

Atlanta *Technology* Angels

TERM SHEET

CONVERTIBLE NOTE FINANCING OF

_____, 20__

This Term Sheet summarizes the principal terms under which accredited investors (the "Investors") associated with Atlanta Technology Angels, Inc. ("ATA") will purchase, and _____, a _____ corporation (the "Company"), will sell one or more of the Company's subordinated, convertible promissory notes in a minimum aggregate principal amount of \$_____ and up to a maximum aggregate principal amount of \$_____ pursuant to the terms set forth in this Term Sheet (the "Financing"). The Financing is being led by _____ and _____ (the "Lead Investors").

Notwithstanding any provision in this Term Sheet to the contrary, no provision of this Term Sheet constitutes a commitment or binding agreement on the part of the Lead Investors or the Company with the exception of the sections set forth under the heading "Legally Binding Provisions," which are binding on the Company and the Lead Investors, as the case may be. Neither any of the Investors nor the Company has any obligation whatsoever to close or participate in the Financing except to the extent agreed to in definitive and final documents relating to the promissory notes and the other matters described in this Term Sheet (the "Final Documents").

SUMMARY OF FINANCING TERMS

The principal terms of the Financing are as follows:

**Pre Financing
Capitalization:**

Common: The Company has issued _____ shares of its common stock (the "Common Stock") of which _____ shares are owned by the Company's founders, _____ and _____ (the "Founders").

Warrants: The Company has issued ___-year warrants to purchase an aggregate of _____ shares of Common Stock for an exercise price of \$___ per share.

Options: The Company has issued ___-year options to officers, directors, employees and consultants to purchase an aggregate of _____ shares of Common Stock for an exercise price of \$___ per share (the "Options").

Loans: The following loans are outstanding:

- (a) _____
- (b) _____

Financing Terms:

Investors: The Lead Investors will invest an aggregate of \$_____ and other accredited investors (as defined in Rule 501 of Regulation D promulgated by the U.S. Securities and Exchange Commission) associated with ATA will invest the balance (collectively, the

"Investors"). The Investors will invest through a single limited liability company that they will establish for this purpose (the "Investor LLC").

Company: _____, a _____ "C" corporation (the "Company").

Aggregate Proceeds: A minimum of \$_____ and up to a maximum of \$_____.

Securities to Be Issued: One or more subordinated convertible notes of the Company (the "Notes") and warrants to purchase Common Stock of the Company (the "Warrants").

Purchase Price: The principal amount of the Note.

Use of Proceeds: The proceeds from the Financing will be used solely for working capital and general corporate purposes.

Closing: Targeted for _____, 20__ (the "Closing Date").

Closing Conditions: The following conditions to the Closing must be satisfied prior to the Closing Date:

- (a) completion of financial and legal due diligence to the satisfaction of the Lead Investors;
- (b) qualification of the issuance of the Notes under applicable "Blue Sky" laws; and
- (c) no material adverse change in the Company's business prospects has occurred prior to the Closing Date.

Subscription Agreement:

The investment will be made pursuant to a Subscription Agreement between the Company and the Investor LLC reasonably acceptable to the Company and the Lead Investors, which agreement will contain, among others, things, appropriate representations and warranties of the Company, representations of the Founders with respect to patents, litigation, previous employment and outside activities, covenants of the Company reflecting the provisions set forth herein, and appropriate conditions of closing, including those set forth above.

The Notes

Maturity: _____, 20__ (the "Maturity Date"). On the Maturity Date, the Investor LLC, at its option, may elect to receive repayment in the form of (a) the then outstanding principal and accrued but unpaid interest on the Notes, (b) equity in the Company as described in "Conversion" below, or (c) a combination of cash and equity as elected by the Investor LLC.

Interest: The Notes carry interest at an annual rate of __%, compounding annually. The interest is payable on the maturity of the Notes. If there is an "Event of Default" (as defined in "Events of Default" below), in addition to any other remedies to which the Note holders are entitled, the interest rate on the Notes increases to __%.

Subordination: The payment of principal and interest on the Notes will be subordinate in right of payment to the payment in full of principal and interest of all amounts due and owing by the Company to other lenders of every kind as may be approved by the Company's Board of Directors, whether now existing or hereafter arising or created at any time.

Pari Passu Treatment With respect to the rights of and payments to the Note Holders, the Company will treat each Investor pari passu.

Prepayment: Prepayment of the Notes is not allowed without the prior written consent of the Note holder in question.

Conversion: If prior to the Maturity Date the Company closes an equity financing in which the Company issues capital stock for which it receives an aggregate consideration of no less than \$_____ (a "Qualified Equity Financing"), then the Notes automatically convert in

whole into the stock issued to the other parties in the Qualified Equity Financing (the "Qualified Equity Stock"). The number of shares of Qualified Equity Stock to be issued to a Note holder will equal the number derived by dividing (x) the principal and accrued interest then outstanding on the Note by (y) 80% of the price per share of the Qualified Equity Stock paid in the Qualified Equity Financing.

If prior to the Maturity Date and the Qualified Equity Financing, the Company closes a sale or liquidation of its assets, then each Note holder has the option to (a) require the Company to repay the principal and interest outstanding on the Note at the time of any such event, (b) convert the Note into newly issued shares of convertible preferred stock of the Company that has the terms set out in Exhibit 1 to this Term Sheet ("Note Holder Preferred Stock") or newly issued shares of common stock of the Company ("Common Stock") as elected by the Note holder or (c) a combination of cash and equity as elected by the Note holder. The number of shares to be issued to the converting Note holder will equal the number of shares the converting Note holder would have received on a fully diluted basis if the converting principal amount of the Note had been invested in the Company on the basis of a \$_____ pre-Financing Company valuation.

On the Maturity Date, each Note holder has the option of converting the Note, in full or in part, into newly issued shares of Note Holder Preferred Stock or newly issued shares of Common Stock as elected by the Note holder. The number of shares to be issued to the converting Note holder will equal the number of shares the converting Note holder would have received on a fully diluted basis if the converting principal amount of the Notes had been invested in the Company on the basis of a \$_____ pre-Financing Company valuation.

Events of Default:

The following are "Events of Default:"

- (a) Default in the payment of the principal or unpaid accrued interest on the Notes.
- (b) Default in the observance or performance of any other covenant or agreement contained in the Notes or in any of the other Final Documents, which default continues for a period of 14 days after the Company receives written notice specifying the default.
- (c) Institution by any of the Company's creditors of any form of state or federal bankruptcy or insolvency proceedings that are not dismissed within 30 days after institution, any assignment for the benefit of the Company's creditors, or institution by the Company of any form of bankruptcy.
- (d) A decision by the Company's Board of Directors to cease substantially all of the Company's operations or wind up the Company's affairs.
- (e) Other customary provisions.

Upon any Event of Default, each Note holder has the right, at its option, to accelerate all amounts due to the Note holder or to convert the Note into Note holder Preferred Stock or newly issued shares of Common Stock as it would have had on the Maturity Date.

Negative Covenants:

The Company agrees not to take any of the following actions without the consent of holders of ___% of the outstanding principal amount of the Notes ("Note Holder Approval"):

- (a) Repurchasing any shares of capital stock other than in connection with the termination of employment at the lower of cost or fair market value.
- (b) Making any cash dividends or other distributions with respect to the capital stock of the Company.
- (c) Other customary provisions.

The Warrants

Shares Subject to Purchase:

The Warrant issued to each holder of a Note gives the holder the right to purchase the number of shares of Common Stock (the "Warrant Shares") determined using the following formula:

$$A = \frac{\text{Aggregate Principal amount of the Note} \times 10\%}{B}$$

Where

A = Warrant Shares

B = The per share price of the shares of capital stock sold and issued by the Company in the Qualified Equity Financing.

Exercise Price: \$0.01 per share.

Exercise: Each Note holder may exercise the Warrant in full or in part at any time during the "Exercise Period" (as defined in "Exercise Period" below). Each Note holder is also allowed a cashless exercise by using the appreciated value of the Warrants as payment. The Warrants are automatically exercised through a cashless exercise in case of (a) an initial public offering of securities of the Company or (b) the Company closes a sale or liquidation of its assets.

Exercise Period: The period commencing with the date of the Qualified Equity Financing and ending 5 years later, unless sooner terminated in case of an automatic exercise described above. The Warrants expire at the earlier of a sale or liquidation of the Company's assets or the Maturity Date.

Protective Provisions:

Board of Directors: The Board of Directors (the "Board") will be comprised of one representative nominated by the holders of Common Stock, one representative nominated by the holders of the Notes (the "Note Holder Director"), and one representative unaffiliated with the Company and the Investors (the "Outside Director"). The Investor LLC will be entitled to designate the Note Holder Director for so long as it holds any Notes. Each committee of the Board of Directors will include the Note Holder Director and the Outside Director. The Company will reimburse non-employee directors for all reasonable expenses incurred in their services as a director of the Company. The Company will indemnify members of the Board of Directors to the fullest extent possible. Immediately upon the Closing, the Company will undertake to obtain Directors and Officers insurance in a standard amount.

For so long as any member of the ATA is either an Investor or a Member of the Investor LLC, a designee of the ATA will be entitled to attend and observe all Board meetings and to receive all materials and communications distributed to the Board, subject to customary exceptions.

Note Holder Approval Items:

So long as at least 50% of the aggregate principal amount of the Notes remains outstanding, Note Holder Approval will be required for the Company to:

- (a) enter into any acquisition of, or any agreement to acquire, any entity, business or business segment;
- (b) enter into any transaction or agreement that would result in any sale or liquidation of the Company;
- (c) declare or pay any dividend or make any distribution with respect to the Company's capital stock;

- (d) redeem or repurchase any Company capital stock (other than any employee stock repurchases pursuant to vesting or employee agreements approved by the Board of Directors including the Note Holder Director);
- (e) increase or decrease the size of the Board; or
- (f) permit any subsidiary or affiliate of the Company to sell or issue any stock to any party other than the Company.

Note Holder Director Approval Items:

So long as any of the Notes remains outstanding, approval of the Board, including the Note Holder Director, will be required for the Company to:

- (a) incur or guarantee indebtedness greater than \$_____ at any time or create or permit to exist any lien or encumbrance or grant any security interest in the assets, business or properties of the Company other than in the ordinary course of the Company's business;
- (b) make any capital expenditure in excess of \$_____ beyond that approved in the annual capital budget approved by the Board of Directors;
- (c) appoint the Chief Executive Officer or other executive officers or setting or changing any such officer's compensation;
- (d) enter into any joint venture or exclusive licensing, marketing or distribution agreement with respect to the Company's products other than in the ordinary course of business;
- (e) make a material change in the Company's line(s) of business, change the principal business of the Company, enter new lines of business, or exit the current line of business; or
- (f) permit any subsidiary or affiliate of the Company to engage in transactions that materially affect the Company's position as regards any of the foregoing list of proscribed actions; or
- (g) begin or settle any litigation.

Board Approval Items:

The approval of the Board will be required for:

- (a) annual budgets, business plans, and financial plans, including those involving employee and officer compensation and hiring arrangements;
- (b) all real estate leases or purchases;
- (c) creating or selling any class of equity or security convertible into any class of equity (other than options and warrants for previously authorized equity); or
- (d) execution of entrance obligations or commitments, including capital equipment leases or purchases, with total value greater than \$_____ and that are outside the most recent business plan or budget approved by the Board of Directors.

Events of Noncompliance:

An event of non-compliance will occur if (a) the Company breaches in any material respect any of its material covenants or obligations to the Note holders and fails to cure such breach after notice and a reasonable opportunity to cure, or (b) the Company incurs a bankruptcy, receivership, assignment for the benefit of creditors or any unsatisfied judgment in a material amount. If any event of non-compliance occurs and continues for 30 days, and until such event of non-compliance is cured, the holders of a majority of the outstanding principal amount of the Notes will have the right to elect a majority of the Company's Board of Directors.

Employee Matters:

Employee Agreements:

The Founders and all employees and consultants have entered into, or will enter into, the Company's standard form inventions and proprietary information agreement in form and substance acceptable to the Investors.

Stock Options:

Any Founder who may hold shares of Common Stock may also be entitled to participate in any such plan and receive incentive stock options or other awards to the extent the Founder is a full time employee of the Company and as subject to the approval by the Board of Directors, including the Note Holder Director. All options issued under the

company's incentive pool will be issued at an exercise price not less than fair market value and vest according to a four-year schedule with a one-year cliff.

Founders' Stock: The Founders will own their respective shares outright, subject to the Company's right to buyback at cost. The Company's buyback right will apply to ___% of the Founders' shares, with such right lapsing as applied to such portion in equal increments each month for a period of 36 months from the Closing. Notwithstanding the foregoing, such buy back right may be triggered only in the event that the Founder with respect to whom such rights would be exercised has left the employ of the Company voluntarily and unilaterally or has been fired by the Company for cause.

Key-Man Insurance: As soon as reasonably possible after the Closing, the Company will procure a key-man life insurance policy for the Founders in the amount of \$_____, naming the Company as beneficiary; provided, however, that at the election of the Investor LLC, such proceeds will be used to repayment of then outstanding principal and accrued but unpaid interest on the Notes.

LEGALLY BINDING PROVISIONS

In consideration of the Company's and the Lead Investors' (a) execution and delivery of this Term Sheet, (b) negotiation and preparation of the Final Documents, and (c) retention of legal counsel, accountants and advisors to assist in connection therewith, the Company and the Lead Investors (collectively referred to as the "Parties" and individually as a "Party") agree to be legally bound as follows:

No Shop: The Company agrees to work in good faith expeditiously towards a Closing. Since _____, 20___, and for a period of time of 45 days from the date this Term Sheet is accepted by the Company, the Company and the Founders represent that they have not taken, and they agree that they will not take, any action to solicit, initiate, encourage, or assist in 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 convertible note or capital 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 Company must notify the Lead Investors promptly of any inquiries by any third parties in regards to the foregoing.

Confidentiality: Each Party agrees to (a) keep the "Confidential Information" (as defined below) of any other Party in confidence, (b) not, without the prior written consent of the disclosing Party, disclose the disclosing Party's Confidential Information to anyone other than its directors, officers, employees, agents, consultants, advisors, prospective Investors, or other representatives ("Representatives") who have a legitimate need to know the Confidential Information, and (c) not use and not permit its Representatives to use the disclosing Party's Confidential Information for any reason other than in connection with their evaluation of the Financing.

"Confidential Information" means non-public information about a Party's business or activities, including, but not limited to, business, financial, technical and other information that is disclosed by such Party and designated by such Party as "confidential" or "proprietary;" or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as confidential.

Upon demand by the disclosing Party and at the direction of the disclosing Party, the receiving Party must return or destroy all Confidential Information of the disclosing Party, except for that portion of the Confidential Information that consists of analyses, compilations, forecasts, studies or other documents prepared by the receiving Party or its Representatives, provided that such analyses, compilations, forecasts, studies or other documents remain confidential and are not used in a manner inconsistent with this Term Sheet.

The covenants and agreements contained in this provision with respect to Confidential Information deemed a trade secret under applicable law continue until the information ceases to be a trade secret under applicable law and the covenants and agreements with

respect to all other Confidential Information continue for a period of three years after the Company's acceptance of this Term Sheet.

Expenses: If the Financing is consummated, the Company must reimburse the Investors for all reasonable out-of-pocket expenses up to \$_____ (including fees and disbursements of one legal counsel). If the Financing is not consummated, each Party must bear its own legal fees and expenses, provided that if the Financing is not consummated by reason of the Company's refusal to proceed for reasons other than those related to the Investors' bad faith, delay, or attempt to negotiate or impose terms that are materially inconsistent with those summarized in this Term Sheet, then the Company must pay the Investors' reasonable out-of-pocket expenses up to \$_____.

Document Preparation: Unless specifically requested by the Lead Investors, the Final Documents will be drafted by counsel for the Investors.

Termination of Offer: This Term Sheet must be accepted by the Company and the Founders through their execution of it at the spaces provided below and their returning it by email or facsimile by the end of business on _____, 20__, or by overnight courier, postmarked no later than _____, 20__, to _____ at the following address:

Fax No.: _____
E-mail: _____

Any acceptance thereafter is not effective unless specifically approved by the Lead Investors.

Governing Law: Regardless of the place of contract, place of performance, or otherwise, this Term Sheet and all amendments, modifications or supplements to it, must be construed under, and be governed by, the laws of the State of Georgia, without giving effect to the principles of law (such as conflicts of law or choice of law rules) that might make the law of some other jurisdiction applicable.

<p><u>LEAD INVESTORS:</u></p> <p>_____</p> <p>_____</p> <p>(signature)</p> <p>Date: _____, 20__</p> <p>_____</p> <p>_____</p> <p>(signature)</p> <p>Date: _____, 20__</p>	<p><u>COMPANY:</u></p> <p>_____</p> <p>_____</p> <p>(signature)</p> <p>Date: _____, 20__</p> <p>By signing this Term Sheet, each Founder agrees to be bound by the "No Shop" provision.</p> <p><u>FOUNDERS:</u></p> <p>_____</p> <p>_____</p> <p>(signature)</p> <p>Date: _____, 20__</p>
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NOTE HOLDER PREFERRED STOCK

The Note Holder Preferred Stock will have the following terms:

Ranking: The Note Holder Preferred Stock ranks senior to all other classes of stock of the Company as to liquidation, dividends, redemptions and any other payment or distribution with respect to capital stock.

Dividends: The holders of the Note Holder Preferred Stock are entitled to cumulative dividends (the "Note Holder Preferred Dividend"), accruing from the date of issuance, in preference to and pro rata with any dividends or distributions on any other securities of the Company at an annual rate of ___% of the "Note Holder Original Purchase Price." The "Note Holder Original Purchase Price" of each share of Note Holder Preferred Stock is (x) the principal and accrued interest outstanding on the Notes on the conversion date divided by (y) the number of shares of Note Holder Preferred Stock into which the Notes have been converted. In addition to the above dividends, the holders the Note Holders Preferred Stock will receive (on an as-converted basis) a dividend equal to any dividend paid on the Common Stock.

Liquidation: In the event of any liquidation or winding up of the Company, the holders of the Note Holder Preferred Stock are entitled to receive, in preference to the holders of the Common Stock, a per share amount equal to the Note Holder Original Purchase Price (plus any accrued but unpaid dividends) in preference to the holders of Common Stock (the "Note Holder Liquidation Preference"). Any assets remaining after payment of the Note Holder Liquidation Preference will be distributed among the holders of the shares of the Note Holder Preferred Stock and Common Stock pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock.

A consolidation or merger of the Company, a sale of substantially all of its assets, or any transaction in which control of not less than 50% of the outstanding voting securities of the Company is transferred to unaffiliated third parties who are not then shareholders of the Company will be deemed to be a liquidation or winding up for the purposes of the liquidation preference and is referred to herein as a "Liquidation Event."

Optional Conversion: Any holder of Note Holder Preferred Stock will have the right to convert any or all shares of its Note Holder Preferred Stock, at any time at his option, into shares of Common Stock. One share of Note Holder Preferred Stock is initially convertible into one share of Common Stock based on a conversion price equal to the Original Note Holder Purchase Price (the "Conversion Price"). The Conversion Price may be adjusted based on certain events (see "Antidilution Provisions" below).

Automatic Conversion: Note Holder Preferred Stock will be automatically converted into Common Stock at the then applicable conversion rate (a) upon the closing of an underwritten public offering of shares of the Company in which (i) the aggregate cash proceeds to the Company equal or exceed \$__ million, net of underwriters' commissions and expenses, and (ii) the price per share is not less than _ times the Original Purchase Price, or (b) at any time upon the written approval of the holders of more than ___% of the outstanding Note Holder Preferred Stock.

Antidilution Provisions: The conversion price of the Note Holder Preferred Stock will be subject to broad based weighted average anti-dilution protection in the event that the Company issues additional shares of Common Stock or Common Stock equivalents at a purchase price less than the applicable Conversion Price, subject to standard exceptions. The conversion price will also be adjusted for any stock splits, stock dividends, reorganizations, recapitalizations and similar events.

Voting Rights: Except as otherwise required by law or by the protective provisions set forth below, the Note Holder Preferred Stock will vote together with the Common Stock. Each share of

Note Holder Preferred will carry a number of votes equal to the number of shares of Common Stock then issuable upon its conversion.

Board of Directors: The Board of Directors (the "Board") will be comprised of one representative nominated by the holders of Common Stock, one representative nominated by the holders of Note Holder Preferred Stock and holders of Notes (the "Note Holder Preferred Director"), and one representative unaffiliated with the Company and the Note Holders (the "Outside Director"). The Note Holder Preferred Director will be designated by holders of Note Holder Preferred Stock and holders of Notes holding a majority of the sum of the aggregate of the Note Holder Liquidation Preference and the outstanding principal and interest on the Notes. The Investor LLC will be entitled to designate the Note Holder Preferred Director for so long as it holds any Note Holder Preferred Stock or Notes. Each committee of the Board of Directors will include the Note Holder Preferred Director and the Outside Director. The Company will reimburse non-employee directors for all reasonable expenses incurred in their services as a director of the Company. The Company will indemnify members of the Board of Directors to the fullest extent possible. Immediately upon the Closing, the Company will undertake to obtain Directors and Officers insurance in a standard amount. For so long as any member of the ATA is either a holder of a Note or Note Holder Preferred Stock or a Member of the Investor LLC, a designee of the ATA will be entitled to attend and observe all Board meetings and to receive all materials and communications distributed to the Board, subject to customary exceptions.

Right of First Refusal: The Company will have a standard right of first refusal, at the bona fide offering price, on shares of Common Stock proposed to be sold on an as-converted basis. Until an initial public offering, the holders of the Note Holder Preferred Stock also will have the right to participate on a pro rata basis in transfers of any shares of Common Stock, and a standard right of first refusal on such transfers, subordinate to the Company's right of first refusal. Any shares not subscribed for by any holder of Note Holder Preferred Stock may be reallocated among the other eligible holders of Note Holder Preferred Stock.

Right to Force a Sale of the Company: The Company must agree to any Liquidation Event transaction and all major shareholders must likewise agree to such transaction upon the approval of (a) the holders of at least 2/3rd of the Note Holder Preferred Stock, (b) a majority of the Board, and (c) a majority of all Common Stock and outstanding Note Holder Preferred Stock, voting as a single class on an as-converted basis.

Preemptive Rights: In the event the Company proposes to offer equity securities to any person, each holder of Note Holder Preferred Stock has the right to purchase up to its pro rata portion of those securities (based on the shareholder's percentage of the fully diluted outstanding shares of the Company), subject to standard exceptions.

Redemption Rights: Any shares of the Note Holder Preferred Stock will be redeemed, at the election of any holder of outstanding Note Holder Preferred Stock, at any time after five years from the Closing at a redemption price that is the greater of the fair market value (with no discount for minority interest or illiquidity) or the Note Holder Liquidation Preference. In the event the Company lacks sufficient funds for redemption at the time of such election, the Company will pay as much as possible and complete the redemption in installments pursuant to a plan set forth by the electing shareholder(s) and the Company.

Information Rights: The holders of the Note Holder Preferred Stock will receive audited annual and unaudited quarterly financial statements.

Note Holder Approval Items: So long as at least 50% of the outstanding principal amount of the original Notes remains outstanding or are represented by Note Holder Preferred Stock, approval by holders of Note Holder Preferred Stock and holders of Notes holding ___% of the sum of the aggregate of the Note Holder Liquidation Preference and the outstanding principal and interest on the Notes will be required for the Company to:

- (a) enter into any acquisition of, or any agreement to acquire, any entity, business or business segment;

- (b) enter into any transaction or agreement that would result in a Liquidation Event;
- (c) declare or pay any dividend or make any distribution with respect to the Company's capital stock;
- (d) redeem or repurchase any Company capital stock (other than any employee stock repurchases pursuant to vesting or employee agreements approved by the Board of Directors including the Note Holder Director);
- (e) amend the Company's Certificate of Incorporation or Bylaws in a manner that results in an adverse change to the rights, preferences, or privileges of the Note Holder Preferred Stock;
- (f) increase the authorized number of shares of Note Holder Preferred Stock or Common Stock;
- (g) sell any security at a common-equivalent price less than that paid for the Note Holder Preferred Stock, other than shares in the incentive pool or shares issued in acquisitions or in connection with debt financings;
- (h) increase or decrease the size of the Board;
- (i) permit any subsidiary or affiliate of the Company to sell or issue any stock to any party other than the Company; or
- (j) increase the size of the incentive pool.

*Note Holder Director
Approval Items:*

So long as any of the Note Holder Preferred Stock remains outstanding, approval of the Board, including the Note Holder Director, will be required for the Company to:

- (a) incur or guarantee indebtedness greater than \$_____ at any time or create or permit to exist any lien or encumbrance or grant any security interest in the assets, business or properties of the Company other than in the ordinary course of the Company's business;
- (b) make any capital expenditure in excess of \$_____ beyond that approved in the annual capital budget approved by the Board of Directors;
- (c) appoint the Chief Executive Officer or other executive officers or setting or changing any such officer's compensation;
- (d) enter into any joint venture or exclusive licensing, marketing or distribution agreement with respect to the Company's products other than in the ordinary course of business;
- (e) make a material change in the Company's line(s) of business, change the principal business of the Company, enter new lines of business, or exit the current line of business; or
- (f) permit any subsidiary or affiliate of the Company to engage in transactions that materially affect the Company's position as regards any of the foregoing list of proscribed actions; or
- (g) begin or settle any litigation.

*Board Approval
Items:*

The approval of the Board will be required for:

- (a) all stock option programs as well as issuance of all stock and stock options (approval by a majority of disinterested Directors or a Compensation Committee when established);
- (b) annual budgets, business plans, and financial plans, including those involving employee and officer compensation and hiring arrangements;
- (c) all real estate leases or purchases;
- (d) creating or selling any class of equity or security convertible into any class of equity (other than options and warrants for previously authorized equity); or
- (e) execution of entrance obligations or commitments, including capital equipment leases or purchases, with total value greater than \$_____ and that are outside the most recent business plan or budget approved by the Board of Directors.

*Events of
Noncompliance:*

An event of non-compliance will occur if (i) the Company breaches in any material respect any of its material covenants or obligations to the holders of the Notes or the holders of the Note Holder Preferred Stock and fails to cure such breach after notice and a reasonable opportunity to cure, or (ii) the Company incurs a bankruptcy, receivership,

assignment for the benefit of creditors or any unsatisfied judgment in a material amount. If any event of non-compliance occurs and continues for 30 days, and until such event of non-compliance is cured, the holders of Note Holder Preferred Stock and holders of Notes holding a majority of the sum of the aggregate of the Note Holder Liquidation Preference and the outstanding principal and interest on the Notes will have the right to elect a majority of the Company's Board of Directors.

Registration Rights:

Note Holders will enjoy standard and customary registration rights for holders of preferred stock typical for transactions of this type.