

# OTA'S TERM SHEET CHECKLIST

CONSIDER OTA'S "RIGHTS & REMEDIES" IN EACH OF THESE POTENTIAL EVENTS

## **CEO Issues:**

- Dies
- Resigns
- Demands compensation/perquisites we feel are excessive
- Falls short of achieving the business plan milestones
- We want to replace him/her for other reasons

## **Other C-Level Officer Issues:**

- Die
- Resign
- Demand compensation/perquisites we feel are excessive
- Performance is unacceptable to us
- We want to replace him/her/them for other reasons

## **Board of Directors Issues:**

- Any director dies or resigns
- We want to replace our director(s) for whatever reason
- Company and/or later investors want to increase/change BOD composition
- We want to take control of the BOD
- We want to observe board meetings later (after we no longer have a BOD seat)
- We want someone other than the CEO to approve compensation plans and review audits

## **Company Raises Capital via Debt which:**

- Is senior to, or pari passu with, our security
- Is junior to our security
- Is any new indebtedness which we oppose for whatever reason
- Involves any shareholders or employees
- Or... any existing debt is pre-paid or re-structured

## **Company Increases or Changes the Options Pool, and:**

- We agree
- We disagree

## **Company Raises Capital via Equity:**

- We agree
- We disagree
- Flat or up round
- Down round
- We want to participate
- We don't want to participate
- Do we have to participate (Pay to Play)?

## **Pulling the Redemption Trigger:**

- We agree... can we force it?
- We disagree... can we be overruled?

**Exit Events:**

- Voluntary Bankruptcy (We agree; disagree)
- Voluntary dissolution (We agree; disagree)
- A stock or asset purchase bid arrives and we like it; We don't
- Company seeks an IPO and we agree; We disagree
- Company wants to sell a subsidiary or some (not all) assets and we agree; We disagree
- We want to force a partial or full liquidity event and the BOD agrees; It disagrees
- Outside shareholders or employees want to sell some of their shares (Co-Sale; ROFR)
- We want to sell some of our shares

**Miscellaneous:**

- Right to approve excessive (define) capital expenditures or lease obligations
- Company wants to settle material law suit (We agree; disagree)
- Company wants to license key IP (We agree; disagree)
- Presume that a material course correction in the original business plan is made, or is needed. How would we drive such a change? Can we block it if we disagree?

**Information Rights: (Summarize)**

- Format and timing of monthly/quarterly/annual reporting
- Right to access / request any other information
- Right to receive annual budget / operating plan
- Does everyone have the same rights, or just "Majority Investors"?

**Composition of the Board of Directors:**

- Provide names of those elected by the common and the preferred shareholders, plus the outside directors.
- Explain which events, if any, will trigger a change in the control of the Board to provide the outside investors the majority.

**Voting Block Percentages:**

**OTAF Percentage**

**OTAF Sidecar Percentage**

**"Other Friendly" Percentage**

**"Likely Contentious" Percentage**

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100%