

{Company Name}
Memorandum of Terms

[Except with respect to the provisions entitled ["**Confidentiality**"] and ["**Exclusive negotiations**"], which are intended to be, and are, legally binding agreements among the parties hereto, this] [This] Memorandum of Terms represents only the current thinking of the parties with respect to certain of the major issues relating to the proposed private offering and does not constitute a legally binding agreement. This Memorandum of Terms does not constitute an offer to sell or a solicitation of an offer to buy securities in any state where the offer or sale is not permitted.

The Offering

Issuer: {Company Name}, a Delaware corporation (the "**Company**")
Securities: Series A Preferred Stock (the "**Series A Preferred**")
[Valuation of the Company: {\$_____} pre-money]
Amount of the offering: [Up to {\$_____}] [{\$_____} to {\$_____}]
Consideration: [Cash] [Cash and cancellation of indebtedness]
Number of securities: {_____} shares
Price per share: {\$_____}

Investors: or affiliated entities, and other investors acceptable to the Company.

[Capitalization: See Exhibit A for the pre-financing capitalization of the Company] and the *pro forma* capitalization following the proposed offering].

[Capitalization changes: {Specify any capitalization changes to occur before or in conjunction with the closing}]

Anticipated closing date: [Initial closing on] [On] or before {date}, with one or more additional closings within {_____} days thereafter].

[Milestone payments: The purchase price will be payable as follows:

- At the initial closing, the investors will pay an aggregate of {\$_____} (the "**Initial Amount**").
- Upon completion of the performance milestones set forth in Exhibit B, the investors [will] [may in their discretion] invest additional amounts (the "**Commitment**") as set forth in Exhibit B.

If, in the sole and absolute judgment of the investors, a performance milestone has not been satisfied, then the investors may either (i) waive the failure and pay the amount, or a portion thereof, set forth opposite such milestone on Exhibit B, such payment to be conditioned upon the receipt by the investors of a written commitment by the Company to use its best efforts to complete the applicable milestone by a specified date and to satisfy such other conditions as the investors may require, (ii) elect not to make such milestone payment but reserve the right to make subsequent milestone payments, or (iii) terminate the Commitment without any further obligation or liability on the part of the investors.]

TERMS OF THE PREFERRED

Dividends: Dividend rate: {_____}%

Cumulation: [Cumulative] [Noncumulative]

Priority: [Senior to common] [Pari passu with common].

[Participation: [After preferential dividends, Series A Preferred does not participate in further dividends] [After preferential dividends, Series A Preferred participates in dividends on the common] [Common may not receive any dividends unless Series A Preferred receives a dividend (including the preference amount) equal to the amount it would have received if converted to common].]

[Cumulative dividends and conversion: Accumulated dividends [not] [payable on conversion].]

Liquidation preference: [Pari passu with common (no liquidation preference).] [Amount: [Original purchase price plus accrued dividends] [{\$_____} times the original purchase price plus accrued dividends] [describe liquidation preference amount]].]

[Priority: [Senior to common].

Participation: After payment of preferential liquidation proceeds, [the Series A Preferred does not participate in further liquidation proceeds.] [the Series A Preferred participates in liquidation proceeds to the common] [common gets {\$_____}, then the Series A Preferred participates *pro rata* in additional liquidation proceeds to the common] [describe the participation feature of the liquidation preference]].]

[Limit on participation: [Cap on participation at {_____} times the initial liquidation preference] [No cap on participation].]

Deemed liquidation: A sale of all or substantially all of the Company's assets or a merger or consolidation of the Company with any other company will be treated as a liquidation of the Company. [A deemed liquidation may be waived upon the election of the holders of {specify vote threshold} of the outstanding shares of preferred stock.]

Redemption: [The Series A Preferred will not have redemption rights.] [Outstanding shares of Series A Preferred will be [redeemed] [redeemable at the election of [any holder] [holders of {_____}% of the outstanding Series A Preferred] [the Company]] on {specify date} in {specify number} equal {specify time period} installments commencing [{specify time period} from the date of purchase] [specify start time]] [describe redemption schedule]]. The redemption price will be [the purchase price plus declared] and accrued] dividends from the closing date] [the purchase price plus declared] and accrued] dividends, plus a {_____}% per annum return [(compounded {specify compounding period})] from the closing date] [describe redemption price]]. [If the Series A Preferred is not redeemed on the date or dates set for redemption, the redemption price will increase to [the purchase price plus declared] and accrued] dividends plus {_____}% per annum [(compounded {specify compounding period})] from [the closing date] [the date originally set for redemption] [specify compounding start date]] [describe penalty price for failure to redeem on a timely basis]].]

Conversion: The Series A Preferred may be converted at any time, at the option of the holder, into shares of common stock. The conversion rate will initially be {____}: 1, subject to anti-dilution and other customary adjustments.

Automatic conversion: Each share of [Series A Preferred] [preferred stock] will automatically convert into common stock, at the then applicable conversion rate, upon (i) the closing of a firmly underwritten public offering of common stock [at a price per share that is at least {\$_____}] [with gross offering proceeds in excess of {\$_____}] (a "**Qualified Public Offering**"), or (ii) the consent of the holders of {specify consent threshold} of the then outstanding shares of the [Series A Preferred] [preferred stock].

Anti-dilution: *Adjustments.* The conversion price of the Series A Preferred will be subject to adjustment, on a [full-ratchet] [narrow-based weighted-average] [broad-based weighted-average] basis [based on outstanding common and preferred only] [based on outstanding preferred only] [based on {describe basis for calculation}]], if the Company issues additional securities at a price per share less than the then applicable conversion price.

Exceptions. There will be no adjustment to the conversion price for:

- [shares issued upon conversion of the Series A Preferred]; and]
- [shares or options, warrants or other rights issued to employees, consultants or directors in accordance with plans, agreements or similar arrangements[, but not to exceed a total of { } shares issued after the closing date[or such greater number as[unanimously] approved by the board]]]; and]
- [shares issued upon exercise of options, warrants or convertible securities]; and]
- [shares issued as a dividend or distribution on the preferred stock or for which adjustment is otherwise made pursuant to the certificate of incorporation (e.g., stock splits)]; and]
- [shares issued in connection with a [registered public offering][Qualified Public Offering]]]; and]
- [shares issued or issuable pursuant to an acquisition of another corporation or a joint venture agreement approved by the board[(describe any special board approval requirements)]]; and]
- [shares issued or issuable to banks, equipment lessors or other financial institutions pursuant to debt financing or commercial transactions approved by the board[(describe any special board approval requirements)]]; and]
- [shares issued or issuable in connection with any settlement approved by the board[(describe any special board approval requirements)]]; and]
- [shares issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar arrangements or strategic partnerships approved by the board[(describe any special board approval requirements)]]; and]
- [shares issued to suppliers of goods or services in connection with the provision of goods or services pursuant to transactions approved by the board[(describe any special board approval requirements)]]; and]
- [shares issued pursuant to [other]transactions approved by the board[(describe any special board approval requirements)]]; and]
- shares that are otherwise excluded by consent of holders of {specify consent threshold} of the Series A Preferred.

[**“Pay-to-play” requirement:** If a holder of preferred stock fails to participate in [this financing][this financing or any future Qualified Financing (as defined below)][any future Qualified Financing (as defined below)] on a *pro rata* basis, then such holder [will lose its anti-dilution protection for the financing on all preferred stock that it owns][will lose its anti-dilution protection for the financing and all subsequent financings on all preferred stock that it owns][will have all preferred stock that it owns converted to common stock][and][will lose [all of its contractual investor rights][its [registration rights][, [and][information rights][, [and][right of first refusal on company issuances][, [and][right of first refusal on issuances by other stockholders][, [and][co-sale rights][, [and][voting rights][and][explain consequences of failure to participate]]]]. [If such holder participates in [the][any such] financing but not to the full extent of its *pro rata* share, then the preceding will apply proportionally to the extent of the failure to participate.]

[A **“Qualified Financing”** is that portion of any financing by the Company[with a purchase price less than [the applicable conversion price of the Series A Preferred][(describe)] that the board [(describe any special board approval requirements)] determines in good faith must be purchased *pro rata* among the stockholders of the Company subject to the “pay-to-play” provisions. [Such determination will be made regardless of whether the price is higher or lower than any series of preferred stock.]]

General voting rights: [Each share of preferred stock will have the right to a number of votes equal to the number of shares of common stock issuable upon conversion of each such share of preferred stock.][Each share of preferred stock will have the right to a number of votes equal to {describe}.][The preferred stock will vote with the common stock on all matters except as specifically provided in the certificate of incorporation or as otherwise required by law.

Voting for directors: [[So long as at least { } shares of Series A Preferred are outstanding, the][The] holders of Series A Preferred will be entitled to elect { } director[s].][The holders of common stock will be entitled to elect { } director[s].][Any additional directors][Directors] will be elected by the holders of preferred stock and common stock voting together.

Protective provisions: [So long as there are at least { } shares of Series A Preferred outstanding, consent][Consent] of the holders of at least { }% of the Series A Preferred will be required to:

- [alter any provision of the certificate of incorporation or the bylaws if it would adversely alter the rights, preferences, privileges or powers of or restrictions on the preferred stock or any series of preferred][alter any provision of the certificate of incorporation if it would adversely alter the rights, preferences, privileges or powers of or restrictions on the preferred stock or any series of preferred][alter any provision of the bylaws if it would adversely alter the rights, preferences, privileges or powers of or restrictions on the preferred stock or any series of preferred]; or]
- [increase or decrease the authorized number of shares of preferred stock or any series of preferred]; or]
- [authorize or create (by reclassification or otherwise) any new class or series of shares having rights, preferences or privileges with respect to dividends or liquidation senior to or on a parity with the Series A Preferred or having voting rights other than those granted to the preferred stock generally][authorize or create (by reclassification or otherwise) any new class or series of shares having rights, preferences or privileges with respect to dividends or liquidation senior to the Series A Preferred or having voting rights other than those granted to the preferred stock generally][authorize or create (by reclassification or otherwise) any new class or series of shares having rights, preferences or privileges with respect to dividends or liquidation senior to or on a parity with the Series A Preferred or having voting rights other than those granted to the preferred stock generally]; or]
- [approve any transaction or series of transactions deemed to be a liquidation of the company]; or]
- [approve any merger, sale of assets or other corporate reorganization or acquisition]; or]
- [approve the voluntary liquidation or dissolution of the Company]; or]
- [increase the size of the board]; or]
- [encumber or grant a security interest in all or substantially all of the assets of the Company in connection with an indebtedness of the Company]; or]
- [acquire a material amount of assets through a merger or purchase of all or substantially all of the assets or capital stock of another entity]; or]
- [declare or pay any dividend or distribution or approve any repurchase with respect to the preferred stock (except as otherwise provided in the certificate of incorporation) or the common stock (subject to customary exceptions)]; or]
- [increase the number of shares authorized for issuance under any existing stock or option plan or create any new stock or option plan]; or]

[Approval is similarly required to;]

INVESTOR RIGHTS

[**Registration rights:** *Registrable securities.* The common stock issued or issuable upon conversion of the preferred stock will be **“Registrable Securities.”**

Demand registration. Subject to customary exceptions, holders of at least { }% of the Registrable Securities will be entitled to demand that the Company effect[up to] { } [firmly underwritten] registration[s][(provided that[each] such registration [has an offering price of at least { \$ } per share][and][has aggregate proceeds of at least { \$ }]]] at any time following the earlier of (i) { } year[s] following the closing of the financing and (ii) { } days following the

Company's initial public offering. The Company will have the right to delay such registration under certain circumstances for [up to { } period[s] of up to { } days[each] in any twelve month period.

"Piggyback" registration. The holders of Registrable Securities will be entitled to "piggyback" registration rights on any registered offering by the Company on its own behalf or on behalf of selling stockholders, subject to customary exceptions. In an underwritten offering, the managing underwriters will have the right, in the event of marketing limitations, to limit the number of Registrable Securities included in the offering[, provided that, in an offering other than the initial public offering, the Registrable Securities may not be limited to less than { }% of the total offering]. In the event of such marketing limitations, each holder of Registrable Securities will have the right to include shares on a *pro rata* basis as among all such holders and to include shares in preference to any other holders of common stock.

S-3 rights. Subject to customary exceptions, holders of Registrable Securities will be entitled to demand registrations on Form S-3 (if available to the Company) so long as the offering is for common stock having an aggregate offering price of not less than { \$ }. The Company will not be required to file more than { } such Form S-3 registration statement[s] in any twelve month period. The Company may defer an S3 filing { } time[s] during any twelve month period for up to { } days.

Expenses. Subject to customary exceptions, the Company will bear the registration expenses (exclusive of underwriting discounts and commissions) of all demand, piggyback and S-3 registrations, provided that the Company will not be required to pay the fees of more than one counsel to all holders of Registrable Securities.

Termination. The registration rights of a holder of Registrable Securities will terminate on the earlier of (i) such date, on or after the Company's initial public offering, on which such holder may immediately sell all shares of its Registrable Securities under Rule 144 during any three-month period and (ii) { } year[s] after the initial public offering.

Transfer. Registration rights may be transferred by a holder of Registrable Securities to current and former partners and members, and affiliates of that holder and to other persons acquiring at least { } shares of the Company's outstanding capital stock, provided the Company is given written notice.

Market stand-off. Holders of Registrable Securities will agree not to effect any transactions with respect to any of the Company's securities within { } days following [any][the initial] public offering by the Company[, provided that all [officers and directors of the Company][holders of at least 1% of the Company's voting securities][officers and directors of the Company and all holders of at least 1% of the Company's voting securities] are similarly bound].

Other provisions. The Investor Rights Agreement will contain such other provisions with respect to registration rights as are customary, including with respect to indemnification, underwriting arrangements and restrictions on the grant of future registration rights.]

[Right to maintain

proportionate ownership: Each holder of [at least { } shares of] Series A Preferred will have a right to purchase its *pro rata* share of [up to { }% of] any offering of new securities by the Company, subject to customary exceptions. The *pro rata* share will be based on the ratio of (x) the number of shares of Series A Preferred held by such holder (on an asconverted basis) to (y) [the Company's outstanding securities (on an asconverted and as-exercised basis)][the Company's fully-diluted capitalization (on an as-converted and as-exercised basis)][the total number of shares of Series A Preferred then outstanding]. [The holders exercising this right will be required to purchase all of the new securities to be offered.] [Participating holders will have the right to purchase, on a *pro rata* basis, any shares as to which eligible holders do not exercise their rights.] This right will terminate immediately prior to [the Company's initial public offering][a Qualified Public Offering].]

[Right of first refusal: In the event proposes to transfer any common stock[or other securities convertible into or exercisable for common stock][, or proposes to transfer any common stock[or other securities convertible into or exercisable for common stock][, the Company will have a right of first refusal to purchase[not less than all of][any or all] the shares on the same terms as the proposed transfer.][the holders of] at least { } shares of] Series A Preferred will have a right of first refusal (on a *pro rata* basis based on [the total shares of Series A Preferred then outstanding][the Company's fullydiluted capitalization (on an as-converted and as-exercised basis)][the Company's outstanding securities (on an asconverted and as-exercised basis)]) with respect to the proposed transfer.[Rights to purchase any unsubscribed shares will be reallocated *pro rata* among the participating holders of Series A Preferred.]]

[If the Company does not exercise its right of first refusal, holders of [at least { } shares of] Series A Preferred will have a right of first refusal (on a *pro rata* basis based on [the total shares of Series A Preferred then outstanding][the Company's fullydiluted capitalization (on an as-converted and as-exercised basis)][the Company's outstanding securities (on an asconverted and as-exercised basis)]) with respect to the proposed transfer.[Rights to purchase any unsubscribed shares will be reallocated *pro rata* among the other eligible holders of Series A Preferred.]]

The rights of first refusal will be subject to customary exceptions and will terminate on [a Qualified Public Offering][an initial public offering].]

["Co-sale" rights: [To the extent the rights of first refusal are not exercised, in][In] the event proposes to transfer any common stock[or other securities convertible into or exercisable for common stock][, or proposes to transfer any common stock[or other securities convertible into or exercisable for common stock][, the holders of] at least { } shares of] Series A Preferred [and the founders] will have the right to participate in the proposed transfer on a *pro rata* basis (as among the transferee[, the founders] and the holders of Series A Preferred).] Rights to participate in the proposed transfer will be reallocated to the extent unexercised.] The co-sale rights will be subject to customary exceptions and will terminate on [a Qualified Public Offering][an initial public offering].]

["Drag-along" right: Subject to customary exceptions, if holders of {specify approval threshold} of the Series A Preferred approve a proposed sale of the Company to a third party (whether structured as a merger, reorganization, asset sale or otherwise), {specify persons subject to drag-along} will agree to approve the proposed sale.]

[Voting agreement: The principal stockholders of the Company will agree to elect to the board:

- [{ } Series A designee[s]] as the Series A director[s]].] The [{Repeat Counter}]Series A designee will be chosen by [{ }][investors holding { } of the Series A Preferred held by all investors].] The Series A designee[s] will initially be [{ }][.].]
- [{specify number} common stock designee[s]] as the common stock director[s]].] The [{Repeat Counter}]common stock designee will be chosen by [{ }][founders holding {specify approval threshold} of the common stock held by all founders].] [One of the][The] common stock designee[s] will be the Company's { }.] The common stock designee[s] will initially be [{ }][.].]
- [{specify number} mutual designee[s], as approved by (i) founders holding {specify approval threshold} of the common stock held by all founders and (ii) investors holding {specify approval threshold} of the shares held by all investors. The mutual designee[s] will initially be [{ }][.].]

Director liability: The directors will be entitled to customary indemnification from the Company and reimbursement of reasonable costs of attendance at board meetings. [The Company will also obtain D&O insurance reasonably satisfactory to the Company and its directors.]

[Management rights: The Company will execute a management rights letter under which will have a right to consult with and advise management, examine the books and records of the Company and attend all board meetings in a non-voting observer capacity, subject to customary exceptions.]

[Board observer rights: Subject to customary exceptions, will be entitled to board observer rights and will be entitled to participate as an observer at all board meetings and to receive copies of all materials distributed to the board.]

Information rights: The Company will deliver to each holder of at least { } shares of Series A Preferred:

- [un]audited annual financial statements within { } days following year-end[;]; and[.]
- [unaudited quarterly financial statements within { } days following quarter-end[;]; and[.]
- [unaudited monthly financial statements within { } days of month-end[;]; and[.]
- [annual operating plans { } days before each fiscal year[;]; and[.]
- [unaudited monthly financial statements showing variances from plan within { } days after the end of each month[.]
- [Holders of at least { } shares will be entitled to inspection rights. [The information rights will terminate upon [an initial public offering][a Qualified Public Offering].

EMPLOYEE MATTERS

[Vesting of founder shares: Shares and options held by {specify persons subject to vesting} will be subject to [four-year vesting, with 25% vesting on the first anniversary of [the commencement of services][the initial closing of this financing][{date}] and the remainder vesting monthly thereafter][a vesting schedule to be mutually agreed upon with the investors][{describe other vesting schedule}]. The Company will have the right, upon termination of services, to repurchase any unvested shares.]

[Vesting of employee shares: [Subject to the discretion of the board, shares and options issued to employees, directors and consultants will be subject to four-year vesting, with 25% vesting on the first anniversary of the commencement of services and the remainder vesting monthly thereafter.][{describe other vesting schedule}] The Company will have the right, upon termination of services, to repurchase any unvested shares.]

Proprietary information

agreements: The Company will have all employees and consultants enter into proprietary information and inventions agreements.

["Key person" life insurance: The Company will obtain a "key person" life insurance policy on , with proceeds payable to the Company.]

OTHER MATTERS

Purchase agreement: The investment will be made pursuant to a stock purchase agreement which will contain, among other things, appropriate representations and warranties of the Company and the investors and appropriate conditions of closing.

[Qualified small business: [The Company is a "Qualified Small Business" as defined in Section 1202(d) of the Internal Revenue Code of 1986, as amended.][The Company will covenant to use commercially reasonable efforts [to comply with any applicable filing and reporting requirements][and][to cause the shares to be purchased by the investors to qualify as "Qualified Small Business Stock"].]

Finders: The Company and the investors will each indemnify the other for any finder's fees for which they are respectively responsible.

[Legal fees and expenses: The Company will pay the reasonable fees and expenses of a single counsel to the investors[, up to a maximum of {\$ }], if the financing closes. [Fees and expenses payable hereunder will be payable at closing by wire transfer.]

[Exclusive negotiations: From the date of the execution of this Memorandum of Terms until the earlier of (i) {date}, (ii) notice of termination of negotiations by the lead investor(s) and (iii) the initial closing of the financing contemplated by this Memorandum of Terms[(the "**Exclusivity Period**")], neither the Company nor any of its directors, officers, employees or agents will [solicit][,][or][participate in negotiations or discussions][or][provide non-public information] with respect to [any other investment in the Company][,][or][an acquisition of the Company][or][any similar transaction] without the prior[written] consent of the lead investor(s). [The lead investor(s) consent to the Company soliciting, and participating in negotiations and discussions with, [and providing nonpublic information to,][list names}]. [During the Exclusivity Period, the Company agrees to promptly notify the lead investor(s) if it receives an offer or proposal with respect to any other investment in, or an acquisition of, the Company.]

[Confidentiality: Until the initial closing of the financing contemplated by this Memorandum of Terms, [the existence and terms of this Memorandum of Terms] [and][the fact that negotiations may be ongoing with the investors] shall not be disclosed to any third party without the consent of the Company and the lead investor(s) [, except as may be (i) reasonably required to consummate the transactions contemplated hereby[(provided that any persons receiving the information agree to the confidentiality restrictions contained herein or are otherwise subject to confidentiality obligations)] or (ii) required by law].]

Conditions precedent: The investment will be subject to customary conditions, including but not limited to:

- completion of due diligence to the satisfaction of the investors;
- negotiation and execution of definitive agreements customary in transactions of this nature;
- receipt of all required authorizations, approvals and consents;
- delivery of customary closing certificates[and an opinion of counsel for the Company]; and
- the absence of material adverse changes with respect to the Company.

[The investment will also be subject to the following additional conditions:]

[*(Signature page follows)*]

[This Memorandum of Terms may be executed in counterparts, which together will constitute one document. Facsimile signatures shall have the same legal effect as original signatures. The legally binding portions of this Memorandum of Terms will be governed by { } law, without regard to conflicts-of-law principles.

{Company Name} TEST

Signature *Signature*

Print name *Print name*

Print title *Print title*

Date *Date*]

[This Memorandum of Terms reflects our mutual intentions as a basis for proceeding toward negotiation of definitive agreements.

{Company Name} TEST

Signature *Signature*

Print name *Print name*

Print title *Print title*

Date *Date*]

[

Capitalization]

[

Performance Milestones

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