

Appendix A: Sample Term Sheet*

ACME VENTURE CAPITAL 2011, L.P.
Summary of Terms for Proposed Private Placement
of Series A Preferred Stock of
NEWCO.COM
_____, 20____
(Valid for acceptance until _____, 20____)

Issuer: NEWCO.COM (the “Company”)
Investor(s): Acme Venture Capital 2011, L.P. and its affiliated partnerships (“Acme”) [**and others, if applicable**] (“Investors”).
Amount of Financing: An aggregate of \$__ million, [(including \$__ **from the conversion of outstanding bridge notes**)] representing a __% ownership position on a fully diluted basis, including shares reserved for any employee option pool. [**The individual investment amounts for each Investor are as follows:**

Acme	\$ _____
Other investor 1	\$ _____
Other investor 2	\$ _____
Total:	\$ _____]

[If there is to be a second closing, differentiate the investors and amounts by each closing.]

Price: \$_____ per share (the “Original Purchase Price”). The Original Purchase Price represents a fully diluted premoney valuation of \$__ million and a fully diluted postmoney

*Also see AsktheVC.com for more examples.

valuation of \$__ million. **[A capitalization table showing the Company’s capital structure immediately following the Closing is attached.]** For purposes of the above calculation and any other reference to “fully diluted” in this term sheet, “fully diluted” assumes the conversion of all outstanding preferred stock of the Company, the exercise of all authorized and currently existing stock options and warrants of the Company, and the increase of the Company’s existing option pool by [] shares prior to this financing.

Post-Closing Capitalization Table

	Shares	Percentage
Common Stock Outstanding		
Employee Stock Options:		
Reserved Pool		
Series A Preferred Outstanding:		
Acme		
[Other Investors]		
Fully Diluted Shares		

Type of Security: Series A Convertible Preferred Stock (the “Series A Preferred”), initially convertible on a 1:1 basis into shares of the Company’s Common Stock (the “Common Stock”).

Closing: Sale of the Series A Preferred (the “Closing”) is anticipated to take place _____, 20__.

TERMS OF SERIES A PREFERRED STOCK

Dividends: The holders of the Series A Preferred shall be entitled to receive noncumulative dividends in preference to any dividend on the Common Stock at the rate of [6%–10%] of the Original Purchase Price per annum **[when and as declared by the Board of Directors]**. The holders

of Series A Preferred also shall be entitled to participate pro rata in any dividends paid on the Common Stock on an as-if-converted basis. *[Adding the second bolded section means discretionary dividends, otherwise automatic.]*

Liquidation Preference: In the event of any liquidation or winding up of the Company, the holders of the Series A Preferred shall be entitled to receive in preference to the holders of the Common Stock a per share amount equal to [2x] the Original Purchase Price plus any declared but unpaid dividends (the “Liquidation Preference”).

[Choose one of the following three options:]

[Option 1: Add this paragraph if you want fully participating preferred: After the payment of the Liquidation Preference to the holders of the Series A Preferred, the remaining assets shall be distributed ratably to the holders of the Common Stock and the Series A Preferred on a common equivalent basis.]

[Option 2: Add this paragraph if you want participating preferred: After the payment of the Liquidation Preference to the holders of the Series A Preferred, the remaining assets shall be distributed ratably to the holders of the Common Stock and the Series A Preferred on a common equivalent basis; provided that the holders of Series A Preferred will stop participating once they have received a total liquidation amount per share equal to [two to five] times the Original Purchase Price, plus any declared but unpaid dividends. Thereafter, the remaining assets shall be distributed ratably to the holders of the Common Stock.]

[Option 3: Add this paragraph if you want nonparticipating preferred: After the payment of the Liquidation Preference to the holders of the Series A Preferred, the remaining assets shall be distributed ratably to the holders of the Common Stock.]

Don't use if stock we are buying is fully participating. [Upon any liquidation or deemed liquidation, holder of the Series A Preferred shall be entitled to receive the greater of (i) the amount they would have received pursuant to the prior sentence, or (ii) the amount they would have received in the event of conversion of the Series A Preferred to Common Stock, in each case taking into account any carve-outs, escrows, or other delayed or contingent payments.]

A merger, acquisition, sale of voting control, or sale of substantially all of the assets of the Company in which the shareholders of the Company do not own a majority of the outstanding shares of the surviving corporation shall be deemed to be a liquidation.

Conversion: The holders of the Series A Preferred shall have the right to convert the Series A Preferred, at any time, into shares of Common Stock. The initial conversion rate shall be 1:1, subject to adjustment as provided below.

Automatic Conversion: All of the Series A Preferred shall be automatically converted into Common Stock, at the then applicable conversion price, upon the closing of a firmly underwritten public offering of shares of Common Stock of the Company at a per share price not less than **[three to five]** times the Original Purchase Price (as adjusted for

stock splits, dividends, and the like) per share and for a total offering of not less than **[\$15]** million (before deduction of underwriters' commissions and expenses) (a "Qualified IPO"). All, or a portion of each share, of the Series A Preferred shall be automatically converted into Common Stock, at the then applicable conversion price in the event that the holders of at least a majority of the outstanding Series A Preferred consent to such conversion.

Antidilution Provisions: The conversion price of the Series A Preferred will be subject to a [full ratchet/weighted average] adjustment to reduce dilution in the event that the Company issues additional equity securities (other than shares (i) reserved as employee shares described under "Employee Pool" below; (ii) shares issued for consideration other than cash pursuant to a merger, consolidation, acquisition, or similar business combination approved by the Board; (iii) shares issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement, or debt financing from a bank or similar financial institution approved by the Board; and (iv) shares with respect to which the holders of a majority of the outstanding Series A Preferred waive their antidilution rights) at a purchase price less than the applicable conversion price. In the event of an issuance of stock involving tranches or other multiple closings, the antidilution adjustment shall be calculated as if all stock was issued at the first closing. The conversion price will [also] be subject to proportional adjustment for stock splits, stock dividends, combinations, recapitalizations, and the like.

[Redemption at Option of Investors: At the election of the holders of at least majority of the Series A Preferred, the Company shall redeem the outstanding Series A Preferred in three annual installments beginning on the [fifth] anniversary of the Closing. Such redemptions shall be at a purchase price equal to the Original Purchase Price plus declared and unpaid dividends.]

Voting Rights: The Series A Preferred will vote together with the Common Stock and not as a separate class except as specifically provided herein or as otherwise required by law. The Common Stock may be increased or decreased by the vote of holders of a majority of the Common Stock and Series A Preferred voting together on an as-if-converted basis, and without a separate class vote. Each share of Series A Preferred 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 Preferred.

Board of Directors: The size of the Company's Board of Directors shall be set at [_____]. The Board shall initially be comprised of _____, as the Acme representative[s] _____, _____, and _____.

At each meeting for the election of directors, the holders of the Series A Preferred, voting as a separate class, shall be entitled to elect [**one**] member[s] of the Company's Board of Directors, which director shall be designated by Acme; the holders of Common Stock, voting as a separate class, shall be entitled to elect [**one**] member[s]; and the remaining directors will be

[Option 1 (if Acme to control more than 50 percent of the capital stock): mutually agreed upon by the Common and Preferred, voting together as a single class] [or Option 2 (if Acme controls less than 50 percent): chosen by the mutual consent of the Board of Directors]. Please note that you may want to make one of the Common seats the person then serving as the CEO.

[Add this provision if Acme is to get an observer on the Board: Acme shall have the right to appoint a representative to observe all meetings of the Board of Directors in a nonvoting capacity.]

The Company shall reimburse expenses of the Series A Preferred directors [**observers**] and advisers for costs incurred in attending meetings of the Board of Directors and other meetings or events attended on behalf of the Company.

Protective Provisions:

For so long as any shares of Series A Preferred remain outstanding, consent of the holders of at least a majority of the Series A Preferred shall be required for any action, whether directly or through any merger, recapitalization, or similar event, that (i) alters or changes the rights, preferences, or privileges of the Series A Preferred; (ii) increases or decreases the authorized number of shares of Common or Preferred Stock; (iii) creates (by reclassification or otherwise) any new class or series of shares having rights, preferences, or privileges senior to or on a parity with the Series A Preferred; (iv) results in the redemption or repurchase of any shares of Common Stock (other than pursuant to

equity incentive agreements with service providers giving the Company the right to repurchase shares upon the termination of services); (v) results in any merger, other corporate reorganization, sale of control, or any transaction in which all or substantially all of the assets of the Company are sold; (vi) amends or waives any provision of the Company's Certificate of Incorporation or Bylaws; (vii) increases or decreases the authorized size of the Company's Board of Directors; [or] (viii) results in the payment or declaration of any dividend on any shares of Common or Preferred Stock [or (ix) **issuance of debt in excess of (\$100,000)**].

Pay-to-Play:

[Version 1: In the event of a Qualified Financing (as defined below), shares of Series A Preferred held by any Investor which is offered the right to participate but does not participate fully in such financing by purchasing at least its pro rata portion as calculated above under "Right of First Refusal" below will be converted into Common Stock.]

[Version 2: If any holder of Series A Preferred Stock fails to participate in the next Qualified Financing (as defined below), on a pro rata basis (according to its total equity ownership immediately before such financing) of their Series A Preferred investment, then such holder will have the Series A Preferred Stock it owns converted into Common Stock of the Company. If such holder participates in the next Qualified Financing but not to the full extent of its pro rata share, then only a percentage of its Series A Preferred Stock will be converted into Common Stock (under the

same terms as in the preceding sentence), with such percentage being equal to the percent of its pro rata contribution that it failed to contribute.]

A Qualified Financing is the next round of financing after the Series A financing by the Company that is approved by the Board of Directors who determine in good faith that such portion must be purchased pro rata among the stockholders of the Company subject to this provision. Such determination will be made regardless of whether the price is higher or lower than any series of Preferred Stock.

When determining the number of shares held by an Investor or whether this “Pay-to-Play” provision has been satisfied, all shares held by or purchased in the Qualified Financing by affiliated investment funds shall be aggregated. An Investor shall be entitled to assign its rights to participate in this financing and future financings to its affiliated funds and to investors in the Investor and/or its affiliated funds, including funds which are not current stockholders of the Company.]

Information Rights:

So long as an Investor continues to hold shares of Series A Preferred or Common Stock issued upon conversion of the Series A Preferred, the Company shall deliver to the Investor the Company’s annual budget, as well as audited annual and unaudited quarterly financial statements. Furthermore, as soon as reasonably possible, the Company shall furnish a report to each Investor comparing each annual budget to such financial statements. Each Investor shall also be entitled to standard

Registration Rights:

inspection and visitation rights. These provisions shall terminate upon a Qualified IPO.

Demand Rights: If Investors holding more than 50 percent of the outstanding shares of Series A Preferred, including Common Stock issued on conversion of Series A Preferred (“Registrable Securities”), or a lesser percentage if the anticipated aggregate offering price to the public is not less than \$5,000,000, request that the Company file a Registration Statement, the Company will use its best efforts to cause such shares to be registered; provided, however, that the Company shall not be obligated to effect any such registration prior to the [third] anniversary of the Closing. The Company shall have the right to delay such registration under certain circumstances for one period not in excess of ninety (90) days in any twelve (12) month period.

The Company shall not be obligated to effect more than two (2) registrations under these demand right provisions, and shall not be obligated to effect a registration (i) during the one hundred eighty (180) day period commencing with the date of the Company’s initial public offering, or (ii) if it delivers notice to the holders of the Registrable Securities within thirty (30) days of any registration request of its intent to file a registration statement for such initial public offering within ninety (90) days.

Company Registration: The Investors shall be entitled to “piggyback” registration rights on all registrations of the Company

or on any demand registrations of any other investor subject to the right, however, of the Company and its underwriters to reduce the number of shares proposed to be registered pro rata in view of market conditions. If the Investors are so limited, however, no party shall sell shares in such registration other than the Company or the Investor, if any, invoking the demand registration. Unless the registration is with respect to the Company's initial public offering, in no event shall the shares to be sold by the Investors be reduced below 30 percent of the total amount of securities included in the registration. No shareholder of the Company shall be granted piggyback registration rights which would reduce the number of shares includable by the holders of the Registrable Securities in such registration without the consent of the holders of at least a majority of the Registrable Securities.

S-3 Rights: Investors shall be entitled to unlimited demand registrations on Form S-3 (if available to the Company) so long as such registered offerings are not less than \$1,000,000.

Expenses: The Company shall bear registration expenses (exclusive of underwriting discounts and commissions) of all such demands, piggybacks, and S-3 registrations (including the expense of one special counsel of the selling shareholders not to exceed \$25,000).

Transfer of Rights: The registration rights may be transferred to (i) any partner, member, or retired partner or member or

affiliated fund of any holder which is a partnership; (ii) any member or former member of any holder which is a limited liability company; (iii) any family member or trust for the benefit of any individual holder; or (iv) any transferee which satisfies the criteria to be a Major Investor (as defined below); provided the Company is given written notice thereof.

Lockup Provision: Each Investor agrees that it will not sell its shares for a period to be specified by the managing underwriter (but not to exceed 180 days) following the effective date of the Company's initial public offering; provided that all officers, directors, and other 1 percent shareholders are similarly bound. Such lockup agreement shall provide that any discretionary waiver or termination of the restrictions of such agreements by the Company or representatives of underwriters shall apply to Major Investors, pro rata, based on the number of shares held.

Other Provisions: Other provisions shall be contained in the Investor Rights Agreement with respect to registration rights as are reasonable, including cross-indemnification, the period of time in which the Registration Statement shall be kept effective, and underwriting arrangements. The Company shall not require the opinion of Investor's counsel before authorizing the transfer of stock or the removal of Rule 144 legends for routine sales under Rule 144 or for distribution to partners or members of Investors.

Right of First Refusal:

Investors who purchase at least _____
(____) shares of Series A Preferred

(a “Major Investor”) shall have the right in the event the Company proposes to offer equity securities to any person (other than the shares (i) reserved as employee shares described under “Employee Pool” below; (ii) shares issued for consideration other than cash pursuant to a merger, consolidation, acquisition, or similar business combination approved by the Board; (iii) shares issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement, or debt financing from a bank or similar financial institution approved by the Board; and (iv) shares with respect to which the holders of a majority of the outstanding Series A Preferred waive their right of first refusal) to purchase **[2 times]** their pro rata portion of such shares. Any securities not subscribed for by an eligible Investor may be reallocated among the other eligible Investors. Such right of first refusal will terminate upon a Qualified IPO. For purposes of this right of first refusal, an Investor’s pro rata right shall be equal to the ratio of (a) the number of shares of common stock (including all shares of common stock issuable or issued upon the conversion of convertible securities and assuming the exercise of all outstanding warrants and options) held by such Investor immediately prior to the issuance of such equity securities to (b) the total number of shares of common stock outstanding (including all shares of common stock issuable or issued upon the conversion of convertible securities and assuming the exercise of all outstanding warrants and options) immediately prior to the issuance of such equity securities.

Purchase Agreement: The investment shall be made pursuant to a Stock Purchase Agreement reasonably acceptable to the Company and the Investors, which agreement shall contain, among other things, appropriate representations and warranties of the Company, covenants of the Company reflecting the provisions set forth herein, and appropriate conditions of closing, including a management rights letter and an opinion of counsel for the Company.

EMPLOYEE MATTERS

Employee Pool: Prior to the Closing, the Company will reserve shares of its Common Stock so that ____ percent of its fully diluted capital stock following the issuance of its Series A Preferred is available for future issuances to directors, officers, employees, and consultants. The term “Employee Pool” shall include both shares reserved for issuance as stated above, as well as current options outstanding, which aggregate amount is approximately ____ percent of the Company’s fully diluted capital stock following the issuance of its Series A Preferred.

Stock Vesting: All stock and stock equivalents issued after the Closing to employees, directors, consultants, and other service providers will be subject to vesting provisions below unless different vesting is approved by the **[unanimous/majority (including the director designated by Acme) or (including at least one director designated by the Investors)]** consent of the Board of Directors (the “Required Approval”): 25 percent to vest at the end of the first year following such issuance, with the remaining 75 percent to vest monthly over the next

three years. The repurchase option shall provide that upon termination of the employment of the shareholder, with or without cause, the Company or its assignee (to the extent permissible under applicable securities law qualification) retains the option to repurchase at the lower of cost or the current fair market value any unvested shares held by such shareholder. Any issuance of shares in excess of the Employee Pool not approved by the Required Approval will be a dilutive event requiring adjustment of the conversion price as provided above and will be subject to the Investors' first offer rights.

The outstanding Common Stock currently held by _____ and _____ (the "Founders") will be subject to similar vesting terms [**provided that the Founders shall be credited with (one year) of vesting as of the Closing, with their remaining unvested shares to vest monthly over three years**].

In the event of a merger, consolidation, sale of assets, or other change of control of the Company and should [**a Founder**] [**or an Employee**] be terminated without cause within one year after such event, such person shall be entitled to [**one year**] of additional vesting. Other than the foregoing, there shall be no accelerated vesting in any event.

Restrictions on Sales:

The Company's Bylaws shall contain a right of first refusal on all transfers of Common Stock, subject to normal exceptions. If the Company elects not to exercise its right, the Company shall assign its right to the Investors.

Proprietary Information and Inventions Agreement:	Each current and former officer, employee, and consultant of the Company shall enter into an acceptable proprietary information and inventions agreement.
[Drag-Along Agreement:	The holders of the (Founders/Common Stock) Series A Preferred shall enter into a drag-along agreement whereby if a majority of the holders of Series A Preferred agree to a sale or liquidation of the Company, the holders of the remaining Series A Preferred (and Common Stock) shall consent to and raise no objections to such sale.]
Co-Sale Agreement:	The shares of the Company's securities held by the Founders shall be made subject to a co-sale agreement (with certain reasonable exceptions) with the Investors such that the Founders may not sell, transfer, or exchange their stock unless each Investor has an opportunity to participate in the sale on a pro rata basis. This right of co-sale shall not apply to and shall terminate upon a Qualified IPO.
[Founders' Activities:	Each of the Founders shall devote 100 percent of his professional time to the Company. Any other professional activities will require the approval of the Board of Directors. Additionally, when a Founder leaves the Company, such Founder shall agree to vote his Common Stock or Series A Preferred (or Common Stock acquired on conversion of Series A or Former Series A Preferred) in the same proportion as all other shares are voted in any vote.]
[Optional Section]	
[Key Man Insurance:	The Company shall procure key man life insurance policies for each of the Founders in the amount of (\$3,000,000), naming the Company as beneficiary.]

[Optional Section]

[Executive Search:

The Company will use its best efforts to hire a (CEO/CFO/CTO) acceptable to the Investors as soon as practicable following the Closing.]

OTHER MATTERS

**[Initial Public Offering
Shares Purchase:**

In the event that the Company shall consummate a Qualified IPO, the Company shall use its best efforts to cause the managing underwriter or underwriters of such IPO to offer to Acme the right to purchase at least (5%) of any shares issued under a “friends and family” or “directed shares” program in connection with such Qualified IPO. Notwithstanding the foregoing, all action taken pursuant to this Section shall be made in accordance with all federal and state securities laws, including, without limitation, Rule 134 of the Securities Act of 1933, as amended, and all applicable rules and regulations promulgated by the National Association of Securities Dealers, Inc. and other such self-regulating organizations.]

No-Shop Agreement:

The Company agrees to work in good faith expeditiously toward a closing. The Company and the Founders agree that they will not, directly or indirectly, (i) take any action to solicit, initiate, encourage, or assist the submission of any proposal, negotiation, or offer from any person or entity other than the Investors relating to the sale or issuance of any of the capital stock of the Company or the acquisition, sale, lease, license, or other disposition of the Company or any material part of the stock or assets of the Company, or (ii) enter into any discussions or

	negotiations, or execute any agreement related to any of the foregoing, and shall notify the Investors promptly of any inquiries by any third parties in regard to the foregoing. Should both parties agree that definitive documents shall not be executed pursuant to this term sheet, then the Company shall have no further obligations under this section.
Capitalization/ Fact Sheet:	The Company shall provide prior to the Closing an updated, post-closing capitalization chart and a list of corporate officers with both business and personal contact information.
Indemnification:	The bylaws and/or other charter documents of the Company shall limit board members' liability and exposure to damages to the broadest extent permitted by applicable law.
[Insurance:	The Company will use its best efforts to obtain directors' and officers' insurance acceptable to Investors as soon as practicable after the Closing.]
Right to Conduct Activities:	The Company and each Investor hereby acknowledge that some or all of the Investors are professional investment funds, and as such invest in numerous portfolio companies, some of which may be competitive with the Company's business. No Investor shall be liable to the Company or to any other Investor for any claim arising out of, or based upon, (i) the investment by any Investor in any entity competitive to the Company, or (ii) actions taken by any partner, officer, or other representative of any Investor to assist any such competitive company, whether or not such action was taken as a board member of such competitive company, or otherwise, and whether or not such action has a detrimental effect on the Company.

Assignment:	Each of the Investors shall be entitled to transfer all or part of its shares of Series A Preferred purchased by it to one or more affiliated partnerships or funds managed by it or any or their respective directors, officers, or partners, provided such transferee agrees in writing to be subject to the terms of the Stock Purchase Agreement and related agreements as if it were a purchaser thereunder.
Legal Fees and Expenses:	The Company shall bear its own fees and expenses and shall pay at the closing (or in the event the transaction is not consummated, upon notice by Acme that it is terminating negotiations with respect to the consummated transactions) the reasonable fees (not to exceed \$__,000) and expenses of [our counsel] regardless if any transactions contemplated by this term sheet are actually consummated.
Governing Law:	This summary of terms shall be governed in all respects by the laws of the State of Delaware.
Conditions Precedent to Financing:	Except for the provisions contained herein entitled “Legal Fees and Expenses,” “No-Shop Agreement,” “Right to Conduct Activities,” and “Governing Law,” which are explicitly agreed by the Investors and the Company to be binding upon execution of this term sheet, this summary of terms is not intended as a legally binding commitment by the Investors, and any obligation on the part of the Investors is subject to the following conditions precedent: <ol style="list-style-type: none"> 1. Completion of legal documentation satisfactory to the prospective Investors. 2. Satisfactory completion of due diligence by the prospective Investors.

3. Delivery of a customary management rights letter to Acme.
- [4. Submission of detailed budget for the following twelve (12) months, acceptable to Investors.]**
- [5. The Company shall initiate a rights offering allowing all current “accredited” shareholders the right to participate proratably in the transactions contemplated herein.]**

Finders: The Company and the Investors shall each indemnify the other for any broker’s or finder’s fees for which either is responsible.

Acme Counsel: **TBD**

Acknowledged and agreed:

ACME VENTURE CAPITAL 2011, L.P.

By: _____
Print Name: _____
Title: _____

NEWCO.COM

By: _____
Print Name: _____
Title: _____