Southern Africa Term Sheet Guidelines, Glossary & Common Pitfalls

Developed by Endeavor South Africa

In Partnership with the Digital Africa Collective

Last edit date: 30 April 2021 (3rd release since July 2020)

Please send all edits / comments to info@endeavor.co.za

Objective

The objective of this project led by Endeavor South Africa, in partnership with the Digital Africa Collective, is to provide guidance to entrepreneurs and investors involved in raising Seed or Series A capital with a working template that can be customized to specific funding circumstances. The term sheet includes standard terms and some non-standard clauses as arise in our discussions with growth-stage companies. It is by no means exhaustive, and various terms may indeed not be included in a term sheet and/or may be mutually exclusive.

This document comprises three parts:

Section A) Working Term Sheet Template with Appendix A

Section B) Glossary of Terms highlighted in **green**

Section C) Common Pitfalls and Founder Friendly Tips **(!)**

The intention is that these will remain working documents and will be updated on a regular basis. At the date of publishing the document relates only to Seed / Series A raises.

If you are raising capital outside of Southern Africa, we recommend using templates from NVCA for US raises and The Galion Project for European raises. Term sheets for equity investments are different from SAFE notes & debt investment rounds. For SAFE rounds please refer to Y Combinator's template.

Contributors

This set of term sheets and appendices has been compiled by Endeavor in conjunction with Digital Africa Collective including the South African Venture Capital Association (SAVCA), East Africa Venture Capital Association (EAVCA) and local and international VCs, including: Rand Merchant Bank, Nedbank, Endeavors' Catalyst Fund, Partech, Newtown Partners, Kingson Capital, Startup Bootcamp, Quona Capital, Edge Growth, AfricArena, Kalon Ventures, Havaic, Amadeus Capital, Allan Gray, Dommisse Attorneys, Udo Udoma and Belo-Osagie among others. Insights have also been taken from the US National Venture Capital Association (NVCA), The Galion Project, Y Combinator and other global market participants.

Introduction

Typically, the purpose of a term sheet is to be a non-binding summary of terms between an investor and company that lays out the proposed commercial arrangement of a future investment. Some term sheets may state that all terms are binding, however it is typical for some terms (confidentiality, exclusivity/no shop, etc) to be legally binding despite the outcome of the transaction.

Once finalised, the term sheet is converted into long-form legal agreements. Negotiating and finalizing clear term sheets in advance is critical to save you time and resources in the legal process.

How to use this Document

This is a guidance term sheet template that should be seen as a working document. We strongly recommend that you work through all of the terms with your legal counsel and advisors before finalizing any term sheet document. (!)

Note that the document contains most of the terms that we find in term sheets in Southern Africa but is not an exhaustive list. The document allows for the user to include company and transaction-specific values and to make any amendments to the terms, including removing them entirely. We encourage you to understand the meaning of each term to ensure that any omissions serve the purpose of your raise.

Terms in green appear in the glossary in Section B. Terms linked to a (!) are to be handled with caution and are dealt with in more detail in Section C. Common Pitfalls and Founder Friendly Tips. Items in [closed brackets] are optional or require additional detail.

Disclaimer

This indicative term sheet document, its commentary and annexures are intended to serve as a starting point only and should be tailored to meet your specific capital raising requirements. This document should not be construed as legal advice for any particular facts or circumstances. Note that this sample document may present a range of (often mutually exclusive) options with respect to particular deal provisions.

None of the opinions stated in this document are necessarily any of the individual views of the contributing parties. Always check the terms in your agreements with a legal expert, despite the non-binding nature of a term sheet. Neither Endeavor nor the contributing parties may be held liable for losses incurred by the use of any part of this document.

SECTION A: Template Term Sheet For Guidance Purposes

TERM SHEET FOR SERIES [A] INVESTMENT IN [NAME OF ISSUER / COMPANY]

This Term Sheet represents the principal terms of a proposed Series [A] investment in [NAME OF COMPANY], a South African private company, and does not constitute a legally binding agreement and remains subject to completion of due diligence and negotiation and execution of the definitive agreements. The intention of this document is to facilitate discussions, negotiations and agreement in principle of key terms. Should agreement be reached, the Parties intend to formalize legally binding obligations through definitive agreements.

In consideration of the time and expense devoted and to be devoted by the Investors with respect to this investment, the Confidentiality and Exclusivity / No Shop, Expenses, Confidentiality and Applicable Law provisions of this Term Sheet (the "Binding Provisions (!)[1]") shall be binding on the Company whether or not the financing is concluded.

Other than the Binding Terms, the Parties agree that the provisions of this Term Sheet are not binding on, and do not create legal rights or obligations on the part of either Party. The Parties agree to proceed at their own risk and expense regarding the subject matter of this Term Sheet until the execution of one or more definitive agreements in respect of any potential investment or termination of this Term Sheet, whichever is earlier.

KEY TERMS

Issuer — [Name of Company] (the "Company"), registration number [_______]

Founder[s] — [Founder 1]
[Founder 2]
(collectively the "Founder[s]").

Investor — [Investor name]

Co-Investor[s] — [Investor 1], registration number [_____]
[Investor 2], registration number [_____]

(collectively the "Investor(s)" or the "Preferred Shareholders")

Investors	Number of [Series A] Shares	Amount subscribed
[____]	[____]	R / $ [____]
[____]	[____]	R / $ [____]
[____]	[____]	R / $ [____]
TOTAL	[____]	R / $ [____]

Type of Investment — Preferred Shares[2] Financing

[1] (!) carries an alert and is referenced in Endeavor's separate section C document on pitfalls to watch out for when raising capital. It is common to agree a period of time in which the Company will agree not to engage with other investors while the current investor conducts due diligence and incurs expenses in that regard.
[2] Text in green is defined in Section 2: Glossary.

Investment Amount	R / $ ___________]
Number of Shares	[_________] Preferred Shares, being [ ] % of the issued Shares in the Company after these Shares have been issued.
Purchase Price per Share	[R / $ ___________] (based on the Valuation and Capitalisation as set out below)
Valuation of the Company	Pre-Money Valuation: [R / $ ________] Post-Money Valuation: [R / $ _________]
Capitalisation/Shareholding	See Annexure A for pre-investment shareholding ("Cap Table") and post investment Cap Table
Use of Funds	The proceeds of the subscription shall be used by the Company in accordance with [a Board-approved] budget and business plan prepared by the Company and adopted by the shareholders. The Company will not use the Investor's funds to settle outstanding Shareholder Loans or buy shares from existing shareholders[3].
Board of Directors	The Investor(s) will require [one] Board seat as part of the financing, [or be entitled to elect their own proxy to the Board], [in accordance with the Company's MOI].[4]
Shareholder Voting	The Investor(s) will have the right to the number of votes equal to the number of shares of Common Stock that would be issuable upon conversion of each share of Preferred.

TERMS OF THE PREFERRED SHARES

Liquidation Preference / Liquidity Preference (!)[5]	Should a liquidity event with respect to the Company occur, the Investor(s) shall be entitled to repayment of their investment amount [recommendation: 1.0x, non-participating preference], plus any amounts

[3] In most Seed, Series A and Series B funding rounds investors will not allow new funds raised to be used for "secondaries" – i.e. buying out existing shareholders or settling shareholder loans. Investors want their capital to be used exclusively for business growth. In later stage rounds (C+) founders may be entitled to sell some of their shareholding as compensation for the value created in the business.

[4] A Board seat is frequently required by lead investors (follow funders may not be entitled to a Board seat). This is governed by the Company's MOI and may refer to a Board seat for every x% shares held by an investor. It is reasonable for the Investor's nominee to be considered and accepted by the Company board, to ensure that the Investor director is a good fit, or a valuable addition to the board dynamic.

[5] Liquidation preferences may not appear in early stage term sheets. There are also many variations of this clause. Where present in a term sheet we recommend a 1x non-participating liquidation preference. In some cases, investors will choose that 10-20% of all cash received on a liquidation event is distributed pro rata to all shareholders (including ordinary). Thereafter, preference shareholders receive 1x the par value of their remaining shares before proceeds are distributed to ordinary shareholders. A participating preferred may also include a cap to the Preferred shareholders once they have received their capital. (!)

loaned to the company and dividends declared but not paid prior to any distribution to the Common Stock shareholders. This means that the investor will receive the greater of (a) the liquidation preference and (b) the amount they would have received if they held ordinary shares.

A liquidity event[6] will be any of the following:

- The sale, acquisition or merger of the Company;
- A sale of the majority of the Company's assets or its intellectual property or the equivalent to 51% or more of the shares in the Company;
- A change of control of the Company (caused by the shareholders selling their shares - like in an exit - or the Company issuing significant shares to new shareholders);
- The sale of all or substantially all of the Company's assets; and
- Liquidation of the Company.

Conversion	The [Series A] Preferred Stock may convert at the option of each Investor into Ordinary Stock at any time. The conversion rate will be [1:1] initially, subject to customary adjustments[7]
Automatic Conversion	Each share of Preferred Stock 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, at a price per share to the public of at least [__x] the [Series A] Preferred Stock purchase price.
[Dividends] [8]!	Dividends will be paid on the [Series A] shares on an as-converted basis when and if dividends are paid to the Ordinary shareholders. [__%] if and when declared by the Board of Directors, prior and in preference to payment of dividends on any other class of shares.

INVESTOR PROTECTIONS

Anti-Dilution Provisions (!)	The [Series A] Preferred Investors will have broad-based weighted average anti-dilution protection. [9]

[6] This would normally be qualified to the extent that there are cashflows. Certain mergers or CoC events won't lead to cashflows, meaning the non-participating wording you have here will effectively be a notional put against the company AND allow the investor to keep their shares, meaning its becomes participating.

[7] In case of preferred issuances, customary adjustments for splits, stock dividends, combination, or similar events would include anti-dilutive adjustments – it's a more elegant way implementing the protection.

[8] Dividends usually need to be approved by a preference shareholders majority as well – you want this or the workaround is that preferred holders will ask for cumulative dividends – which is best avoided.

[9] While this is a conventional term in Series A investments, the Company should be very clear on the consequences of having to raise funds at a lower valuation in future. This is the recommended calculation methodology for anti-dilution provisions. There may however be variations to this provision according to stage of investment and class of shares. Investors may include a "ratchet **warrant"** alternative. A **ratchet** is attached to each share that reprices the investment on a **down round**. It is advisable to use a worked example with numbers that are signed off. (!)

Weighted Average Anti-Dilution Basis: If the Company issues shares in the future at a lower price than the price paid by the [Series A] Investors, then the [Series A] Investors' conversion right will change so that on conversion they will be entitled to convert each of their shares into more than 1 Ordinary Share. Effectively, they will be able to convert their investment amount into Ordinary Shares at a lower price, giving them more Ordinary Shares. This "anti-dilution right" will take into account both the price of the new share issuance, and the number of shares issued. The formula that will be followed is:

$$CP_2 = CP_1 * (A+B) / (A+C)$$

CP_2 = Series A Conversion Price in effect immediately after new issue

CP_1 = Series A Conversion Price in effect immediately prior to new issue

A = Number of shares of Common Stock deemed to be outstanding immediately prior to new issue (includes all shares of outstanding common stock, all shares of outstanding preferred stock on an as-converted basis, and all outstanding options on an as-exercised basis; and does not include any convertible securities converting into this round of financing)

B = Aggregate consideration received by the company with respect to the new issue divided by CP_1

C = Number of shares of stock issued in the subject transaction]

Protective Provisions (!)

Protective provisions will only apply to holders of at least [10%] of total issued Preferred Stock.

For as long as any Preferred Stock is outstanding, consent of at least [50% - 75%] of the Preferred Investors and [50% - 75%] of the Ordinary Shareholders will be required for any action that involves [these depend on context, select any / all provisions below[10]]:

i. setting up or acquiring any subsidiary branch otherwise than in the ordinary course of business;
ii. any changes to the company's issued share capital, any changes to the par value, or the rights attached to any of the shares or any reorganisation (including but not limited to any consolidation, sub-division, conversion or re-classification of any class of shares) of the company's share capital;
iii. acquisition of any material business or material assets outside of the ordinary course of the Company's business;
iv. the sale or transfer by the Company of all or substantially all of

[10] Note that this is a comprehensive list and many terms may be negotiated out of a term sheet. Thresholds may vary substantially and protections may only be offered to investors with a minimum shareholding (e.g. 10%) of total equity or a certain class. Generally the ask is for protection on changes of business. (!)

its assets or intellectual property;

v. providing any guarantee or suretyship for the obligations of any third party;

vi. any amalgamation, merger, restructuring or reorganization;

vii. incurring of any liability other than in the ordinary course of conduct of the Company's business;

viii. entering into any contract or transaction by the Company outside the ordinary course of its business;

ix. giving any mortgage, pledge, notarial bond or other encumbrance over the assets of the Company;

x. any transaction with any of the direct/indirect Shareholders of the Company (i.e. related parties);

xi. borrowing money, except as provided for in budgets which have been approved by the Board;

xii. any capital expenditure and/or investment not provided for in any budget which has been approved by the Board, if it is in excess of [R100,000];

xiii. pensions, gratuities or allowances to anyone otherwise than in terms of a fund which the Company has established or joined; and

xiv. the lease or purchase of property or the hire of any material assets of whatever nature, if not provided for in any budget which has been approved by the Board;

xv. the directors' remuneration;

xvi. the annual operating budget;

xvii. any amendment of the MOI;

xviii. commencing or take any steps towards commencing any liquidation, winding up or bankruptcy, reorganisation, composition with creditors or other analogous insolvency proceeding of the company;

xix. any increase in the number of Shares reserved for issuance to employees and consultants;

xx. the creation or issue by the Company of any debt instruments, debentures or loan stock;

xxi. the capitalisation of any profits or the issue of capitalisation or bonus shares or any rights issue;

xxii. hiring/Firing CEO/CFO

xxiii. hiring executives with base compensation of more than [RX – usually set]

While not requiring investor approval, the Company will in good faith notify investors of the following matters in writing:

i. Litigation involving the company where the aggregate claim is greater than [R100,000]

ii. Any change in the Company's name, financial year, accounting policies or auditor

iii. Any incurring by the Company of material foreign exchange exposure, other than in the normal course of business;

iv. Other matters as agreed between the Parties.

Pre-emptive Rights	Any Shareholder who wants to sell their shares (and if they are permitted to sell their shares), must first offer them to the other shareholders. No shares can be sold to any third party unless they are offered to the existing shareholders on the same terms. *[or]* **Fresh issue of shares:** first offer in writing to each shareholder of the Company the right to subscribe for that number of the shares of the proposed issue pro rata to the shares held by such shareholder on a fully diluted basis. **Transfer of shares [same as fresh issue]:** the Board shall provide a notice of the offer to all shareholders. The relevant shares up for offer will then be offered for purchase first to the Major Shareholders (owning at least [5%] of the Ordinary Shares of the Company on a fully diluted basis) on the terms set out in offer notice in the proportions in which the Major Shareholders hold shares on a fully diluted basis and second, to each preference shareholder who is not a Major Shareholder in the proportions in which they hold shares on a fully diluted basis.
Drag Along	If a third party offers to buy [75%] of the Company and the Board, [75%] of the Preferred Investors and [75%] of the Ordinary Investors agree, then all the shareholders must sell their shares to that party on the same terms[11].
Tag Along	In the event that a third party offers to purchase more than [10%] [lowest shareholding held by key founder but affects liquidity] of the fully diluted share capital of the Company, all other shareholders to whom the offer to purchase was not made will be entitled to sell their shares on the same terms pro rata.
Pro rata Rights	Holders of [Series A] Preferred Stock will be entitled to pro rata rights to participate in subsequent rounds of financing of the Company. In addition, should any Investor choose not to purchase its full pro rata share, the remaining Investors shall have the right to purchase the remaining pro rata shares.
[Forced Sales]	Any shareholder who experiences the following events will be forced to sell their shares to the other shareholders, at a market value agreed between the Parties or determined by the Auditors: • In the case of an employee shareholder, termination of employment (subject to the Forced Sale provisions for Founders)

[11] See Section B Glossary and C. Common Pitfalls and Guidance for ways to think about Tag along and drag along clauses. Tag along and drag along thresholds are sometimes heavily negotiated.

[Employee Incentive Scheme] (!)	The Company undertakes to set up an employee incentive scheme within [6-12 months] of the investment. [5-10%] of ordinary shares will be set aside for the employee incentive scheme. [12]

FOUNDER RESTRICTIONS

Founder Vesting[13] (!)	Founders' shares will "vest" over a [four] year period on the following basis: • [25%] after [12] months • All the rest in equal fractions over the next [36] months If a Founder leaves before the end of that period, the Company [or active Co-Founders or [Series A] investors] will be entitled to purchase back all the Founder's "unvested" shares for [R0.01 (one cent)] each. Unvested Shares means the percentage of the Founder's total shareholding in proportion to the four-year period remaining when a Founder leaves. As an exception to the above, in case of dismissal of a Founder for willful misconduct.[14]
Founder Lock Up (!)	No Founder can sell their shares until they are fully vested and must follow the Pre-Emptive Rights provision.
Share Lock Up (!)	No security may be transferred by the Founders until the [fourth] anniversary of Closing, [except for transfers by the Founders (i) not exceeding [10 to 15%] in the aggregate, of the securities held by each of them at the Closing date, or (ii) being subject to Leaver or Drag Along.]

NEXT STEPS

Conditions Precedent	Closing Conditions[15]:

[12] Be aware of the dilutive effect of ESOPs – typically investors require the ESOP to be included as part of their "fully diluted" shareholding, meaning that the ESOP pool of shares dilutes the founders, but not the Investors. Therefore, the Series A will dilute the Founders twice (firstly by the creation of the ESOP pool of shares, and second when the Series A investors are issued their shares). It is therefore crucial that the Founders agree to an ESOP pool size that is big enough to incentivize their key employees, but not so big that it over-dilutes the Founders. See additional guidance in Section C Common pitfalls.

[13] Founder vesting does not always appear in term sheets, but it can be present and have serious consequences for founders. In the South African environment investors can waive vesting schedules in favour of founder lock-ups. Generally these are seen to be mutually exclusive.

[14] The wilful misconduct must be shown to have material impact on the value of the Company. However, this may still not justify a forced sale at nominal value because it ignores the value created by the founder. If this is raised by investors, expect it to be carefully negotiated and only agreed as part of a quid pro quo in the context of other negotiations. Bad Leaver" provisions are contentious and designed to (a.) discourage Founders from leaving for any reason and (b.) to penalize Founders where they act against the interests of the Company. Recommend that these terms are clearly defined so that Founders understand the cost of leaving within the vesting period for any reason (i.e. Founders may lose all shares and/or receive well below the market value for their shares if their exit falls within a "Bad Leaver" definition.

[15] These may reasonably include other deal / investor specific conditions precedent and positive undertakings.

a) Satisfactory completion of due diligence (commercial, technical, legal, tax, social, financial and accounting due diligences covering usual matters);
b) Negotiation of customary legal documentation in compliance with this term sheet (including a simplification / modification of the Company's by-laws, to the extent relevant);
c) Approval of the proposed investment / definitive agreements by the [Series A] Investor[s]' respective investment committees or other competent bodies, if applicable;
d) Receipt by the Investors of anti-money laundering documents reasonably satisfactory to them;
e) Receipt of waiver of any existing pre-emptive/anti-dilution rights and/or other necessary approvals and consents;
f) Execution by all the Shareholders and all the holders of securities of the Company of the Agreement or of a Short-Form Agreement as the case may be and agreement between the parties regarding any other documentation (including corporate documentation);
g) No unanticipated material adverse events.

Board of Directors

At all times will not consist of less than [x[16]] Board of Directors.

Each shareholder of the Company, other than the Founders, shall have the right to nominate, remove and replace [one] director to the Board in respect of each complete tranche of [10%-15%] of the issued shares in the Company on a fully diluted basis, held by the shareholder.

The Founders [Or: Ordinary Shareholders] will be entitled to nominate, remove and replace [X] directors to the Board. [Or: Each Founder shall have the right to nominate, remove and replace one director to the Board in respect of each complete tranche of [5%] of the issued shares in the Company, on a fully diluted basis, held by the Founder.]

Each Director will vote the number of shares held by the Shareholders who appointed him/her, divided by the number of directors appointed by that Shareholder who actually vote on any matter.

Each Director will have [one] vote, provided that if a shareholder is entitled to nominate more than one director but has not done so, or the additional directors do not vote, then the director voting will have the number of votes as equal to the number of directors which such shareholder was entitled to nominate.

The board of directors will meet at least quarterly.

[16] Would usually suggest having a minimum of three directors as having 2 directors can usually result in deadlock situations which can often be difficult to resolve

[Definitive Agreements]	The various legal agreements to be entered into by the parties in connection with the transaction, include, but are not limited to: a) a share subscription/purchase agreement setting out the terms and conditions of the Investor's acquisition of shares in the company; b) a shareholders agreement between the investors and the founders; c) and any other document as the Company may require, relating directly to the transaction.
[Keyman Insurance] [17]	The Company must acquire life insurance on each Founder and other necessary insurance, as determined by the Board as well as D&O insurance.
[Shareholders' Agreement]	[A shareholders' agreement (the "Agreement") will be entered into on the Closing date among the Shareholders] [Or, when there are a lot of small shareholders: Founder[s] and the Investor[s] owning more than [5%] of the share capital for a term of 15 years renewable[18]. The Agreement will replace and supersede in all respect any and all pre-existing shareholders agreements entered into between the shareholders of the Company. The Agreement shall automatically terminate in case of Qualifying IPO or where there are no longer any shareholders holding more than 5% of the share capital of the Company.]
Exclusivity / No Shop (!)	All Parties agree to work expeditiously towards a closing. The Company and the Founders agree not to solicit, initiate, encourage or receive any funding from any investors other than the [Series A] Investor[s] for a period of [4 weeks] from the date this term sheet is signed by the Company; provided that the [Series A] Investor[s] shall promptly inform the Company of their decision not to pursue their proposed investment in the Company, as the case may be, in which case such exclusivity period shall immediately lapse.
Expenses (!)	[Recommend]: Each Party will pay for its own fees and expenses in connection with this transaction, whether or not it is executed.[19] [Or] The Company will pay for the legal and due diligence expenses up to the lower of [R150,000 – R500,000] or [2%] of the round.

[17] This clause may not be included in a term sheet. If it is present it may include investor-specific requests for additional insurance policies over the business.

[18] Usually, the shareholders agreement will remain in place for as long as more than 2 shareholders hold [5%] of the share capital and will automatically terminate where there is an QIPO or there are no longer any shareholders holding more than 5%.

[19] While we recommend that Parties share costs, in many term sheets investors require the investee to cover at least all of the fees associated with executing the transaction (legal fees to draft MOIs, Shareholder Agreement, employment contracts, etc). Investors may cover direct costs relating to specific expertise required. Recommend that Parties share costs, or at a minimum that a cap is set [of R150,000 - R500,000, depending on the round size or a percentage of the round] on expenses incurred by Investors.

Confidentiality	The parties agree to treat this term sheet confidentially and will not distribute or disclose its existence or contents, except to their respective shareholders and professional advisors as reasonably required to complete the Financing.
Expiry (!)	This term sheet will expire on [________] if not accepted by the Company by that date.
Applicable Law	This Summary of Terms and the definitive agreements shall be governed and construed in accordance with the laws of [South Africa]. Any dispute arising therefrom or in connection therewith shall be submitted to the exclusive jurisdiction of the commercial court of South Africa. Breach. The parties agree that, in the event of a breach of a Binding Provision of this Term Sheet, monetary damages would not be an adequate remedy. In the event of a breach or threatened breach of any Binding Provisions of this Term Sheet by a party (“infringing party”), any other party (“innocent party”) (and/or its relevant affiliate) shall be entitled to seek injunctive relief in any court of competent jurisdiction and the infringing party shall reimburse the innocent party/ies for any costs, claims, demands or liabilities arising directly or indirectly out of a breach. Nothing contained in this Term Sheet shall be construed as prohibiting the innocent party/ies or its affiliates from pursuing any other remedies available to it for a breach or threatened breach. Arbitration. Subject to the above, any dispute between the parties arising from or relating to this Term Sheet which cannot be amicably resolved between the parties shall be submitted to final resolution in accordance with the rules of the Arbitration Foundation of Southern Africa (“AFSA Rules”) for the time being in force, which AFSA Rules are deemed to be incorporated by reference in this Term Sheet. The arbitration shall consist of one (1) arbitrator to be agreed upon between the parties or in the event that such agreement cannot be reached, appointed by AFSA. The language of the arbitration shall be English and the decision of the arbitrator shall be final and binding on the Parties. The law of the arbitration shall be the laws of South Africa and the arbitration shall be held in Cape Town.

This Term Sheet may be executed in counterparts, which together will constitute one document. Email signatures shall have the same legal effect as original signatures.

[COMPANY]

By:__________________________________

Print Name:____________________________

Title:__________________________________

Date:__________________________________

[INVESTORS]

By:__________________________________

Print Name:____________________________

Title:__________________________________

Date:__________________________________

[FOUNDERS]

By:__________________________________

Print Name:____________________________

Title:__________________________________

Date:__________________________________

Appendix A – Capitalization table (pre and post)

Pre-Funding Capitalization Table

Shareholder Name	Number of Shares Held	Percentage of Shares held
[_________]	[_________]	[_________]
[_________]	[_________]	[_________]
[_________]	[_________]	[_________]
[_________]	[_________]	[_________]

Post Funding Capitalization Table

Shareholder Name	Number of Ordinary Shares Held	Number of Series Seed Shares Held	Percentage of Total Company Shares
[_________]	[_________]	[_________]	[_________]
[_________]	[_________]	[_________]	[_________]
[_________]	[_________]	[_________]	[_________]
[_________]	[_________]	[_________]	[_________]

SECTION B: Glossary of Key Terms

Below is a summary of key terms included in this term sheet document. These definitions can change in different jurisdictions.

No-shop / Exclusivity	A restriction on founders to talk to other investors while in the term sheet process. This protects investors given the time and resources required to complete the DD. Founders should restrict this to no longer than 60 days.
Preference Shares Common / Ordinary Shares	Preferred shares have additional rights (or "preferences") to Ordinary Shares, which are usually associated with a "liquidation preference" and "anti-dilution" rights and special voting rights (see below) and are used to raise capital in earlier stages of funding rounds. This share class affords benefits to investors like claiming the first share of positive company value on a liquidation event, sometimes a higher dividend and will rank ahead of ordinary shares. They are usually issued in series (A, B, C etc.) and can carry a conversion option. Common (ordinary) shares are the primary form of equity shares in a company. They typically rank behind preferred and debt investors and hold voting rights. These are typically the class of shares held by founders and employees.
Pre-money vs Post money valuation	Pre-money valuation: the valuation of the company before the investment Post-money valuation: the valuation of the company after the investment. *Pre-money valuation = Post-money valuation – Investment made.* *Post-money valuation = number of shares after the investment * price of investment* The best way to think about this is buying a car before or after there is a suitcase of money in the boot. Most investors work on a post-money basis. Note that the post-money valuation also includes the impact of all convertible notes at the date of the raise.
Capitalisation Table (Cap Table)	A summary of the equity ownership of the company. This includes ordinary shares, preferred shares, convertible instruments and warrants.
Liquidation Preference	The liquidation preference determines who gets paid first and how much they get in a liquidation event (e.g. sale of the company, winding up the company, etc). Preferred shareholders typically get paid first, before ordinary shareholders, which makes this an attractive term to protect VC investors. In reality, this should really just allow investors to get their investment back (in priority to other shareholders) if things don't go well for the Company. Participating preferred shareholders are entitled to receive a share of any remaining liquidation proceeds after they have already received their liquidation preference.

Participating Preferred Preferred Returns	Non-participating preferred shareholders are only entitled to receive their capital back on a liquidation event. Bear in mind, investors are always allowed to choose between receiving their liquidation preference, or the amount they would have received if they had converted their Preference Shares into Ordinary Shares. The amount that must be returned to preferred shareholders before distributing any assets to ordinary shareholders. This is usually limited to the Liquidation preference, returning the investment amount provided by the investor.
Lead Funder vs Follow Funder	Typically, VC investors like to share the risk in the round with others. One VC will agree to lead the round, and others will follow. A Lead funder will take a large part of the round, set the terms and often offers to represent the remaining investors on the Board. A Follow funder will do an assessment of the investment and a check on the valuation but will largely accept the terms set by the Lead investor with the Company.
Anti-dilution	Anti-dilution protects investors from over-diluting should the next round of funding be a “down round”. Bonus shares are issued to investors (usually through their right to convert to Ordinary Shares) in the event of a lower valuation round to prevent them from over-diluting. Various forms exist, most commonly the weighted average anti-dilution version, but there is a more aggressive “full ratchet” version which is more punishing to Founders and can make raising funding in future harder.
Ratchet	A ratchet provision protects earlier stage investors by ensuring that their percentage ownership is not diminished in future funding rounds. In a down-round, additional shares may be issued to compensate existing preference shareholders for the reduction in valuation. Be aware that a full ratchet provision can make it difficult to raise future rounds of funding.
Down round	Raising a subsequent round of financing at a lower company valuation than the last.
Pre-emptive Rights/ROFR	Right of First Refusal This gives investors the right, but not the obligation, to purchase shares offered by the company prior to an offer being extended to third parties. This means that investors have the right to participate in future rounds prior to the offer being made to outside funders.
Pro-rata rights	Pro-rata rights give all shareholders the option to participate in future funding rounds to maintain their level of shareholding and avoid dilution. These can be problematic for founders where existing investor Shareholders insist on taking part in future fund raising rounds, either “pro rata” or even taking up more than their proportionate share of future funding rounds. See more on pro-rata rights here.
Tag-along Drag-along	Designed to protect a minority shareholder, tag-along allows minority shareholders the right to follow a lead shareholder in an exit transaction. Designed to protect a majority shareholder, drag-along gives a shareholder the right to force minority shareholders to join the sale of a company. This is particularly helpful

	where a cap table contains lots of minorities and there is an opportunity for a major trade buyer transaction. More info here. See our additional guidance note for ways to think about these clauses.
Convertible Loans/ Debentures	Often used in earlier stages of funding or between funding rounds, convertible loans / debentures are a debt instrument with an option to convert into equity at a pre-determined price (often at a discount to the company valuation). Often interest is “rolled up” and both principal and accumulated interest are converted into ordinary shares at the next financing round. Pros: no need to value the company in early stages and therefore limit dilution should the valuation increase in the next round. Cons: Create liabilities on the Company’s balance sheet. Also, conversion options can be tricky where the next round of equity is hard to raise. In this case the company will either be required to settle the debenture principal and interest or have the debenture-holders force the company to take funding on unfavourable terms.
Warrants	Warrants are options held by investors that give them the right, but not the obligation, to buy or convert into ordinary shares at a pre-determined price. Warrants often accompany debt instruments and act as a conversion tool on later funding rounds or events of default.
SAFE Notes	A SAFE (Simple Agreement for Future Equity) note, like a convertible instrument or warrant, allows an investor to put money into a company which will only convert into shares in the next priced equity round. SAFEs are helpful when valuation of the company is not yet known and often act as a bridge round prior to a priced equity raise. They also do not create debt/liabilities for the Company and are helpful for presenting a cleaner balance sheet. SAFEs usually carry a valuation cap and can include conversion discounts that apply when converted to equity. It is essential that founders work through the dilution calculations to understand the true impact of raising capital through a SAFE note. SAFE discounts allow holders to buy shares at a discount (10-30%) to the post-money valuation at the time of raising a priced round. The aim of the discount is to provide early investors with compensation for taking risk early on. This mechanism will result in additional dilution to the founders. SAFE valuation cap limits the price at which the SAFE converts, i.e. where the company grows rapidly and raises at a valuation above the cap, the SAFE holders convert at the cap. This creates additional dilution for founders. Where the SAFE includes both a discount and a valuation cap, the holder will typically pick the option that results in the lower cost per share at conversion.

	MFN provisions (Most Favored Nation) govern the layering of SAFE notes. Where a SAFE note contains an MFN and another round of SAFEs is issued with more favorable terms, the earlier holders can convert their SAFE to the newer version. This can result in doubling up of dilution.
Pay to Play	This clause protects the company by requiring shareholders to participate in future funding rounds. This can also take the form of penalties (like losing anti-dilution provisions or other rights) if shareholders do not follow in later rounds.
Vesting	Vesting is a mechanism used by investors to incentivize Founders to remain with the Company and also to minimize the risk of founders leaving. Founders are required to "earn" the right to keep their shares, usually between 36 and 48 months of the financing round. Founder shares gradually vest over time, provided the founding team remains to build and scale the company. Investors can include a "cliff" where initial vesting takes longer (e.g. no vesting for the first 12 months) and a regular vesting schedule takes over (e.g. 2% per month thereafter). Unvested shares forfeited by leaving founders are typically bought back by the company at a nominal cost. Investors typically choose either founder vesting or founder lock-ups and seldom use both in a South African context.
Good leaver vs Bad leaver	These terms refer to the conditions under which a founder or key manager departs the company. They are designed to protect the investors who invest on condition that the founding team remain. <u>Bad leaver</u>: dismissal for "cause" (i.e. misconduct, fraud or breach of a material obligation). Loses all shares, vested or not. <u>Good leaver</u>: dismissal or involuntary resignation not for cause (e.g. the business reaches maturity and a new CEO is required to scale the business). Keeps vested shares, loses unvested shares. <u>Gray Leaver (Usually bad leaver, but negotiable)</u>: Voluntary resignation. Can lose all shares, vested or not. These should be negotiated and terms (especially relating to "cause") clearly defined in the term sheet, particularly when a new funding round is raised or the company is sold.

SECTION C: Common Pitfalls, Terms to Watch Out for and Founder Friendly Advice

The last section is full of founder friendly tips that have been accumulated through its interactions with founders, investors and capital mentors.

Legal detail trumps personal relationships	The legal terms required by investors are important to establish the ground rules for a sustainable, productive relationship. Bear in mind that it is unfavourable for all parties to ever follow a legal course of action. The quality of the relationship between the founders and investors is the key to success for the business. Be rigorous about the legal detail, plan for future funding rounds and be deliberate and intentional in working on your relationships with your investors. We also recommend that founders inform their legal counsel of any informal agreements that it may have with an investor and which might be relevant to the proposed investment. We say this because such informal agreements could form the basis of a dispute going forward if the parties are not clear on the status and/or intention of the agreement following execution of the definitive agreements.
Binding/non-binding clauses (No Shop /Exclusivity)	It is almost always the case that upon signature of the term sheet, the investor will require the Company to cease holding discussions with other investors for a period of time, i.e. the "exclusivity / no shop" period. This is because the investor will now start incurring expenses including paying for due diligence professionals (IP, finance, operational and legal) and in return for that the investor wants to know that they have the advantage of full commitment of the founders and the company. Be careful though – long exclusivity periods can place the Company under cash flow stress. If the Company has to wait too long for the due diligence and legal negotiations, it may not have the liquidity / cash flow to re-start negotiations with another investor, and so the Company may be forced to close with the current investor on terms that it would not have otherwise agreed. Try to set hard milestones for completion of each due diligence stage and receipt of first draft legals. Always retain the right and ability to walk away if the commercial principles of the term sheet change during due diligence or legal drafting – otherwise the Company loses its power to negotiate. Note, there is nothing wrong with inviting and comparing a number of term sheets, as long as you only sign and commit to an exclusively period with one investor.
Leading investors on	Investors truly dislike taking immense amounts of time and resources to progress toward a transaction, only to be excluded at the last minute. While this must be a 2-way street, bear in mind that there is an etiquette to courting investors and getting it wrong could be reputationally and commercially fatal.[20] It is also important that founders do not execute any binding pre-investment documentation with investors until they are certain they are ready to go ahead with the deal.
Participating Preferred and Non-standard Liquidation Preferences	A liquidation preference right gives investors the right to claim a multiple of their initial investment in the event of liquidation. Liquidation preferences may not appear in early stage term sheets, as they can put off future funders in later stage rounds. Generally, the intention is to allow the Investor to be repaid their investment capital. So, where present, a 1x standard, non-participating liquidation preference

[20] See the legal case between Havaic and Custos.

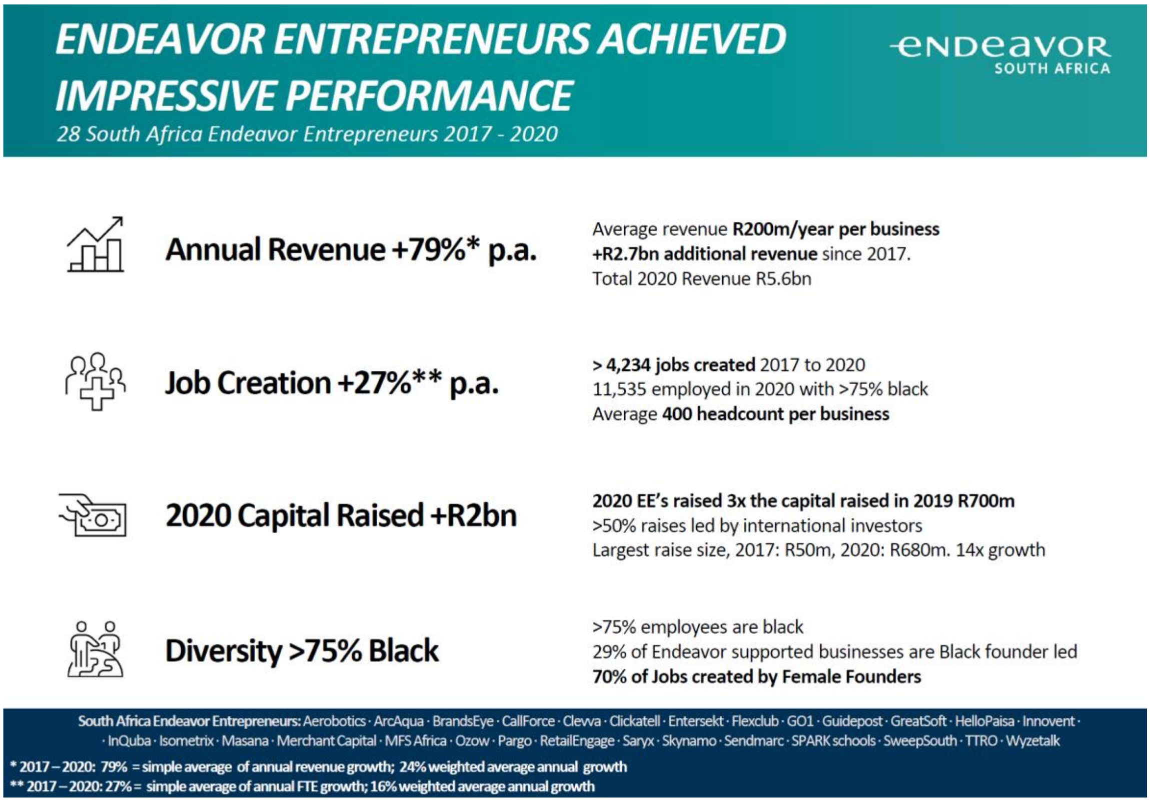
	with/without declared but the unpaid dividends is market-related. This means that the Investor gets back 100% (only) of their investment, as well as any dividends that have been declared but unpaid. It is uncommon for dividends to be declared, so this element is typically irrelevant. Bear in mind, that the Investor will typically receive the GREATER OF their liquidation preference and the amount they would have received in a liquidity event, if they had converted their Preference Shares into Ordinary Shares. So, this means that if the Company's value has risen so that their shares are worth more than the original post-money investment, liquidation preference will typically not apply (provided that it is 1x, a non-participating). We recommend that founders assess the consequences of future funders requiring their own layers of liquidation preferences at a later date, and that founders limit the multiple on cash available on the occurrence of a liquidation event to no more than 1x. Whether the investor will be requesting for more than 1x preferred participating rights is dependent on the bargaining position of the parties. Founders that are cash strapped and require urgent funding must make these decisions carefully as they could affect future capital raising.
Anti-dilution/Over-complex deal structures	These can result in unintended consequences, including over-dilution for founders down the line. Try to keep the structuring as simple as possible. Remember that future rounds will use earlier rounds as precedent, so include the terms you want early on and be wary of tying the company into structures that could affect later rounds.
Protective Provisions	Protective provisions are designed to give investors a say in the major strategic and operating decisions of the business. This clause is incredibly important, as some investors would prefer to have as much control as possible but may leave you hamstrung in running your business. This can also be problematic where a business has many small minority shareholders who all want a say in how you make decisions as a management team. We recommend that shareholders with a minimum equity ownership (e.g. 10%) are offered protective provisions exclusively. We also recommend splitting protective provisions into those that materially affect the company's valuation and strategic direction (requiring 50% - 75% shareholder approval) and operational decisions that should be shared as a courtesy on an information-only basis. In addition, we recommend that the founders are involved in making decisions on certain exclusive matters which are of particular importance to them and that may be material to the management and growth of the business (such as changing the name and nature of the business and, issuance of new securities etc). Beyond the usual provisions, some investors will push for additional items, such as the following: • Any hiring, firing or change in the compensation of any executive officers; • The entering into any transaction with any director, executive or employee of the Company; • Any incurrence of indebtedness in excess of of a specified amount; • Any change in the principal business of the company or the entering into any new line of business; or

	• Any purchase of a material amount of assets of another entity. Founders may push back on these to the extent possible depending on their bargaining power. It is worthwhile summarizing what decisions the company can and can't make without investor approval, and aligning the founders on the impact of this on the Company – or negotiating an exclusion of one or more of these topics when the Founders believe that they should retain independent decision making regarding any of the following points: - Raising funds by taking on future shareholders. - Raising funds by way of debt. - Taking strategic decisions with regard to products, territories, strategic partnerships, - Corporate structuring – setting up subsidiaries, or offshore structures. - Incentivizing staff with bonuses or shares
Employee Share Scheme (ESOP) Option Pool	Term sheets may create a requirement to establish a share option pool for senior hires and incentives. Who pays (dilutes) for this pool is critical. If the term sheet states that the pre-money valuation must include a fully diluted post money option pool, it means that the founders and existing shareholders essentially dilute for the full option pool, not investors. This means that future hires who may be offered shares as part of the ESOP or internal option pool dilute the founders' equity, but not the new investors' equity. If the company does not have an existing employee share scheme, it would have to be given sufficient time to establish one. Founders should also be mindful that, in attracting specific employees, they do not give away too much equity as this could disrupt future capital raises. This part of the negotiation essentially comes down to a valuation or pricing discussion as carving the ESOP out of the pre-money valuation serves to reduce the price per share for incoming investors. Our view is that new hires benefit all shareholders and all should dilute when new senior team members are hired. The recommended alternative is to estimate the pool you will need to attract and retain top talent (5-15% of ordinary shares) and to add at least a portion of this to the post-money valuation. In other words, you increase the company value by the value of the ESOP pool, in anticipation of being required to dilute to create the ESOP pool as part of the investment. The investor gets the option pool and the founder gets a better price, than if the founder dilutes exclusively to create the option pool. In our experience, it is not unusual for startups to reserve around 10% of equity for their option pools.
Imbalances in the stakeholder group and cap table	The key to achieving balanced governance is to diversify your stakeholder groups and cap tables. Ensure that you have a proper Board structure, even as an early stage company. Advisory Boards can play a very important role in supporting the team with expertise as the company grows. Establish key voting thresholds for corporate events to include a blend of founders and investors. Research shows that founders who dilute below 50% of the ordinary shares in the company tend to look to investors for strategic direction. When diluted below 10% founders see themselves as employees or the business as a side hustle. The recommendation is to aim to sell no more than 30% -40% of the company in a

	combination of Seed and Series A rounds. Later stage investors will look for balanced cap tables to ensure that founders have enough equity to incentivize them to continue to build the business.
Tag along/Drag along clauses	The principle behind these clauses is "teaming". So for drag along, the shareholders' agree that they should all be compelled to sell their shares if a percentage of the shareholder "team" agree to sell. Essentially this means that the minority can't block the sale of 100% of the company if a designated majority percentage agree to sell. These terms can include a non-cash exclusion or a price floor where minorities hold a strong negotiating position. The clause may be removed and percentages may change in some circumstances. We strongly recommend staying away from minimum IRR levels included in this clause (i.e. giving investors the right to earn a certain return before agreeing to be dragged along). For tag along, on the other hand, the shareholders agree the if some shareholders choose to sell so that the shareholder "team" changes to a certain extent, then they should all be entitled to exit along with the selling shareholders. The percentage threshold for tag along clauses often tracks the shareholding held by the founder group, or specific founders. Note that often tag along clauses do not apply when Investors sell.
Legal Fees	Legal fees (whether the deal goes ahead or not) are usually for the company's account. We encourage investors to pay their own legal fees and leave the company to invest cash into the business. At the very least, aim to place a cap on legal fees incurred on the term sheet. Be very careful of "break fees" where the investor requires the Company to pay their legal fees if the Company terminates negotiations. This is another way for the Investor to reduce the Company's ability to negotiate the best terms. Grounds for accepting this clause may be when the Company terminates negotiations because it has demanded a material change to the principles recorded in the term sheet, which the Investor won't accept.
Term sheet expiration	Term sheets can include an expiration, which places founders under immense pressure. It is critical that you find the right investor and that the fit and chemistry is right for the business. Take your time and in some circumstances go as far as requesting that expirations are removed or ensuring at the least, that there is flexibility to extend. It is good practice to solicit at least two term sheets from two different investors, even if only to verify that your preferred investor is offering you a good deal.
Raising too much / too little capital	Capital raising takes a long time and requires the founders' time (this varies depending on the stage of the company). The management team distraction is hard to quantify, but it can cost the business in money and lack of focus. At the same time, raising too much capital too soon results in over-dilution in the early stages of capital raising. On average, Endeavor Global sees capital raises across the world take around 8 months. In Southern African environments it can take far longer from initial discussions to closing a round. Add margin on to your capital raise amount to aim to raise capital every 18-24 months. Maintain relationships with investors long before you need to approach them for capital.

When to appointing a Financial Advisor	Founders are experts in their fields and laser focused on running their businesses. Funders are experts in capital raising, legal agreements and structuring. Where you are raising a large international Series B round we strongly encourage bringing an experienced advisor (financial and/or legal) into your negotiation with track record of raising capital in the appropriate region. The right advisor will cost 3-5% in capital raising fees but may save you far more down the line if they can assist with avoiding problematic terms. Note though that appointing an advisor does not recuse the founders from knowing the business and commercial metrics in detail!
Future Dilution for SAFEs and Convertibles	SAFEs can be problematic for founders if the fully diluted cap table is not well understood before raising a convertible round. Valuation caps and discounts can create far more equity dilution for founders than anticipated and can cause tensions when raising capital from equity investors. As much as it may be desirable, cost-effective and less cumbersome for investors to prefer SAFEs to other traditional methods of raising capital for start-ups, it is advised that the Founder also consider anti-dilution protection to guide his equity. Other pitfalls include assuming that the valuation cap on a SAFE is the floor to your next priced equity round. In addition, any discounts applied in a SAFE will not necessarily translate into a minimum premium on a future raise. Understand the impact of convertible notes on your cap table and avoid layering SAFE notes prior to raising a fully priced round. Bear in mind too, that VCs may require a minimum equity holding, which may not be possible if there are too many convertible notes outstanding. Convertible notes can be useful when founders have ambitious revenue aspirations and help protect young companies against down rounds in the future.

Endeavor is a global organization present in 40+ countries that works to catalyze long-term economic growth by selecting, mentoring, and accelerating the best high-impact entrepreneurs worldwide. Endeavor South Africa currently has 28 High-Impact Entrepreneurs in its program, 50+ in its pipeline and receive pro-bono support from +125 mentors. These 28 teams have average annual revenue of R200m per business and over the past 3 years have achieved 79% annual growth in revenue and 27% growth in headcount - collectively generating incremental revenue of R2.7bn and creating additional 4234 jobs since 2017. At end of 2020 these 28 Entrepreneurs jointly employed a total 11535 people (with >75% Black SA) and generated R5.6bn total revenue. The Endeavor South Africa Board is chaired by Herman Bosman and the team is led by Alison Collier.



Linda's Rottenberg, Endeavor's co-founder and CEO, has some core insights about Entrepreneurship apt for our current situation: "Turbulence is the official climate of entrepreneurship. Stability is the friend of the status quo. Chaos is the friend of the entrepreneur. Entrepreneurs' competitive advantage is being nimble and adaptable."