

annotated term sheet



**The following Annotated Term Sheet
is for illustrative purposes only and does not
indicate our position on any substantive issue
or with respect to any specific transaction.**

TERM SHEET FOR POTENTIAL INVESTMENT

IN

NEWCO EMERGING GROWTH, INC.

CONFIDENTIAL

This Term Sheet summarizes the principal terms with respect to a potential private placement of equity securities of Newco Emerging Growth, Inc., an Idaho corporation (the “Company”) by a group of investors (“Investors”) led by Highway 12 Venture Fund, LP.¹ This Term Sheet is intended solely as a basis for further discussion and is not intended to be and does not constitute a legally binding obligation except as provided under “Confidentiality,” “Exclusivity,” and “Expenses” below. No other legally binding obligation will be created, implied or inferred until a document in final form entitled “Stock Purchase Agreement” is executed and delivered by all parties. Without limiting the generality of the foregoing, it is the parties intent that, until that event, no agreement shall exist among them and there shall be no obligations whatsoever based on such things as parol evidence, extended negotiations, “handshakes,” oral understandings, courses of conduct (including reliance and changes of position), except as provided under “Confidentiality,” “Exclusivity,” and “Expenses” below.²

Amount of Investment: \$ _____³

Valuation of the Company: \$ _____⁴ Pre-Money on a fully-diluted basis.

\$ _____ Post-Money on a fully-diluted basis.

Type of Security: Shares of the Company’s Series A Convertible Preferred Stock (“Preferred”), convertible into shares of the Company’s Common Stock (“Common”), representing ____% of the outstanding capital stock of the Company on a fully-diluted basis.

Price Per Share: \$ _____ (“Original Purchase Price”).

¹ Generally, in venture financings, a single Investor such as a venture capital fund takes the lead in investigating the proposed investment, including performing due diligence and negotiating the terms of the stock acquisition.

² The concern addressed by the last two sentences is whether an agreement in principle or term sheet could be construed to be a contract binding on the Investor group. From the Investors’ perspective, they will not want to be bound in any way until all conditions precedent have been met, such as completion of due diligence and execution of a definitive purchase agreement.

³ Sometimes this amount is structured as a range, e.g., “A minimum of \$3 million and a maximum of \$6 million.” Also, the investment is sometimes structured as a staged pay-in, with subsequent installments to be invested if the Company has met certain milestones or performance objectives. See “Milestones.”

⁴ This is the agreed upon valuation of the Company prior to the Investors contributing money to the Company. Valuation per share will often take into account outstanding stock options together with authorized but unissued options.

Milestones:

It is contemplated that the Investors will purchase the Preferred in [two] tranches, the first \$ _____ upon [completion of the first milestone, *e.g.*, the successful field trial of a product (the “*Product*”) or the signing of a letter of intent to join in a business partnership to market the Product]. The second \$ _____, comprising the balance of the investment, will be advanced upon [completion of the second milestone, *e.g.*, purchase orders for a specified amount of Product, the achievement of a specified amount of revenue, or the execution of a formal strategic alliance with a major manufacturer].

Company Capitalization:

The current capitalization of the Company is set forth in Exhibit 1, and the capitalization of the Company after this proposed financing is set forth on Exhibit 2.⁵

Terms of Preferred Stock:

(1) Dividend Provisions: [Starting on January 1, 2000,] [T]he holders of the Preferred will be entitled to receive dividends [at the rate of ____% of the Original Purchase Price] whenever funds are legally available and when and as declared by the Board. No dividend shall be paid on the Common at a rate greater than the rate at which dividends are paid on the Preferred (based on the number of shares of Common into which the Preferred is convertible on the date the dividend is declared). Dividends on Preferred will be in preference to dividends paid on the Common. Dividends on the Preferred will be [cumulative] [noncumulative]. No dividends will be paid on the Common until such time as the holders of Preferred have received aggregate dividends equal to the Original Purchase Price of the shares of Preferred purchased in the offering.⁶

⁵ Exhibit 1 should show outstanding warrants, stock options, employee reserved stock and options, and outstanding Common, Preferred, and convertible securities. It may be useful for Exhibit 2 to show the capitalization of the Company taking into account the effect of anti-dilution provisions of any prior Preferred Stock issuances.

⁶ Because most emerging growth companies will not typically be in a position to pay dividends to the holders of the Preferred Stock, some dividend provisions are drafted as to not mandate or cumulate dividends. However, in most financings, the Investors will require that dividends accrue and cumulate whether or not declared by the Board. Where dividends are cumulative, companies will want all previously accrued but unpaid dividends to be waived upon the automatic conversion of the Preferred Stock; Investors will want the unpaid dividends to be paid or to be converted into Common Stock. If dividends are required, the Company will want the dividends not to commence immediately and to have the option to pay such dividends in cash or stock. In the latter case, dividends are often structured as “*pik preferred*” dividends, *e.g.*, “payment in kind” dividends for additional shares of Preferred Stock.

(2) Liquidation Preference: In the event of any liquidation, dissolution or winding up of the Company, the holders of Preferred will be entitled to receive in preference to the holders of Common⁷ an amount (“*Liquidation Preference*”) equal to the Original Purchase Price plus any dividends declared [cumulated] on the Preferred but not paid [and then to share with the holders of the Common in the remaining assets on an as-if converted basis].⁸ At the option of the holders of the Preferred, the effectuation by the Company or third-party acquirors of a transaction or series of transactions in which more than [50%] [80%] of the voting power of the Company is disposed of to a single person or group of affiliated persons or the consolidation or merger of the Company with or into any other corporation or corporations or the sale of all or substantially all of its assets shall be deemed to be a liquidation, dissolution or winding up for purposes of the Liquidation Preference.

(3) Conversion: A holder of Preferred will have the right to convert Preferred, at the option of the holder, at any time, into shares of Common. The total number of shares of Common into which Preferred may be converted initially will be determined by dividing the Original Purchase Price by the conversion price. The initial conversion price (“*Conversion Price*”) will be the Original Purchase Price. The Conversion Price will be the subject of adjustment to reflect stock dividends, stock splits and similar events as provided in paragraph (5) below.

⁷ If the Company has other series or classes of Preferred Stock, this provision will need to address the liquidation preferences of those past issuances vis-à-vis the new Preferred issuance. For example, is a Series B round to be equal or superior to the liquidation of the Series A round.

⁸ The bracketed language provides for a “participating preferred,” where on liquidation of the Company the Preferred first receives an amount equal to the original purchase price and unpaid dividends, or a multiple of the original purchase price, with the remainder of the Company’s assets divided on a pro-rata with the Common as if the Preferred were converted. The Company will typically strongly resist this participating feature or attempt to mitigate its effect (*e.g.*, the participating feature will not apply if the Investors have made at least a 25% annual compounded return on their investment, or a higher multiple such as 4-6 times the original purchase price). This participating provision results in the payment of the Liquidation Preference on each share of Preferred from the proceeds of a merger or sale of the Company. After such payment, all holders of Preferred and Common typically share the balance on an “as converted” basis. Entrepreneurs who hold Common are often disappointed when they realize that the payment of the Liquidation Preference results in sharply lower per share prices for their Common. A participating preferred provision can also result in situations where Investors may favor a sale of the Company that the founders would oppose.

(4) Automatic Conversion:⁹ The Preferred will be automatically converted into Common, at the then applicable Conversion Price, upon the closing of a sale of the Company's shares of Common Stock pursuant to a firm commitment underwritten public offering by the Company at a public offering price per share (prior to underwriter commissions and discounts) that is not less than \$ _____¹⁰ in an offering greater than [\$15 million] (a "*Qualified IPO*").¹¹

(5) Antidilution Provisions: The conversion price of the Preferred will be subject to adjustment (a) for stock dividends, stock splits, or similar events, and (b) to prevent dilution in the event that the Company issues additional shares at a purchase price less¹² than the applicable Conversion Price. No adjustment to the Conversion Price will occur for any issuance of additional shares at a purchase price in excess of the current Conversion Price.¹³ Conversion Prices will not be adjusted because of (a) conversion of Preferred Stock, (b) the issuance and sale of, or grant of options to purchase, _____¹⁴ shares of Common Stock pursuant to the Company's employee stock purchase or option plans (the "*Reserved Employee Shares*"), or (c) options or stock issued to equipment lessors and

⁹ The purpose of this automatic conversion provision is to clean up and simplify the Company's capitalization structure at the initial public offering stage. The underwriters in an IPO will want the capitalization structure simplified as much as possible without unusual rights outstanding to minority shareholders.

¹⁰ This number will vary depending on the state of the Company's progress at the time of this financing. The Investors will not want to be forced to convert to Common Stock unless they have received a sufficient return on their investment.

¹¹ This Number is typically \$10 million to \$15 million. Automatic conversion of the Preferred is also sometimes required (i) when less than 25% of the Preferred shares issued in the financing remain outstanding or (ii) upon the affirmative vote of more than 50% (or 66-2/3%) of the outstanding Preferred.

¹² Adjustment mechanisms can take several forms. The most favorable to the Investor is the so-called "full ratchet provision" which provides that upon a dilutive financing, the conversion price of the diluted shares is adjusted downward to the issuance price of the dilutive financing. A less onerous mechanism is so-called "weighted average." The trend is for the former because of the perception that there is a greater risk of down rounds in the current economic times. An additional provision, the so-called "pay to play provision," which can be burdensome from the Investor's standpoint, provides that the Investors must participate pro rata in the dilutive financing (or perhaps even in all future financings) in order to retain antidilution protection for their shares. Lead Investors sometimes require a pay to play provision to prevent "free riding" by minor Investors. The "pay to play" provision could also provide that any Investor that does not participate pro rata in future financings (or dilutive future financings) would be converted to Common Stock.

¹³ Occasionally, the Company is able to request and obtain a provision that requires the antidilution provisions to take into account future Company issuances of stock at a price *greater* than the Conversion Price, to ameliorate the effect to stock issued at lower than the Conversion Price. However, the Investors will usually not allow the Conversion Price to ever be higher than the initial Conversion Price due to such a provision.

¹⁴ This number is typically 10%-20% of the company's capital stock. This provision can be alternatively worded to exclude any stock options or stock to employees approved by the Board. See "Reserved Employee Shares."

bank lenders [or stock issued in connection with mergers and acquisitions by the Company].

(6) Voting Rights: Except with respect to election of Directors, a holder of Preferred will have the right to that number of votes equal to the number of shares of Common issuable upon conversion of its Preferred at the time the shares are voted.¹⁵ Election of Directors will be as described under “Board Representation” below.

(7) Protective Provisions: [So long as there are at least _____ shares of Preferred outstanding,]¹⁶ consent of the holders of at least [a majority] [two-thirds] of the outstanding Preferred will be required for any action which would: (a) amend or repeal any provision of, or add any provision to, the Company’s Articles of Incorporation or Bylaws to change the rights of the Preferred, or increase or decrease the number of authorized shares of the Preferred; (b) create any new series or class of shares having a preference or priority as to dividends or assets superior to or on a parity with that of the Preferred; (c) create any bonds, notes or other obligations convertible into, exchangeable for or having option rights to purchase shares of stock with any preference or priority as to dividends or assets superior to or on a parity with that of the Preferred; (d) reclassify any class or series of Common into shares with a preference or priority as to dividends or assets superior to or on a parity with that of the Preferred; (e) apply any of its assets to the redemption or acquisition of any shares of Common, except from employees, advisors, officers, directors, consultants and service providers of the Company on terms approved by the Board; or (f) agree to a merger, sale or consolidation of the Company with another entity or the effectuation of any transaction or series of related transactions in which more than [50%]

¹⁵ In addition, the Preferred, voting as a class, must approve a sale or merger of the Company, or other event in which the Liquidation Preference comes into play.

¹⁶ The Company may request the bracketed language, so that the protective provisions would no longer apply if the number of outstanding shares of the Preferred were reduced to a designated percentage (e.g., 25%).

[80%] of the voting power of the Company is disposed [other than pursuant to a Qualified IPO].¹⁷

Redemption:¹⁸

The Company shall redeem the Preferred in [three] equal annual installments commencing [six] years from the date of purchase by paying in cash an amount equal to the Original Purchase Price plus any declared but unpaid dividends [plus ____% for each year the Preferred Stock is outstanding]. To the extent that the Company may not at any such date legally redeem such Preferred, such redemption will take place as soon as legally permitted.¹⁹

Information and Registration Rights:²⁰

(1) Registration Rights Agreement: The information and registration rights between the Company and any past purchasers of the Company's stock shall be merged with the registration rights of the Investors in this transaction to be set forth in an Investor Rights Agreement (the "*Rights Agreement*").

(2) Information Rights: So long as an Investor holds Preferred (or Common issued upon conversion of Preferred), the Company will deliver to such Investor annual [audited/unaudited] and quarterly [unaudited] financial statements. So long as the Investor holds at least [5%] [10%] of the Preferred (or Common issued upon conversion of the Preferred), and the Company has not gone public, the Company will timely furnish such Investor with budgets and monthly financial statements.

¹⁷ The Common holders may request that the Preferred holders must vote in favor of a merger or sale so long as the Preferred have received a designated return on their investment.

¹⁸ The Company will typically resist a redemption feature, on the theory that the expected liquidity will be achieved when the Company goes public or is acquired. The venture Investors may insist on the redemption feature to force the Company to cash them out a some point (assuming funds are available), if the other liquidity options have not materialized, especially if the fund is nearing the end of its life and must have liquidity to make distributions to its partners.

¹⁹ Investors may require that if a redemption is not made on schedule, the Conversion Price of the shares not redeemed shall be reduced by some percentage. In some cases, the unredeemed shares' Conversion Price continues to be adjusted downward until the shares are redeemed.

²⁰ A short form provision that would replace sections (1) through (9) under this "Information and Registration Rights" section is as follows: "The Investors shall have demand, piggyback and S-3 registration rights and related rights, and information rights and related rights, and information rights, in the manner customary for transactions of this nature, all as to be detailed in the definitive documents."

(3) Demand Rights: If, at any time after the earlier of the Company's initial public offering and the date [three] years from the [first] [last] purchase of the Preferred (but not within 180 days of the effective date of a registration), Investors holding at least [25% - 50%] of the Preferred (or Common issued upon conversion of the Preferred) request that the Company file a registration statement for at least [25% - 50%] of the Common issued or issuable upon conversion of the Preferred (or any lesser percentage if the aggregate offering price to the public would exceed \$[2,000,000]), the Company will use its [reasonably diligent] [best] efforts to cause such shares to be registered. The Company will not be obligated to effect more than [two] registrations (other than on Form S-3) under these demand registration rights provisions.²¹

(4) Registrations on Form S-3: Holders of at least [25% - 50%] of the Preferred (or Common issuable upon conversion of the Preferred) will have the right to require the Company to file up to [four] registration statements of its Common on Form S-3 (or any equivalent successor form) if the anticipated aggregate offering price to the public would exceed [\$500,000 - \$1,000,000].

(5) Piggyback Registrations: The Investors will be entitled to "piggyback" registration rights on registrations of the Company or on any demand registrations, subject to the right of the Company and its underwriters, in view of market conditions, to reduce or eliminate the number of shares of the Investors proposed to be registered.²²

(6) Registration Expenses: All registration expenses (exclusive of underwriting discounts and commissions [and the fees of one special counsel for the selling shareholders]) shall be borne by the Company.

²¹ The Company may request that it will not be obligated under the demand registration rights provisions if SEC Rule 144, 144A, or a comparable rule is available to the Investors for the proposed sale.

²² The Company may request that the piggyback rights not be exercisable if the Investors are able to use the benefits of SEC Rule 144, 144A, or a comparable rule. The Investors may request that any underwriter cutbacks from piggyback rights be effectuated first from the founders and other shareholders before any cut back of Investors' shares.

(7) Transfer of Registration Rights: The registration rights may be transferred to a transferee (other than a competitor of the Company) who acquires at least [25%] of the shares held by a holder of Preferred (or Common issued upon conversion of Preferred). Transfer of registration rights to a limited or general partner or any Investor will be without restriction as to minimum shareholding.²³

(8) Future Purchasers of Company Securities:²⁴ Subsequent purchasers of the Company's securities may be granted information and registration rights upon consent of the holders of at least 51% of the holders of registration rights.²⁵

(9) Other Registration Provisions: Other provisions will be contained in the Stock Purchase Agreement with respect to registration rights as are customary, including cross-indemnification, the Company's ability to delay the filing of a demand registration for a period of not more than 180 days, the agreement by the purchasers of Preferred if requested by the underwriter in a public offering not to sell any Company securities they hold for a period of up to [180 days] following the effective date of the registration statement of such offering, underwriting arrangements and the like. The registration rights will apply only to Common issued upon conversion of Preferred and the Company shall have no obligation to register an offering of Preferred.

Board Representation:

The authorized number of directors of the Company will not be less than _____ nor more than _____, to be initially fixed at _____. So long as [25%] or more of the Preferred issued in this financing remains outstanding, the holders of Preferred (voting as a class) will elect _____ director(s), the Common (voting as a class) will elect _____

²³ This is intended to allow distribution of securities from a venture fund to its partners.

²⁴ The Company must address the issue of what registration rights can be given to future investors, and what consents from this round of Investors will be necessary.

²⁵ The Company will prefer that it be allowed to grant pari passu registration rights to future investors without the consent of any of the holders of registration rights granted in this financing.

director(s), and the holders of Preferred and Common voting together as one class will elect _____ director(s). If at any time, less than [25%] of the Preferred remains outstanding, all of the directors will be entitled to vote as if all of the Preferred were converted into Common. The Company's Board of Directors will meet at least quarterly. The Company's Bylaws will provide that any two directors or holders of at least [25%] of the Preferred may call a meeting of the Board.

Use of Proceeds:

The proceeds from the sale of the Preferred will be used for general working capital purposes.²⁶

Employment Relationships:

The Company has or will prior to the closing, employment agreements with the following persons: _____. The Company will hire persons acceptable to the Investors to the following positions: _____.²⁷

Stock Restriction and Vesting Agreements:

The founders of the Company and [all] [certain] other holders of Common of the Company who are [key] employees of, or consultants to, the Company will execute a Stock Restriction and Vesting Agreement with the Company pursuant to which the Company will have a repurchase option to buy back at cost a portion of the shares of Common held by such person in the event that such shareholder's employment with, or consulting to, the Company is terminated prior to the expiration of [48] months from the date of the [first] [last] purchase of the Preferred or date of first employment or consulting, whichever is later (the "*Starting Date*").²⁸ A portion of the shares will be released from the repurchase option based upon continued employment with the Company as follows: [1/48th] will be released from the repurchase option at the end of each month from the Starting Date. In

²⁶ If the proceeds are to be used for a specific purpose, this provision will need to be amended accordingly.

²⁷ In early stage companies, venture Investors often insist that a new chief executive officer, acceptable to the Investors, be employed.

²⁸ This vesting provision can be heavily negotiated, with the primary issues revolving around: (1) which founders and employees are subject to this vesting provision; (2) whether all of the shares will be subject to vesting; (3) how long the vesting period is to last; and (4) whether monthly or other time period vesting should occur. Founders are often deemed to be vested in at least a portion of their stock, reflecting service to the Company prior to the Preferred investment. Founders also sometimes request that accelerated vesting occur in the event major milestones are met or the Company is sold.

addition, the Company will have a right of first refusal with respect to any employee's or consultant's shares proposed to be resold. The price at which the Company may exercise its right of first refusal will be equal to the lower of (i) the price offered by the proposed third party purchaser or (ii) the price most recently set by the Board of Directors as the fair market value of the Company's Common Stock. The right of first refusal will terminate upon completion of a public offering by the Company.

Market Standoff Provisions:

The Company, prior to closing, will cause all present holders of the Company's Common and all present holders of options to purchase, or rights to convert into, the Company's Common to execute a Market Standoff Agreement with the Company pursuant to which such holders will agree, if so requested by the Company or any underwriter's representative in connection with the first public offering of the Company's Common, not to sell or otherwise transfer any securities of the Company during a period of up to [180 days] following the effective date of the registration statement. The Company will require all future purchasers of stock prior to the Company's initial public offering to execute such a Market Standoff Agreement.²⁹

Reserved Employee Shares:

The Company may reserve up to [10% - 20%] share of Common (the "*Reserved Employee Shares*"), [inclusive] [exclusive] of shares presently reserved for issuance upon the exercise of outstanding options, for issuance to employees, officers and consultants. The Reserved Employee Shares will be issued from time to time under such arrangements, contracts or plans as are recommended by management and approved by the [Compensation Committee of the] Board of Directors. Issuance of shares or options to employees in excess of the Reserved Employee Shares [will be dilutive events requiring adjustment of the Conversion Price as

²⁹ The length of the market standoff will vary depending on the quality and size of the underwriter involved in the Company's initial public offering. Many "small cap" underwriters, who specialize in smaller issues and IPOs of "penny stocks" will require that the market standoff extend as long as two years following the initial public offering. The purpose of these provisions is to enable the underwriter to stabilize the market following the IPO and to prevent the founders and other major stockholders from immediately dumping their shares into the public market.

described above and] will be subject to the Investors' right of first refusal described below. Holders of Reserves Employee Shares will be required to execute Stock Restriction and Vesting Agreements and Market Standoff Agreements as described above.

Right of First Refusal:

In the event that the Company offers equity securities (other than Reserved Employee Shares, or upon conversion of outstanding Preferred, or upon exercise of outstanding options, warrants, or in connection with an acquisition of technology or a business or in a public offering), each Investor [who holds at least _____% of the Preferred issued in this financing] shall have a right of first refusal to purchase a pro rata percentage of shares in the new offering, based on the holder's percentage ownership interest in the Company. This right will terminate upon the Company's initial public offering.

Co-Sale Agreement:

The founders of the Company shall execute a Co-Sale Agreement in which, if any founder proposes to sell shares of the Company, each Investor will be entitled to participate in such sale by selling the same percentage of its stock as such founder is selling of such founder's Common.³⁰ This right will terminate upon the Company's initial public offering.

Sale of the Company:

If an affiliated third party makes a bona fide offer for all of the stock or substantially all the assets of the Company (or to lease its product line on an exclusive basis) and the holders of [a majority] [two-thirds] of the Preferred elect to sell, the founders shall have [30 - 60] days to match the offer and, failing their ability to do so (with financing in place), they shall sell their shares or vote to sell assets or lease product to the third party on the terms set forth in the offer.

Confidential Information and Inventions Assignment

³⁰ Founders will sometimes request exclusions from this restriction, e.g., that the founders are allowed to sell up to \$100,000 of their stock without the co-sale rights coming into effect.

Agreements:

Each officer, director and key employee of the Company will enter into a Confidential Information and Inventions Assignment Agreement in a form reasonably acceptable to the Company and the Investors.

Stock Purchase Agreement:

The purchase of the Preferred, if consummated, will be made pursuant to a Stock Purchase Agreement (with exhibits) drafted by counsel to the Investors and acceptable to the Company and the Investors. The Stock Purchase Agreement will contain, among other things, appropriate representations and warranties of the Company³¹, covenants of the Company,³² and conditions to the obligations of the Investors.

Conditions of Closing:

The closing for the purchase of the Preferred will be conditioned upon:

- (1) Completion of due diligence to the satisfaction of the Investors in their sole discretion.
- (2) Execution by the Company of a Stock Purchase Agreement and related agreements satisfactory to the Investors in their sole discretion.
- (3) Compliance by the Company with applicable federal and state securities laws.
- (4) Opinion of counsel to the Company rendered to the Investors in form and substance satisfactory to the Investors.
- (5) Key man life insurance having been obtained for the benefit of the Company on [key employee(s)] for \$_____ [provided that the Company can obtain such insurance at normally prevailing rates for persons in good health].
- [(6) Other material conditions.]

³¹ The venture Investors may also want representations and warranties from the founders, such as with respect to technology and inventions developed by the founders.

³² Covenants will often include requirements by the Company to provide Investors (or Investors who hold a designated minimum number of shares) with monthly, quarterly, and annual financial and other information.

(7) Such other conditions as are customary for transactions of this type.

Expenses:

The Company and the Investors will each bear their own legal and other expenses with respect to the transaction, except that, [assuming a successful completion of the offering], the Company will pay the reasonable legal fees and expenses incurred by a single counsel to all Investors, [subject to a cap of \$_____], payable at closing or payable immediately if the Company elects not to proceed with this transaction.

Finders:

The Company and the investors each will indemnify the other for any finders' fees for which that party is responsible.

Closing:

The closing of the transaction, if all conditions are met, is expected to occur on or before _____, 1999.

Confidentiality:

The Investors agree that (except as may be required by law) they will not disclose or use and they will cause their Representatives (as defined below) not to disclose or use, any Confidential Information (as hereinafter defined) with respect to the Company furnished, or to be furnished, by the Company to the Investors in connection herewith at any time or in any manner and will not use such information other than in connection with their evaluation of the Company and the Preferred. For purposes of this paragraph, "*Confidential Information*" means any information identified as such in writing to the Investors by the Company. If the purchase of the Preferred is not consummated, the Investors will promptly return all documents, contracts, records or properties to the Company. The provisions of this paragraph shall survive the termination of this Term Sheet.

Exclusivity:

The Company agrees that until _____, 1999 (the "*Termination Date*"), or if a definitive Stock Purchase Agreement shall have been executed prior to such date, thereafter pursuant to the terms of such Agreement, the Company will,

and the Company will cause its Representatives (as defined below) to, (i) immediately terminate all existing discussions with any corporation, partnership, person or other entity or group (other than the Investors and their Representatives) concerning any merger, purchase or sale of material assets or shares of capital stock, consolidation, reorganization, recapitalization, business combination or similar transaction (collectively, a “*Transaction*”) involving the Company; and (ii) shall not, nor shall it direct or authorize any of its Representatives to, directly or indirectly, solicit, initiate or participate in any way in discussion or negotiations with, or provide any information to, any corporation, partnership, person or other entity or group (other than the Investors and their Representatives) concerning any Transaction involving the Company which would prevent the Investors’ acquisition of the Preferred substantially in accordance with the terms set forth herein. The Company represents that neither it nor any of its affiliates is party to or bound by any agreement with respect to any such transaction other than as contemplated by this Term Sheet. For purposes of this Term Sheet, “*Representatives*” shall mean a party’s directors, officers, employees, agents, advisors, consultants, attorneys, financing sources, accountants and affiliates.

Counsel to the Investors:

Phone: (____) _____
Fax: (____) _____
Attn: _____

Counsel to the Company:

Phone: (____) _____
Fax: (____) _____
Attn: _____

Distribution List:

The parties list for distribution of documents is set forth as Exhibit 3.

Exhibit 1

[Current Capitalization of the Company]

Exhibit 2

[Capitalization of the Company After the Proposed Financing]

Exhibit 3

[Distribution List for Documents]

