This sample document is the work product of a national coalition of attorneys who specialize in venture capital financings, working under the auspices of the NVCA. This document is intended to serve as a starting point only, and should be tailored to meet your specific requirements. This document should not be construed as legal advice for any particular facts or circumstances. Note that this sample document presents an array of (often mutually exclusive) options with respect to particular deal provisions.

TERM SHEET

Preliminary Note

This term sheet maps to the NVCA Model Documents, and for convenience the provisions are grouped according to the particular Model Document in which they may be found. Although this term sheet is perhaps somewhat longer than a "typical" VC Term Sheet, the aim is to provide a level of detail that makes the term sheet useful as both a road map for the document drafters and as a reference source for the business people to quickly find deal terms without the necessity of having to consult the legal documents (assuming of course there have been no changes to the material deal terms prior to execution of the final documents).

TERM SHEET
FOR SERIES A PREFERRED STOCK FINANCING OF
[***INSERT COMPANY NAME***], **INC.**
[____ __, 20__]

This Term Sheet summarizes the principal terms of the Series A Preferred Stock Financing of [_____], Inc., a [Delaware] corporation (the "**Company**"). In consideration of the time and expense devoted and to be devoted by the Investors with respect to this investment, the No Shop/Confidentiality [and Counsel and Expenses] provisions of this Term Sheet shall be binding obligations of the Company whether or not the financing is consummated. No other legally binding obligations will be created until definitive agreements are executed and delivered 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. This Term Sheet shall be governed in all respects by the laws of [_____the].[1]

Offering Terms

Closing Date:	As soon as practicable following the Company's acceptance of this Term Sheet and satisfaction of the Conditions to Closing (the "**Closing**"). [*provide for multiple closings if applicable*]
Investors:	Investor No. 1: [_____] shares ([__]%), $[_____] Investor No. 2: [_____] shares ([__]%), $[_____] [as well other investors mutually agreed upon by Investors and the Company]
Amount Raised:	$[_____], [including $[_____] from the conversion of principal [and interest] on bridge notes].[2]
Price Per Share:	$[_____] per share (based on the capitalization of the Company set forth below) (the "**Original Purchase Price**").

[1] The choice of law governing a term sheet can be important because in some jurisdictions a term sheet that expressly states that it is nonbinding may nonetheless create an enforceable obligation to negotiate the terms set forth in the term sheet in good faith. Compare *SIGA Techs., Inc. v. PharmAthene, Inc., Case No. C.A. 2627 ((Del. Supreme Court May 24, 2013)* (holding that where parties agreed to negotiate in good faith in accordance with a term sheet, that obligation was enforceable notwithstanding the fact that the term sheet itself was not signed and contained a footer on each page stating "Non Binding Terms"); *EQT Infrastructure Ltd. v. Smith, 861 F. Supp. 2d 220 (S.D.N.Y. 2012); Stanford Hotels Corp. v. Potomac Creek Assocs., L.P., 18 A.3d 725 (D.C. App. 2011) with Rosenfield v. United States Trust Co.*, 5 N.E. 323, 326 (Mass. 1935) ("An agreement to reach an agreement is a contradiction in terms and imposes no obligation on the parties thereo."); *Martin v. Martin, 326 S.W.3d 741 (Tex. App. 2010)*; *Va. Power Energy Mktg. v. EQT Energy, LLC, 2012 WL 2905110 (E.D. Va. July 16, 2012)*. As such, because a "nonbinding" term sheet governed by the law of a jurisdiction such as Delaware, New York or the District of Columbia may in fact create an enforceable obligation to negotiate in good faith to come to agreement on the terms set forth in the term sheet, parties should give consideration to the choice of law selected to govern the term sheet.

[2] Modify this provision to account for staged investments or investments dependent on the achievement of milestones by the Company.

Pre-Money Valuation: The Original Purchase Price is based upon a fully-diluted pre-money valuation of $[_____] and a fully-diluted post-money valuation of $[_____] (including an employee pool representing [__]% of the fully-diluted post-money capitalization).

Capitalization: The Company's capital structure before and after the Closing is set forth on Exhibit A.

CHARTER[3]

Dividends: [*Alternative 1:* Dividends will be paid on the Series A Preferred on an as-converted basis when, as, and if paid on the Common Stock]

[*Alternative 2:* The Series A Preferred will carry an annual [__]% cumulative dividend [payable upon a liquidation or redemption]. For any other dividends or distributions, participation with Common Stock on an as-converted basis.] [4]

[*Alternative 3*: Non-cumulative dividends will be paid on the Series A Preferred in an amount equal to $[_____] per share of Series A Preferred when and if declared by the Board.]

Liquidation Preference: In the event of any liquidation, dissolution or winding up of the Company, the proceeds shall be paid as follows:

[*Alternative 1 (non-participating Preferred Stock)*: First pay [one] times the Original Purchase Price [plus accrued dividends] [plus declared and unpaid dividends] on each share of Series A Preferred (or, if greater, the amount that the Series A Preferred would receive on an as-converted basis). The balance of any proceeds shall be distributed pro rata to holders of Common Stock.]

[*Alternative 2 (full participating Preferred Stock)*: First pay [one] times the Original Purchase Price [plus accrued dividends] [plus declared and unpaid dividends] on each share of Series A Preferred. Thereafter, the Series A Preferred participates with the Common

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[3] The Charter (Certificate of Incorporation) is a public document, filed with the Secretary of State of the state in which the company is incorporated, that establishes all of the rights, preferences, privileges and restrictions of the Preferred Stock.

[4] In some cases, accrued and unpaid dividends are payable on conversion as well as upon a liquidation event. Most typically, however, dividends are not paid if the preferred is converted. Another alternative is to give the Company the option to pay accrued and unpaid dividends in cash or in common shares valued at fair market value. The latter are referred to as "PIK" (payment-in-kind) dividends.

Stock pro rata on an as-converted basis.]

[*Alternative 3 (cap on Preferred Stock participation rights)*: First pay [one] times the Original Purchase Price [plus accrued dividends] [plus declared and unpaid dividends] on each share of Series A Preferred. Thereafter, Series A Preferred participates with Common Stock pro rata on an as-converted basis until the holders of Series A Preferred receive an aggregate of [_____] times the Original Purchase Price (including the amount paid pursuant to the preceding sentence)**.**]

A merger or consolidation (other than one in which stockholders of the Company own a majority by voting power of the outstanding shares of the surviving or acquiring corporation) and a sale, lease, transfer, exclusive license or other disposition of all or substantially all of the assets of the Company will be treated as a liquidation event (a "**Deemed Liquidation Event**"), thereby triggering payment of the liquidation preferences described above [unless the holders of [___]% of the Series A Preferred elect otherwise]. [The Investors' entitlement to their liquidation preference shall not be abrogated or diminished in the event part of the consideration is subject to escrow in connection with a Deemed Liquidation Event.][5]

Voting Rights:

The Series A Preferred shall vote together with the Common Stock on an as-converted basis, and not as a separate class, except (i) [so long as [*insert fixed number, or %, or "any"*] shares of Series A Preferred are outstanding,] the Series A Preferred as a class shall be entitled to elect [_____] [(_)] members of the Board (the "**Series A Directors**"), and (ii) as required by law. The Company's Certificate of Incorporation will provide that the number of authorized shares of Common Stock may be increased or decreased with the approval of a majority of the Preferred and Common Stock, voting together as a single class, and without a separate class vote by the Common Stock.[6]

Protective Provisions:

[So long as [*insert fixed number, or %, or "any"*] shares of Series A Preferred are outstanding,] in addition to any other vote or approval required under the Company's Charter or Bylaws, the Company will not, without the written consent of the holders of at least [__]% of the Company's Series A Preferred, either directly or by amendment, merger, consolidation, or otherwise:

(i) liquidate, dissolve or wind-up the affairs of the Company, or

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[5] See Subsection 2.3.4 of the Model Certificate of Incorporation and the detailed explanation in related footnote 25.

[6] For corporations incorporated in California, one cannot "opt out" of the statutory requirement of a separate class vote by Common Stockholders to authorize shares of Common Stock. The purpose of this provision is to "opt out" of DGL 242(b)(2).

effect any merger or consolidation or any other Deemed Liquidation Event; (ii) amend, alter, or repeal any provision of the Certificate of Incorporation or Bylaws [in a manner adverse to the Series A Preferred];[7] (iii) create or authorize the creation of or issue any other security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to or on parity with the Series A Preferred, or increase the authorized number of shares of Series A Preferred; (iv) purchase or redeem or pay any dividend on any capital stock prior to the Series A Preferred, [other than stock repurchased from former employees or consultants in connection with the cessation of their employment/services, at the lower of fair market value or cost;] [other than as approved by the Board, including the approval of [_____] Series A Director(s)]; or (v) create or authorize the creation of any debt security [if the Company's aggregate indebtedness would exceed $[____][other than equipment leases or bank lines of credit][unless such debt security has received the prior approval of the Board of Directors, including the approval of [_____] Series A Director(s)]; (vi) create or hold capital stock in any subsidiary that is not a wholly-owned subsidiary or dispose of any subsidiary stock or all or substantially all of any subsidiary assets; [or (vii) increase or decrease the size of the Board of Directors].[8]

Optional Conversion: The Series A Preferred 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 Provisions."

Anti-dilution Provisions: In the event that the Company issues additional securities at a purchase price less than the current Series A Preferred conversion price, such conversion price shall be adjusted in accordance with the following formula:

[*Alternative 1:* "Typical" weighted average:

$$CP_2 = CP_1 * (A+B) / (A+C)$$

CP_2 = Series A Conversion Price in effect immediately after new issue

CP_1 = Series A Conversion Price in effect immediately prior to new issue

[7] Note that as a matter of background law, Section 242(b)(2) of the Delaware General Corporation Law provides that if any proposed charter amendment would adversely alter the rights, preferences and powers of one series of Preferred Stock, but not similarly adversely alter the entire class of all Preferred Stock, then the holders of that series are entitled to a separate series vote on the amendment.

[8] The board size provision may also be addressed in the Voting Agreement; see Section 1.1 of the Model Voting Agreement.

A = Number of shares of Common Stock deemed to be outstanding immediately prior to new issue (includes all shares of outstanding common stock, all shares of outstanding preferred stock on an as-converted basis, and all outstanding options on an as-exercised basis; and does not include any convertible securities converting into this round of financing)[9]

B = Aggregate consideration received by the Corporation with respect to the new issue divided by CP_1

C = Number of shares of stock issued in the subject transaction]

[*Alternative 2:* Full-ratchet – the conversion price will be reduced to the price at which the new shares are issued.]

[*Alternative 3*: No price-based anti-dilution protection.]

The following issuances shall not trigger anti-dilution adjustment:[10]

(i) securities issuable upon conversion of any of the Series A Preferred, or as a dividend or distribution on the Series A Preferred; (ii) securities issued upon the conversion of any debenture, warrant, option, or other convertible security; (iii) Common Stock issuable upon a stock split, stock dividend, or any subdivision of shares of Common Stock; and (iv) shares of Common Stock (or options to purchase such shares of Common Stock) issued or issuable to employees or directors of, or consultants to, the Company pursuant to any plan approved by the Company's Board of Directors [including at least [_____] Series A Director(s)].

Mandatory Conversion: Each share of Series A Preferred will automatically be converted into Common Stock at the then applicable conversion rate in the event of the closing of a [firm commitment] underwritten public offering with a price of [___] times the Original Purchase Price (subject to adjustments for stock dividends, splits, combinations and similar events) and [net/gross] proceeds to the Company of not less than $[_____] (a "**QPO**"), or (ii) upon the written consent of the holders of [__]% of the Series A Preferred.[11]

[*Pay-to-Play:* [Unless the holders of [__]% of the Series A elect otherwise,] on any

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[9] The "broadest" base would include shares reserved in the option pool.

[10] Note that additional exclusions are frequently negotiated, such as issuances in connection with equipment leasing and commercial borrowing. See Subsections 4.4.1(d)(v)-(viii) of the Model Certificate of Incorporation for additional exclusions.

[11] The per share test ensures that the investor achieves a significant return on investment before the Company can go public. Also consider allowing a non-QPO to become a QPO if an adjustment is made to the Conversion Price for the benefit of the investor, so that the investor does not have the power to block a public offering.

subsequent [down] round all [Major] Investors are required to purchase their pro rata share of the securities set aside by the Board for purchase by the [Major] Investors. All shares of Series A Preferred[12] of any [Major] Investor failing to do so will automatically [lose anti-dilution rights] [lose right to participate in future rounds] [convert to Common Stock and lose the right to a Board seat if applicable].][13]

Redemption Rights:[14]

Unless prohibited by Delaware law governing distributions to stockholders, the Series A Preferred shall be redeemable at the option of holders of at least [__]% of the Series A Preferred commencing any time after [_____] at a price equal to the Original Purchase Price [plus all accrued but unpaid dividends]. Redemption shall occur in three equal annual portions. Upon a redemption request from the holders of the required percentage of the Series A Preferred, all Series A Preferred shares shall be redeemed [(except for any Series A holders who affirmatively opt-out)].[15]

STOCK PURCHASE AGREEMENT

Representations and Warranties:

Standard representations and warranties by the Company. [Representations and warranties by Founders regarding technology ownership, etc.]. [16] [Representations and warranties regarding CFIUS.][17]

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[12] Alternatively, this provision could apply on a proportionate basis (*e.g.*, if Investor plays for ½ of pro rata share, receives ½ of anti-dilution adjustment).

[13] If the punishment for failure to participate is losing some but not all rights of the Preferred (*e.g.*, anything other than a forced conversion to common), the Certificate of Incorporation will need to have so-called "blank check preferred" provisions at least to the extent necessary to enable the Board to issue a "shadow" class of preferred with diminished rights in the event an investor fails to participate. As a drafting matter, it is far easier to simply have (some or all of) the preferred convert to common.

[14] Redemption rights allow Investors to force the Company to redeem their shares at cost (and sometimes investors may also request a small guaranteed rate of return, in the form of a dividend). In practice, redemption rights are not often used; however, they do provide a form of exit and some possible leverage over the Company. While it is possible that the right to receive dividends on redemption could give rise to a Code Section 305 "deemed dividend" problem, many tax practitioners take the view that if the liquidation preference provisions in the Charter are drafted to provide that, on conversion, the holder receives the greater of its liquidation preference or its as-converted amount (as provided in the Model Certificate of Incorporation), then there is no Section 305 issue.

[15] Due to statutory restrictions, the Company may not be legally permitted to redeem in the very circumstances where investors most want it (the so-called "sideways situation"). Accordingly, and particulary in light of the Delaware Chancery Court's ruling in *Thoughtworks (*see discussion in Model Charter*),* investors may seek enforcement provisions to give their redemption rights more teeth - *e.g.*, the holders of a majority of the Series A Preferred shall be entitled to elect a majority of the Company's Board of Directors, or shall have consent rights on Company cash expenditures, until such amounts are paid in full.

[16] Founders' representations are controversial and may elicit significant resistance as they are found in a minority of venture deals. They are more likely to appear if Founders are receiving liquidity from the transaction, or if there is heightened concern over intellectual property (*e.g.*, the Company is a spin-out from an academic institution or the Founder was formerly with another company whose business could be deemed competitive with the Company), or in international deals. Founders' representations are even less common in subsequent rounds, where risk is viewed as

[*Regulatory Covenants (CFIUS):*	*To the extent a CFIUS filing is or may be required:* Investors and the Company shall use reasonable best efforts to submit the proposed transaction to the Committee on Foreign Investment in the United States ("**CFIUS**") and obtain CFIUS clearance or a statement from CFIUS that no further review is necessary with respect to the parties' [notice/declaration]][18] [Notwithstanding the previous sentence, Investors shall have no obligation to take or accept any action, condition, or restriction as a condition of CFIUS clearance that would have a material adverse impact on the Company or the Investors' right to exercise control over the Company.][19]
Conditions to Closing:	Standard conditions to Closing, which shall include, among other things, satisfactory completion of financial and legal due diligence, qualification of the shares under applicable Blue Sky laws, the filing of a Certificate of Incorporation establishing the rights and preferences of the Series A Preferred, [the obtaining of CFIUS clearance and/or a statement from CFIUS that no further review is necessary,] [20] and an opinion of counsel to the Company.
Counsel and Expenses:	[Investor/Company] counsel to draft Closing documents. Company to pay all legal and administrative costs of the financing [at Closing], including reasonable fees (not to exceed $[_____])and expenses of Investor counsel[, unless the transaction is not completed because the

significantly diminished and fairly shared by the investors, rather than being disproportionately borne by the Founders. A sample set of Founders Representations is attached as an Addendum at the end of the Model Stock Purchase Agreement.

[17] To be considered in order to address issues under the Defense Production Act of 1950 and related regulations (DPA). Relevant representations may include whether or not a Company works with "critical technologies" within the meaning of the DPA, whether a Company has operations or activities in particular sectors of the U.S. economy or in the U.S. at all, whether an Investor is foreign, and whether an Investor has foreign government relationships, among others.

[18] To be included if Investors review the facts of the investment and determine that a CFIUS filing is warranted. When the Investors are foreign persons, a CFIUS filing may be mandatory with respect to certain investments (e.g., some transactions involving "critical technologies") and voluntary but advisable with respect to others. This covenant may be paired with an explicit reference to the exercise of the redemption right in the charter in the event of a CFIUS-mandated divestiture of shares. A CFIUS "notice" is a full-form filing that results in a definitive opinion by CFIUS regarding the national security risks associated with the transaction but may take months to obtain; a CFIUS "declaration" is a short-form filing that may not result in a definitive opinion by CFIUS but is intended to be able to be obtained within 45 days.

[19] If a CFIUS filing is warranted, the parties may also elect to negotiate a basic statement laying out the scope of Investors' obligation to accept CFIUS conditions. Whether or not a CFIUS filing is made, the parties may wish to consider other risk allocation measures; examples include unilateral or bilateral waivers of responsibility for CFIUS-related costs and penalties, indemnification terms, or other similar language.

[20] To be included if Investors review the facts of the investment and determine that a CFIUS filing is warranted. Note that in cases where a mandatory filing is necessary, that filing must be submitted 45 days in advance of closing, but obtaining CFIUS clearance in advance of closing is not a requirement of law. However, submitting a CFIUS filing and then closing over that review process creates regulatory risks for Investors that are best avoided if the timing of the investment permits.

Investors withdraw their commitment without cause].[21]

Company Counsel: [_____
_____
_____]

Investor Counsel: [_____
_____
_____]

INVESTORS' RIGHTS AGREEMENT

Registration Rights:

Registrable Securities: All shares of Common Stock issuable upon conversion of the Series A Preferred [and any other Common Stock held by the Investors] will be deemed "**Registrable Securities**."[22]

Demand Registration: Upon earliest of (i) [three-five] years after the Closing; or (ii) [six] months[23] following an initial public offering ("**IPO**"), persons holding [__]% of the Registrable Securities may request [one][two] (consummated) registrations by the Company of their shares. The aggregate offering price for such registration may not be less than $[5-15] million. A registration will count for this purpose only if (i) all Registrable Securities requested to be registered are registered, and (ii) it is closed, or withdrawn at the request of the Investors (other than as a result of a material adverse change to the Company).

Registration on Form S-3: The holders of [10-30]% of the Registrable Securities will have the right to require the Company to register on Form S-3, if available for use by the Company, Registrable Securities for an aggregate offering price of at least $[1-5 million]. There will be no limit on the aggregate number of such Form S-3 registrations, provided that there are no more than [two] per year.

Piggyback Registration: The holders of Registrable Securities will be entitled to "piggyback" registration rights on all registration statements of the Company, subject to the right, however, of the Company and its underwriters to reduce the number of shares proposed to be registered to a minimum

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21 The bracketed text should be deleted if this section is not designated in the introductory paragraph as one of the sections that is binding upon the Company regardless of whether the financing is consummated.

22 Note that Founders/management sometimes also seek limited registration rights.

23 The Company will want the percentage to be high enough so that a significant portion of the investor base is behind the demand. Companies will typically resist allowing a single investor to cause a registration. Experienced investors will want to ensure that less experienced investors do not have the right to cause a demand registration. In some cases, different series of Preferred Stock may request the right for that series to initiate a certain number of demand registrations. Companies will typically resist this due to the cost and diversion of management resources when multiple constituencies have this right.

of [20-30]% on a pro rata basis and to complete reduction on an IPO at the underwriter's discretion. In all events, the shares to be registered by holders of Registrable Securities will be reduced only after all other stockholders' shares are reduced.

Expenses: The registration expenses (exclusive of stock transfer taxes, underwriting discounts and commissions will be borne by the Company. The Company will also pay the reasonable fees and expenses[, not to exceed $_____,] of one special counsel to represent all the participating stockholders.

Lock-up: Investors shall agree in connection with the IPO, if requested by the managing underwriter, not to sell or transfer any shares of Common Stock of the Company [(including/excluding shares acquired in or following the IPO)] for a period of up to 180 days [plus up to an additional 18 days to the extent necessary to comply with applicable regulatory requirements][24] following the IPO (provided all directors and officers of the Company [and [1 – 5]% stockholders] agree to the same lock-up). [Such lock-up agreement shall provide that any discretionary waiver or termination of the restrictions of such agreements by the Company or representatives of the underwriters shall apply to Investors, pro rata, based on the number of shares held.

Termination: Upon a Deemed Liquidation Event~~,~~ [and/or] when all shares of an Investor are eligible to be sold without restriction under Rule 144 [and/or] the [____] anniversary of the IPO**.**

No future registration rights may be granted without consent of the holders of a [majority] of the Registrable Securities unless subordinate to the Investor's rights.

Management and Information Rights: A Management Rights letter from the Company, in a form reasonably acceptable to the Investors, will be delivered prior to Closing to each Investor that requests one.[25]

Any [Major] Investor [(who is not a competitor)] will be granted access to Company facilities and personnel during normal business hours and with reasonable advance notification. The Company will deliver to such Major Investor (i) annual, quarterly, [and monthly] financial statements, and other information as determined by the Board; (ii) thirty days prior to the end of each fiscal year, a comprehensive operating budget forecasting the Company's revenues, expenses, and cash position on a month-to-month basis for the upcoming fiscal year[; and (iii) promptly following the end of

[24] See commentary in footnotes 23 and 24 of the Model Investors' Rights Agreement regarding possible extensions of lock-up period.

[25] See commentary in introduction to Model Managements Rights Letter, explaining purpose of such letter.

each quarter an up-to-date capitalization table. A "Major Investor" means any Investor who purchases at least $[_____] of Series A Preferred.

Right to Participate Pro Rata in Future Rounds:

All [Major] Investors shall have a pro rata right, based on their percentage equity ownership in the Company (assuming the conversion of all outstanding Preferred Stock into Common Stock and the exercise of all options outstanding under the Company's stock plans), to participate in subsequent issuances of equity securities of the Company (excluding those issuances listed at the end of the "Anti-dilution Provisions" section of this Term Sheet. In addition, should any [Major] Investor choose not to purchase its full pro rata share, the remaining [Major] Investors shall have the right to purchase the remaining pro rata shares.

Matters Requiring Investor Director Approval:

[So long as the holders of Series A Preferred are entitled to elect a Series A Director, the Company will not, without Board approval, which approval must include the affirmative vote of [one/both] of the Series A Director(s):

(i) make any loan or advance to, or own any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Company; (ii) make any loan or advance to any person, including, any employee or director, except advances and similar expenditures in the ordinary course of business or under the terms of a employee stock or option plan approved by the Board of Directors; (iii) guarantee, any indebtedness except for trade accounts of the Company or any subsidiary arising in the ordinary course of business; (iv) make any investment inconsistent with any investment policy approved by the Board; (v) incur any aggregate indebtedness in excess of $[_____] that is not already included in a Board-approved budget, other than trade credit incurred in the ordinary course of business; (vi) enter into or be a party to any transaction with any director, officer or employee of the Company or any "associate" (as defined in Rule 12b-2 promulgated under the Exchange Act) of any such person [except transactions resulting in payments to or by the Company in an amount less than $[60,000] per year], [or transactions made in the ordinary course of business and pursuant to reasonable requirements of the Company's business and upon fair and reasonable terms that are approved by a majority of the Board of Directors];[26] (vii) hire, fire, or change the compensation of the executive officers, including approving any option grants; (viii) change the principal business of the Company, enter new lines of business, or exit the current line of business; (ix) sell,

[26] Note that Section 402 of the Sarbanes-Oxley Act of 2003 would require repayment of any loans in full prior to the Company filing a registration statement for an IPO.

assign, license, pledge or encumber material technology or intellectual property, other than licenses granted in the ordinary course of business; or (x) enter into any corporate strategic relationship involving the payment contribution or assignment by the Company or to the Company of assets greater than [$100,000.00].

Non-Competition and Non-Solicitation Agreements:[27] Each Founder and key employee will enter into a [one] year non-competition and non-solicitation agreement in a form reasonably acceptable to the Investors.

Non-Disclosure and Developments Agreement: Each current and former Founder, employee and consultant will enter into a non-disclosure and proprietary rights assignment agreement in a form reasonably acceptable to the Investors.

Board Matters: [Each Board Committee shall include at least one Series A Director.]

The Board of Directors shall meet at least [monthly][quarterly], unless otherwise agreed by a vote of the majority of Directors.

The Company will bind D&O insurance with a carrier and in an amount satisfactory to the Board of Directors. Company to enter into Indemnification Agreement with each Series A Director [and affiliated funds] in form acceptable to such director. In the event the Company merges with another entity and is not the surviving corporation, or transfers all of its assets, proper provisions shall be made so that successors of the Company assume the Company's obligations with respect to indemnification of Directors.

Employee Stock Options: All employee options to vest as follows: [25% after one year, with remaining vesting monthly over next 36 months].

[Immediately prior to the Series A Preferred Stock investment, [_____] shares will be added to the option pool creating an unallocated option pool of [_____] shares.]

[*Limitations on Pre-CFIUS-Approval Exercise of* Notwithstanding anything to the contrary contained in the Transaction Agreements, Investors and the Company agree that as of and following the initial Closing and until the CFIUS clearance is

[27] Note that non-compete restrictions (other than in connection with the sale of a business) are prohibited in California, and may not be enforceable in other jurisdictions, as well. In addition, some investors do not require such agreements for fear that employees will request additional consideration in exchange for signing a Non-Compete/Non-Solicit (and indeed the agreement may arguably be invalid absent such additional consideration - although having an employee sign a non-compete contemporaneous with hiring constitutes adequate consideration in jurisdictions where non-competes are generally enforceable). Others take the view that it should be up to the Board on a case-by-case basis to determine whether any particular key employee is required to sign such an agreement. Non-competes typically have a one year duration, although state law may permit up to two years. Note also that some states may require that a *new* Non-Compete be signed where there is a material change in the employee's duties/salary/title.

Rights: received, Investors shall not obtain (i) control (as defined in 31 C.F.R. § 800.204) of the Company, including the power to determine, direct or decide any important matters for the Company; (ii) access to any material nonpublic technical information (as defined in 31 C.F.R. § 801.208) in the possession of the Company (which shall not include financial information about the Company), including access to any information not already in the public domain that is necessary to design, fabricate, develop, test, produce, or manufacture Company products, including processes, techniques, or methods; (iii) membership or observer rights on the Board of Directors of the Company or the right to nominate an individual to a position on the Board of Directors of the Company; or (iv) any involvement (other than through voting of shares) in substantive decisionmaking of the Company regarding the use, development, acquisition, or release of any of the Company's critical technologies (as defined in 31 C.F.R. § 801.204). To the extent that any term in the Transaction Agreements would grant any of these rights, (i)-(iv) to Investors, that term shall have no effect until such time as the CFIUS clearance is received.] [28]

[*Springing CFIUS Covenant:* [In the event that CFIUS requests or requires a filing/in the event of [ ]], Investors and the Company shall use reasonable best efforts to submit the proposed transaction to the Committee on Foreign Investment in the United States ("**CFIUS**") and obtain CFIUS clearance or a statement from CFIUS that no further review is necessary with respect to the parties' [notice/declaration]. Notwithstanding the previous sentence, Investors shall have no obligation to take or accept any action, condition, or restriction as a condition of CFIUS clearance that would have a material adverse impact on the Company or the Investors' right to exercise control over the Company.][29]

[*Limitations on Information Rights:* Notwithstanding anything to the contrary contained in the Stock Purchase Agreement, the Charter, the Investors' Rights Agreement, the Right of First Refusal And Co-Sale Agreement, and the Voting Agreement (all of the agreements above together being the

[28] To be included if Investors intend to close the transaction in stages, with at least one stage occurring before CFIUS clearance is obtained. The foreign investor side letter language on point would override any aspect of the other transaction agreements that might grant control of the Company or access to aspects of the Company that might create grounds for CFIUS jurisdiction – until CFIUS clearance is obtained.

[29] To be included if Investors believe that there is risk that CFIUS may request a filing of the transaction at some future date or that a CFIUS filing may be required in the event of some future event (e.g., when the exit of another investor causes Investor to obtain control over the selection of a board member). A springing CFIUS covenant provides certainty that all parties will proceed at CFIUS in orderly fashion. The further "notwithstanding" sentence ensures that while parties will cooperate to make the CFIUS filing, Investor will not be obligated to accept CFIUS-required conditions on the deal that might frustrate the purposes of its investment (i.e., the Investor can abandon the proposed investment); more robust mitigation commitment language may be desirable from the perspective of U.S. companies or U.S. investors seeking to limit foreign investors' ability to abandon the transaction. For more information on the differences between electing to pursue a CFIUS notice vs. a CFIUS declaration and considering a reference to redemption rights, please see note 18, above.

"**Transaction Agreements**"), Investors and the Company agree that as of and following [Closing/the initial Closing], Investors shall not obtain access to any material nonpublic technical information (as defined in 31 C.F.R. § 801.208) in the possession of the Company (which shall not include financial information about the Company), including access to any information not already in the public domain that is necessary to design, fabricate, develop, test, produce, or manufacture Company products, including processes, techniques, or methods.] [30]

Key Person Insurance: Company to acquire life insurance on Founders [*name each Founder*] in an amount satisfactory to the Board. Proceeds payable to the Company.

RIGHT OF FIRST REFUSAL/CO-SALE AGREEMENT

Right of First Refusal/ Right of Co-Sale (Take-Me-Along): Company first and Investors second (to the extent assigned by the Board of Directors,) will have a right of first refusal with respect to any shares of capital stock of the Company proposed to be transferred by Founders [and future employees holding greater than [1]% of Company Common Stock (assuming conversion of Preferred Stock and whether then held or subject to the exercise of options)], with a right of oversubscription for Investors of shares unsubscribed by the other Investors. Before any such person may sell Common Stock, he will give the Investors an opportunity to participate in such sale on a basis proportionate to the amount of securities held by the seller and those held by the participating Investors.[31]

VOTING AGREEMENT

Board of Directors: At the initial Closing, the Board shall consist of [_____] members comprised of (i) [*name*] as [the representative designated by [____], as the lead Investor, (ii) [*name*] as the representative designated by the remaining Investors, (iii) [*name*] as the representative designated by the Founders, (iv) the person then serving as the Chief Executive Officer of the Company, and (v) [___] person(s) who are not

[30] To be included if Investors are considered foreign entities under the DPA and intend to make an investment outside the jurisdiction of CFIUS. Note that this assumes that Investors intend not to obtain (i) a board seat, observer, or nomination right, (ii) more than 10% of the voting rights in the Company, or (iii) control over decision-making at the Company, including with respect to company technologies. If the Stock Purchase Agreements, Charter, and other Transaction Agreements contemplate an investment on those terms, then a disclaimer of information rights with respect to certain technical information should be the last necessary step to remove the transaction from CFIUS jurisdiction. Further markups of the other Transaction Agreements would be necessary to ensure that they are developed consistent with this intention.

[31] Certain exceptions are typically negotiated, *e.g.*, estate planning or *de minimis* transfers. Investors may also seek ROFR rights with respect to transfers by investors, in order to be able to have some control over the composition of the investor group.

employed by the Company and who are mutually acceptable [to the Founders and Investors][to the other directors].

[*Drag Along:* Holders of Preferred Stock and the Founders [and all future holders of greater than [1]% of Common Stock (assuming conversion of Preferred Stock and whether then held or subject to the exercise of options)] shall be required to enter into an agreement with the Investors that provides that such stockholders will vote their shares in favor of a Deemed Liquidation Event or transaction in which 50% or more of the voting power of the Company is transferred and which is approved by [the Board of Directors] [and the holders of ____% of the outstanding shares of Preferred Stock, on an as-converted basis (the "**Electing Holders**")], so long as the liability of each stockholder in such transaction is several (and not joint) and does not exceed the stockholder's pro rata portion of any claim and the consideration to be paid to the stockholders in such transaction will be allocated as if the consideration were the proceeds to be distributed to the Company's stockholders in a liquidation under the Company's then-current Certificate of Incorporation.][32]

[*Sale Rights:* Upon written notice to the Company from the Electing Holders, the Company shall initiate a process intended to result in a sale of the Company.][33]

OTHER MATTERS

Founders' Stock: All Founders to own stock outright subject to Company right to buyback at cost. Buyback right for [__]% for first [12 months] after Closing; thereafter, right lapses in equal [monthly] increments over following [__] months.

[*Existing Preferred Stock:*[34] The terms set forth above for the Series [_] Preferred Stock are subject to a review of the rights, preferences and restrictions for the existing Preferred Stock. Any changes necessary to conform the existing Preferred Stock to this term sheet will be made at the Closing.]

No Shop/Confidentiality: The Company agrees to work in good faith expeditiously towards a closing. The Company and the Founders agree that they will not, for a period of [_____] weeks from the date these terms are accepted, 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

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[32] See Subsection 3.3 of the Model Voting Agreement for a more detailed list o f conditions that must be satisfied in order for the drag-along to be invoked.

[33] See Addendum to Model Voting Agreement

[34] Necessary only if this is a later round of financing, and not the initial Series A round.

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] and shall notify the Investors promptly of any inquiries by any third parties in regards to the foregoing. [In the event that the Company breaches this no-shop obligation and, prior to [_____], closes any of the above-referenced transactions [without providing the Investors the opportunity to invest on the same terms as the other parties to such transaction], then the Company shall pay to the Investors $[_____] upon the closing of any such transaction as liquidated damages.][35] The Company will not disclose the terms of this Term Sheet to any person other than officers, members of the Board of Directors and the Company's accountants and attorneys and other potential Investors acceptable to [_____], as lead Investor, without the written consent of the Investors.

Expiration: This Term Sheet expires on [_____ __, 20__] if not accepted by the Company by that date.

EXECUTED THIS [__] DAY OF [_____],20[__].

[SIGNATURE BLOCKS]

[35] It is unusual to provide for such "break-up" fees in connection with a venture capital financing, but might be something to consider where there is a substantial possibility the Company may be sold prior to consummation of the financing (*e.g.*, a later stage deal).

EXHIBIT A

Pre and Post-Financing Capitalization

	Pre-Financing		Post-Financing	
Security	# of Shares	%	# of Shares	%
Common – Founders				
Common – Employee Stock Pool				
Issued				
Unissued				
[Common – Warrants]				
Series A Preferred				
Total				