

# TERM SHEET FOR PROPOSED SERIES A PREFERRED STOCK FINANCING OF CARDINAL CORPORATION

October 22, 2013

The following is a summary of terms for a proposed financing of the company set forth above. Except as set forth next to “Confidentiality” and “Exclusivity” below, this Term Sheet is not intended to, and does not, create any binding obligation on the part of any party and there shall be no legal obligation of any party with respect to the matters contemplated hereby until mutually agreeable definitive documents relating thereto are executed by all parties. This Term Sheet is not a commitment to invest, and is conditioned on the completion of due diligence, legal review and documentation that is satisfactory to the Investors (as defined below).

## **Offering Terms:**

**Issuer:** Cardinal Corporation, a Delaware corporation (the “**Company**”).

**Security:** Series A Preferred Stock (the “**Series A**” or “**Preferred Stock**”).

**Total Investment / Investors:** \$5,000,000, which shall be subscribed for by the following parties (the “**Investors**”):

<u>Name</u>	<u>Amount</u>
Venture Capital Fund, LP	\$4,500,000
Venture Capital Partners, LLC	\$500,000

**Closing:** The closing shall occur as soon as practicable.

**Pre-Money Valuation:** \$7,500,000

**Purchase Price Per Share:** The amount obtained by dividing the pre-money valuation set forth above by the sum of all outstanding securities (including commitments to issue securities) on an as-converted, as-exercised basis, plus an equity incentive pool reserve that is uncommitted and available for future issuance and that represents 10% of the post-money fully-diluted capitalization of the Company (inclusive of such reserve).

**Pro-Forma Capitalization:** After the consummation of the financing, the capital structure will be as set forth on Exhibit A hereto.

## **Terms of Series A:**

**Dividend Rights:** The holder of each share of Series A shall be entitled to receive non-cumulative dividends, if and when declared by the Company’s Board of Directors (the “**Board**”), in preference to the holders of Common Stock, at an annual rate equal to 8% of the Series A purchase price. The holders of Series A shall also participate on an as-converted basis in any dividends payable on the Common Stock.

**Liquidation Preference:** In the event of any Liquidation Event, the holder of each share of

Series A shall be entitled to receive an amount per share equal to the Series A purchase price per share, plus declared but unpaid dividends on such share, in preference to the holders of Common Stock. After payment of the full liquidation preference of the Preferred Stock, any remaining proceeds shall be distributed to the holders of Series A and Common Stock on an as-converted basis. A “**Liquidation Event**” means a liquidation, dissolution, winding up, change of control merger or consolidation, or sale of substantially all assets of the Company.

**Redemption:**

The Series A shall not be redeemable.

**Conversion:**

The Series A 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 Protection.”

All shares of Preferred Stock will be automatically converted to Common Stock, at the then applicable conversion ratio, in the event of (a) the consent of the holders of at least a majority of the Preferred Stock on an as-converted basis or (b) the closing of an underwritten public offering of shares of Common Stock of the Company resulting in at least \$25,000,000 of gross proceeds to the Company.

**Anti-Dilution Protection:**

The conversion price of the Series A will be subject to a broad-based weighted average adjustment in the event that the Company issues additional equity securities (other than securities that are exempted from the “Right of First Offer” below) at a purchase price less than the then-current conversion price of the Series A.

**Voting:**

Except as provided herein or in applicable law, the Preferred Stock shall vote together with the Common Stock. Each share of Preferred Stock shall have a number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock is then convertible.

**Protective Provisions:**

**Class Protective Provisions.** Consent of the holders of at least a majority of the Preferred Stock on an as-converted basis shall be required for any of the following actions (whether undertaken by merger, consolidation, or otherwise): (a) alter or change the rights, powers or preferences of the Preferred Stock; (b) increase or decrease the authorized number of shares of Preferred Stock (or any series thereof); (c) increase or decrease the authorized number of shares of Common Stock; (d) authorize or create any new class or series of capital stock having rights, powers, or preferences set forth in the Company's certificate of incorporation that are senior to or on a parity with any series of Preferred Stock, or authorize or create any security convertible into or exercisable for any such new class or series of capital stock; (e) redeem or repurchase any shares of Common Stock or Preferred Stock, other than pursuant to employee or consulting agreements giving the Company the right to repurchase

shares at the original cost thereof upon the termination of services; (f) declare or pay any other distribution or declare or pay any dividend; (g) otherwise amend, alter, restate, or repeal any provision of the Company's certificate of incorporation or bylaws; (h) consent, agree, or commit to, or effect any merger, consolidation, or Liquidation Event; or (i) increase or decrease the authorized number of directors.

Subject to compliance with the foregoing protective provisions, the number of shares of Common Stock may be increased or decreased by a vote of all outstanding stock, voting together on an as-converted basis.

### **Other Rights:**

#### **Information Rights:**

Each Investor shall be entitled to receive standard information rights, including monthly, quarterly and annual financial statements and an annual budget. Each Investor shall also be entitled to standard inspection rights.

#### **Registration Rights:**

The shares of Common Stock issuable upon conversion of the Series A shall be “registrable securities.” The Investors shall be entitled to registration rights on the following terms:

**Demand.** At any time after the earlier of the fifth anniversary of the closing or 180 days following the effective date of a registration statement for an IPO, any holder of the outstanding registrable securities may request registration provided that that anticipated aggregate offering price of the shares proposed to be sold have an anticipated aggregate offering price of not less than \$25,000,000. The holders of registrable securities will be entitled to 2 such demand registrations. The Company may delay such registration once per twelve-month period for up to 120 days under certain circumstances.

**S-3.** Any holder of the outstanding registrable securities will be entitled to unlimited S-3 registrations (but no more than 2 in any twelve-month period) so long as each such registration has an anticipated aggregate offering price of at least \$5,000,000, subject to the same right of the Company to delay registrations as is set forth above.

**Piggyback.** The Investors shall be entitled to piggyback on any registrations, other than registrations relating solely to employee stock incentive plans, registration relating to Rule 145 transactions, registration on a form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the registrable securities, or a registration in which the only shares of Common Stock being registered are shares issuable upon conversion of debt securities that

are also being registered. To ensure the success of the offering, the underwriters may cut back the holders of registrable securities entirely from an IPO. Otherwise, the underwriters may not reduce the holders of registrable securities below 30% of the offering, and in no event will the Investors be cut back before other parties (other than the Company).

**Other Terms.** The Company will pay all registration expenses, including the reasonable fees and expenses of one special counsel to the selling stockholders, but exclusive of underwriting discounts and commissions. Customary indemnification and contribution obligations and assignment and termination provisions. Customary 180-day lock-up period for an IPO, subject to extension by up to another 18 days in light of FINRA rules, and provided that all directors, officers, and 1% stockholders are bound by obligations that are no less restrictive. Any discretionary release from the lock-up shall also be offered to the Investors on a pro rata basis. The Company shall not grant any future registration rights without the consent of the holders of at least a majority of the Preferred Stock on an as-converted basis.

**Right of First Offer:**

Each Investor shall have the right to purchase its pro rata share of each future issuance of securities issued by the Company. Pro rata is determined by dividing the number of common stock equivalents owned by the Investors by the number of outstanding common stock equivalents. The Investors shall have the right to subscribe for securities not subscribed for by other Investors. The right of first refusal will not apply to the following securities: (a) shares of Common Stock (or options therefor) issued to employees, directors, and consultants pursuant to Board approved plans or agreements; (b) securities issued pursuant to acquisitions of other entities or assets, in each case as approved by the Board (including a Series A Director); (c) securities issued to banks, equipment lessors, or other financial institutions pursuant to debt financing or equipment leasing transactions approved by the Board (including a Series A Director); (d) securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships, in each case as approved by the Board (including a Series A Director; and (e) shares issued in an IPO.

**ROFR & Co-Sale:**

The Company, Jane Smith and John Deer (collectively, the “**Key Holders**”) and the Investors shall enter into a Right of First Refusal and Co-Sale Agreement pursuant to which the Company shall have a non-assignable primary right of first refusal to purchase any shares proposed to be sold by the Key Holders, with the Investors having the right to subscribe for shares not purchased by the Company (or other Investors). To the extent that such rights are not exercised, the Investors may participate in the sale transaction with the selling party. The rights of first refusal and co-sale shall not apply to donative transfers made to family members for estate planning

purposes.

**Board of Directors:**

The authorized size of the Board shall initially be set at 5 members, consisting of:

- (a) One person designated by the holders of a majority of the shares of Preferred Stock (initially Warren Packard), such designee to serve as one of the members of the Board who are elected solely by the holders of Preferred Stock.
- (b) One person designated by the holders of a majority of the shares of Preferred Stock (initially vacant), such designee to serve as one of the members of the Board who are elected solely by the holders of Preferred Stock.
- (c) One person designated by the holders of a majority of the shares of the Common Stock (initially John Deer), such designee to serve as one of the members of the Board who are elected solely by the holders of Common Stock.
- (d) The Company's then-current Chief Executive Officer (initially vacant), such designee to serve as one of the members of the Board who are elected solely by the holders of Common Stock.
- (e) One person designated by the unanimous agreement of the other members of the Board (initially vacant), such designee to serve as the member of the Board who is elected by the holders of Common Stock and Preferred Stock, voting together.

**Drag-Along:**

In the event that (i) the holders of a majority of the shares of Common Stock then issued or issuable upon conversion of the shares of Preferred Stock, and (ii) the Board approve of a sale of the Company (whether pursuant to a merger, stock sale or similar transaction), all holders of shares of Preferred Stock and the Key Holders shall vote in favor of such transaction and take such other actions as are reasonably necessary to cause such transaction to be consummated.

**General Termination Provision:**

The foregoing rights shall terminate on the earlier to occur of a liquidation event or an IPO in which all Preferred Stock is converted to Common Stock, except that registration rights shall survive an IPO.

**Company Covenants:**

**Insurance:**

The Company shall use its commercially reasonable efforts to promptly obtain directors and officers liability insurance from a

financially sound and reputable insurer in such amount and on such terms as determined by the Board, and will use commercially reasonable efforts to cause such insurance policies to be maintained until such time as the Board determines that such insurance should be discontinued.

**Employee Agreements:**

The Company will cause each employee or consultant with access to confidential information and/or trade secrets, or performing services that consist of the development of technology, to enter into a customary nondisclosure and proprietary rights assignment agreement or an employment or consulting agreement containing substantially similar terms.

**Employee Vesting:**

Unless otherwise approved by the Board, all employees and consultants of the Company who purchase, receive options to purchase, or receive awards of shares of the Company's capital stock shall be required to execute restricted stock or option agreements, as applicable, providing for vesting of shares over a 4 year period, with the first 25% of such shares vesting following 12 months of continued employment or service (or the date of grant in the case of a grant to an existing employee or consultant), and the remaining shares vesting in equal monthly installments over the following 36 months.

**Terms of Purchase Agreement:**

**Conditions to Closing:**

Standard conditions to closing, which shall include, among other things, satisfactory completion of financial and legal due diligence.

**Closing Deliverables:**

The Investors shall receive standard closing deliverables, including customary representations and warranties by the Company, indemnity agreements (for Board members), an opinion of counsel to the Company, and management rights letters.

**Counsel and Expenses:**

Initial drafts of the documents to reflect the terms set forth in this Term Sheet will be drafted by counsel to the Company, subject to the review of counsel to the Investors.

The Company shall reimburse Venture Capital Fund, LP for its reasonable fees and expenses incurred in negotiating and documenting the transactions contemplated hereby, not to exceed \$25,000 in the aggregate.

**Other Matters:**

**Confidentiality:**

The terms of this Term Sheet and any related discussions shall be kept confidential by the Company and shall be disclosed by the Company only to such parties as have a need to know as part of the legal and due diligence and related usual and customary processes related to preparing and executing the definitive agreements that will consummate the transactions contemplated hereby.

**Exclusivity:**

In consideration of the efforts of Venture Capital Fund, LP in evaluating the Company, the sufficiency of which is acknowledged, during the Exclusivity Period (as defined below) the Company shall not, and shall not permit its officers, directors, equity holders, and representatives to, directly or indirectly initiate, solicit, encourage, discuss, negotiate, or accept any offers or proposals relating to the sale of debt or equity securities of the Company or a substantial portion of the Company's business or assets to or from any party other than Venture Capital Fund, LP. In the event that the Company (or any of its officers, directors, equity holders, or representatives) receives any such offers or proposals during the Exclusivity Period, the Company will, within one business day, deliver to Venture Capital Fund, LP written notice of such receipt, which notice will identify the party making such offer or proposal and state the terms thereof. The "Exclusivity Period" shall commence with the day on which the Company returns an executed copy of this Term Sheet to Venture Capital Fund, LP and end 30 days thereafter. The Company agrees to work in good faith expeditiously toward a closing of the transactions contemplated hereby.

**No Finder's Fee:**

The Company represents to Venture Capital Fund, LP that no finder's fee or other commission or benefit is, or will become, payable on account of the transactions contemplated hereby.

**Expiration:**

This Term Sheet will expire if not executed and returned by the Company to Venture Capital Fund, LP by 5:00 p.m. PST on October 25, 2013.

**Acknowledged and agreed:****VENTURE CAPITAL FUND, LP**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CARDINAL CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**PRO FORMA CAPITALIZATION TABLE**

	<b><u>Number of Shares</u></b>	<b><u>Percentage Interest</u></b>
Founders:		
Jane Smith	4,000,000	20.0%
John Deer	4,000,000	20.0%
Angel Investors	2,000,000	10.0%
Option Pool	2,000,000	10.0%
Investors	<u>8,000,000</u>	<u>40.0%</u>
	<u>20,000,000</u>	<u>100.0%</u>