

Please Note:

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NEWCO, INC.

MEMORANDUM OF TERMS

Series A Preferred Stock Financing

_____, 200_

This memorandum summarizes the principal terms proposed by NewCo, Inc, a [California] corporation (the “**Company**”), with respect to a private placement of its Series A preferred stock. This term sheet expires on _____, 200_.

Capitalization

Set forth below is the Company’s current fully diluted capitalization, as adjusted to reflect the sale of all shares of Series A preferred stock proposed to be offered in this financing:

	<u>No. of Shares</u>	<u>Ownership %</u>	<u>Stock Class</u>
Founders (& Other Common Shareholders, if any)	1,000,000	55.56%	Common
Stock Option Plan	250,000	13.89%	Common
[possible start-up advisor]	100,000	5.55%	Common
Series A Investors	450,000	25%	Series A Preferred Stock
Total	1,800,000	100%	

Proposed Private Placement

The Company proposes a private placement of shares of Series A convertible preferred stock to a limited number of “accredited” investors (as prescribed under the SEC’s Reg. D Rules) on the following terms:

Number of Series A Shares Offered: Up to [450,000] shares.

Board of Directors: The size of the Company’s Board of Directors shall be set at 3. The Board shall initially be comprised of [Founder Name 1] and [Founder Name 2] as representatives of the Common Stock, and [Investor Name] as a representative of the Series A investors; provided that such Series A board seat shall terminate in the event that the Series A Shareholders do not retain at least 5% of the Company’s capital stock calculated on an a fully diluted basis.

Conversion Price Adjustments: The conversion price of the Series A shall be subject to broad-based weighted average anti-dilution protection (with customary exceptions) to reduce dilution in the event that the Company issues additional equity securities at a purchase price less than the applicable conversion price.

Voting Rights: The Series A will vote together with the Common Stock and not as a separate class except as specifically provided herein or as otherwise required by law. Each share of Series A shall have a number of votes equal to the number of shares of Common Stock then issuable upon conversion of such share of Series A.

Protective Provisions: The consent of holders of at least a majority of the Series A shall be required for any amendment to the Company’s Articles of Incorporation which adversely affects the rights, preferences or privileges of the Series A.

Investor Rights: Upon the closing of an additional financing round pursuant to which the Company grants customary investors rights, the holders of Series A shares shall be made parties to any investors rights agreement (or similar agreement providing for information, voting, registration, preemptive or similar rights); provided that, each holder of Series A shares must execute such agreement and be subject to the terms of such agreement in the same manner as other investors and such right to become a party to such investors rights agreement shall terminate following the Company’s closing of additional equity investments of not less than an aggregate of [\$1,500,000] (a “Qualified Financing”)

Information Rights:

The Company shall provide to each Investor annual financial statements within a reasonable timeframe.

Right of First Refusal:

Investors shall have the right in the event the Company proposes to offer equity securities to any person (other than securities issued to employees, officers and directors of the Company, securities issued pursuant to a merger or acquisition, securities issued in connection with an equipment leasing or debt financing, securities issued pursuant to a registration statement, or securities issued in connection with strategic transactions) to purchase their pro rata portion of such shares. Each Investor's pro rata portion shall be calculated by dividing the outstanding shares of Series A held by such investor by the total number of shares of the Company outstanding on a fully-diluted basis. Such right of first refusal will terminate upon a Qualified IPO or upon an acquisition, merger or consolidation of the Company, and may be waived, modified or terminated earlier on behalf of all Investors by a majority in interest of the Investors. [Alternative: Such right may be terminated, waived or modified in any manner by the holders of a majority of the Series A shares and shall terminate following a Qualified Financing unless a substantially similar right is expressly provided in the investors rights agreement described above.]

Expenses:

Each party shall be responsible for and pay all fees and expenses incurred resulting from the use of any professional advisors, including accountants, investor representatives and attorneys.

The Series A investment shall be made pursuant to a subscription agreement and other documentation reasonably acceptable to the Company and the investors. The term sheet is not legally binding on any parties, and is subject to the satisfactory completion of due diligence and the execution of mutually agreed upon definitive Series A preferred stock financing documents.