatory Note

This schedule sets out key terms on share or option grants for an employee, advisor, director, consultant or contractor for a start-up business that does not yet have an employee incentive plan (EIP) in place.

If your start-up business has an EIP in place, it would be better for you to grant shares or options under that EIP as it is likely to deal more precisely and consistently with relevant issues.

Use of this schedule is not recommended for start-ups which are past the initial stages of recruiting its first few employees, advisors, directors, consultants or contractors.

For a more in-depth discussion on EIPs for a start-up business set up as a Singapore company, please see VIMA’s guide – ''Introduction to Employee Incentive Plans". Note that EIPs may be structured and documented in different ways. These have different incentivisation, governance, control and tax consequences both for the employee, advisor, director, consultant or contractor as well as for your business. All relevant parties should consider this carefully and obtain professional legal, accounting or tax advice where necessary.

DRAFT

Two options are presented in this Schedule:

Option 1 – use this where you want to keep it short and you don't know what you want to do with your EIP even after reviewing VIMA’s guide. This gives your start-up business greater flexibility. However, your employee, advisor, director, consultant or contractor may not like it.

Option 2 – use this where you have key terms in mind for your EIP. This gives an outline of key terms for your employee, advisor, director, consultant or contractor and may incentivise them better because there are obligations you are willing to commit to.

This schedule only contemplates either (a) an employee share option plan – where there is an issue of options over ordinary shares subject to exercise periods and conditions; or (b) an employee share ownership scheme – where there is an issue of ordinary shares subject to vesting conditions.

The level of precision you choose has a material effect on what you may do later and what the employee, advisor, director, consultant or contractor may require you to deliver. This schedule also includes [options in bold which you should pay particular attention to, customise to fit your circumstances and then ensure that all bolded wording and square brackets are deleted].

This schedule assumes that you have an agreement for the provision of the employee's, advisor's, director's, consultant's or contractor's services or appointment and this is merely a schedule that will be inserted into that agreement. Accordingly, you should substitute the terms "Employee" and "Company" in this schedule for the relevant term in your agreement. In addition, this schedule assumes that the agreement already contains certain provisions which are important for its operation such as the following:

[Entire Agreement] This Agreement sets out the whole agreement between the Parties in respect of subject matter of this Agreement and supersedes any previous draft, agreement, arrangement or understanding, whether in writing or not, relating to its subject matter.

[Governing law] This Agreement and any non-contractual obligations arising out of, or in connection with it, shall be governed by, and interpreted in accordance with, Singapore law.

[Litigation] The Singapore courts shall have [**non-**]exclusive jurisdiction in relation to all Disputes. [For these purposes each Party irrevocably submits to the jurisdiction of the Singapore courts and waives any objection to the exercise of that jurisdiction.]

**[OPTION 1 – COMPANY DISCRETION]**

The Employee may be awarded ordinary shares in the Company (Shares) or options over Shares but any award is in the Company’s sole and absolute discretion and the Company is entitled to impose any terms on any award [including terms on vesting or exercise and mandatory participation in any exit events].

[END OPTION 1]

\_\_\_\_\_\_\_\_\_\_\_\_\_

**[OPTION 2A – KEY TERMS - OPTIONS]**

The Company [currently intends to/must] award options (Options) over ordinary shares in the Company (Shares) to the Employee with the following key terms:

|  |  |
| --- | --- |
| Number of Options and Shares over which Options are granted | [insert number] Options with each Option entitling you to acquire one Share**[The total number of Options is intended to represent [insert percentage] % of the issued shares of the Company until the next major equity financing of the Company, which means one or a series of transactions with the principal purpose of raising funds of at least US$[insert]. Shares issued after such a fundraising will not be taken into account in the calculation.]** / **[These Options represent a certain percentage of the issued shares of the Company at the date of this Agreement. However, the Company is likely to issue more shares to raise funds, reward other employees, advisors, directors, consultants or contractors or for other purposes and when that happens, these Options will represent a lower percentage of the issued shares of the Company.]** |
| Number of Options exercisable and exercise period | [1/4] of the total Options on [the first anniversary of this Agreement].For the rest, in equal instalments each [month/quarter] for the next [36-month] period.**[If an Option is not exercised within a period from the date that it may be exercised, further rules may provide that the Option lapses and is of no effect. Whenever any Options lapse, are cancelled or are otherwise terminated (other than by exercise), the Shares allocable to the unexercised portion of such Options shall again become available for the grant of other Options by the Company.]** |
| Exercise price | Each exercisable Option entitles you to acquire Shares [by paying a subscription price of $[insert amount per Share]] / [for no additional payment].  |
| Resignation or termination | If the Employee resigns or the Employee’s [employment] is terminated for any reason (other than as set out below), the Employee is only entitled to Options which are exercisable prior to the date [of the resignation or termination notice] / [the Employee ceases to be employed by the Company].In addition, if the Employee’s **[employment]** is terminated under clauses **[insert references to provisions dealing with egregious conduct]**, the shareholders of the Company may require a buyback of Shares issued to the Employee (even if these are the result of an exercise of Options) or a sale of those Shares to the shareholders at nominal purchase price. |
| Exit events[[1]](#footnote-2) | [If an exit event is proposed – for example, all the shares in the Company are the subject of an acquisition or the Company is being wound up or the Company is part of an initial public offering - the Company may require:* **that the Employee is only entitled to Options which are exercisable by a key date that is prior to the exit event;**
* **the Employee to participate in the exit event by agreeing to sell exercisable Options for a comparable amount to others participating in the exit event.**

**The Company also reserves the right to make a cash payout in lieu of allowing the Employee to exercise some or all of the Employee’s exercisable Options, which is equivalent to the fair market value of the Shares otherwise issuable upon the exercise of such Options. These Options shall automatically and immediately lapse and be of no effect on the date that the Employee receives the cash payout.]** |

Further or more precise terms will apply to the Options [in the sole and absolute discretion of the Company] / [being terms which are within the range of what is customary for employee share or option plans] provided that these are [not inconsistent with the express terms of this Schedule] / [accepted by a majority of the employees, advisors, directors, consultants or contractors of the Company] / [consented to by the Employee (such consent not to be unreasonably withheld or delayed)].

[END OPTION 2A]

**[OPTION 2B – KEY TERMS - SHARES]**

The Company [currently intends to/must] issue ordinary shares in the Company (Shares) to the Employee with the following key terms:

|  |  |
| --- | --- |
| Number of Shares  | [insert number]**[The total number of Shares is intended to represent [insert percentage] % of the issued shares of the Company until the next major equity financing of the Company, which means one or a series of transactions with the principal purpose of raising funds of at least US$[insert]. Shares issued after such a fundraising will not be taken into account in the calculation.]** / **[ These Shares represent a certain percentage of the issued shares of the Company at the date of this Agreement. However, the Company is likely to issue more shares to raise funds, reward other employees, advisors, directors, consultants or contractors or for other purposes and when that happens, these shares will represent a lower percentage of the issued shares of the Company.]** |
| Number of Shares vesting and vesting period | [1/4] of the total Shares on [the first anniversary of this Agreement].For the rest, in equal instalments each [month/quarter] for the next [36-month] period. |
| Resignation or termination | If the Employee resigns or the Employee’s [employment] is terminated for any reason (other than as set out below), the Employee is only entitled to Shares which have vested prior to the date [of the resignation or termination notice] / [the Employee ceases to be employed by the Company].In addition, if the Employee’s **[employment]** is terminated under clauses **[insert references to provisions dealing with egregious conduct]**, the shareholders of the Company may require a buyback of Shares issued to the Employee (even if these have vested) or a sale of those Shares to the shareholders at nominal purchase price. |
| Exit events | If an exit event is proposed – for example, all the shares in the Company are the subject of an acquisition or the Company is being wound up or the Company is part of an initial public offering, the Company may require:* that the Employee is only entitled to Shares which have vested by a key date that is prior to the exit event;
* the Employee to participate in the exit event by agreeing to sell Shares for a comparable amount to others participating in the exit event.
 |

Further or more precise terms will apply to the Shares [in the sole and absolute discretion of the Company] / [being terms which are within the range of what is customary for employee share or option plans] provided that these are [not inconsistent with the express terms of this Schedule] / [accepted by a majority of the employees, advisors, directors, consultants or contractors of the Company] / [consented to by the Employee (such consent not to be unreasonably withheld or delayed)].

[END OPTION 2B]

\_\_\_\_\_\_\_\_\_\_\_\_\_

[SUGGESTED PROVISIONS WHETHER OPTION 1 OR 2 IS USED]

The Employee agrees that:

* the Company is entitled to withhold Shares unless the Employee signs a shareholders’ agreement in relation to the Company. [Such a shareholders’ agreement is likely to include further restrictions on the transfer of **Shares** and may include "Good leaver/bad leaver" provisions which require the Employee to sell **Shares** in certain circumstances, potentially at a nominal purchase price];
* this Schedule and any **[Shares/Options]** do not form part of the terms of the Employee’s **[employment]** and no representation has been made to the Employee about any expectation of **[employment]** or continued **[employment]** including to induce the Employee to accept the **[Shares/Options]**;
* the Employee shall not be entitled to take into account these **[Shares/Options]** in calculating any compensation or damages on the termination of the Employee’s **[employment]** **[for any reason]**[[2]](#footnote-3);
* the value of the Shares **[and Options]** is uncertain and the value may increase or decrease from time to time;
* the Employee must pay all applicable taxes in relation to the **[Shares/Options]** and the Employee’s acquisition or disposal of them;
* the Company and each of its employees, advisors, directors, consultants or contractors has not provided financial product advice to the Employee and the Employee has been advised to consult an independent investment or taxation advisor prior to accepting any **[Shares/Options]**;
* the Employee must not transfer the Shares **[or Options]** contemplated in this Schedule or create any mortgage, charge, security interest, pledge, equity, option, lease, trust, or any other encumbrance (other than liens arising by operation of law) over such Shares **[or Options]**;
* **[the Company may, instead of issuing Shares to the Employee as contemplated under this Schedule, issue such Shares to a company, trustee or other entity (SPV) and procure that such SPV issues shares or other interests in the SPV to the Employee. Such an SPV may hold other shares in the Company and may issue shares or other interests in the SPV to others such that the Employee is not the only shareholder, beneficiary or person with an interest in the SPV;]**[[3]](#footnote-4)
* [the Employee warrants that it is acting for itself as principal and is a person to whom the Company may offer and issue Shares **[and Options]** as contemplated in this Schedule without a prospectus or other disclosure document and the Employee acknowledges that the offer and issue of Shares **[and Options]** as contemplated in this Schedule is made without any registration of a prospectus with the Monetary Authority of Singapore (or any other authority) and this might result in restrictions on the further offer or sale of such Shares **[and Options]** under the Securities and Futures Act (Chapter 289) of Singapore or other applicable law or regulation.][[4]](#footnote-5)

Disclaimer: This precedent (the **Precedent**) is intended to give legal information only and has been developed specifically for use in Singapore. The Precedent is drafted based on the applicable laws as at the date of publication. You acknowledge and agree that the Precedent may not be up to date in accordance with changes to the law or market practice and Singapore Academy of Law (**SAL**) and the contributor of the Precedent (**Contributor**) are under no obligation to update it.

You acknowledge and agree that the making available of the Precedent to you by SAL and Contributor does not constitute the provision of legal advice or other professional advice by SAL and Contributor and you will not rely on such documents as legal advice. You further agree and acknowledge that the Precedent has not been prepared with your specific circumstances in mind, may not be suitable for use in your situation, may not be exhaustive in respect of provisions that are to be included, and does not constitute legal or tax advice. In relying on the Precedent, you assume all risks and liabilities that may result.

You are strongly advised to advise your client of the implications of entering into such an agreement and ensure appropriate customization of the provisions as set out in this specimen to ensure that the terms and conditions required in light of the circumstances faced by your client are included.

You should review the Precedent carefully for accuracy before using it. These terms and the operations or availability of the Precedent may be changed by SAL, with or without notice, at its sole discretion.

1. Drafting Note: This is usually negotiated based on the specific circumstances of the company as well as its founders and key employees and often comes up as a negotiation point with the acquirer in a change of control situation. See VIMA’s guide – "Introduction to Employee Incentive Plans" for more information. [↑](#footnote-ref-2)
2. Drafting Note: please consider if this should be tied to "bad leaver" type exits only. [↑](#footnote-ref-3)
3. Drafting Note: This provision is unlikely to be necessary for an employee, but may be useful for others who are not employees so that the Company has an option of aggregating holdings of such persons through an SPV so that their holdings do not tip the Company over the 50 shareholder limit for private companies. [↑](#footnote-ref-4)
4. Drafting Note: This is unlikely to be necessary for an employee who resides in Singapore, but may be useful for others who are not employees or who do not reside in Singapore so that there is a prompt to think about any securities law issues. [↑](#footnote-ref-5)