

Sample Term Sheet

Here is a copy of the Atlassian term sheet, which they recently made public, as an example. I have also included the link as a reference, as they will likely update this on occasion.

Any term sheet you receive will likely be slightly different from this but will follow a similar format and include similar language. Startup founders should familiarize themselves with this document, and the terminology used so they are not caught off balance when they receive one for real.

Link:

<https://editorial.atlassian.net/wiki/spaces/ED/pages/262284/The+Atlassian+Term+Sheet>

THE ATLASSIAN TERM SHEET

We are excited that [Company Name] (the “**Company**”) is considering joining the TEAM!

This Term Sheet lays out the main terms of a potential transaction between the Company and Atlassian Corporation Plc or one of its subsidiaries (“**Atlassian**”). In this Term Sheet, Atlassian and the Company are sometimes referred to as the “**Parties**” or individually as a “**Party**.”

NON-BINDING PROVISIONS

Proposed Transaction:	Atlassian anticipates that it would acquire the company through a reverse triangular merger (the “ Proposed Transaction ”).
Deal Documents:	Atlassian and its legal counsel would be the primary drafter of the definitive agreement (“ Definitive Agreement ”) and other legal documents for the Proposed Transaction (collectively, with the Definitive Agreement, the “ Deal Documents ”). The Definitive Agreement would contain representations and warranties, covenants, closing conditions, indemnities and other typical provisions for a transaction of this nature.
Closing:	The Closing of the Proposed Transaction (“ Closing ”) would take place after all closing conditions in the Definitive Agreement are satisfied or waived. In no event would the Closing occur during the last month of any Atlassian financial quarter.
Due Diligence:	As soon as possible after the date this Term Sheet is executed (the “ Term Sheet Date ”), the company would provide Atlassian and its representatives with access to the company (and its representatives, personnel, subsidiaries, assets,

	<p>properties, documents, and other information) so Atlassian can conduct a thorough diligence investigation.</p>
<p>Proposed Purchase Price:</p>	<p>The aggregate purchase price to be paid by Atlassian for all of the company's outstanding equity securities, whether vested or unvested, would be \$[_____] (the "Purchase Price"). For the avoidance of doubt, cash on the company's balance sheet would be factored into the Purchase Price and the associated valuation. On a dollar-for-dollar basis, the Purchase Price would be adjusted as follows:</p> <p>(i) increased by the aggregate exercise price of all of the company's vested equity awards as of the Closing, and</p> <p>(ii) reduced by (x) the company's indebtedness (including accrued interest) at Closing, (y) the aggregate amount of Transaction Expenses and Change of Control Payments (each defined below), in each case whether paid or unpaid, and (z) the R&W Insurance Expenses (defined below).</p> <p>The Purchase Price would be paid in cash, except that (i) certain unvested equity awards would be substituted for Substitute Awards (defined below), and (ii) the Core Employees (defined below) would be issued Holdback Shares (defined below), each as described below.</p>
<p>Outstanding Equity Awards, and Other Equity Rights:</p>	<p>All vested Company equity awards (other than the Holdback Amount described below) would be cashed out at Closing, net of any exercise price and subject to any applicable tax withholding and Escrow Amount (defined below) obligations. All unvested equity awards held by Company employees who accept their Atlassian offer letters would be substituted for Atlassian equity awards (the "Substitute Awards"). All other outstanding rights to acquire equity securities of the company that have not been exercised as of Closing would terminate.</p>
<p>Holdback:</p>	<p>In lieu of receiving cash for [__]% of the consideration otherwise payable to each of [Name] and [Name] (the "Core Employees") in the Proposed Transaction (the "Holdback Amount"), these Core Employees would each be issued a number of Atlassian Class A ordinary shares equal to their Holdback Amount divided by the volume weighted average price of Atlassian Class A ordinary shares for the 10 trading days ending on the last trading day preceding the signing date of the Definitive Agreement (the "Holdback Shares"). The Holdback Shares would be issued pursuant to registration exemptions under U.S. and other securities laws, and would be subject to any resale and other trading restrictions that apply.</p> <p>Each Core Employee's Holdback Shares would vest over [__] months as follows:</p> <p>(i) [__]% of such Holdback Shares would vest on the first anniversary of the</p>

	<p>Closing, and (ii) [__] of such Holdback Shares would vest on a quarterly basis thereafter until all Holdback Shares have vested, subject to such Core Employee being employed by Atlassian on each vesting date.</p> <p>A Core Employee’s unvested Holdback Shares would accelerate in full if they are terminated without “Cause” or terminate their employment for “Good Reason,” or due to death or “Permanent Disability” (as such terms are defined in the Deal Documents), effective as of the date of such termination.</p>
<p>Employment Offer Letters and Non-Competes:</p>	<p>Concurrently with the signing of the Definitive Agreement:</p> <p>(i) Each of the Core Employees and other key employees of the company to be identified by Atlassian in consultation with the CEO of the Company during diligence would enter into: (a) employment offer letters with Atlassian (“Offer Letters”); and (b) Atlassian’s standard form of employee confidential information and invention assignment agreement (an “IP Assignment”), each to become effective at the Closing; and</p> <p>(ii) Each Core Employee would enter into a [__]-year non-competition and non-solicitation agreement in favor of Atlassian (a “Non-Compete”), to become effective at the Closing.</p> <p>The following would be conditions to Closing:</p> <p>(i) At least [__]% of the company's employees who receive Offer Letters accept their Offer Letters and enter into an IP Assignment; and</p> <p>(ii) The Offer Letters, IP Assignments and Non-Competes remain effective as of the Closing.</p> <p>Atlassian would evaluate, on a case-by-case basis, whether to require Company employees to waive their vesting acceleration rights, change-in-control payments, severance compensation, or other payments that might be triggered by the Proposed Transaction.</p>
<p>Employee Retention Pool:</p>	<p>Atlassian would allocate an additional \$[__] in Atlassian equity awards to some or all employees of the company, in consultation with the CEO of the Company.</p>
<p>Indemnification, Escrow and Insurance:</p>	<p><u>Indemnification</u></p> <p>The Definitive Agreement would require all shareholders of the company and all holders of vested equity securities that are cashed out at the Closing (collectively,</p>

	<p>the "Sellers") to indemnify Atlassian against any damages arising out of or resulting from:</p> <ul style="list-style-type: none"> (i) breaches of the company's representations and warranties; (ii) breaches of the company's covenants set forth in the Definitive Agreement ("Covenants"); (iii) tax-related matters, capitalization matters, purchase price allocation matters, third-party claims, exercise of dissenters', appraisal or other similar rights, and other matters set forth in the Definitive Agreement ("Other Indemnities"); or (iv) fraud. <p><u>Escrow and Insurance</u></p> <p>As partial security for Atlassian's post-Closing indemnification rights, an amount equal to 1% of the Purchase Price (the "Escrow Amount") would be held in a third party escrow fund for 15 months after the Closing.</p> <p>Atlassian would obtain a representations and warranties insurance policy ("R&W Insurance") in connection with the Proposed Transaction. The premium, taxes, commissions and any other fees and expenses payable in connection with obtaining R&W Insurance coverage for a policy limit of 4% of the Purchase Price (the "R&W Insurance Expenses") would be paid for by the Sellers.</p> <p><u>Limitations on Indemnification Obligations</u></p> <p>The Sellers' indemnification obligations would be limited as set forth in Schedule I.</p>
<p>R&W Insurance Expenses, Transaction Expenses, Change of Control Payments:</p>	<p>The Sellers would be solely responsible for:</p> <ul style="list-style-type: none"> (i) All R&W Insurance Expenses; (ii) All expenses (including all legal, accounting, financial advisory, consulting, regulatory and other fees, the cost of any D&O tail insurance policy, and the employer portion of any payroll taxes related to payments made in connection with the Proposed Transaction) incurred by or on behalf of the company in connection with this Term Sheet, the Deal Documents, and the completion of the Proposed Transaction ("Transaction Expenses"); and (iii) All bonuses, severance payments and other similar cash benefits that are payable in connection with, or are triggered by, the Proposed Transaction, any

	<p>payments required to obtain third-party consents, waivers or approvals under any of the company's contracts in connection with the Proposed Transaction, and all termination, balloon or similar payments resulting from the early termination of any contract, or the repayment of outstanding indebtedness, in connection with the Proposed Transaction, if any (collectively, "Change of Control Payments").</p>
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BINDING PROVISIONS

Upon execution of this Term Sheet by the Parties, the following provisions (collectively, the "**Binding Provisions**") will constitute the legally binding and enforceable agreement of the Parties (in recognition of the significant costs to be borne by the Parties in pursuing the Proposed Transaction and in consideration of their mutual undertakings as to the matters described in the Binding Provisions).

Confidentiality:	<p>The company and its representatives and advisors will hold this Term Sheet and the terms of any proposals made by or on behalf of Atlassian in strict confidence, in accordance with the Mutual Nondisclosure Agreement dated as of [_____] between Atlassian and the Company.</p>
Exclusive Dealing:	<p>From and after the Term Sheet Date until the Expiration Date (as defined below), the company (it being understood that "Company" in this "Exclusive Dealing" section refers to the company and any of its subsidiaries) will not, and will ensure that its affiliates, officers, directors, employees, equity holders and representatives (collectively, the "Company Representatives") do not:</p> <p>(i) solicit, encourage or facilitate the initiation or submission of any proposal to directly or indirectly acquire any of the company's businesses, properties, assets (other than sales of the company's products in the ordinary course of business), or equity securities from any person or entity other than Atlassian (any such transaction, a "Prohibited Transaction");</p> <p>(ii) participate in any discussions or negotiations or enter into any agreement with any person or entity relating to or in connection with a Prohibited Transaction;</p> <p>(iii) entertain, consider or accept any proposal or offer from any person or entity relating to a Prohibited Transaction; or</p> <p>(iv) disclose to any person or entity (other than Atlassian and its representatives) any information concerning any of the company's businesses, properties, assets, or equity securities, or give any person or entity (other than Atlassian and its</p>

	<p>representatives) access to any of its properties, books, records or employees, other than in the ordinary course of the company's business (any such disclosure or access, a "Prohibited Disclosure").</p> <p>For purposes of this Term Sheet, "Expiration Date" means the earlier to occur of:</p> <p>the date on which Atlassian advises the company in writing that it does not wish to proceed with the Proposed Transaction; and 5:00 p.m. Pacific Time on the date that is [] days after the Term Sheet Date, provided that such []-day period will be automatically extended for one []-day period so long as Atlassian is continuing good faith negotiations with respect to the Proposed Transaction.</p> <p>In the event that the company or any of the Company Representatives receives any offer or proposal related to a Prohibited Transaction or any request for disclosure or access that would constitute a Prohibited Disclosure, the Company or such Company Representative shall promptly notify Atlassian.</p> <p>The Parties agree that irreparable damage will occur should the provisions of this "Exclusive Dealing" section be breached or not performed. Accordingly, the Parties agree that, in addition to all other remedies available (at law or otherwise) to the Parties, each Party will be entitled to equitable relief as a remedy for any breach or threatened breach of any of the provisions of this "Exclusive Dealing" section and neither Party will be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this "Exclusive Dealing" section.</p>
<p>Entire Agreement; Amendment:</p>	<p>The Binding Provisions of this Term Sheet constitute the entire agreement between the Parties regarding the subject matter thereof, and supersede all prior oral or written agreements, understandings, representations and warranties, course of conduct and dealing between the Parties regarding the subject matter thereof. The company acknowledges and agrees that neither this Term Sheet nor any action taken in connection with the matters referred to in this Term Sheet will give rise to any obligation on the part of Atlassian to continue any discussions or negotiations or to pursue or enter into any transaction or relationship of any nature. The Binding Provisions may be amended or modified only by written agreement executed by both of the Parties.</p>
<p>Governing Law:</p>	<p>This Term Sheet shall be construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles. Each Party hereby irrevocably waives all rights to trial by jury in any action or proceeding arising out of or relating to the provisions of this Term Sheet.</p>

(signature page follows)

IN WITNESS WHEREOF, the Parties have executed this Term Sheet as of the last date written below.

Atlassian Corporation PLC	[COMPANY NAME]
Signature: _____	Signature: _____

Print

Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Schedule I

Claim	Tipping Basket Applies	Cap	Survival
Breach of General Rep	Yes	Seller's pro rata share of Escrow Amount	15 months
Breach of Fundamental Rep/Other Indemnity	No	Seller's pro rata share of Purchase Price	Later of (i) 6 years and (ii) 60 days after the expiration of the longest applicable statute of limitations (as it may be extended).
Covenant Breach	No	Seller's pro rata share of Purchase Price	15 months for covenants to be performed at or prior to Closing. Covenants to be performed after Closing survive until fully performed, and any claims for breaches of those covenants will survive 15 months from full performance of those covenants.
Fraud	No	Seller's pro rata share of Purchase Price, except for any Seller who committed, participated in or had actual knowledge of fraud (" Bad Actor "). No limitation on the liability of any Bad Actor.	Later of (i) 6 years and (ii) 60 days after the expiration of the longest applicable statute of limitations (as it may be extended).

The following terms are used in the table above:

"**Fundamental Reps**" refers to the company's representations and warranties relating to organization, capitalization, due authorization, brokers' and finders' fees, non-contravention with organizational documents, and taxes in the Definitive Agreement.

"**General Reps**" refers to the company's representations and warranties in the Definitive Agreement that are not Fundamental Reps.

"**Tipping Basket**": For claims to which the Tipping Basket applies, Atlassian would not be entitled to be indemnified unless and until the cumulative amount of all damages for breaches of all

General Reps exceeds an amount equal to 0.5% of the Purchase Price, in which case Atlassian would be entitled to indemnification for the aggregate amount of all such damages from the first dollar up to the Escrow Amount.

“Survival” refers to the time period within which Atlassian would need to bring an indemnification claim.

“Cap” refers to the maximum monetary exposure for a Seller.