

The term sheet, read for what it decides

Chapter 5. The ten terms, each side's opening position, and where your draft stands. Treat the term sheet as the agreement and the long form as the transcription.

Venture		Prepared by	
Counterparty		Date	

Term	Sponsor opens with	Investor opens with	Our draft says	Agreed?
Capital split and total commitment	Percentage split, open-ended total	Hard-capped commitment		
Sponsor co-investment	Low, part-credited from fees or costs	Higher, all hard cash at closing		
Preferred return: rate, compounding, frequency, base	Simple, annual, on capital only	Compounded quarterly, on unpaid accruals too		
Promote: tiers, hurdles, metric, lookback	Two tiers, low first hurdle	Three tiers, higher hurdle, multiple test		
Fees: every one, with base and rate	Full menu, generous bases	Short menu, equity-based bases		
Major decisions	Short list, high thresholds	Long list, low thresholds		
Cost overruns	Pro rata above contingency	Sponsor-funded above contingency		
Transfer and exit	Long lock-up, sponsor-controlled sale	Forced sale at a date, free transfers		
Sponsor removal	Narrow cause, promote preserved	Cause plus performance triggers, promote at risk		
Business plan and budget	High-level, flexible	Detailed, attached, variance-controlled		

Read for absence	Present?	Where / what it says
A total commitment number, not only percentages		
A compounding frequency and base for the preferred return		
A lookback or clawback on the promote		
Promote on a refinancing, or only on a sale		
Removal, and a key person provision		
A deadlock remedy with teeth		
Failure to fund, and its remedy		
Who signs the guarantees, and whether the venture indemnifies them		
An OBLIGATION on each partner to fund approved calls up to its commitment		

Three additions that cost almost nothing now	Asked	Agreed
Retrade release: exclusivity ends if the investor changes any economic term		
Fee schedule listing every payment to the sponsor or its affiliates; unlisted fees prohibited		
Each partner is obliged to fund its share of approved calls up to its commitment; failure triggers the remedies		

Binding clauses survive a failed deal: exclusivity, confidentiality, cost sharing, governing law of the term sheet, and break costs where agreed. Everything economic is non-binding, which does not make it reopenable.

Term sheet checklist, part 1

Appendix B: the parties, the money, funding, the waterfall and fees. Status: Answered, Open or Not applicable. The last column is the one that earns its keep.

Venture		Prepared by	
Counterparty		Date	

Question	What the draft says	Status	Who benefits if open
The Parties and the Vehicle			
Who are the contracting entities, and what stands behind each of them?			
What is the vehicle, in which jurisdiction, and is it transparent or opaque for each partner?			
Is there a two-tier structure, and where does the debt sit?			
Who is the manager, and under what standard of conduct?			
Are there key persons, and are they named?			
The Money			
What is the total equity commitment, and how is it split?			
Is the sponsor's co-investment hard cash, deferred fees, or credited value?			
Is the funding ratio fixed for the life of the venture?			
What exactly does the commitment cover — price, costs, capex, interest reserve, working capital, contingency?			
What is committed and what is merely anticipated?			
Is any partner contributing an asset in kind, and how is it valued?			
What is the debt assumption — quantum, term, and whose covenant supports it?			
Are there partner or shareholder loans, and on what terms?			
Is preferred equity contemplated, and how does it rank?			
Funding Mechanics			
Who issues capital calls, on what notice, and in what form?			
Is there a cap on the number or frequency of calls?			
How are late-admitted partners equalized?			
What is the cure period for a missed call?			
What is the remedy on failure to fund — default loan, dilution, or both — and at what rate or multiple?			
Does a failure to fund affect major decision rights, or the promote?			
The Waterfall			
Is there one waterfall or two, and what is the definition of a capital event?			
In what order is capital returned, and pro rata or by class?			
What is the preferred return rate; is it simple or compounding, at what frequency, and on what base?			
Does unpaid preferred return itself accrue?			
Is there a catch-up, is it full or partial, and to what target percentage?			
What are the hurdles — IRR, multiple, or both — and what are the splits between them?			
Is promote paid on interim distributions, and if so is there an escrow, a guarantee or a lookback?			
Is a refinancing a capital event for promote purposes?			
Is there a clawback, who owes it, is it net of tax, and how long does it survive?			
Fees			
Which fees are payable, at what rate, and on what base?			
Are any fees payable to affiliates, and how is market rate tested?			
Are fees offset against the promote?			
What overhead or personnel cost is reimbursed, and is it capped?			

Term sheet checklist, part 2

Appendix B: governance, the plan, reporting and distributions, transfers, deadlock and exit, removal, and the binding provisions.

Venture		Prepared by	
Counterparty		Date	

Question	What the draft says	Status	Who benefits if open
Governance			
What is delegated to the sponsor without consent?			
What is the major decisions list, and what are the thresholds?			
Is there a deemed consent mechanism, with what response period and what default?			
Is there a board or committee, how is it composed, and what is the quorum?			
How are conflicts and related-party transactions consented to?			
How are opportunities allocated between the venture and the sponsor's other vehicles?			
The Plan			
Is the business plan attached, and is the base-case model attached with it?			
What is the annual budget cycle, and what happens if a budget is not approved?			
What are the permitted variances, by line item and in aggregate?			
What triggers a re-forecast, and who approves it?			
Reporting and Distributions			
What is the reporting package and the calendar?			
Who values the asset, how often, and on whose instruction?			
What are the audit and information rights?			
What is the distribution frequency and policy?			
Who sets reserves, and is there a cap?			
Are tax distributions required?			
Transfers, Deadlock and Exit			
What is the lock-up, and what transfers are permitted during it?			
Is there a change-of-control provision?			
Is there a ROFO or a ROFR, and what is the process and timing?			
Are there tag and drag rights, and on what conditions?			
What is the target hold, and what right arises at the end of it?			
What is the deadlock ladder, and what is the structural remedy at the end of it?			
Can the promote be transferred?			
Removal and Termination			
What constitutes cause, and what standard of proof applies?			
What is the cure period, and what is incurable?			
What happens to the promote and to the sponsor's co-investment on removal, in each case?			
Is there a transition period, is it paid, and what must the outgoing sponsor deliver?			
Does removal require lender consent, and what happens if it is refused?			
Binding Provisions			
Exclusivity — for how long, and on what terms?			
Confidentiality — who is bound, and for how long?			
Cost sharing — who pays for what if the deal does not complete?			

The three-way race: timetable and conditions precedent

Chapter 3. Build the timetable backward from completion; mark the committee date and the lender's credit date as immovable, and name one owner per workstream.

Venture		Prepared by	
Counterparty		Date	

Workstream	Owner (book)	Typical time	Our owner	Start	Deadline	Status
Teaser, NDA, underwriting pack	Sponsor	1-3 weeks				
Investor screening	Investor deal team	1-2 weeks				
Term sheet negotiation	Both principals	1-3 weeks				
Asset legal and technical due diligence	Sponsor, investor's counsel	4-6 weeks				
Partner due diligence, both directions	Each party	2-4 weeks				
Tax structuring and vehicle formation	Tax adviser, counsel	3-5 weeks				
JV agreement and ancillary documents	Both counsel	6-10 weeks				
Debt term sheet to credit approval	Sponsor and lender	4-8 weeks				
Loan documentation and security	Lender's counsel	3-6 weeks				
Committee paper and approval	Investor deal team	2-3 weeks				
Signing to completion	All	same day to 12 weeks				

Condition precedent	Who satisfies it	Evidence	Done
Constitutional documents adopted, vehicle registered			
JV agreement and asset management agreement executed			
Board and committee approvals obtained			
Regulatory or foreign investment clearance			
AML and KYC clearance on all partners			
Loan agreement and security executed			
Lender valuation addressed, reliance in place			
Insurance in place, lender as loss payee			
Equity funded to the completion account (the day before)			
Purchase agreement conditions satisfied or waived			
Property management and operating agreements signed			
Opening budget and initial business plan adopted			

Instruct the technical, environmental and valuation work when exclusivity is signed, not when the term sheet is agreed, and agree in writing who pays if the deal aborts.

Sources and uses, the capital call and the overrun

Chapter 7. The commitment is the whole business plan, capped in currency. A call is a document, not an email.

Venture		Prepared by	
Counterparty		Date	

Line	Amount	Basis / note
Purchase price		
Acquisition costs and transfer taxes		
Capital expenditure (priced, not estimated)		
Leasing costs on vacant space		
Interest reserve to stabilization		
Working capital and reserves (lender escrows)		
Contingency (5-10% of discretionary lines; more on development)		
TOTAL USES		
Senior facility		
Equity commitment: investor		
Equity commitment: sponsor		
Uncommitted, "anticipated" capital (not a commitment)		

Capital call notice	Entry
Issued by, and under which approved budget line or major decision	
Total amount called	
Each partner's share, and the funding ratio applied	
Purpose, by budget line, and amount previously funded against it	
Cash position of the venture today	
Contractor's application or monitoring surveyor's certificate	
Account and funding date (notice period: standard / emergency)	
Spend expected within how many days of the funding date	

Overrun category	Approval	Who funds	This overrun?
Draw on budgeted contingency	Report; consent above a cumulative threshold	Pro rata, within commitment	
Within permitted variance	None	Pro rata, within commitment	
Change of scope	Major decision	Pro rata if approved; not incurred if not	
Sponsor breach or gross negligence	None available	Sponsor alone, non-diluting, no pref	
Force majeure	Notice and revised budget	Pro rata, right to reopen the plan	

Calling 10 ninety days early at a seven-point spread accrues 0.175 of preferred return for nothing, taken from the residual on which the promote is computed (workbook 3, Funding sheet).

Model the remedy before you sign it

Chapter 8. Run your own percentage through the exact formula in the draft, with a realistic missed call. The Failure to Fund workbook does the arithmetic.

Venture		Prepared by	
Counterparty		Date	

Inputs	Value	Inputs	Value
Our contributions to date		Their contributions to date	
Size of the call		Our share of the call	
Credit multiple in the draft		Capital-account reduction multiple	
Default loan rate and compounding		Conversion to equity after (months)	
Base for percentages: contributed or committed?		Cure period, and is notice required first?	

Formula	Our stake after	Their stake after	Our promote after	Notes
Before the call				
Straight dilution on contributed capital				
Non-defaulter credited at the multiple				book: 1.5x moves 10% to 7.04%
Defaulter's account reduced by the multiple				book: 1.5x takes 10% to 2.99%
Default loan: balance after the period				book: 2 at 15% for 2 years = 2.645
Forced buyout: price, and when paid				book: 75% paid in 3 years at 10% = 56%

Before you serve or accept a notice	Answer
Was the call validly issued: budgeted purpose, supporting information, full notice?	
Partial funding: is the balance alone in default?	
Is failure to fund ring-fenced, or an event of default generally (cross-default, removal)?	
Do the fundamental protections survive a suspension of major decision rights?	
Does the remedy reach the sponsor's money (the promote), or only its percentage?	
Would a conversation (extension, agreed loan, re-cut plan) serve better than the notice?	

A remedy that transfers a large interest cheaply is a standing incentive to engineer a call the other partner cannot meet. Calls only for budgeted purposes, capped in size and frequency, on adequate notice.

The waterfall, written as definitions, and the tests that prove it

Chapters 9 and 13. Say what you mean in a formula, not an adjective; then prove the model at its boundaries, not in the base case.

Venture		Prepared by	
Counterparty		Date	

Definition	As drafted (words, then formula)
Distributable cash: receipts less opex, debt service, capex from operations, reserves (defined), and the distribution covenant (days after quarter end)	
One waterfall or two; operating distributions count in every hurdle test	
Return of capital: pari passu or in stated order; all contributions, whenever made	
Preferred return: rate	
compounding: simple or compound, accrual and capitalisation frequency	
base: unreturned capital only, or plus accrued and unpaid	
Catch-up: rate (full or 50/50) and target (promote as % of profit above capital)	
Hurdles: IRR, multiple or both; effective annual or nominal; dated flows	
Splits between hurdles	
Promote on all distributions or on capital events only	
Refinancing: a capital event? Escrow, cash-return test, lookback	

Test	Pass condition	Result	Date
Cash conservation	Distributions equal distributable cash, each period and cumulatively		
Zero-promote point	At capital plus accrued preferred return exactly (146.93 in the book), promote is zero		
Hurdle reconciliation	At the end of tier 4 (215.68), the partners' dated IRR is exactly the hurdle		
Partner returns	Each partner's return from its own row matches the summary		
Negative period	A negative figure becomes a contribution, never a negative distribution		
Monotonicity	Promote never falls as proceeds rise		
Split integrity	No tier is paid while an earlier tier is unpaid		
Extreme inputs	Zero, capital only, and ten times capital all resolve without errors		

Above the second hurdle the promote no longer depends on how the preferred return is defined: in the book's structure it is fixed once proceeds pass 215.68, whatever the compounding. The argument about compounding is an argument about mediocre outcomes.

Interim promote, the clawback and the lookback

Chapter 11. An interim promote is unsecured credit to the sponsor. Price it and secure it like any other credit exposure.

Venture		Prepared by	
Counterparty		Date	

Protection	Strength	In our draft	Terms
Escrow or holdback (share of each interim promote, release triggers)	Absolute up to the amount held		
Guarantee (who, balance sheet, net worth covenant, annual accounts)	Equal to the guarantor's credit		
Clawback (who owes it, gross or net of tax, joint and several, survival)	Depends on solvency and enforcement		
Lookback (measure: accrual by contribution, or whole-life IRR)	Prevents rather than recovers		

Lookback computation	Amount
Cumulative partner contributions, by date	
Preferred return on each contribution until returned	
Capital plus preferred return owed	
Total cash distributed over the life (including promote)	
Shortfall or excess	
Promote entitlement on the lookback	
Promote actually received	
Gross clawback	
Net-of-tax limit (only natural persons, tax actually paid and unrecoverable)	
Escrow matching the tax retention	
Amount to collect, from whom, by when	

The measure is a drafting choice worth money. On the book's own clawback venture the accrual measure finds no promote earned; a whole-life IRR measure finds 5.36, because the partners earned 9.9% before promote (Case 1).

Every payment to the sponsor and its affiliates

Chapter 12. One table, downside and upside, beside the investor's net return. Unlisted fees prohibited.

Venture		Prepared by	
Counterparty		Date	

Fee	Base	Rate	Downside case	Upside case	Abuse to watch
Acquisition					
Asset management					
Property management					
Leasing commissions					
Construction / development management					
Financing					
Disposition					
Guarantee fee					
Overhead and secondees					
Affiliate contracts (by contract)					
Total fees					
Promote					
Return on co-investment					
Investor net IRR and multiple					

Affiliate services: make "market rate" operational	Done
Two written quotes from unaffiliated providers before any affiliate contract above the threshold	
Periodic re-benchmarking every two or three years, match or be replaced	
Aggregate cap on all affiliate services, above which partner approval is required	
Termination without cause, on short notice, without penalty	
Quarterly schedule of every payment to the sponsor or an affiliate, by category and contract	

In the book's bad case the sponsor's fees alone are 1.5 times its 10 of capital, and everything it takes out 3.2 times, while the investor clears 8.2%. An offset against the promote returns nothing in that case (Case 3).

Major decisions: opening positions and where you landed

Appendix D. Every consent needs a response period and a stated default; thresholds are the lower of a percentage and an amount.

Venture		Prepared by	
Counterparty		Date	

Decision	Sponsor opens	Investor opens	Where we landed	Threshold	Response / default
Business plan approval	First plan only	Every plan and amendment			
Annual budget	Deemed in 15 business days	Express approval			
Budget not approved	Prior year, indexed	Prior year, no capex			
Variance within a line	15% of the line	10% of line, 5% of total			
Capex outside budget	High single threshold	Low threshold, any scope change			
Debt and refinancing	New debt only	Any incurrence, amendment, prepayment			
Granting security	Within financing plan	Consent in all cases			
Distributions and reserves	Reasonable discretion	Capped, or by budget only			
New partner or equity	Consent, save rescue	Consent without exception			
Buying or selling an asset	Sale only	Both			
Leases	Outside parameters only	Size, term, rent floor			
Related-party contracts	Market rate, reported	Prior consent, benchmarked			
Key service providers	Sponsor discretion	PM, valuer, auditor			
Litigation and settlement	High threshold	Low threshold, title			
Constitutional documents	Consent	No economic change without unanimity			
Tax status, accounting policy	Consent	Consent plus tax opinion			
Insolvency filing	Consent	Consent plus standstill			
Change of business	Consent	Consent plus narrow objects			

Test the list as a process: how many consent requests a year will it produce, how long will each take, and who at the investor may answer? Set thresholds just inside the investor's own delegated authority.

Removal: what the sponsor keeps, and the morning after

Chapter 19. Negotiate the clause backwards: start with who manages on the day after, then work back to the trigger.

Venture		Prepared by	
Counterparty		Date	

Variant	Promote received	Capital interest	Removal fee	Guarantees released?
No removal; sale at exit				
No-cause; promote preserved to the actual exit				
No-cause; promote pro-rated by years served				
No-cause; crystallised at the removal valuation				
Cause; forfeiture, capital bought at the lower of cost and value				

Transition obligation	Shape of the provision	In our draft
Handover period	90-180 days of continued service at the existing fee, at the investor's election	
Records and data	All books, records, models and correspondence within 30 days, native format	
Systems access	Read access to asset management and accounting systems during handover	
Contracts	Assignment or novation; affiliate contracts terminable on notice without penalty	
Personnel	Named individuals available for stated hours; no restriction on hiring them	
Cooperation	Introductions to tenants, lenders, brokers, authorities; help with consents and claims	
Standard of conduct	Good-faith standard throughout, fees withheld until complete	
The lender	Consent to the change of manager obtained or pre-agreed; replacement carve-out guarantor	

In the book's table the sponsor's capital interest stays at 21.66 whatever happens to its promote: the promote it gives up is assumed to go to the investor alone. If it falls back into the pro rata distributions, the sponsor's share becomes 22.99 (pro-rated) or 23.20 (crystallised at 180). Say which.

The quarterly report and the distribution notice

Chapter 20. Report against the plan, not the prior quarter; show the waterfall run in every notice.

Venture		Prepared by	
Counterparty		Date	

Deliverable	Frequency	Deadline (book)	Our deadline	Received
Operating flash	Monthly	10 business days after month end		
Investor report and management accounts	Quarterly	15-20 business days after quarter end		
Plan and budget for next year	Annual	60-90 days before year end		
Audited financial statements	Annual	90-120 days after year end		
Independent valuation	Annual or more often	With the period report		
Tax package and allocations	Annual	Each partner's filing dates		
Investor meeting	Annual	Within 120 days of year end		

Covenant	Test level	Actual	Above the covenant	Income can fall by	Consequence of breach
Interest cover (book example)	1.50x	1.94x	29%	22.7%	cash trap / default
Loan to value				value can fall by	

Distribution notice	Amount
Total amount and source (operating cash or capital event)	
Tier 1: capital returned	
Tier 2: preferred return paid	
Tier 3: catch-up (to partners / promote)	
Tier 4 and 5: splits	
Each partner's share	
Unreturned capital after this distribution	
Accrued preferred return after this distribution	
Reserves held, with the purpose of each	
Payment date (notice given ___ business days before)	

A reserve is not neutral: holding back 5 for a year at an 8% preferred return adds 0.40 to the preferred return tier, out of the residual on which the promote is computed.

Diligence on your partner

Appendix E. Both sides run this, in a meeting rather than as a questionnaire: the ease of the answer matters more than the answer.

Venture		Prepared by	
Counterparty		Date	

Question	What was said	How it was received
Capability and Track Record		
What have you done that is genuinely comparable to this — same asset type, same market, same business plan?		
Show me a deal that did not work. What happened, what did you do, and what did your partner say afterwards?		
Who exactly will work on this, how much of their time, and what else are they doing?		
What happens to this venture if the two people in the room leave?		
May I speak to a capital partner from a deal that went badly, not just one that went well?		
Balance Sheet and Alignment		
Where does your co-investment come from, and is it committed or contingent on something else?		
What other commitments does that same balance sheet support, and when do they call?		
How does your firm pay the people on this deal, and when do they see the promote?		
What proportion of your firm's revenue comes from fees and what proportion from promote?		
Are you raising a fund? If so, how are opportunities allocated between it and this venture?		
Systems and Reporting		
Show me a quarterly report you sent to another partner. Then show me the one you sent in a bad quarter.		
What is your accounting system, who prepares the accounts, and who audits them?		
How long after quarter end can you deliver a full pack, and what have you actually delivered historically?		
Who values your assets and how often, and have you ever disagreed with a valuer?		
What is your process for a capital call, and what notice do you need to give your own funder?		
Behaviour Under Stress		
Tell me about a covenant breach you have lived through.		
Have you ever failed to fund a capital call, been late, or asked for an extension?		
Have you ever been removed, sued by a partner, or been in a formal dispute? What was the outcome?		
Have you ever bought out a partner, or been bought out?		
When was the last time you told a partner something they did not want to hear before they asked?		
Institutional and Regulatory		
Who owns your firm, and is there any change of control in prospect?		
What regulatory permissions do you hold, and in which jurisdictions?		
What is your insurance cover, and does it respond to the risks in this plan?		
What are your anti-money-laundering and sanctions procedures, and who is the ultimate beneficial owner of every entity in your structure?		
Is there any litigation, investigation or contingent liability that a reasonable partner would want to know about?		

Two questions to ask yourself. Would I be comfortable if this partner made every decision in the agreement without asking me? And if this venture goes wrong in year three, do I want to be in a room with these people?