

December, 2022

This Sample Term Sheet was created by the Innovative Finance Project, led by teams from Blueprint Local and the Drexel University Metro Finance Lab, and managed by [Catalyze](http://catalyze.community).

The creation of this term sheet in particular was led by Aunnie Patton Power, author of Adventure Finance, and supported by a broad network of expert practitioners around the world, including several key legal experts such as RPCK Rastegar Panchal.

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**[INVESTOR]**

**[COMPANY]**

**TERM SHEET**

**REVENUE-BASED LENDING[[1]](#footnote-1)**

\_\_\_\_\_\_\_\_\_ \_\_, 202\_

This term sheet summarizes the terms with respect to the Revenue-Based Loan (the “RBL”). Except as described herein, this term sheet is non-binding and is intended solely as a basis for discussion and negotiation of definitive documentation (the “RBL Documents”), which will supersede any and all previous agreements. This term sheet does not obligate the Lender to provide any capital to the Company.Notwithstanding anything to the contrary herein, the parties acknowledge and agree that their respective agreements set forth below under the headings “Costs and Expenses”, “Confidentiality”, and “No-Shop” are intended to be, and are, binding and enforceable agreements of the parties with respect to such matters.

|  |  |
| --- | --- |
| Revenue-Based Loan Terms | |
| Target Close Date | **[**Date**]** (the “Closing Date”) |
| Company | [Company Name], a [Formation/Incorporation Jurisdiction] [Entity Type] (the “Company”) |
| Lender[[2]](#footnote-2) | [Lender Name], a [Formation/Incorporation Jurisdiction] [Entity Type] (the “Lender”) |
| Loan Amount & Disbursement[[3]](#footnote-3) | [$ ###] (the “Loan Amount”), to be disbursed upon execution of the RBL Documents on the Closing Date, net of costs and expenses, and subject to Lender’s diligence review |
| Currency | United States Dollars |
| Use of Proceeds | The Company shall use the Loan Amount to [Describe permitted Use of Proceeds]. |
| RBL Obligation | At the Maturity Date the Company shall have repaid the Lender a total of [Multiple][(#x)] the Loan Amount (the “RBL Obligation”).[[4]](#footnote-4) |
| Revenue Rate | [Revenue percentage]% (the “Revenue Rate”) of the Company’s Revenue (as defined below) (the “Revenue Payments”) |
| Fees | [Describe any Fees][[5]](#footnote-5) |
| Costs and Expenses | [The Company shall pay all costs and expenses (including legal expenses) incurred by Lender in connection with the preparation, negotiation and execution of this Term Sheet and the definitive RBL Documents.][Each party shall bear their respective legal fees and other expenses incurred in connection with the preparation, negotiation and execution of the RBL Documents.] |
| Maturity Date | All Obligations of the Company to the Lender (including the RBL Obligation) will mature and become due and payable in full on the earlier of: (i) the Monthly Payment date where the Company fulfils the RBL Obligation; (ii) [TERM (#)] months after the Closing Date; (iii) the Company’s insolvency; or (iv) at the option of the Lender, the declaration of an Event of Default.[[6]](#footnote-6) |
| Optional Prepayment[[7]](#footnote-7) | Company may prepay any portion of the RBL Obligation at any time. |
| Revenue Reporting and Payment Period | The Company shall provide the Lender [monthly][quarterly] Revenue reports, within [#] days of the end of the preceding [month][quarter]  The Company shall pay Revenue Payments to the Lender on a [monthly][quarterly] basis, within [#] days of the end of the preceding [month][quarter][[8]](#footnote-8)[, beginning on [DATE]][the date on which [certain metrics are satisfied]][[9]](#footnote-9) |
| Revenue Definition | “Revenue” means all payments and other revenues (exclusive, however, of any payment attributable to sales taxes) received by or on behalf of the Company or its consolidated subsidiaries from all sources relating to the ownership or operation of the Company’s assets and business, determined [on a consolidated basis in accordance with GAAP][on a cash basis].[[10]](#footnote-10) |
| Reporting Requirements | On a [Insert Time Period] basis, within [Insert Number of Days] of [Insert Time Period] end, the Company will submit to the Lender financial statements prepared in accordance with GAAP along with other reports as reasonably requested. |
| Conditions Precedent[[11]](#footnote-11) | Conditions precedent as are usual and customary for facilities of this kind, including without limitation:   1. Completion of satisfactory due diligence by the Lender[[12]](#footnote-12) 2. Negotiation and execution of RBL Documents satisfactory to the Lender 3. Receipt by Lender of other customary closing documents and deliverables, including organizational documents, authorizing resolutions, officers’ certificates and evidence of good standing 4. Confirmation of no material adverse change 5. Receipt of all necessary governmental and third-party consents 6. Additional conditions precedent as the Lender may require |
| Representations and Warranties of the Company[[13]](#footnote-13) | Representations and warranties by the Company as are usual and customary for facilities of this kind, including, without limitation:   1. Existence; Compliance with Laws 2. Power; Authorization; Enforceability 3. No Contravention of Law or Contractual Obligation 4. Accuracy of Financial Statements 5. No Material Adverse Effect 6. No Litigation 7. No Default 8. Ownership of Property; Liens 9. Environmental Matters 10. Insurance 11. Material Contracts 12. Intellectual Property 13. Payment of Taxes; 14. Subsidiaries; Equity Interests; 15. Accuracy of Information 16. [Additional Representations and Warranties of the Company] |
| Covenants[[14]](#footnote-14) | Affirmative and negative covenants as are usual and customary for facilities of this kind, including without limitation:   1. Delivery of Financial Statements, Budget and Financial Projections 2. Delivery of Notices (including notices of default, litigation, and material adverse change) 3. Maintenance of Existence, Compliance with Law 4. Performance of Material Contracts 5. Maintenance of Property; Insurance 6. Inspection of Property; Books and Records 7. Environmental Laws 8. Use of Proceeds 9. Further Assurances 10. Limitation on Debt 11. Limitation on Liens 12. Mergers; Nature of Business 13. Limitation on Investments 14. Limitation on Dispositions 15. Limitation on Sales and Leasebacks 16. Limitation on Restricted Payments 17. [Limitation on Prepayments of Debt and Amendments of Debt Instruments] 18. Limitation on Transactions with Affiliates 19. Limitation on Restrictive Agreements 20. Limitation on Amendments of Material Contracts 21. [Financial covenants to be determined.][[15]](#footnote-15) |
| Events of Default[[16]](#footnote-16) | Events of default as are usual and customary for facilities of this kind, including without limitation:   1. Failure to make [Insert Number of Payments] payment(s)[[17]](#footnote-17) 2. Failure to repay the RBL Obligation by the Maturity Date 3. Representations and warranties untrue in any material respect 4. Failure to comply with covenants 5. Bankruptcy or insolvency 6. Unsatisfied judgments 7. Cross-default and cross-acceleration for material debt 8. Change of Control/Key personnel 9. Material Adverse Effect |
| Economic Agreement and Usury Protection | Typical severability and interest rate limitation provisions.[[18]](#footnote-18) |
| Assignments/ Participations | Lender may Assign or Participate the Facility upon written notice to Company; Company may not assign obligations under the loan without Lender’s consent, in its sole discretion.[[19]](#footnote-19) |
| Governing Law | [Lender’s preferred jurisdiction][[20]](#footnote-20) |
| Confidentiality | The Company will hold this term sheet in strict confidence. This is a binding term. |
| No-Shop | The Company and Lender agree to work in good faith expeditiously towards a closing. The Company agrees that it will not, for a period of [30 days] from the date these terms are accepted, solicit additional financing or investment without Lender’s consent unless Lender terminates discussions to provide the financing prior to the end of such period. |
| Optional Terms | |
| Maturity Extension | If the RBL Obligation is not fulfilled by the Maturity Date, the parties may mutually agree to automatically extend the Maturity Date.[[21]](#footnote-21) |
| RBL Obligation Adjustments | If the Company meets the RBL Obligation prior to the Maturity Date, the RBL Obligation shall be adjusted as follows: Prior to the 4th anniversary: [#]x, Prior to the 3rd anniversary: [#]x, Prior to the 2nd anniversary: [ ]x.[[22]](#footnote-22) |
| Revenue Floor | The Borrow will only be obligated to make Revenue Payments if the Company’s Revenue exceeds [$ Insert Amount] per payment period.[[23]](#footnote-23) |
| Seniority / Subordination | [Describe Seniority/Subordination].[[24]](#footnote-24) |
| Security and Guarantees[[25]](#footnote-25) | The RBL shall be unsecured and have no guarantors. |
| Board Observer[[26]](#footnote-26) | During the term of the RBL, the Lender shall be entitled to designate one (1) representative of the Lender to attend meetings of the Company’s [Governing Body] in the capacity of a non-voting observer. |
| Securities Legend[[27]](#footnote-27) | Customary Securities Legend. |
| Representations and Warranties of the Lender[[28]](#footnote-28) | Customary investor representations for private securities investments. |
| Equity Consideration / Conversion[[29]](#footnote-29) | “The Company shall provide the Lender a warrant to allow the Lender to purchase [$ Insert Amount] of the Company’s next Qualifying Financing Round.”  “If the Company conducts a Qualifying Financing Round prior to the Maturity Date and the RBL Obligation has not been paid, then the Lender shall have the right, but not the obligation, to convert the unpaid amount of the RBL Obligation as of immediately prior to the closing of the Qualifying Financing Round, into the same class of shares being purchased Qualifying Financing Round at a price per share equal (a) the lowest price per share available in the round or (b) [Insert Valuation Cap] divided by the fully diluted share total of the Company, whichever is lower. The Company shall inform the Lender of such Qualifying Financing Round [Insert Number of Days] prior to its closing, which upon receiving such notice the Lender shall have [Insert Number of Days] to elect and notify the Company of its intention to convert the remaining RBL Obligations to equity. Upon the conversion of the remaining RBL Obligations to equity in the Qualifying Financing Round, the RBL Obligations will be considered satisfied.” |

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the Company and the Lender have each duly executed this Term Sheet as of the \_\_\_ day of \_\_\_\_\_, 202\_.

**[COMPANY]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

**[LENDER]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

1. This Term Sheet has been prepared for the Innovative Finance Project and has been structured to be “debt like” as compared to an alternative Term Sheet published by the Innovative Finance Project that is intended to be “equity like”. This Term Sheet and the Revenue Based Loan contemplated hereby assumes that the Lender and Company desire to structure an investment by the Lender that is (1) non-dilutive, in that the Lender takes no equity interest in the Company; (2) treated as a loan (or loan-like investment) under most accounting systems; and (3) relatively founder friendly, while (4) protecting the Lender’s economic interest in its initial investment and primarily capped return expectations. Accommodating these elements yielded a balance between the Lender protective vs. company favorable perspectives that intentionally is less protective of the Lender than would be a traditional fixed or floating rate debt investment, but more protective of the Lender than would be a traditional equity investment.

   Please note that this term sheet contains various options for terms related to RBF financing. Text contained in brackets represent different options available for the relevant terms. These options are not an extensive list. In certain instances it will make sense to only pick one of these options, a combination, none at all, or pick an entirely new option not contained in this Term Sheet. This Term Sheet also includes a number of optional categories and provisions to consider based on the specific nature of the Company’s business, the economic model of the Lender’s investments, and the agreed approach toward RBF by the parties.

   This RBL Term Sheet is based on standard terms for a traditional loan agreement and modified to include revenue-based repayment mechanism and investment multiple rather than a principal amount and interest payments. Certain lenders, such as Community Development Financial Institutions may approach RBL as a flexible modification of customary payment terms in familiar loan documentation. Other lenders may have a desire for a higher multiple and reduced covenant and documentation set—approximating a more “venture like” investment.

   The approach of both the Company and the Lender toward RBF requires discussion and a meeting of the minds on important structural considerations such as tax and accounting treatment allocations of principal and interest versus capital gains, lending licensing, securities offerings, and usury laws, among other issues flagged in the Innovative Finance Project. [↑](#footnote-ref-1)
2. As noted in the prior footnote, Lenders will approach RBL with different economic interest, relationships with borrowers, and requirements from their own sources of capital. For the purposes of this Term Sheet, we have assumed that a Lender will be appropriately authorized to make loans in the context of the Lender’s business, including any appropriate state or federal registration and regulation of financial institutions or other organizations in the business of making loans. Of particular concern for investors new to the RBF instruments and desiring to structure investments as loans will be a review of state lending license requirements and state interest rate limitations relating to licensing or usury. [↑](#footnote-ref-2)
3. For purposes of this Term Sheet, we have assumed that the RBL will be provided to a single borrower from a single Lender in a single disbursement on the Closing Date. Syndicated lending facilities would require modest modifications to the Term Sheet, based on customary documentation, which are outside of the scope of this particular Term Sheet project. [↑](#footnote-ref-3)
4. For purposes of this Term Sheet, we have defined the RBF “multiple” or “cap” as a form of “Obligation”, which is customary for lending documents. [↑](#footnote-ref-4)
5. A Lender may charge a structuring fee, closing fee, or upfront fee which may be deducted from the Loan Amount at disbursement or included in a repayment obligation at maturity. [↑](#footnote-ref-5)
6. In addition to acceleration of the maturity of the RBL Obligations, the parties may contract for other remedies upon an Event of Default, such as a Board observer seat or conversion of the RBL into equity. See the discussion of Optional Terms included at the end of this Term Sheet. [↑](#footnote-ref-6)
7. The economic structure of the RBL would discourage a borrower from making optional prepayments. Without a discounted multiple for prepayment (*see RBL Obligation Adjustments*), optional prepayments increase the cost of capital for a borrower. [↑](#footnote-ref-7)
8. An RBL could also include a straight-line interest rate payment or amortization mechanism in addition to contingent revenue payments. This structure would mimic a traditional loan with an additional mandatory prepayment such as an “excess cash flow sweep”. An RBL may also include a minimum and/or maximum payment for each payment period. See, for example, the Revenue Floor description in the Optional Terms section of this Term Sheet. [↑](#footnote-ref-8)
9. The revenue payment obligation may begin in the first payment period following the Closing Date, deferred to a particular date in the future, or contingent on the Company meeting particular revenue or other financial metrics. While a “honeymoon period”, will likely require certain tax treatment regarding Original Issue Discount, we see a delayed start to payments to ensure affordability as best practices for these instruments. [↑](#footnote-ref-9)
10. This definition is included as an example only, and we expect the parties will negotiate a specific definition that makes sense based on the Company’s business and operations on a case-by-case basis. See also the discussion of Available Redemption Funds and related definitions in the RBF (Equity Style) Redeemable Preferred Term Sheet. [↑](#footnote-ref-10)
11. This Term Sheet includes a detailed list of Conditions Precedent. For a “short form” term sheet, the description of Conditions Precedent could be limited to “Conditions precedent as are usual and customary for facilities of this kind.” [↑](#footnote-ref-11)
12. For RBL, the diligence would typically include a detailed budget, revenue projections over the tenor of the RBL, and anticipated use of proceeds. [↑](#footnote-ref-12)
13. This Term Sheet includes a detailed list of Representations and Warranties of the Company. For a “short form” term sheet, the description of Representations and Warranties could be limited to “Representations and warranties by the Company as are usual and customary for facilities of this kind.” Additional categories of Representations may include: Labor Matters, ERISA, Margin Regulations, Investment Company Act, Security, Solvency. [↑](#footnote-ref-13)
14. This Term Sheet includes a detailed list of Affirmative and Negative Covenants. For a “short form” term sheet, the description of Covenants could be limited to “Affirmative and negative covenants as are usual and customary for facilities of this kind.” RBL Agreements typically include a limited set of covenants, however, Lenders accustomed to making traditional loans may prefer to adapt their own loan documentation, including a more fulsome set of covenants. [↑](#footnote-ref-14)
15. Financial covenants are not typical for RBL agreements. [↑](#footnote-ref-15)
16. This Term Sheet includes a detailed list of Events of Default. For a “short form” term sheet, the description of Events of Default could be limited to “Events of default as are usual and customary for facilities of this kind.” [↑](#footnote-ref-16)
17. In traditional loan agreements, failure to making scheduled principal or interest payments trigger an Event of Default. However, for RBL, payments are tied to the revenue of the Company. The parties may negotiate an Event of Default when certain revenue targets (and therefore, revenue-based payments) are not met. For example, failure to generate revenue by a certain date, or a certain number of consecutive missed revenue payments/targets. [↑](#footnote-ref-17)
18. Protecting the economic agreement of the parties against adverse usury enforcement is a frequent concern among revenue-based lenders. Usury definitions and enforcement are highly jurisdiction specific and interrelated to the regulatory environment or source of capital for each lender. For example, a lender providing RBL through Small Business Administration or other state or federal capital sources may be explicitly restricted from lending above a particular implied APR/APY. Although a full treatment of usury is outside the scope of this Term Sheet, we have included sample severability and interest rate limitation provisions. These provisions are customary in most commercial lending documentation and the interest rate provision included here contains additional nuance regarding the accounting treatment of interest payments, since an RBL Agreement would not include a stated interest rate. For lenders willing to reduce the multiple of an RBL to provide additional usury protection, see RBL Obligation Adjustments provision in the Optional Terms section of this Term Sheet.

    Severability: “In the event that any provision of this Agreement or the other Transaction Documents is found to be invalid or unenforceable, (a) the remaining provisions shall remain in full force and effect and (b) the parties shall endeavor in good faith negotiations to replace the invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid or unenforceable provisions.”

    Interest Rate Limitation: “In the event that portions of the Company’s Monthly Payments are allocated as interest payments, and it is determined that the imputed rate of such interest allocations was in excess of the then-legal maximum rate, then that portion of the payment representing allocated interest in excess of the then legal maximum rates shall be deemed a payment of principal and applied against the Loaned Amount. In determining whether the imputed rate of interest contracted for, charged, or received by the Lender exceeds such maximum rate, the Lender may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.” [↑](#footnote-ref-18)
19. Parties looking to structure assignments and participations as part of an RBL facility should seek additional tax and accounting advice regarding unique tax and accounting treatment of basis in RBF. [↑](#footnote-ref-19)
20. For purposes of this Term Sheet, we have assumed that a lender will have a preferred jurisdiction for governing law. Note that certain jurisdictions that are typically “lender friendly” or with well-developed case law on lending, such as New York, may also have licensing requirements and treatment of economic arrangements as usurious in smaller-dollar RBL Agreements. A full treatment of jurisdiction choice is outside of the scope of this Term Sheet project and would require a highly contextual evaluation of the parties and the proposed RBL. [↑](#footnote-ref-20)
21. A fixed maturity date is preferable to set economic expectations of the parties and to allow for appropriate tax and accounting treatment of the RBL. A Company may not meet the RBL Obligation prior to the maturity of the loan. Rather than requiring an amendment or waiver of any associated Event of Default, the parties may wish to structure one or more automatic pre-agreed extensions. [↑](#footnote-ref-21)
22. The parties may agree to adjust the RBL Obligation/Multiple under certain circumstances. For example, to encourage high revenue growth and early prepayment, the multiple may be reduced based on the timing of prepayment. A reduced multiple would also protect the parties against usury concerns or restrictions from capital sources where an effective APR/APY would increase if the Company meets the RBL Obligation prior to the maturity date. This provision could be tailored to adjust the obligation only in certain instances. For example, the RBL Obligation could step down if paid early due to high revenue, but not where a borrower has a Change of Control or is seeking to refinance at a lower cost of capital. An RBL Obligation could increase in the event of a Change of Control, offering a lender upside in a sale of a Company. However, such an economic arrangement could cause a reevaluation of the “loan-like” treatment of the RBL to a “equity-like” characterization. See also the discussion regarding Economic Agreement and Usury Protection in the prior section of this Term Sheet. [↑](#footnote-ref-22)
23. Note this definition may also be structured as an accounting calculation. For example, “in the event that the Company’s revenue exceeds two times the amount of liabilities payable during said payment period.” [↑](#footnote-ref-23)
24. RBL Agreements sit in a spectrum of financing relationships. Depending on the relationship, an RBL may require seniority and restrict a Borrower from assuming any other pari-passu debt. Conversely, a more catalytic RBL may explicitly subordinate the RBL to future lenders, offering terms more akin to a convertible note, when paired with warrants or convertibility features. [↑](#footnote-ref-24)
25. RBL Agreements are typically unsecured and not guaranteed. However, certain lenders moving from traditional senior-secured facilities into RBF investments, or lenders with particular agreements relating to their source of capital may use security and guarantees. A more venture-style lender may which to offer a covenant-lite agreement or “thin” documentation in exchange for a personal guarantee from a founder. [↑](#footnote-ref-25)
26. RBL lenders may wish to take an observer seat along with the investment or upon an Event of Default. Due to concerns regarding conflicting fiduciary duties and lender liability, RBL lenders do not typically take full board seats along with the investment. [↑](#footnote-ref-26)
27. For RBL Agreements that tends toward “equity-like” RBF, the investment could be considered a security under the Howey test or state securities laws. The parties may wish to include typical a typical securities legend and “investor” representations to support an exempt private placement characterization of the investment. [↑](#footnote-ref-27)
28. Representations and warranties by the lender for securities compliance, e.g., Organizational Status and Authority, Authorization and Enforceability, Accredited Lender Status, Purchased Entirely for Own Account, Disclosure of Information, Non-Reliance, Investment Experience, Restricted Investment, No Public Market, No General Solicitation, Residence, Foreign Investments. [↑](#footnote-ref-28)
29. An RBL Agreement may include a mechanism to convert some or all of the RBL Obligation into equity of the Company, upon an Event of Default, a Change of Control or upon some other trigger. A lender may also require warrants as a condition of the RBL investment. The provisions included here are as an example only, and we expect the parties will negotiate specific definitions and mechanisms that makes sense based on the Company’s business and operations on a case-by-case basis. Note that equity-related provisions would also influence the characterization of an RBF as “equity-like” or “loan-like”. See also discussion of RBL Obligation Adjustments in the prior section of this Term Sheet. [↑](#footnote-ref-29)