



Common Stock (“Common”).

Price Per Share: \$\_\_\_\_\_ (“Original Purchase Price”).

Capitalization of the Company: The current capitalization of the Company is set forth in Exhibit 1, and the capitalization of the Company after this proposed financing is set forth in Exhibit 2.<sup>5</sup>

Rights, Preferences, Privileges and Restrictions of Preferred Stock:

- (1) Dividend Provisions: [Starting on January 1, 200\_,] [T]he holders of the Preferred will be entitled to receive dividends [at the rate of \_\_\_% of the Original Purchase Price] whenever funds are legally available and when and as declared by the Board. No dividend shall be paid on the common at a rate greater than the rate at which dividends are paid on Preferred (based on the number of shares of Common into which the Preferred is convertible on the date the dividend is declared). Dividends on Preferred will be in preference to dividends paid on the Common. Dividends on the Preferred will be noncumulative.<sup>6</sup>
- (2) Liquidation Preference: In the event of any liquidation, dissolution or winding up of the Company, the holders of Preferred will be entitled to receive in preference to the holders of Common<sup>7</sup> an amount (“Liquidation Preference”) equal to the Original Purchase Price plus any dividends declared on the Preferred but not paid [and then to share with the holders of the Common in the remaining assets on an as-if-converted basis].<sup>8</sup> At

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<sup>5</sup> Exhibit 1 should show outstanding warrants, stock options, employee reserved stock and options, and outstanding Common, Preferred, and convertible securities. It may be useful for Exhibit 2 to show the capitalization of the Company taking into account the effect of anti-dilution provisions, if any, of any prior stock issuances.

<sup>6</sup> Because most start-up and emerging companies will not be typically in a position to pay dividends to the holders of the Preferred Stock, many dividend provisions are drafted as to not mandate or cumulate dividends. However, in some financings, the investors may require that dividends accrue and cumulate whether or not declared by the Board. Where dividends cumulate, companies will want all previously accrued but unpaid dividends to be waived upon the automatic conversion of the Preferred Stock; investors will want the unpaid dividends to be paid or to be converted into common stock. More commonly, accrued dividends will be paid upon liquidation or redemption of the Preferred. If dividends are required, the Company will want the dividends not to commence immediately and to have the option to pay such dividends in cash or stock.

<sup>7</sup> If the Company has other series or classes of Preferred Stock, this provision will need to address the liquidation preferences of those past issuances vis -à-vis the new Preferred issuance. For example, is a Series B round to be equal or superior to the liquidation preference of a Series A round?

<sup>8</sup> The bracketed language provides for a “participating preferred,” where on liquidation the Preferred first receives an amount equal to the original purchase price and unpaid dividends, plus an amount pro-rata with the Common as if the Preferred were converted. The Company will typically strongly resist this participating feature or attempt to mitigate its effect (*e.g.*, the participating feature will not apply if the investors have made at least a 25% annual compounded return on their investment or until the investors have received a 3-5x multiple of the Original Purchase Price). This participating provision results in the payment of the Liquidation Preference on each share of Preferred

the option of the holders of Preferred, the effectuation by the Company or third party acquirors of a transaction or series of transactions in which more than [50%] [80%] of the voting power of the Company is disposed of to a single person or group of affiliated persons or the consolidation or merger of the Company with or into any other corporation or corporations or the sale of all or substantially all of its assets shall be deemed to be a liquidation, dissolution or winding up for purposes of the liquidation preference.

- (3) Conversion: A holder of Preferred will have the right to convert Preferred, at the option of the holder, at any time, into shares of Common. The total number of shares of Common into which Preferred may be converted initially will be determined by dividing the Original Purchase Price by the conversion price. The initial conversion price will be the Original Purchase Price. The conversion price will be the subject of adjustment to reflect stock dividends, stock splits and similar events and as provided in paragraph (5) below.
- (4) Automatic Conversion:<sup>9</sup> The Preferred will be automatically converted into Common, at the then applicable conversion price, upon the closing of a sale of the Company's shares of Common Stock pursuant to a firm commitment underwritten public offering by the Company at a public offering price per share (prior to underwriter commissions and discounts) that is not less than \$\_\_\_\_\_ <sup>10</sup> in an offering greater than [\$15 million].<sup>11</sup>
- (5) Antidilution Provisions: The conversion price of the

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from the proceeds of a merger or sale of the Company. After such payment, in a "participating preferred," all holders of Preferred and Common typically share the balance of the proceeds on an "as converted" basis. Entrepreneurs who hold Common are often disappointed when they realize that the payment of the Liquidation Preference results in sharply lower per share prices for their Common. A participating preferred provision can also result in situations where investors may favor a sale of the Company that founders would oppose.

<sup>9</sup> The purpose of this automatic conversion provision is to clean up and simplify the Company's capitalization structure at the initial public offering stage. The underwriters in an IPO will want the capitalization structure simplified as much as possible without unusual rights outstanding to minority investors.

<sup>10</sup> This number will vary depending on the stage of the Company's progress at the time of this financing. The investors will not want to be forced to convert to Common Stock unless they have received a sufficient return on their investment; and this figure also represents a "target" minimum valuation for the Company's IPO.

<sup>11</sup> This number is typically \$15 million to \$20 million. Automatic conversion of the Preferred is also sometimes required (i) when less than 25% of the Preferred shares issued in this financing remain outstanding or (ii) upon the affirmative vote of more than 50% of the outstanding series of Preferred.

Preferred will be subject to adjustment (i) for stock dividends, stock splits, or similar events, and (ii) on a weighted average basis to prevent dilution in the event that the Company issues additional shares at a purchase price less<sup>12</sup> than the applicable conversion price.<sup>13</sup> No adjustment to the conversion price will occur for any issuance of additional shares at a purchase price in excess of the current conversion price. Conversion prices will not be adjusted because of (a) conversion of Preferred Stock, (b) the issuance and sale of, or the grant of options to purchase, \_\_\_\_\_<sup>14</sup> shares of Common pursuant to the Company's employee stock purchase or option plans (the "Reserved Employee Shares"), [or (c) options or stock issued to equipment lessors and bank lenders.]

- (6) Voting Rights: Except with respect to election of Directors, a holder of Preferred will have the right to that number of votes equal to the number of shares of Common issuable upon conversion of its Preferred at the time the shares are voted. Election of Directors will be as described under "Board Representation" below.
- (7) Protective Provisions: [So long as there are at least \_\_\_\_\_ shares of Preferred outstanding,]<sup>15</sup> consent of the holders of at least a majority of the outstanding Preferred will be required for any action which would:
  - (i) amend or repeal any provision of, or add any provision to, the Company's [Articles of Organization]

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<sup>12</sup> An alternate provision, the so-called "ratchet provision," which is quite onerous from the Company's standpoint, provides that upon a dilutive financing, the conversion price of the diluted shares is adjusted downward to the issuance price of the dilutive financing. An additional provision, the so-called "pay to play provision," which can be burdensome from the investors' standpoint, provides that the investors must participate pro rata in the dilutive financing (or perhaps even in all future financings) in order to retain antidilution protection for their shares. Lead investors sometimes require a pay to play provision to prevent "free-riding" by minor investors. The "pay to play" provision could also provide that any investor that does not participate pro rata in future financings (or dilutive future financings) would be converted to Common Stock.

<sup>13</sup> Weighted average is still the most typical antidilution protection. It adjusts our conversion ratio based on a formula that takes into account the lower price per share in the "down round" and the number of shares actually sold in the "down round." The broad-based weighted average formula is less favorable to investors because it takes into account unexercised options and outstanding convertible notes and warrants. This means that the effect of the issuance of shares in the "down round" is diluted or spread over a "broader base." The less typical narrow-based weighted average formula does not take into account unexercised options and outstanding convertible notes and warrants, and therefore is more favorable to investors.

<sup>14</sup> This number is typically 10% -20% of the Company's capital stock. This provision can be alternatively worded to exclude any stock options or stock to employees approved by the Board.

<sup>15</sup> The Company may request the bracketed language, so that the protective provisions would no longer apply if the number of outstanding shares of the Preferred were reduced to a designated percentage (e.g., 25%).

[Certificate of Incorporation]<sup>16</sup> or Bylaws to change the rights of the Preferred, or increase or decrease the number of authorized shares of the Preferred; (ii) create any new series or class or shares having a preference or priority as to dividends or assets superior to or on a parity with that of the Preferred; (iii) create any bonds, notes or other obligations convertible into, exchangeable for or having option rights to purchase shares of stock with any preference or priority as to dividends or assets superior to or on a parity with that of the Preferred; (iv) reclassify any class or series of Common into shares with a preference or priority as to dividends or assets superior to or on a parity with that of the Preferred; (v) apply any of its assets to the redemption or acquisition of any shares of Common, except from employees, advisors, officers, directors, consultants and service providers of the Company on terms approved by the Board; (vi) agree to a merger, sale or consolidation of the Company with another entity or the effectuation of any transaction or series of related transactions in which more than [50%] [80%] of the voting power of the Company is disposed; [(vii) changes in the nature of the Company's business; or (viii) authorization of any amount of indebtedness in excess of \$\_\_\_\_\_].<sup>17</sup>

Redemption:<sup>18</sup>

The Company shall redeem the Preferred in [three] equal annual installments commencing [six] years from the date of purchase by paying in cash an amount equal to the Original Purchase Price plus any declared but unpaid dividends [plus \_\_\_% for each year the Preferred Stock is outstanding]. To the extent that the Company may not at any such date legally redeem such Preferred, such redemption will take place as soon as legally permitted.<sup>19</sup>

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<sup>16</sup> The term "Articles of Organization" is used for Massachusetts corporations and "Certificate of Incorporation" for Delaware corporations.

<sup>17</sup> In subsequent rounds of financing, the determination of whether all series of preferred vote together as a class or separately as individual series, takes on great importance. Certain actions affecting the series remain protected under statute. On the other hand, the Company may request that the Preferred holders vote together in favor of a merger or sale so long as the Preferred have received a designated return on their investment.

<sup>18</sup> The Company will typically resist a redemption feature, on the theory that the expected liquidity will be achieved when the Company goes public or is acquired. The venture investors typically insist on the redemption feature to force the Company to cash them out at some point (assuming funds are available), if the other liquidity options have not materialized. Redemption features may have important tax consequences.

<sup>19</sup> Investors may require that if a redemption is not made on schedule, the conversion price of the shares not so redeemed shall be reduced by some percentage. In some cases, the unredeemed shares' conversion price continues to be adjusted downward until the shares are redeemed. Alternatively or additionally, the terms may provide that the holders of a majority of the Preferred shall be entitled to elect a majority of the Company's Board of Directors until the redemption amounts are paid in full.

- Information and Registration Rights:<sup>20</sup>
- (1) Registration Rights Agreement: The information and registration rights provisions between the Company and any past purchasers of the Company's stock shall be merged with the registration rights of the investors in this transaction to be set forth in an Investors Rights Agreement (the "Rights Agreement").
  - (2) Information Rights: So long as an investor holds Preferred (or Common issued upon conversion of Preferred), the Company will deliver to such investor annual audited and quarterly unaudited financial statements. So long as the investor holds at least \_\_\_%<sup>21</sup> of the Preferred (or Common issued upon conversion of the Preferred), and the Company has not gone public, the Company will timely furnish such investor with budgets and monthly financial statements.
  - (3) Demand Rights on Forms other than Form S-3: If, at any time after the earlier of the Company's initial public offering and the date [three] years from the purchase of the Preferred (but not within 180 days of the effective date of a registration), investors holding at least \_\_\_%<sup>22</sup> of the Preferred (or Common issued upon conversion of the Preferred) request that the Company file a Registration Statement for at least \_\_\_%<sup>23</sup> of the Common issued or issuable upon conversion of the Preferred (or any lesser percentage if the aggregate offering price to the public would exceed \$[5] million), the Company will use its reasonably diligent efforts to cause such shares to be registered. The Company will not be obligated to effect more than two registrations (other than on Form S-3) under these demand registration right provisions.
  - (4) Registrations on Form S-3: Holders of at least \_\_\_% of the Preferred (or Common Stock issuable upon

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<sup>20</sup> A short form provision that would replace sections (1) through (9) under this Information and Registration Rights provision is as follows:

"The investors shall have demand, piggyback, and S-3 registration rights and related rights, and information rights, in the manner customary for transactions of this nature, all as to be detailed in the definitive documents."

<sup>21</sup> This number is typically 5% to 10% of the Company's fully-diluted capitalization.

<sup>22</sup> This number is typically 25% to 50%.

<sup>23</sup> This number is typically 25% to 50%.

conversion of the Preferred) will have the right to require the Company to file up to [four] Registration Statements of its Common Stock on Form S-3 (or any equivalent successor form) if the anticipated aggregate public offering price to the public would exceed \$\_\_\_\_\_.<sup>24</sup>

- (5) Piggy-Back Registration: The investors will be entitled to “piggy-back” registration rights on registrations of the Company or on any demand registrations, subject to the right of the Company and its underwriters, in view of market conditions, to reduce or eliminate the number of shares of the investors proposed to be registered.<sup>25</sup>
- (6) Registration Expenses: All registration expenses (exclusive of underwriting discounts and commissions and special counsel fees of a selling shareholder) shall be borne by the Company.
- (7) Transfer of Registration Rights: The registration rights may be transferred to a transferee (other than a competitor of the Company) who acquires at least [25%] of the shares held by a holder of Preferred (or Common issued upon conversion of Preferred). Transfer of registration rights to a limited or general partner of any investor will be without restriction as to minimum shareholding.<sup>26</sup>
- (8) Future Purchasers of Company Securities:<sup>27</sup> Subsequent purchasers of the Company’s securities may be granted information and registration rights upon consent of the holders of at least 51% of the holders of registration

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<sup>24</sup> Typically \$500,000 to \$1,000,000. Rather than an absolute limit on the number of S-3 registrations, the investors may request an unlimited number, subject to no more than two S-3 registrations in any 12-month period. It is negotiable as to who bears the expense of such S-3 registrations; at least after some minimum number.

<sup>25</sup> The investors may request that any underwriter cutbacks from piggyback rights be effectuated first from the founders and other shareholders before any cutback of investors’ shares. The Company may also request that the registration rights not be exercisable if the investors are able to use the benefits of SEC Rule 144, 144A, or a comparable rule. Investors will generally resist such a provision, as the mere availability of Rule 144 does not guarantee liquidity options. Often, provisions will be made for termination of registration rights after a specified number of years following an IPO or once the investor falls below a specified ownership position (e.g., 2%) and Rule 144 is available.

<sup>26</sup> This is intended to allow distribution of securities from a venture fund to its partners.

<sup>27</sup> The Company has to address the issue of what registration rights can be given to future investors, and what consents from this round of investors will be necessary.

rights.<sup>28</sup>

- (9) Other Registration Provisions: Other provisions will be contained in the Rights Agreement with respect to registration rights as are customary, including cross-indemnification, the Company's ability to delay the filing of the demand registration for a period of not more than 180 days, the agreement by purchasers of the Preferred if requested by the underwriter in a public offering not to sell any Company securities they hold for a period of up to 180 days following the effective date of the Registration Statement of such offering, underwriting arrangements and the like. The registration rights will only apply to Common issued upon conversion of Preferred and the Company shall have no obligation to register an offering of Preferred.

Board Representation:

The authorized number of directors of the Company will be not less than \_\_\_\_\_ nor more than \_\_\_\_\_, to be initially fixed at \_\_\_\_\_. So long as [25%] or more of the Preferred issued in this financing remain outstanding, the Preferred (voting as a class) will elect \_\_\_\_\_ directors and the Common (voting as a class) will elect \_\_\_\_\_ directors. If at any time, less than [25%] of the Preferred remains outstanding, all of the directors will be elected by the Preferred and Common voting together as one class, and the Preferred will be entitled to vote as if all of the Preferred were converted to Common.<sup>29</sup>

[Alternative Board of Directors provisions:

[The Company's Certificate of Incorporation shall provide that the] Board shall consist of \_\_\_\_ members, with the holders of a majority of Series \_\_\_\_ Preferred Stock entitled to elect \_\_\_\_\_ member(s) [and the holders of a majority of the Common Stock entitled to elect \_\_\_\_ member(s)]. [The Company and the Investors intend to select \_\_\_\_ outside director with relevant industry experience as soon as possible after Closing.] Board composition at Closing shall be \_\_\_\_\_, [with \_\_\_\_\_ vacancy].

[Board visitation rights?]

[Compensation Committee:

The Board shall appoint and maintain a Compensation Committee, which shall contain no more than three persons, one of whom shall be a representative of the Investors. The Compensation Committee shall administer the Company's stock

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<sup>28</sup> The Company will prefer that it be allowed to grant pari passu registration rights to future investors (or, sometimes, warrant holders) without the consent of any of the holders of registration rights granted hereunder.

<sup>29</sup> This provision can be highly negotiated and subject to many alternatives. Some alternative/additional provisions are set forth above. Often the voting arrangements are set forth in a separate Voting or Stockholders Agreement.

option plan and make recommendations to the Board of Directors with respect to management compensation and terms of employment. The Board of Directors shall have the power to accept or reject any recommendation of the Compensation Committee, but shall not approve an employee's compensation in amounts which differ from the amounts recommended by the Compensation Committee.]

Expense Reimbursement for Outside Directors:

The Company shall reimburse outside directors for all reasonable expenses incurred in their services as a director of the Company.

Use of Proceeds:

The proceeds from the sale of the Preferred will be used for working capital.<sup>30</sup>

Employment Relationships:

The Company has or will have prior to the closing employment agreements with the following persons: \_\_\_\_\_.  
The Company will hire persons to the following positions: \_\_\_\_\_.<sup>31</sup>

Stock Restriction and Vesting Agreements:<sup>32</sup>

The founders of the Company and [all] other holders of [\_\_\_\_\_ shares of] Common of the Company who are employees of, or consultants to, the Company will execute a Stock Restriction and Vesting Agreement with the Company pursuant to which the Company will have a repurchase option to buy back at cost a portion of the shares of Common Stock held by such person in the event that such shareholder's employment with, or consulting to, the Company is terminated prior to the expiration of [48] months from the date of the purchase of the Preferred or date of first employment or consulting, whichever is later (the "Starting Date").<sup>33</sup> A portion of the shares will be released from the repurchase option based upon continued employment by the Company as follows: [1/48<sup>th</sup>] will be released from the repurchase option at the end of each month from the Starting Date. In addition, the Company will have a

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<sup>30</sup> If the proceeds are to be used for a specific purpose, this provision will need to be amended accordingly.

<sup>31</sup> In early stage companies, venture investors often insist that a new chief executive officer, acceptable to the investors, be employed.

<sup>32</sup> This would not be typically applicable for later rounds of financings, as early stage venture investors will have likely insisted on such agreements. In later stage rounds, investors may request specified vesting schedules applicable to all employee option grants.

<sup>33</sup> This vesting provision can be heavily negotiated, with the primary issues revolving around: (1) which founders and employees are subject to this vesting provision, (2) whether all of the shares will be subject to vesting, (3) how long the vesting period is to last, and (4) whether monthly or other time period vesting should occur. Founders are often deemed to be vested in at least a portion of their stock reflecting service to the Company prior to the investment. Founders also sometimes request that accelerated vesting occur in the event major milestones are met, the Company is sold or they are terminated without cause.

right of first refusal with respect to any employee's or consultant's shares proposed to be resold, terminable upon completion of a public offering by the Company.

Market Standoff Agreements:<sup>34</sup>

The Company, prior to closing, will cause all present holders of the Company's Common and all present holders of options to purchase the Company's Common to execute a Market Standoff Agreement with the Company pursuant to which such holders will not, if so requested by the Company or any underwriter's representative in connection with the first public offering of the Company's Common, sell or otherwise transfer any securities of the Company during a period of up to 180 days following the effective date of the registration statement. The Company will require all future purchasers of stock prior to the Company's initial public offering to execute such a Market Standoff Agreement.

Reserved Employee Shares:

The Company may reserve up to \_\_\_\_\_<sup>35</sup> shares of Common (the "Reserved Employee shares") inclusive of shares presently reserved for issuance upon the exercise of outstanding options for issuance to employees, officers and consultants. The Reserved Employee Shares will be issued from time to time under such arrangements, contracts or plans as are approved by the Board of Directors. Issuance of shares or options to employees in excess of the Reserved Employee Shares will be subject to the investors' right of first refusal described below. Holders of Reserved Employee Shares will be required to execute Stock Restriction and Vesting Agreements as described above.

Right of First Refusal:

In the event that the Company offers equity securities (other than Reserved Employee Shares, or upon conversion of outstanding Preferred, or upon exercise of outstanding options or warrants, or in connection with an acquisition or strategic vendor, leasing or lending arrangement, or in a public offering), each investor [who holds at least \_\_\_% of the Preferred Stock issued in this private placement] shall have a right of first refusal to purchase a pro rata percentage of shares in the new offering, based on the holder's percentage ownership interest in the Company. This right will terminate upon the Company's initial public offering.

Co-Sale Agreement:<sup>36</sup>

The founders [significant Common stockholders] of the Company shall execute a Co-Sale Agreement in which if any

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<sup>34</sup> This provision is also known as a Lock-Up Agreement. Often, the Market Standoff Agreement is folded into the Stock Restriction and Vesting Agreement or employee stock option or stock purchase agreements.

<sup>35</sup> This number is typically 10% -20% of the Company's capital stock.

<sup>36</sup> This Co-Sale Agreement will need to be coordinated with any prior Co-Sale Agreements signed by the founders.

founder [stockholder] proposes to sell shares of the Company, each investor will be entitled to participate in such sale by selling the same percentage of his stock as such founder is selling of such founder's [stockholder's] Common.<sup>37</sup> This right will terminate upon the Company's initial public offering.

Confidential Information and Inventions Assignment Agreement:

Each officer and [key] employee of the Company will enter into a Confidential Information and Inventions Assignment Agreement in a form reasonably acceptable to the Company and the investors.

The Stock Purchase Agreement:

The purchase of the Preferred, if consummated, will be made pursuant to a Stock Purchase Agreement (with exhibits) drafted by counsel to the investors and acceptable to the Company and the investors. The Stock Purchase Agreement will contain, among other things, representations and warranties of the Company,<sup>38</sup> covenants of the Company,<sup>39</sup> and conditions to the obligations of the investors.

Conditions of Closing:

The closing for the purchase of the Preferred will be conditioned upon:

- (1) Completion of due diligence to the satisfaction of the investors in their sole discretion.
- (2) Execution by the Company of a Stock Purchase Agreement and related agreements (including the Rights Agreement) satisfactory to the investors in their sole discretion.
- (3) Compliance by the Company with applicable securities laws.

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<sup>37</sup> Founders will sometimes request exclusions from this restriction, *e.g.*, that the founders are allowed to sell up to \$100,000 of their stock without the co-sale rights coming into effect.

<sup>38</sup> Often, in a seed or early-stage investment, the venture investors may also want representations and warranties from the founders, such as with respect to technology and inventions developed by the founders. Typical representations and warranties of the Company will include the following: organization and standing; capitalization, corporate power and authorization; subsidiaries; validity of securities; governmental consents; compliance with other instruments and laws; litigation; proprietary information agreements with employees; intellectual property; financial statements; absence of certain changes; material contracts and commitments; registration rights; title to property and assets; outstanding indebtedness and liabilities; shareholder agreements; employee compensation and pension plans; labor union activities; employee relations; tax returns and audits; disclosure and business plan; insurance; certain transactions; brokers or finders; Foreign Corrupt Practices Act; environmental regulations; returns and complaints; Section 83(b) elections; outstanding securities; and use of proceeds.

<sup>39</sup> Covenants will often include requirements by the Company to provide investors (or investors who hold a designated minimum number of shares) with monthly, quarterly, and annual financial and other information, unless contained in the Rights Agreement.

- (4) Opinion of counsel to the Company rendered to the investors in form and substance satisfactory to the investors.
- [(5) Key man life insurance having been obtained for the benefit of the Company on \_\_\_\_\_ for \$\_\_\_\_\_[, provided that the Company can obtain such insurance at normally prevailing rates for persons in good health].]
- [(6) Other material conditions.]
- (7) Such other conditions as are customary for transactions of this type.

Expenses: The Company will pay [up to \$\_\_\_\_\_] for the legal fees incurred by counsel to \_\_\_\_\_, together with out-of-pocket expenses incurred by such Counsel, payable at Closing by wire transfer or payable if the Company elects not to proceed with this transaction.

Confidentiality: The Company will not disclose or discuss the terms of this Term Sheet with any person other than key officers, members of the Board of Directors of the Company or the Company's accountants or attorneys without the written consent of Investor, except as required by law. In addition, the Company shall not use the Investor's name in any manner, context or format (including, reference on or links to websites, press releases, etc.) without the prior review and approval of Investor.

Exclusivity: From the signing date hereof until 5:00 P.M. [Boston] Time on \_\_\_\_\_, the Company [and the Founders] agree that they shall not solicit, encourage others to solicit, encourage or accept any offers for the purchase or acquisition of any capital stock of the Company, of all or any substantial part of the assets of the Company, or proposals for any merger or consolidation involving the Company, and they shall not negotiate with or enter into any agreement or understanding with any other person with respect to any such transaction.

Finders: The Company and the investors each will indemnify the other for any finder's fees for which that party is responsible.

Closing: The closing of the transaction, if all conditions are met, is expected to occur on or before \_\_\_\_\_, 200\_.

Counsel to the Investors: \_\_\_\_\_  
 \_\_\_\_\_  
 Phone: (\_\_\_\_\_) \_\_\_\_\_  
 Fax: (\_\_\_\_) \_\_\_\_\_  
 Attn: \_\_\_\_\_

Counsel to the Company:

\_\_\_\_\_  
\_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_  
Attn: \_\_\_\_\_

Distribution List:

The parties list for distribution of documents is set forth as Exhibit 3.

[Company Signature]

[Investor Signature]

Exhibit 1

[Current Capitalization  
of the Company]

Exhibit 2

[Capitalization of the Company  
after the Proposed Financing]

Exhibit 3

[Distribution List for Documents]