Southern Africa Term Sheet Guidance Note

Developed by Endeavor South Africa

In Partnership with the Digital Africa Collective

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

Objective

The objective of this project led by Endeavor South Africa (Endeavor), in partnership with the African Digital Collective, is to provide guidance to African (Sub-Sahara) 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 that follows includes standard terms as well as 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 two parts:

1) working term sheet with appendix and

2) glossary of terms.

Endeavor has also compiled a third section detailing founder-friendly tips when raising capital that have been accumulated through its interactions with founders and capital mentors. This section is available separately.

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 in Southern Africa. We are currently working with eco-system in Nigeria & Kenya to extend this to for West & East Africa respectively. We plan to have this complete by December 2020.

Contributors

This set of term sheets and appendices has been compiled by Endeavor in conjunction with African Digital 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, Endeavor's Catalyst Fund, Partech, Newtown Partners, Kingson Capital, Startup Bootcamp, Quona Capital, Edge Growth, AfricArena and Kalon Ventures, 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 including Endeavor Global Catalyst.

Endeavor is currently working on a similar document for capital raises in Nigeria and Kenya with the Endeavor offices in those countries and their ecosystem partners.

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, or some terms (confidentiality, no shop, etc) will hold 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.

If you are raising capital outside of South 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 and debt investment rounds. For SAFE rounds please refer to Y Combinator's template.

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 South 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 2. Terms linked to a (!) are to be handled with caution and are dealt with in more detail in Endeavor's commentary document or section 3. 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 1: 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. 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 No Shop provision (!)[1] of this Term Sheet shall be binding on the Company whether or not the financing is concluded.

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

Total Amount to be Raised — [R / $ ___________]

Investment Amount — R / $ ___________]

Number of Shares — [_________] Preferred Shares

[1] (!) carries an alert and is referenced in Endeavor's separate section 3 document on pitfalls to watch out for when raising capital.
[2] Text in green is defined in Section 2: Glossary.

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	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 (!)	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)[5], plus any amounts loaned to the company and dividends declared but not paid prior to any distribution to the Common Stock shareholders. A liquidity event 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; • A change of control of the Company;

[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.

[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. The liquidation preference, where participating, may also include a cap to the Preferred shareholders once they have received their capital. (!)

- 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.
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; or ii. The consent of the holders of at least a majority of the then outstanding shares of Preferred shareholders.
Dividends	[__%] if and when declared by the Board of Directors, prior and in preference to payment of dividends on any other class of shares. [Or: Dividends will be paid on the [Series A] shares on an as-converted basis when and if dividends are paid to the Ordinary shareholders.]

INVESTOR PROTECTIONS

Anti-Dilution Provisions

The [Series A] Preferred Investors will have broad-based weighted average anti-dilution protection.[6]

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 will be entitled to convert each of their shares into more than 1 Ordinary Share. 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

[6] 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. (!)

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[7]]:

i. setting up or acquiring any subsidiary branch otherwise than in the ordinary course of business;
ii. acquisition of any material business or material assets outside of the ordinary course of the Company's business;
iii. the sale or transfer by the Company of all or substantially all of its assets or intellectual property;
iv. providing any guarantee or suretyship for the obligations of any third party;
v. incurring of any liability other than in the ordinary course of conduct of the Company's business;
vi. entering into any contract or transaction by the Company outside the ordinary course of its business;
vii. giving any mortgage, pledge, notarial bond or other encumbrance over the assets of the Company;
viii. any transaction with any of the direct/indirect Shareholders of the Company (i.e. related parties);
ix. borrowing money, except as provided for in budgets which have been approved by the Board;
x. 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];
xi. pensions, gratuities or allowances to anyone otherwise than in terms of a fund which the Company has established or joined; and
xii. 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;
xiii. Directors' remuneration;
xiv. The Annual Operating Budget;
xv. Any amendment of the MOI;
xvi. Any increase in the number of Shares reserved for issuance to employees and consultants;
xvii. The creation or issue by the Company of any debt

[7] 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. (!)

instruments, debentures or loan stock;

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

xix. Authorising or issuing of any shares, whether Preferred or Ordinary Shares, or any other instruments that may rank senior to or on par with the Preferred Stockholders.

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: 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[8].

[8] Tag along and drag along thresholds are sometimes heavily negotiated. 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).

Tag Along	In the event that a third party offers to purchase more than [50%] 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 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: • Death, mental illness; • Insolvency / liquidation; • Conviction of a criminal offence; and • Breach of restraint of trade obligations.
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.

FOUNDER RESTRICTIONS

Founder Restraint	Founders will not be allowed to compete with the Company or have any interest in a competing company in any jurisdiction in which the Company currently operates.
Founder Vesting[9] (!)	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 (*faute lourde*) before the [fifth] anniversary of Closing, all shares held by such Founder, whether vested or unvested, may be

[9] 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.

purchased at their [nominal value] by the Active Founders and the [Series A] Investor[s] (pro rata among them).[10]

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[11]: 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 [two] 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.

[10] "Bad Leaver" provisions are contentious and designed to discourage Founders from leaving for any reason. 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 if their exit falls within a "Bad Leaver" definition.

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

	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 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.
Assignment of IP Rights	The Closing shall be subject to the assignment of all intellectual property rights related to the business of the Company to the Company by the Founders or any entity controlled or owned by the Founders.
[Keyman Insurance]	The Company must acquire life insurance on each Founder and other necessary insurance, as determined by the Board.[12]
[Shareholders' Agreement]	[A shareholders' agreement (the "Agreement") will be entered into on the Closing date among the Founder[s] and the Investor[s] owning more than [5%] of the share capital, for a term of 15 years renewable. 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.]
Exclusivity / No Shop (!)	All Parties agree to work expeditiously towards a closing. The Company and the Founders agree not to solicit 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.[13] [Or] The Company will pay for due diligence expenses up to the lower of [R250,000 - R750,000] or [2%] of the round.

[12] 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.

[13] 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 R250,000 - R750,000 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 2: Glossary of Key Terms

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

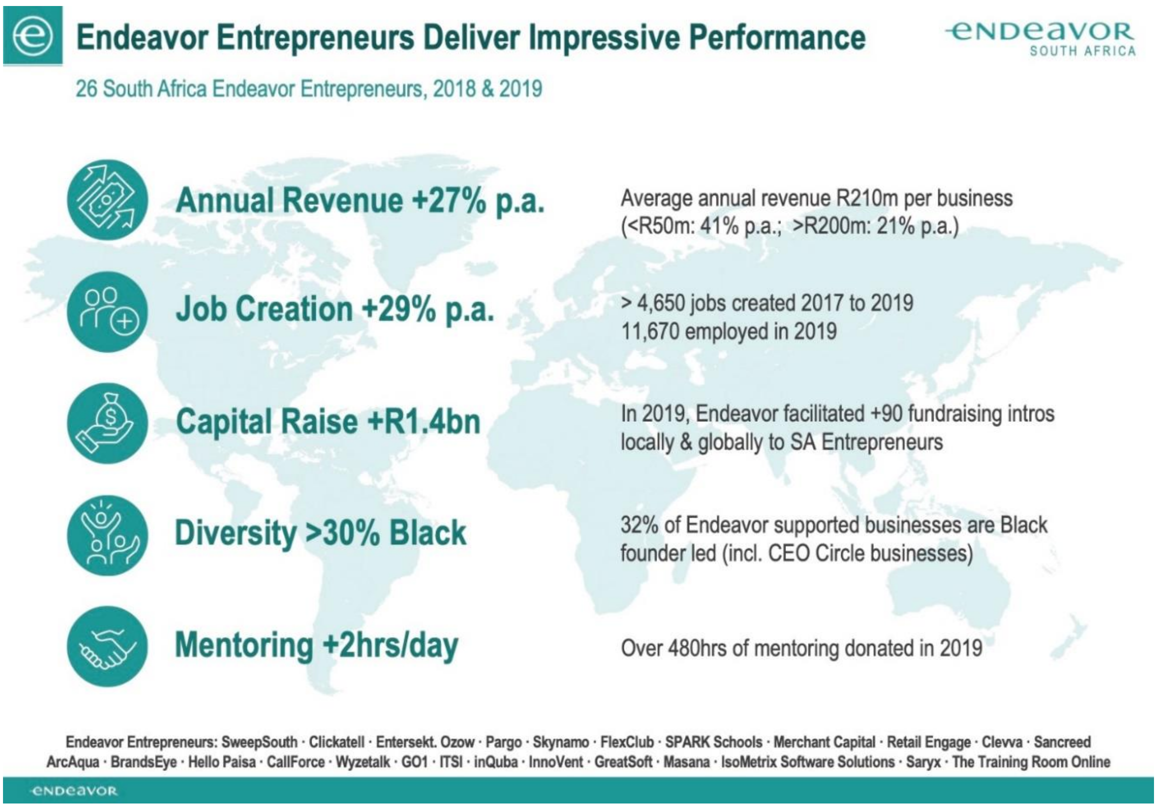
Common / Ordinary Shares Preferred Shares	Common (ordinary) shares are the primary form of equity shares in a company. They typically rank behind preferred and debt investors and hold voting rights. These are typically the class of shares held by founders and employees. Preferred shares are usually associated with a "liquidation preference" (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.
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.
Preferred Returns	The amount that must be returned to preferred shareholders before distributing any assets to ordinary shareholders. Default is the investment amount provided by the investor.
Participating Preferred	Participating preferred shareholders are entitled to receive a share of any remaining liquidation proceeds after they have already received their liquidation preference. Non-participating preferred shareholders are only entitled to receive their capital back on a liquidation event.
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.
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.
Pro-rata rights	Pro-rata rights give investors an option to participate in future funding rounds to maintain their level of shareholding and avoid dilution. These can be problematic for founders. 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.
Anti-dilution	Anti-dilution protects investors from diluting should the next round of funding be a "down round". Bonus shares are issued to investors in the event of a lower valuation round to prevent them from over-diluting.
Down round	Raising a subsequent round of financing at a lower company valuation than the last.
Capitalisation Table (Cap Table)	A summary of the equity ownership of the company. This includes ordinary shares, preferred shares, convertible instruments and warrants.
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.
Convertible Debentures	Often used in earlier stages of funding or between funding rounds, convertible 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: 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 debentureholders force the company to take funding on unfavourable terms.
SAFE Notes	A SAFE (Simple Agreement for Future Equity) note, like a convertible instrument or warrant, gives investors the right to buy 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.

	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 favourable terms, the earlier holders can convert their SAFE to the newer version. This can result in doubling up of dilution.
No-shop agreement	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.
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.
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.
Rachet	A rachet 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 rachet provision can make it difficult to raise future rounds of funding.
Vesting	Vesting is a mechanism used by investors 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 (eg 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.

Endeavor is a global organization present in 35+ 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 26 Scale Ups in its program, 50+ in its pipeline and receive pro-bono support from 125 mentors. These 26 Scale Ups have average annual revenue of R210m per business and over the past 2 years have achieved 29% annual growth in headcount and 27% growth in annual revenue - collectively creating additional 4567 jobs and generating incremental revenue of R1.7bn. At end of 2019 these 26 Entrepreneurs jointly employed a total 11758 people and generated R4.7bn 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."