



**[NAME OF COMPANY]**  
**SUMMARY OF TERMS**  
**SERIES A PREFERRED STOCK FINANCING**  
**([DATE])**

This summary of terms (this “*Summary of Terms*”) summarizes the principal terms of a private equity financing of [Name of Company], a [State of Incorporation] corporation (the “*Company*”) led by the Tech Coast Angels (“*TCA*”). This Summary of Terms is for discussion purposes only; there is no obligation on the part of any negotiating party until a definitive stock purchase agreement is signed by all parties. The transactions contemplated by this Summary of Terms are subject to closing conditions including the satisfactory completion of due diligence and the execution of definitive financing documents by each investor.

**Amount of Financing:** \$ \_\_\_\_\_, with a minimum of \$ \_\_\_\_\_ and a maximum of \$ \_\_\_\_\_.

**Type of Security:** Series A Preferred Stock

**Price Per Share:** \$ \_\_\_\_\_

**Number of Shares:** \_\_\_\_\_

**Pre-Financing Valuation:** \$ \_\_\_\_\_

**Closing Date:** \_\_\_\_\_, 200\_\_, with additional Closings for the balance of any unsold Shares for up to [45] days thereafter.

**POST-FINANCING FULLY DILUTED CAPITALIZATION**

	<u>Number of Shares</u>	<u>Percentage</u>
<b>Common Stock Outstanding:</b>	0	
<b>Common Stock Options Outstanding:</b>	0	
<b>Stock Option Plan Reserved Shares:</b>	0	[20.00%]
<b>Series A Preferred Stock:[<sup>1</sup>]</b>	0	
<b>TOTAL:</b>	<b>0</b>	<b>100.00%</b>

<sup>1</sup> Includes Series A Preferred Stock issuable upon conversion of approximately \$ \_\_\_\_\_ in outstanding convertible promissory notes.]

## TERMS OF SERIES A PREFERRED STOCK

- Dividend Preference:*** The holders of Series A Preferred Stock will be entitled to receive noncumulative dividends at the rate of 8.0% per annum, when and if declared by the Board of Directors (the “**Board**”), from funds legally available therefor. No dividend will be paid on the Company’s Common Stock at a rate greater than the rate at which dividends are paid on any series of Preferred Stock (based on the number of shares of Common Stock into which such Preferred Stock is convertible on the date the dividend is declared).
- Liquidation Preference:*** In the event of any liquidation or winding up of the Company, the holders of Series A Preferred Stock will be entitled to receive, in preference to the holders of the Company’s Common Stock, an amount equal to declared but unpaid dividends plus the original purchase price for such shares. All remaining proceeds thereafter will be shared pro rata by the holders of Common Stock and Series A Preferred Stock (on an as-converted basis). A consolidation or merger of the Company or sale of all or substantially all of its assets or of a majority of its capital stock will be deemed to be a liquidation or winding up for purposes of the Liquidation Preference.
- Redemption Rights:*** The holders of at least 60% of the outstanding Series A Preferred Stock may elect to redeem all of the Series A Preferred Stock at any time after four years after the Closing, at cost plus 8.0% per year.
- Conversion Rights:*** Each share of Series A Preferred Stock may be converted into Common Stock at any time at the option of the holder. The initial conversion price will be the original purchase price per share. Additionally, the Series A Preferred Stock will be automatically converted into Common Stock in the event of (i) an underwritten public offering of the Company’s Common Stock with gross proceeds to the Company of at least \$20,000,000 and an offering price per share (including underwriting discounts and commissions) of not less than five times the original purchase price of the Series A Preferred Stock (a “**Qualifying IPO**”), (ii) the election of the holders of at least 60% of the outstanding Series A Preferred Stock, or (iii) the conversion into Common Stock of at least 60% of the originally issued Series A Preferred Stock.
- Antidilution Protection:*** The rate at which shares of the Series A Preferred Stock may be converted into Common Stock will be subject to adjustment for stock dividends, stock splits, reverse stock splits, and similar events. The rate will also be subject to full-ratchet antidilution protection until the closing of the Company’s Series B Preferred Stock financing, and broad-based weighted average antidilution protection thereafter, subject to exclusions for the issuance of (i) up to [**number of option**

**pool shares]** shares of Common Stock (or rights therefor) as approved by the Board to directors, officers, employees, consultants, and advisors, (ii) Common Stock upon conversion of Preferred Stock, (iii) Common Stock pursuant to a Qualifying IPO, (iv) securities pursuant to currently outstanding options, warrants, notes, or other rights to acquire securities of the Company, and (v) securities approved by the holders of at least 60% of the outstanding Series A Preferred Stock.

***Voting Rights:***

A holder of Preferred Stock will have the right to that number of votes equal to the number of shares of Common Stock issuable upon conversion of the Preferred Stock held by such holder. The Series A Preferred Stock will initially be entitled to one vote per share (on an as-if-converted basis). Except as otherwise provided by law or set forth below, the Preferred Stock and the Common Stock will vote together on all other matters.

***Board of Directors:***

The Company, certain [**shareholders OR stockholders [USE “SHAREHOLDERS” FOR CALIFORNIA CORPORATIONS AND “STOCKHOLDERS” FOR DELAWARE]**] of the Company and the Investors will enter into a Voting Agreement to provide for the election of the Board as follows:

The Board will have five members. The holders of Series A Preferred Stock, voting as a separate class, will have the right to elect two members of the Board. The holders of Common Stock, voting as a single class, will have the right to elect two members of the Board. The remaining member of the Board will be an outside industry expert elected by mutual consent of the holders of Common Stock and Series A Preferred Stock.

***Drag-Along Rights:***

The Voting Agreement will also provide that the holders of Series A Preferred Stock, all current and future officers, all persons exercising stock options and all other current and future holders of greater than one percent of Common Stock of the Company will be required to vote their shares in favor of a merger or sale of the Company, sale of all or substantially all of the Company’s assets or other transaction in which 50% or more of the voting power of the Company is disposed of, provided such transaction has been approved by the holders of at least 60% of the outstanding shares of Series A Preferred Stock and a majority of the outstanding shares of Common Stock, each voting as a separate class.

***Protective Covenants:***

Consent of the holders of at least 60% of the outstanding Series A Preferred Stock, voting as a separate class, will be required for: (i) the creation of any new class or series of shares having preference over or on parity with the existing Preferred Stock with respect to

dividends, voting, liquidation preferences, or conversion rights, or the issuance of any convertible debt convertible into, or debt issued with warrants exercisable for, any equity securities of the Company, (ii) the issuance of any distribution or dividend with respect to the Company's capital stock, (iii) any decrease (other than by conversion) or increase in the authorized number of shares of Preferred Stock, (iv) any amendment to the [**Articles OR Certificate [USE "ARTICLES" FOR CALIFORNIA CORPORATIONS AND "CERTIFICATE" FOR DELAWARE]**] of Incorporation or Bylaws affecting the rights, preferences or privileges of the Preferred Stock, (v) any increase in the number of shares reserved under the Company's stock option plan, (vi) a merger or acquisition of the Company or a sale of all or substantially all its assets, (vii) a dissolution or winding-up of the Company, (viii) any redemption or repurchase of any securities (other than the repurchase at cost of the Company's Common Stock from employees, directors, consultants and advisors in connection with the termination of such individuals pursuant to contractual arrangements approved by the Board), (ix) any material transaction with an officer, director or [**shareholder OR stockholder**] of the Company other than in the ordinary course of business or for capital raising purposes, (x) any action that establishes borrowing from banks or financial institutions in the aggregate of more than \$200,000, (xi) any change in the size of the Board, or (xii) the issuance of any equity securities of any subsidiary by the Company or any of its subsidiaries (other than to the Company).

## **INFORMATION AND REGISTRATION RIGHTS AGREEMENT**

***Information Rights:*** The Company will deliver to each holder of Series A Preferred Stock annual audited financial statements, an annual budget and quarterly unaudited financial statements. These obligations will terminate upon the earlier of (i) the closing of a Qualifying IPO or (ii) the date the Company becomes a reporting company under the Securities Exchange Act of 1934, as amended.

***Registration Rights:*** (1) Beginning on the earlier of three years after the final Closing, or six months after a Qualifying IPO, persons holding at least 40% of the Preferred Stock (the "***Registrable Securities***") may request that the Company file a Registration Statement for at least 50% of the Registrable Securities (or any lesser percentage if the anticipated aggregate offering price, net of underwriting discounts and commissions, would exceed \$10,000,000), and the Company will use its best efforts to cause such Registrable Securities to be registered. The Company will not be obligated to effect more than two demand registrations (other than on Form S-3).

(2) The holders of Registrable Securities will have the right to require the Company to file Form S-3 registrations provided that (i) the Company is able to utilize such form, (ii) the aggregate proposed public offering price is in excess of \$1,000,000, and (iii) the Company will not be required to effect more than one such registration within any six month period.

(3) The holders of Registrable Securities will be entitled to “piggy-back” registration rights on Company registrations, subject to the right of the underwriters to reduce the number of such Registrable Securities proposed to be registered, but not below 20% of the total number of shares to be offered in any offering subsequent to an initial public offering.

(4) Subject to compliance with applicable Blue Sky laws, the registration expenses (exclusive of underwriting discounts and commissions) of two demand registrations, unlimited Form S-3 registrations and unlimited piggy-back registrations will be borne by the Company; additionally, the Company will bear the reasonable fees of a single counsel for the selling [**shareholders OR stockholders**]. All other expenses of registered offerings will be borne pro rata among the selling [**shareholders OR stockholders**] and, if it participates, the Company.

(5) Registration rights will terminate upon the earlier of (i) three years after a Qualifying IPO, or (ii) with respect to any holder if such holder is eligible to sell all of such holder’s Registrable Securities under Rule 144 of the Securities Act of 1933, as amended, within any three month period without volume limitations, or under Rule 144(k) thereunder.

***Transfer of Rights:***

The Information Rights and Registration Rights set forth above may be transferred to (i) any partner or member of any holder which is a partnership or limited liability company, respectively, (ii) any transferee who acquires at least \_\_\_\_\_ [**SUGGEST ABOUT \$5,000 OF SHARES**] shares of Registrable Securities, or (iii) any family member or trust for the benefit of any individual holder, provided the Company is given written notice thereof.

***Participation Rights:***

Each holder of Series A Preferred Stock will have the right in the event the Company subsequently proposes to offer equity securities to any person to purchase that portion of such equity securities equal to (a) the number of shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock held by each holder of Series A Preferred Stock divided by (b) the number of shares of the Company’s Common Stock then outstanding or issuable upon exercise of options or warrants or conversion of the Series A

Preferred Stock. Should any holder choose not to purchase its full pro rata share, the remaining holders shall have the right to purchase their pro rata share of the remaining shares. The participation rights will not apply to the issuance of (i) up to **[number of option pool shares]** shares of Common Stock (or rights therefor) as approved by the Board of Directors to directors, officers, employees, consultants, and advisors, (ii) Common Stock upon conversion of Preferred Stock, (iii) Common Stock pursuant to a Qualifying IPO, (iv) securities pursuant to currently outstanding options, warrants, notes, or other rights to acquire securities of the Company, and (v) securities approved by the holders of at least 60% of the outstanding Series A Preferred Stock. Each such holder of Series A Preferred Stock will be given at least 20 days after notice by the Company to elect to make such purchase and will purchase such equity securities on the same terms as they are purchased by other third party purchasers. Such participation rights will terminate upon the earlier of (A) immediately prior to the closing of a Qualifying IPO or (B) the date the Company becomes a reporting company under the Securities Exchange Act of 1934, as amended.

***Market Standoff:***

Each holder of Series A Preferred Stock will enter into a 180 day lockup agreement with respect to an IPO, provided that each officer, director, and one percent **[shareholder OR stockholder]** is similarly bound.

**OTHER MATTERS**

***Rights of First Refusal and Co-Sale:***

Each Investor will have a right of first refusal and a right of co-sale (on a pro rata basis) in the event that **[list founders and major Common Stock holders]** (each a “*Founder*”) wishes to sell any of such Founder’s shares of Common Stock to a third party (other than customary sales to family members, who will be similarly bound). This right will be subordinate to the Company’s right of first refusal with respect to the Company’s Common Stock and will terminate immediately prior to a Qualifying IPO or change of control.

***Employee and Founder Common Stock:***

(1) Common Stock issued to employees will be issued from time to time under such arrangements, contracts or plans as are recommended by management and approved by the Board. Unless otherwise determined by the Board, all such Common Stock will be issued subject to four-year vesting or repurchase restrictions. Common Stock acquired under a restricted stock purchase plan or stock option plan will be subject to repurchase by the Company upon termination of employment to the extent that the four year vesting or restriction period has not expired. Repurchase in all cases will be at cost.

(2) **[Describe Founder vesting, e.g. Common Stock held by the Founders will be subject to a right of repurchase at cost lapsing over four years following the Closing, or earlier upon a change of control [NOTE: SENSITIVE ISSUE, CONSIDER CAREFULLY].]**

(3) No transfer of Common Stock will be allowed prior to vesting. The Company will have a right of first refusal on all transfers of vested Common Stock, terminating upon an initial public offering.

***Confidential Information and Inventions:***

Each officer and employee of the Company has entered, and each person serving in any such capacity in the future will enter, into the Company's standard form of confidential information and inventions assignment agreement. Each technical consultant and advisor will enter into an agreement with comparable provisions relating to confidentiality and the assignment of inventions.

***Compensation Committee:***

The Board of Directors will establish a Compensation Committee, which will be composed of the TCA and outside members of the Board.

***Management Rights and Director Compensation Letter:***

The Company will enter into TCA's standard form of management rights and director compensation letter.

***Management Rights Letter:***

The Company will enter into TCA's standard form of management rights letter.

***Directors' and Officers' Insurance:***

The Company will maintain directors' and officers' insurance with coverage in the amount of \$2 million.

***Key Person Life Insurance:***

The Company will maintain key person life insurance in the amount of \$2 million on \_\_\_\_\_, with proceeds payable to the Company.

***The Purchase Agreement:***

The purchase of the Series A Preferred Stock will be made pursuant to a Series A Preferred Stock Purchase Agreement drafted by counsel to TCA and reasonably acceptable to the Company. The Stock Purchase Agreement will contain, among other things, appropriate representations and warranties of the Company and covenants of the Company reflecting the provisions set forth herein.

***Confidentiality:***

The terms contained in this Summary of Terms are confidential and are not to be disclosed by any party hereto to any third party other than their respective directors, officers and financial and legal advisors.

***Expenses:***

The Company will pay at the Closing the reasonable legal fees and expenses (in an amount not to exceed \$\_\_\_\_\_ [**SUGGEST \$20,000 PLUS OR MINUS DEPENDING ON OVERALL SIZE OF DEAL, WHETHER TCA IS LEAD AND HOW MUCH TCA IS EXPECTED TO INVEST**] in the aggregate) incurred by legal counsel to TCA.

***No Offer:***

This Summary of Terms and any documents delivered by the Company in connection therewith are for informational purposes only and do not constitute either an offer to sell securities or the solicitation of an offer to buy securities. There will be no offer or sale of securities, or any solicitation to buy, in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

***No-Shop:***

The Company agrees that until 90 days after the date of this Summary of Terms (or such earlier date that the parties hereto mutually agree in writing to discontinue efforts with respect to the proposed financing), the Company will not take any action to solicit, initiate, encourage, or assist the submission of any proposal, negotiation, or offer from any person or entity, other than parties hereto and investors contemplated herein, relating to any debt or equity financing of the Company. The Company acknowledges and agrees that the legal remedies available to TCA in the event that the Company violates the foregoing covenant would be inadequate and that TCA shall be entitled to obtain, specific performance, injunctive relief and other equitable remedies in the event of any such violation.

***TCA Counsel:***

[ \_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
**Phone:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
**Fax:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
**Email:** \_\_\_\_\_ ]

***Counsel to the Company:***

[ \_\_\_\_\_  
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\_\_\_\_\_  
**Phone:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
**Fax:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
**Email:** \_\_\_\_\_ ]



IN WITNESS WHEREOF, the parties hereto have executed this Summary of Terms as of **[Date]**.

**Company:**

**[NAME OF COMPANY]**  
a **[State of Incorporation]** corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**TCA Deal Lead:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_