



G U N D E R S O N D E T T M E R

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The firm serves more than 2,500 venture-backed companies and over 450 of the world's top venture capital and growth equity firms, including thousands of their underlying funds from nine offices in key markets throughout the world: Silicon Valley, Ann Arbor, Boston, Los Angeles, New York, San Diego, San Francisco, Beijing, and Singapore.

For venture-backed companies, the firm provides guidance at every stage in their lifecycle, from launch through IPO and beyond, becoming extensions of their management teams as they prepare for their next stage of growth. For funds, the firm routinely negotiates close to one-third of every venture capital dollar raised worldwide and is the recognized global leader in the representation of venture capital and other growth equity funds in their investment activities, negotiating more than 1,000 venture and growth financings every year.

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MEMORANDUM OF TERMS
FOR PRIVATE PLACEMENT OF
SERIES SEED PREFERRED STOCK OF
[COMPANY NAME]

[Date]

This memorandum summarizes the principal terms of the seed-round venture capital financing of [COMPANY NAME] (the “Company”). The completion of the transactions contemplated by this memorandum will be subject to, among other things, satisfactory completion of financial and legal due diligence by the Investors, as well as the completion of final documents acceptable to the Investors and the Company.

Offering Terms

Issuer: [COMPANY NAME], a Delaware corporation.

Investors:	Investor Name	Amount
	[LEAD INVESTOR]	[\$_____]
	[OTHER INVESTORS]	[\$_____]

Total Investment: \$[_____]

Founders: [_____] [_____]

Securities to be issued: [_____] shares of Series Seed Preferred Stock.

Price: \$[_____] per share (based on the capitalization of the Company set forth on Attachment A hereto under the heading “Pro Forma Capitalization”). To the extent the capitalization indicates fewer or more shares than assumed herein, the per share price shall be adjusted to reflect a pre-money valuation of \$[_____]. The number of shares of Common Stock and options available for issuance under the Company’s stock option plans shall equal [_____] % of the fully diluted capitalization of the Company following the closing of the financing.

Expected Closing Date: On or about [TARGET CLOSING DATE] (the “Closing”). The Company may sell, within [_____] days following the Closing, up to [_____] additional shares of Series Seed Preferred Stock not sold at the Closing to purchasers acceptable to the Company.

Terms of Series Seed Preferred Stock

Certificate of Incorporation

Dividends:	Annual [__]% dividend on the Series Seed Preferred Stock, payable when and if declared by Board, and prior and in preference to any declaration or payment of other dividends; dividends are not cumulative. For any other dividends or similar distributions, Preferred Stock participates with Common Stock on an as-converted basis.
Liquidation Preference:	<p>In the event of a liquidation, dissolution or winding-up, the proceeds shall be distributed to the stockholders as follows:</p> <p>First pay 1x the original purchase price plus declared but unpaid dividends on each share of Series Seed Preferred Stock. Any remaining proceeds shall be paid to the holders of Common Stock.</p> <p>A sale of all or substantially all of the assets of the Company and a merger, reorganization or other transaction in which 50% of the outstanding voting power of the Company is transferred will be treated as a liquidation event (each a "<u>Liquidation Event</u>"), thereby triggering the liquidation payment. The holders of a majority of the outstanding Preferred Stock may waive the treatment of such a transaction as a liquidation event.</p>
Redemption:	The Preferred Stock will not be redeemable.
Conversion:	Each share of Series Seed Preferred Stock shall initially be convertible into one share of Common Stock at any time at the holder's option.
Automatic Conversion:	Series Seed Preferred Stock automatically converts into Common Stock upon the earlier of (i) the election of a majority of the outstanding shares of Series Seed Preferred Stock or (ii) the consummation of an underwritten public offering with aggregate proceeds in excess of \$[_____] (a " <u>Qualified Public Offering</u> ").
Price-Based Antidilution Adjustments	<p>Conversion ratio for Series Seed Preferred Stock shall be adjusted on a broad-based weighted average basis in the event of an issuance below the Series Seed Preferred Stock price, as adjusted.</p> <p>No adjustment shall be made for (i) the sale of shares of Common Stock reserved for employees and other service providers, (ii) Common Stock issued pursuant to a stock split or similar reorganization, (iii) Common Stock issued upon conversion of Preferred Stock, (iv) securities issued in connection with a bona fide business acquisition by the Company or an initial public offering, (v) securities issued to persons or entities with which the Company has business relationships, which issuances are approved by the Board and for primarily non-equity financing purposes, or (vi) securities issued or issuable pursuant to equipment lease financings or</p>

	bank credit arrangements that are approved by the Board and for primarily non-equity financing purposes.
Other Antidilution Adjustments:	Proportional adjustments for stock splits and stock dividends and similar events.
Voting Rights:	Votes on an as-converted basis, but also has class and series vote as provided by law. In addition, approval of a majority of the Preferred Stock required on (i) the creation of any senior or <u>pari passu</u> security, (ii) payment of dividends on any class of stock, (iii) redemptions or repurchases of Common Stock or Preferred Stock, except for purchases at cost upon termination of service or the exercise by the Company of contractual rights of first refusal over such shares, (iv) consummation of any Liquidation Event, (v) any increase or decrease in the number of authorized shares of Preferred Stock or Common Stock, (vi) any amendment of the Certificate of Incorporation or Bylaws that adversely affect the powers, preferences or special privileges of the Preferred Stock and (vii) any increase or decrease in the size of the Board.

Terms of Preferred Stock Purchase Agreement

Representations and Warranties:	Standard representations and warranties by the Company.
Conditions to Closing:	<p>(a) Standard conditions to Closing, which shall include, among other things, satisfactory completion of financial and legal due diligence by the Investors.</p> <p>(b) All current and former employees and consultants shall have entered into the Company's standard form proprietary information and inventions agreement in form and substance acceptable to the Investors.</p> <p>(c) Board composition at Closing shall be as described under "Board of Directors" below.</p> <p>(d) The Company shall have entered into indemnification agreements with the members of the Board in a form acceptable to the Investors.</p>
Expenses:	Counsel to the Company will draft documents. The Company shall pay, at the closing, reasonable fees and expenses of Investors' counsel, not to exceed \$[_____].

Terms of Investor Rights Agreement

- Registration Rights: Investors shall receive standard demand, piggyback and S-3 registration rights, subject to customary limitations.
- Market Stand-Off: Prior to the Closing, all stockholders of the Company and the Investors shall agree not to sell or otherwise transfer an interest in any shares of Preferred Stock or Common Stock owned or controlled by them immediately prior to the closing of the IPO for a period of up to 180 days following the IPO (provided directors and officers of the Company and [__]% stockholders agree to the same lock-up); such agreement shall provide that any discretionary releases from the lock-up be allocated to holders of registrable securities on a pro-rata basis. Such stockholders shall also agree to sign the underwriter's standard lock-up agreement reflecting the foregoing.
- Right of First Offer: The Investors holding at least [_____] shares of Series Seed Preferred Stock (the "Major Investors") shall have a pro rata right, but not an obligation, based on their percentage equity ownership of Common Stock, assuming full conversion and exercise of all outstanding convertible and exercisable securities, to participate in subsequent financings of the Company, other than (i) the issuance or sale of shares of Common Stock (or options therefor) to employees and similar service providers pursuant to plans approved by the Board, (ii) the issuance of securities pursuant to a bona fide, firmly underwritten public offering, (iii) the issuance of securities pursuant to the conversion or exercise of convertible or exercisable securities, (iv) the issuance of securities in connection with a bona fide business acquisition of or by the Company, (v) the issuance of stock, warrants or other securities or rights to persons or entities with which the Company has business relationships, provided such issuances are for other than primarily equity financing purposes or (vi) the issuance of securities that, with unanimous approval of the Company's Board of Directors, are not offered to any existing stockholder of the Company. Any shares not subscribed for by an Investor may be reallocated pro rata among the other eligible Investors. Such right shall not apply to any public offering and will terminate immediately prior to a Qualified Public Offering.
- Financial Information: The Major Investors shall receive standard information rights including annual unaudited financial reports within [120-180] days after the end of the fiscal year, quarterly unaudited financial reports within 45 days after the end of each of the first three quarters, monthly unaudited financial reports within 30 days after the end of the month upon request of the Major Investors and annual budget and business plan prior to the beginning of a fiscal year, as well as standard inspection rights.

Management Rights Letter: Each Investor requiring one shall receive a standard management rights letter providing for the consultation with management on significant issues and access to the books, records and facilities of the Company.

Board of Directors Matters

Board of Directors: At the Closing the Board shall consist of [three] members, who shall be [____], [____] and [____]. Holders of Series Seed Preferred Stock shall be entitled to elect [one] member.¹ Holders of Common Stock shall be entitled to elect [two] members. Holders of the Series Seed Preferred Stock and Common Stock, voting as a single class on an as-converted basis, shall elect any remaining directors.

Other Matters

Employee Common Stock Vesting: Unless otherwise approved by the Board, employee Common Stock shall vest as follows: after 12 months of employment, 25% will vest; the remainder will vest monthly over the following 36 months. The Company shall have a repurchase option on unvested shares at cost.²

Restrictions on Common Stock:

- (a) No transfers allowed prior to vesting except for certain estate planning.
- (b) Company right of first refusal on vested shares until initial public offering.
- (c) No transfers or sales permitted during lock-up period of up to 180 days as required by underwriters in connection with stock offerings by the Company.
- (d) The number of authorized shares of Common Stock may be increased or decreased upon the approval of the holders of a majority of the outstanding shares of the Company's capital stock, regardless of Section 242 of the DGCL.

¹ In some seed financings, the Series Seed investors do not have a representative on the board of directors, in which case, the lead investor typically receives board observer rights.

² Founder vesting arrangements may also include double-trigger acceleration following a sale of the company.

Right of First Refusal and
Co-Sale Right:

Until the Qualified Public Offering, each Major Investor shall have the right to participate on a pro rata basis in transfers of any stock held by the Founders; and a right of first refusal on such transfers, subordinate to the Company's right of first refusal. Any shares not subscribed for by an Investor may be reallocated pro rata among the other eligible Investors. The right of first refusal and co-sale shall not apply, in the case of an individual, to (a) transfers to any spouse or member of Founder's immediate family, or to other estate planning transfers, (b) any sale to the public pursuant to an effective registration, (c) any transfer or transfers by a Founder which in the aggregate, over the term of this Agreement, amount to no more than [_____] shares held by a Founder, (d) any pledge of Founder Stock made pursuant to a bona fide loan transaction that creates a mere security interest, or (e) any bona fide gift to any charitable organization described in Section 501(c)(3) of the Internal Revenue Code.

Drag-Along Right:

In the event of a sale of the Company by way of a merger, recapitalization, sale of all or substantially all of the Company's stock or assets or otherwise, which is approved by holders of a majority of the Preferred Stock and the holders of a majority of the Common Stock, the Founders and the Company's stockholders who are party to the Voting Agreement shall be required to vote for, consent to, transfer their shares of capital stock pursuant to, and take such other action as may be required to consummate, such sale.

This term sheet is non-binding and is intended solely as a summary of the terms that are currently proposed by the parties. The parties acknowledge that they neither intend to enter, nor have they entered into, any agreement to negotiate a definitive agreement pursuant to this term sheet, and either party may, at any time prior to execution of such definitive agreement, propose different terms from those summarized herein or unilaterally terminate all negotiations pursuant to this term sheet without any liability whatsoever to the other party. Each party shall be solely liable for all of its own fees, costs and other expenses in conjunction with negotiation and preparation of a final agreement pursuant to this term sheet.

If the terms of this memorandum are acceptable to the Company, please so indicate on the enclosed copy of this memorandum and return it to the undersigned no later than [TIME] on [DATE].

[COMPANY NAME]

By: _____

Name: _____

Date: _____

LEAD INVESTOR:

[VENTURE FUND]

By: _____

Name: _____

Date: _____

ATTACHMENT A

PRO FORMA CAPITALIZATION

Series Seed Preferred Stock:	_____ shares	_____ %
Common Stock Outstanding:	_____ shares	_____ %
Options to Purchase Common Stock Outstanding:	_____ shares	_____ %
Options Available for Grant:	_____ shares	_____ %
Warrants/Convertible Notes/SAFEs:	_____ shares	_____ %
Total	_____ shares	100%
Post-Closing Valuation:	\$ _____	