



SUMMARY OF TERMS
FOR THE SERIES A PREFERRED STOCK FINANCING
OF \_\_\_\_\_, INC.

This term sheet ("Term Sheet") outlines the terms and conditions of a proposed investment by certain CTAN investors in \_\_\_\_\_. This Term Sheet is an expression of intention only and, except as expressly set forth below, is not to be construed as a binding agreement.

Issuer: \_\_\_\_\_, Inc. (the "Company").

Investors: Members of the Central Texas Angel Network and other investors designated or approved by them (the "Investors").

Security: Shares of the Company's Series A Preferred Stock (the "Series A Preferred").

Amount of Offering: \$\_\_\_\_\_. Each Investor's investment amount is set forth on Appendix A attached hereto.

Purchase Price: \$\_\_\_\_\_ per share (the "Purchase Price"), based upon a pre-money valuation of \$\_\_\_\_\_ and the following pre-money fully-diluted capitalization:

Table with 3 columns: Category, Value, Percentage. Rows: Common Stock, Option Pool, Total (100.00 %).

Pro Forma Capitalization: The capitalization of the Company after the closing of the purchase and sale of the Series A Preferred will be as follows:

Table with 3 columns: Category, Value, Percentage. Rows: Common Stock, Series A Preferred, Option Pool, Total (100.00 %).

Conversion of Entity: Prior to or contemporaneously with the closing of the Series A financing, the Company will convert into a Delaware corporation.

Closing: The Closing is expected to occur on or about \_\_\_\_\_, 2009; provided, however, the Company may conduct subsequent closings with other investors approved by a majority of the CTAN investors within thirty (30) days after the Closing on the same terms and conditions of the Closing.



## TERMS OF SERIES A PREFERRED:

### **Dividends:**

The holders of the Series A Preferred will be entitled to receive cumulative dividends at the rate of 8% per annum (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations and the like) whether declared or not, in preference to any dividends to the holders of the Common Stock, payable when determined by the Board of Directors and, in any event, such cumulative dividends shall be paid upon the liquidation of the Company. The holders of Series A Preferred also will be entitled to participate pro rata in any dividends paid to the holders of the Common Stock on an as-converted basis.

### **Liquidation Preference:**

Upon the liquidation of the Company, the holders of the Series A Preferred will be entitled to receive, in preference to the holders of the Common Stock, a per share amount equal to two (2) times the Purchase Price plus any accrued but unpaid dividends (the "Liquidation Preference"). After the payment of the Liquidation Preference in full, the remaining assets or other property of the Company will be distributed ratably to the holders of the Common Stock and the Series A Preferred on an as converted basis. A merger or consolidation involving the Company, a sale of voting control of the Company or the sale of all or substantially all of the assets of the Company will be deemed to be a liquidation for this purpose.

### **Optional Conversion:**

The holders of the Series A Preferred will have the right to convert their shares (including accrued dividends thereon) into shares of Common Stock at any time. The initial conversion price will be equal to the Purchase Price, and will be subject to adjustment as described below.

### **Automatic Conversion:**

The Series A Preferred will be converted automatically into Common Stock at the then applicable conversion price upon:

- (i) the election of the holders of a majority of the outstanding Series A Preferred; or
- (ii) the closing of a firmly underwritten public offering of shares of Common Stock at a public offering price per share (prior to underwriter commissions and expenses) that is not less than five (5) times the Purchase Price per share in an offering with aggregate proceeds of not less than \$25,000,000 (a "Qualified IPO").

**Antidilution Protection:** Subject to customary exceptions, the Series A Preferred will be entitled to broad-based, weighted-average dilution protection if the Company issues additional equity securities at a purchase price less than the then applicable conversion price. The conversion price also will be subject to proportional adjustment for stock splits or combinations, stock dividends, recapitalizations and the like.

**Voting Rights:** The Series A Preferred will vote together with the Common Stock as a single class, except as specifically provided below or as otherwise required by law. Each share of Series A Preferred will be entitled to that number of votes equal to the number of shares of Common Stock then issuable upon conversion of such share of Series A Preferred.

**Board of Directors; CTAN Board Observer:** The size of the Company's Board of Directors will be set at five (5). The holders of the Series A Preferred, voting as a separate class, will be entitled to nominate two (2) members of the Company's Board of Directors (at least one of whom shall be a CTAN member); the holders of Common Stock, voting as a separate class, will be entitled to nominate two (2) members, one (1) of whom will be the CEO of the Company; and the fifth Director will be nominated by the whole Board subject to the approval of the holders of a majority of the outstanding Series A Preferred. In addition, the CTAN-affiliated Investors will be allowed to appoint one (1) Board observer to attend Board meetings.

**Protective Provisions:** Without the consent or approval of the holders of a majority of the Series A Preferred, the Company will not:

- (i) amend the Company's certificate of incorporation or bylaws;
- (ii) alter or change the rights, preferences or privileges of the Series A Preferred;
- (iii) take any action, including amending the Company's certificate of incorporation or bylaws, by way of merger, consolidation or otherwise, that would adversely affect the powers, preferences or privileges of the Series A Preferred;
- (iv) increase or decrease the authorized number of shares of Common or Preferred Stock;
- (v) create (by reclassification or otherwise) or issue any new class or series of shares having rights, preferences or privileges senior to or on a parity with the Series A

Preferred;

- (vi) redeem or purchase any shares of Common Stock (other than up to \$ \_\_\_\_\_ of repurchases per calendar year pursuant to equity incentive agreements with employees or directors giving the Company the right to repurchase unvested shares upon the termination of service);
- (vii) merge or consolidate with another entity, sell a critical asset or technology, or sell more than 51% of its assets and properties in any single transaction or series of related transactions;
- (viii) authorize or consummate any liquidation, dissolution or winding up of the Company;
- (ix) increase or decrease the authorized size of the Company's Board of Directors;
- (x) pay or declare or pay any dividend on any shares of Common Stock;
- (xi) incur any indebtedness for borrowed money in excess of \$100,000; or
- (xii) create any subsidiary or make an investment in any other entity.

**Information Rights:**

As long any Investor continues to hold shares of Series A Preferred or Common Stock issued upon conversion of Series A Preferred, the Company will deliver to such Investor audited (if requested) annual and unaudited quarterly financial statements, compared, in each case, against plan, and the Company's annual operating plan within 30 days prior to the beginning of the related fiscal year. All such financial statements will contain a certification by the CEO or President of the Company that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of the dates, and for the periods presented, in therein. Each Investor also will be entitled to standard inspection and visitation rights.

**Registration Rights:**

Demand Registration Rights: If Investors holding more than 50% of the Series A Preferred, including Common Stock issued on conversion of Series A Preferred (the "Registrable Securities"), request that the Company file a registration statement for the registration of Registrable Securities having an aggregate gross offering price to the public of not less than \$10,000,000.00, the

Company will use its best efforts to effect such registration. The Company will not be obligated to effect more than two such registrations, and will not be obligated to effect any such registration:

- (i) during the 180-day period the Company's initial public offering; or
- (ii) if the Company delivers notice to the holders of the Registrable Securities within 30 days of any registration request of its intent to file a registration statement for an initial public offering within 90 days.

The Company will have the right to delay any such registration under certain circumstances for one period of up to 90 days during any 12-month period.

Piggy-Back Registration Rights: Investors will be entitled to "piggy back" registration rights on all registrations of the Company or on any demand registrations effected for other investors. The Company's underwriters may reduce the number of shares proposed to be registered in any such registration pro rata based market conditions. Unless the registration is for the Company's initial public offering, the shares to be sold by the Investors will not be reduced below 50% of the total amount of securities requested to be included in the registration. No shareholder of the Company will be granted "piggy back" registration rights that would reduce the number of shares includable by the holders of the Registrable Securities in any such registration without the consent of the holders of a majority of the Registrable Securities.

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Form S-3 Registration Rights: Investors will be entitled to unlimited demand registrations on Form S-3 (if available to the Company); provided that the Company will not be required to effect any such registration unless it will cover the offer and sale of Registrable Securities with an aggregate gross offering price to the public of at least \$1,000,000.00 and the Company will not be required to undertake more than two such registrations per year.

Expenses: The Company will bear the cost (exclusive of underwriting discounts and commissions) of all such demand, “piggy back” and Form S-3 registrations (including the fees and expenses of one special counsel to the selling shareholders).

Transfer of Rights: An Investor may transfer registration rights to:

- (i) any partner or retired partner of any holder which is a partnership;
- (ii) any family member or trust for the benefit of any individual holder; or
- (iii) any transferee who acquires at least \_\_\_\_\_ shares of Registrable Securities (as adjusted for stock splits and combinations, stock dividends and similar events).

Lock-Up: If requested by the Company and its underwriters, each Investor will agree not to sell its shares for a up to 180 days following the effective date of the Company’s initial public offering.

**Preemptive Rights:**

Subject to customary exceptions, Investors will have preemptive rights to acquire their pro rata share of any equity securities proposed to be issued by the Company.

**Restrictions on Sales:**

The Company and Investors will have rights of first refusal, and Investors will have co-sale rights, with respect to all transfers of Common Stock by the Common Stockholders, subject to customary exceptions.

**Transaction Documents:**

The investment in the Series A Preferred will be made pursuant to a Series A Stock Purchase Agreement and related agreements drafted by Investors’ counsel, which will contain, among other provisions, appropriate representations and warranties of the Company and the Founders, covenants of the Company reflecting the provisions set forth herein and appropriate conditions of closing. The Series A Stock Purchase Agreement will reflect the fact that it is the intent of the Investors that their investment be in

the business of the Company as a whole, which includes any and all future technology or products developed, not in any specific product.

## **EMPLOYEE MATTERS:**

### **Founder Vesting:**

\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (the “Founders”) will subject \_\_\_\_\_ % of their shares of Common Stock in the Company to reverse vesting at the Closing. These shares will be subject to vesting over four (4) years, with 25% vesting at the end of the first year following the Closing and the remaining 75% vesting in equal monthly increments over the next three (3) years.

### **Employee Option Pool:**

Prior to the Closing, the Company will reserve \_\_\_\_ shares of its Common Stock, constituting [15]% of its post-closing fully diluted capitalization, for issuance to employees, Directors and consultants pursuant to an incentive compensation plan (the “Plan”) in a form satisfactory to the Investors. Unless the Board of Directors decides otherwise, all stock and stock equivalents issued under the Plan will be subject to vesting over four years, with 25% vesting at the end of the first year following issuance and the remaining 75% vesting in equal increments over the next three (3) years.

### **Proprietary Information and Inventions Agreement:**

Each officer, employee and consultant of the Company will enter into a proprietary information and inventions agreement in a form acceptable to the Investors, which agreement will include non-competition and nonsolicitation covenants.

### **Key-Person Insurance:**

The Company will procure key-person life insurance policies for each of the Founders and any named CEO (if other than one of the Founders) in the amount of \$\_\_\_\_\_ each, renewable for five years and naming the Company as beneficiary.

### **Director & Officer Insurance:**

The Company will procure D&O insurance in an amount to be determined by the Board of Directors within a reasonable time after the Closing, but, in any event, no more than sixty (60) days thereafter.

### **Indemnification:**

The Company will enter into an indemnification agreement with each member of its Board of Directors.

## **OTHER MATTERS AND BINDING PROVISIONS:**

### **Legal Fees and Expenses:**

The Company will pay the legal fees and expenses of Investors’ counsel (not to exceed \$\_\_\_\_\_ ) even if the transaction contemplated by this Term Sheet is not actually consummated.

Such maximum amount, however, shall not apply if extenuating circumstances or unexpected diligence issues require additional legal work, in which case the parties agree to negotiate a revised cap on legal fees based on such circumstances.

**Conditions Precedent:**

The investment contemplated by this Term Sheet is subject to, among others, the following conditions:

1. Conversion of the Company into a Delaware entity.
2. The business, assets, financial condition, operations, results of operations and prospects of the Company are substantially as have been represented to us, and no change shall have occurred which, in our sole judgment, is or may be materially adverse to the Company.
3. The negotiation and execution of definitive agreements setting forth representations and warranties of the Company and stockholders, covenants and other provisions customary in transactions of this nature.
4. Completion of due diligence (both legal and technical).

**Exclusivity Period:**

In consideration of the time and expenses incurred (and to be incurred) in connection herewith, from the date of acceptance of this Term Sheet until the consummation of the proposed financing or the earlier termination of our negotiations, but in any event for a period of not more than sixty (60) days from the date of this Term Sheet (the "Exclusivity Period"), the Company will not directly or indirectly solicit, initiate, or participate in any discussions or negotiations with, or encourage or respond to any inquiries or proposals by any person or group other than CTAN or \_\_\_\_\_ concerning any financing of the Company. The Company agrees to use its best efforts to allow CTAN investors to participate in the new financing with such investor(s).

The Company will promptly notify the Investors if any person or entity seeks to initiate any other discussions or negotiations not contemplated in the immediately preceding paragraph, makes an inquiry or proposal, or requests any information with respect to any proposed financing of the Company or any of its subsidiaries, and will disclose to the Investor the terms of any such financing proposal.

It is understood that this Term Sheet constitutes a statement of our present mutual intentions with respect to the proposed transactions and does not contain all matters upon which agreement must be reached in order for the transactions to be completed. This Term Sheet



creates no legally binding agreements or obligations of any party, except for the Sections above entitled “Legal Fees and Expenses” and “Exclusivity Period,” which are expressly binding on the Company. A binding commitment with respect to the transactions will result only from the execution and delivery of a definitive Series A Stock Purchase Agreement and related agreements.

\* \* \*



Please indicate your acceptance of this summary Term Sheet by signing below and returning an executed copy.

Accepted and agreed to  
this \_\_\_ day of \_\_\_\_\_, 2009:

**INSERT COMPANY NAME HERE**

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

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

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



**APPENDIX A**

**Schedule of Investors**

1. \_\_\_\_\_ [Name] \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ [Address] \_\_\_\_\_
  
2. \_\_\_\_\_ [Name] \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ [Address] \_\_\_\_\_
  
3. \_\_\_\_\_ [Name] \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ [Address] \_\_\_\_\_
  
4. \_\_\_\_\_ [Name] \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ [Address] \_\_\_\_\_