

Term Sheets

Gesmer
Updegrove_{LLP}

Jeremy Cohen
jeremy.cohen@gesmer.com

Offering Terms

<i>Securities to Issue:</i>	Shares of Series A Preferred Stock of the Company (the “Series A Preferred”).
<i>Closing Date:</i>	The “Initial Closing” is anticipated to be on or about _____, and will require a minimum investment of \$750,000. One or more additional closings may occur within 120 days after the first closing (with the Initial Closing, each, a “Closing”).
<i>Amount Raised:</i>	Up to \$1,500,000, which amount may be increased in the Company’s sole discretion.
<i>Pre-Money Valuation:</i>	The “Original Purchase Price” will be a per share price of \$2.67 based upon a fully-diluted pre-money valuation of \$5,000,000 (including an employee pool representing 5% of the fully-diluted post-money capitalization).

CHARTER

Dividends:

The Series A Preferred will carry an annual 5% cumulative dividend payable upon a liquidation or redemption. For any other dividends, Series A Preferred will participate with Common Stock on an as-converted basis.

Liquidation Preference:

In the event of any liquidation, dissolution or winding up of the Company, the proceeds shall be paid as follows: (i) first, to pay the Original Purchase Price plus accrued dividends on each share of Series A Preferred; and (ii) then, the balance of any proceeds shall be distributed pro rata to holders of Common Stock.

Liquidation Preference:

A merger or consolidation (other than one in which stockholders of the Company own a majority by voting power of the outstanding shares of the surviving or acquiring corporation) and a sale, lease, transfer, exclusive license or other disposition of all or substantially all of the assets of the Company will be treated as a liquidation event (a “**Deemed Liquidation Event**”), thereby triggering payment of the liquidation preferences described above unless the holders of a majority of the Series A Preferred elect otherwise. The Investors' entitlement to their liquidation preference shall not be abrogated or diminished in the event part of the consideration is subject to escrow in connection with a Deemed Liquidation Event.

Voting Rights:

The Series A Preferred shall vote together with the Common Stock on an as-converted basis, and not as a separate class, except (i) so long as at least 50% of the shares of Series A Preferred are outstanding, the Series A Preferred as a class shall be entitled to elect one member of the Board (the “**Series A Director**”), (ii) as required by law, and (iii) as provided in “*Protective Provisions*” below.

Protective Provisions:

So long as at least 50% of the shares of Series A Preferred are outstanding, in addition to any other vote or approval required under the Company's Charter or By-laws, the Company will not, without the vote or written consent of the holders of at least a majority of the Series A Preferred:

(i) liquidate, dissolve or wind-up the affairs of the Company, or effect any merger or consolidation or any other Deemed Liquidation Event; (ii) amend, alter, or repeal any provision of the Certificate of Incorporation or Bylaws in a manner adverse to the Series A Preferred;-(iii) create or authorize the creation of or issue any other security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to or on parity with the Series A Preferred, or increase the authorized number of shares of Series A Preferred; or (iv) purchase or redeem or pay any dividend on any capital stock prior to the Series A Preferred, other than stock repurchased from former employees or consultants in connection with the cessation of their employment/services, at the lower of fair market value or cost.

Optional Conversion:

The Series A Preferred initially converts 1:1 to Common Stock at any time at option of holder, subject to adjustments for stock dividends, splits, combinations and similar events and as described below under “*Anti-dilution Provisions.*”

Anti-dilution Provisions:

If the Company issues additional securities at a purchase price less than the current Series A Preferred conversion price, such conversion price shall be adjusted in accordance with the following formula:

$$CP_2 = CP_1 * (A+B) / (A+C)$$

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 and options in the unallocated option pool on an as-exercised basis; and does not include any convertible securities converting into this round of financing)

B = Aggregate consideration received by the Corporation with respect to the new issue divided by CP_1

C = Number of shares of stock issued in the subject transaction

Anti-dilution Provisions: The following issuances shall not trigger anti-dilution adjustment:

(i) securities issuable upon conversion of any of the Series A Preferred, or as a dividend or distribution on the Series A Preferred; (ii) securities issued upon the conversion of any debenture, warrant, option, or other convertible security; (iii) Common Stock issuable upon a stock split, stock dividend, or any subdivision of shares of Common Stock; and (iv) shares of Common Stock (or options to purchase such shares of Common Stock) issued or issuable to employees or directors of, or consultants to, the Company pursuant to any plan approved by the Company's Board of Directors; and (v) any securities with respect to which holders of a majority of the shares of Series A Preferred have waived anti-dilution protection.

Mandatory Conversion:

Each share of Series A Preferred will automatically be converted into Common Stock at the then applicable conversion rate upon the closing of a firm commitment underwritten public offering with a price of five times the Original Purchase Price (subject to adjustments for stock dividends, splits, combinations and similar events) and gross proceeds to the Company of not less than \$20,000,000 (a “QPO”), or (ii) upon the written consent of the holders of a majority% of the Series A Preferred.

Redemption Rights:

The Series A Preferred shall be redeemable from funds legally available for distribution at the option of holders of at least two-thirds of the Series A Preferred commencing any time after the seventh anniversary of the Initial Closing at a price equal to the Original Purchase Price plus all accrued but unpaid dividends. Redemption shall occur in three equal annual portions. Upon a redemption request from the holders of the required percentage of the Series A Preferred, all Series A Preferred shares shall be redeemed (except for any Series A holders who affirmatively opt-out).

STOCK PURCHASE AGREEMENT

Representations and Warranties:

Standard representations and warranties by the Company.

Conditions to Closing:

Standard conditions to Closing, which shall include, among other things, satisfactory completion of financial and legal due diligence, qualification of the shares under applicable Blue Sky laws, and the filing of a Certificate of Incorporation establishing the rights and preferences of the Series A Preferred.

Counsel and Expenses:

Company counsel to draft closing documents. Company to pay all legal and administrative costs of the financing at Closing, including reasonable fees (not to exceed \$25,000) and expenses of a single counsel for the Investors.

Right to Participate Pro Rata in Future Rounds:

All Investors shall have a pro rata right, based on their percentage equity ownership in the Company (assuming the conversion of all outstanding Preferred Stock into Common Stock and the exercise of all options outstanding under the Company's stock plans), to participate in subsequent issuances of equity securities of the Company (excluding those issuances listed at the end of the "*Anti-dilution Provisions*" section of this Term Sheet); provided, that this right to participate may be waived on behalf of all Investors by Investors holding a majority of the Series A Preferred.

Non-Competition and Non-Solicitation Agreement:

Each Founder and key employee will enter into a one year non-competition and non-solicitation agreement in a form reasonably acceptable to the Investors.

Non-Disclosure and Developments Agreement:

Each Founder, employee and consultant will enter into a non-disclosure and proprietary rights assignment agreement in a form reasonably acceptable to the Investors.

Board Matters:

Each Board Committee shall include the Series A Director. The Company will bind D&O insurance with a carrier and in an amount satisfactory to the Board of Directors.

Employee Stock Options:

All employee options to vest as follows: 25% after one year, with remaining vesting monthly over next 36 months.

Key Person Insurance:

Company to acquire life insurance on X in an amount satisfactory to the Board. Proceeds payable to the Company.

RIGHT OF FIRST REFUSAL / CO-SALE AGREEMENT

*Right of first Refusal/
Right of Co-Sale
(Take-me-Along):*

Company first and Investors second will have a right of first refusal with respect to any shares of capital stock of the Company proposed to be -transferred by Founders [and future employees holding greater than 3% of Company Common Stock (assuming conversion of Preferred Stock and whether then held or subject to the exercise of options), with a right of oversubscription for Investors of shares unsubscribed by the other Investors. Before any such person may sell Common Stock, he will give the Investors an opportunity to participate in such sale on a basis proportionate to the amount of securities held by the seller and those held by the participating Investors.

VOTING AGREEMENT

Board of Directors: At the initial Closing, the Board shall consist of three members comprised of (i) [_____] as the representative of the holders of Series A Preferred, and (ii) [_____] and [_____] as representatives of the holders of Common Stock.

Drag Along: Holders of Series A Preferred and the Founders and all future holders of Common Stock (assuming conversion of Series A Preferred and whether then held or subject to the exercise of options) shall be required to enter into an agreement with the Investors that provides that such stockholders will vote their shares in favor of a Deemed Liquidation Event or transaction in which 50% or more of the voting power of the Company is transferred and which is approved by the Board of Directors, holders of a majority of the outstanding shares of Common Stock and the holders of a majority of the outstanding shares of Series A Preferred, (the “Electing Holders”), so long as the liability of each stockholder in such transaction is several (and not joint) and does not exceed the stockholder’s pro rata portion of any claim and the consideration to be paid to the stockholders in such transaction will be allocated as if the consideration were the proceeds to be distributed to the Company’s stockholders in a liquidation under the Company’s then-current Certificate of Incorporation.

Questions/Comments

Jeremy Cohen
Gesmer Updegrove LLP
jeremy.cohen@gesmer.com
(617) 350-6800

Rob Jevon
Rob.jevon@gmail.com

Prithvi Tanwar
Foley Hoag LLP
ptanwar@foleyhoag.com
(617) 832-1000