

Acorn Capital

**Memorandum of Terms
For
Private Placement of Series A Preferred Stock
Of
Hi-Tech, Inc.**

Securities to Be Issued:	Series A Preferred Stock
Amount of Investment:	\$3,000,000 by Acorn; \$1,500,000 by one other venture capital investor acceptable to Acorn; and \$500,000 by “friends” of Acorn to be designated.
Pre-Money Valuation/Price:	Pre-money valuation as determined by mutual agreement, based on the fully diluted capitalization of 6,500,000 shares (inclusive of a 3,000,000 share stock reserve for future option grants (i.e., instead of the 1,500,000 share reserve currently reflected in the capital structure)).
Closing/Minimum Investment:	The initial closing date of, on a minimum investment of \$3,500,000. The second closing of the remaining amount of the investment shall be not later than three months from today, to permit sufficient time to find a second VC investor suitable to Acorn.
Dividends:	Annual dividend representing an annual dividend rate of 10% per share. The dividend shall be cumulative and accrue quarterly, and shall be payable, in addition to any liquidation preference as described below, upon the first to occur of (A) a “qualified initial public offering” (as defined below) by the Company of shares of its common stock; or (B) upon any sale, merger or other acquisition of the Company. At the election of a majority of the Series A Preferred, the dividend payable hereunder shall be paid in additional shares of Series A Preferred equal to the amount determined by dividing the amount of such dividend by the original purchase price of the Series A Preferred. No cash dividends shall be paid on any shares of common stock.

Liquidation Preference:	<p>In the event of any liquidation, dissolution or winding up of the Company, the holders of the Series A Preferred shall be entitled to receive 1x the original purchase price per share, plus any accrued and unpaid dividends, in preference to the holders of the common stock.</p> <p>After the liquidation preference of the Series A Preferred has been satisfied in full, any remaining proceeds shall be paid to the holders of both the Series A Preferred and the common stock pro rata on the basis of the number of shares owned.</p> <p>A merger or consolidation of the Company with or into another corporation in which the Company does not survive (unless the shareholders of the Company own more than 50% of the surviving entity), or the sale or transfer of all or substantially all of the Company's assets, or a sale by the founders of more than 50% in interest of their original stock in the Company, will be treated as a liquidation.</p>
Conversion:	<p>Each share of Series A Preferred shall initially be convertible, at the election of the holder at any time, into one share of common stock (i.e., a 1:1 conversion ratio), subject to anti-dilution adjustments described below.</p> <p>Each share of Series A Preferred shall automatically convert, at the conversion ratio then in effect, immediately prior to the closing of a “qualified initial public offering”, which shall be defined as a firmly underwritten public offering of common stock with (i) a price of at least 3x the original purchase price of the Series A Preferred, (ii) aggregate proceeds to the Company in excess of \$20 million, and (iii) aggregate proceeds to the holders of the Series A Preferred (if they request to include in the offering at least 25% of the common stock issuable to them upon conversion of the outstanding Series A Preferred) of at least \$20 million.</p>
Anti-dilution Adjustment:	Pending completion of the next round of equity financing required by the company (i.e., the Series B Preferred), the conversion ratio of the Series A Preferred shall be adjusted on a “narrow-based weighted average formula” taking into account all shares of outstanding Series A Preferred stock and outstanding rights to purchase Series A Preferred stock. The formula shall take effect upon any issuance of capital stock at a price less than original purchase price per share of the Series A Preferred (other than the sale of common stock to employees, directors, and consultants), such that the Series A

Anti-dilution Adjustment: (continued)	<p>Preferred shall receive the full benefit of any reduction in the valuation of the Company reflected by such dilutive issuance. Upon completion of the next round of equity financing, the conversion ratio of the Series A Preferred shall thereafter be based on a customary, “broad-based” anti-dilution formula (or formula not less favorable than that provided to the future investors in the Series B Preferred). There shall be proportional adjustments for stock splits and stock dividends.</p> <p>No stock or stock options shall be granted to any employee, consultant, director or officer without the unanimous approval of the board of directors (i.e., including the two representatives of the Series A Preferred).</p>
Voting Rights:	<p>The Series A Preferred shall vote on an “as-converted-to common” basis, and shall be entitled to a class vote as provided by law. The Series A Preferred shall have special voting rights with respect to certain matters—see “Protective Covenants” below.</p>
Board Representation:	<p>The holders of the Series A Preferred shall have the right to designate three directors to the board of directors, and the holders of the common stock shall have the right to designate one director, who shall be the chief executive officer. The size of the board of directors will be fixed at four (4) in the bylaws of the Company.</p>
Protective Provisions:	<p>As long as not less than 10% of the originally issued shares of Series A Preferred remain outstanding, the Company shall not, without the prior written consent of the holders of 60% of the outstanding Series A Preferred:</p> <ul style="list-style-type: none"> • Amend or modify the rights and preferences of the Series A Preferred, or create any security on parity with or senior to the Series A Preferred; • Increase the authorized number of shares of Series A Preferred; • Enter into any merger, consolidation, or sale of assets transaction in which the voting control of the Company would be transferred; • Effect any acquisition of any business, product or technology that would require the issuance of voting stock; • Increase the size of the board of directors; • Incur any bank debt or other indebtedness for money of any kind;

Protective Provisions: (continued)	<ul style="list-style-type: none"> • Increase the size of the stock reserve set aside for equity incentives to employees, directors and consultants; • Hire or fire any officers of the Company; • Approve an annual operating budget; • Enter into any lease facility for the Company's principal offices; or • Issue stock to vendors or strategic partners.
Pre-Emptive Right:	The holders of the Series A Preferred shall have a right to purchase any or all new issuances of the Company's shares in connection with any future financing transactions of the Company (subject to customary exclusions). Such right shall expire upon completion of a qualified initial public offering.
Right of First Refusal and Co-Sale:	All shares of common stock held by the founders of the Company shall be made subject to a right of first refusal and co-sale agreement, such that no such shareholder may sell stock unless the holders of the Series A Preferred have an opportunity to purchase such shares. If such right of first refusal is not exercised in full, then each holder of the Series A Preferred shall have the right to cause its shares to be included in the sale. These rights shall terminate upon completion of a qualified initial public offering.
Key-Person Insurance:	The Company shall procure key-person insurance policies for each of the three founders of the Company in the amount of \$2,000,000, naming the holders of the Series A Preferred as beneficiaries.
Vesting of Founders' Stock:	The shares of common stock held by each of the founders shall be made subject to a five-year vesting schedule, commencing upon completion of the Series A Preferred Financing, with the first 25% of such shares vesting upon the first anniversary of the closing, and the remaining shares vesting in equal amounts of the next 48 months. In the event of termination of employment of a founder for cause, then all shares of common stock held by the founder (whether or not vested) shall be forfeited and returned to the Company without payment of any kind.
Stock Purchase Agreement:	The Series A Preferred financing shall be made pursuant to a Series A Preferred Stock Purchase Agreement which shall contain appropriate representations and warranties of the Company and customary conditions of closing.

Conditions of Investment:	<p>As conditions for the completion of the Series A Preferred financing:</p> <ul style="list-style-type: none"> • The Company shall agree that within six months of completing the Series A Preferred, it will hire a replacement with suitable credentials for Kishore as the chief executive officer. At the time of hiring the new CEO, Acorn will determine whether Kishore has demonstrated the necessary leadership skills to remain as an executive manager of the Company. • Mutual agreement between Acorn and the Company on the use of proceeds from the financing. • Employment letters with each of the founders that provide for “at will” employment (i.e., either of the Company or the founder can terminate the employment relationship at any time, with or without cause), and that set the annual compensation for each founder. • The founders shall agree that should there be any interest in adjusting the equity ownership among the founders in connection with the Series A Preferred investment, this equity is to come from the outstanding founders’ stock and not from the stock reserve.
Indemnification:	The Company shall indemnify each holder of the Series A Preferred against any loss for any breach of representation or agreement entered into in connection with the Series A Preferred financing.
Expenses:	The Company shall pay the legal fees and expenses of counsel for the investors.
Exclusivity:	The Company and each of the founders agrees that for a period of 60 days from the execution date of this document, they will not solicit, negotiate or enter into any agreement or commitment or accept any proposal for any debt or equity financing of the Company, other than pursuant to this Memorandum of Terms.