**NEWCO, INC.**

**MEMORANDUM OF TERMS**

**SERIES AA PREFERRED STOCK FINANCING**

**October 1, 2010**

This memorandum summarizes the principal terms proposed by NewCo, Inc, a Delaware corporation (the “**Company**”), with respect to a private placement of its Series AA preferred stock. This term sheet expires on November 1, 2010.

**Capitalization**

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | Shares | Ownership % | Type |
| Founders / Common | 800000 | 60% | Common |
| Stock Option Plan | 150000 | 11.25% | Common |
| TechStars | 50000 | 3.75% | Common |
| Series AA Investors | 333333 | 25% | Series AA Preferred Stock |
| Total | 1333333 | 100% |  |

**Proposed Private Placement**

The Company proposes a private placement of shares of Series AA convertible preferred stock to a limited number of “accredited” investors on the following terms:

|  |  |
| --- | --- |
| Number of Series AA Shares Offered: | Up to [333,333] shares. |
| Price Per Series AA Share: | $[1.50] (the “**Original Purchase Price**”). The Original Purchase Price represents a post-money valuation of $[2,000,000]. |
| Total Amount of Offering: | Up to $[500,000], but not less than $[250,000]. |
| Dividends: | The holders of the Series AA shall be entitled to participate pro rata in any dividends paid on the Common Stock on an as-if-converted basis. Dividends are payable only when, as and if declared by the Board of Directors. |
| Liquidation Preference: | In the event of any liquidation or winding up of the Company, the holders of Series AA shall be entitled to receive in preference to the holders of the Common Stock a per share amount equal to the greater of: (i) the Original Purchase Price plus any declared but unpaid dividends or (ii) the amount such holder would have received had the shares of Preferred Stock been converted into Common Stock immediately prior to the liquidation or winding up (the “**Liquidation Preference**”). After the payment of the Liquidation Preference to the holders of the Series AA, the remaining assets of the Company shall be distributed to the holders of the Common Stock on a pro-rata basis. A consolidation, merger, acquisition, sale of voting control or sale of all or substantially all of the assets of the Company in which the stockholders of the Company do not own a majority of the outstanding shares of the surviving corporation shall be deemed to be a liquidation or winding up for purposes of the Liquidation Preference. |
| Conversion: | The holders of the Series AA shall have the right to convert the Series AA, at any time, into shares of Common Stock. The initial conversion rate shall be 1:1, subject to adjustment as provided below. The Series A shall be automatically converted into Common Stock (i) if the holders of at least a majority of the outstanding Series AA consent to such conversion or (ii) upon the closing of a firmly underwritten public offering of shares of Common Stock of the Company offering with total proceeds to the Company of not less than fifteen million dollars ($15,000,000) (before deduction of underwriters’ commissions and expenses) (a “**Qualified IPO**”). |
| 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 AA investors; provided that such Series AA board seat shall terminate in the event that the Series AA Stockholders 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 AA 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 AA 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 AA shall have a number of votes equal to the number of shares of Common Stock then issuable upon conversion of such share of Series AA. |
| 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 Certificate 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 AA 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 Series AA Holder must execute such agreement and be subject to the terms of such agreement in the same manner as other investors and such right shall terminate following the company’s closing of additional equity investments of more than $750,000 (a “**Qualified Financing**”). |
| Information Rights: | The Company shall provide in a reasonable timeframe to each Investor annual financial statements. |
| 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 AA held by such investor by the total number of shares 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 on behalf of all Investors by a majority in interest of the Investors. Such right may be terminated, waived or modified in any manner by a majority of the Series AA Preferred and shall terminate following a Qualified Financing. |
| Expenses: | Each party shall pay their own fees and expenses. |

The 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 documents.