



VENTURE FINANCING TERMS

- A. Classes of Stock
  - 1. Common Stock
  - 2. Preferred Stock
    - a. Liquidation rights
      - (i) Standard – dividends and stated value
      - (ii) Double Dip – dividends, a multiple of stated value and participating with Common
    - b. Conversion
      - (i) Automatic
        - on qualified IPO
        - on a percentage of class choosing to convert (mechanism of cram down)
      - (ii) Optional
    - c. Dividends
      - (i) Cumulative
      - (ii) As Declared
      - (iii) Participating
    - d. Anti-Dilution Rights
      - (i) Adjustment
        - (a) Full Ratchet
        - (b) Weighted Average
      - (ii) Trigger
        - (a) Down Round
        - (b) Mutually Agreed Value
        - (c) Fair Market Value
    - e. Voting
      - (i) Participating
      - (ii) Board Seats upon Redemption or Default
    - f. Redemption
      - (i) Fair Market Value
      - (ii) Principal plus Accrued Dividends
      - (iii) Cash Flow Repayments
- 3. Warrants
  - a. Exercise Price
  - b. Term
  - c. Cashless exercise
  - d. Exploding warrants
- 4. Convertible Notes
  - a. Discount conversion
  - b. Short Maturity

B. Stockholder Rights

1. Preemptive Rights

- a. Formula (fully diluted v issued and outstanding)
- b. Exceptions
  - (i) Employee Compensation
  - (ii) Strategic Partners
  - (iii) Vendor and Lender Relationships
  - (iv) Existing Options, Warrant and Convertible Securities
  - (v) Mergers and Acquisition Activity
  - (vi) IPO
- c. Limitations on Exceptions
  - (i) Number/percentage thresholds
  - (ii) Supermajority Approval
    - (a) Board
    - (b) Investors
- d. Delaware Law
- e. Rights on IPO
- f. Termination of Rights Upon Non-Exercise

2. Tag Along Rights

- a. Formula
- b. Parties entitled to the Right
  - (i) Investor
    - (a) Venture Investors
    - (b) Angel Investors
  - (ii) Founders
  - (iii) Other Investors
- c. Parties Subject to the Obligation
  - (i) Investors
    - (a) Venture Investor
    - (b) Angel Investor
  - (ii) Founders
  - (iii) Other Investors
- d. Exceptions
  - (i) Estate Planning
  - (ii) Affiliate Transfers
  - (iii) IPO Termination

3. Right of First Refusal

- a. Contrast to Right of First Offer
- b. Formula
- c. Parties entitled to the Right
  - (i) Company
  - (ii) Investor
    - (a) Venture Investors
    - (b) Angel Investors
  - (ii) Founders
  - (iii) Other Investors

- d. Parties Subject to the Obligation
    - (i) Investors
      - (a) Venture Investors
      - (b) Angel Investors
    - (ii) Founders
    - (iii) Other Investors
  - e. Lock-up
  - f. Exceptions
    - (i) Estate Planning
    - (ii) Affiliate Transfers
    - (iii) QPO
4. Drag-Along Rights
- a. Formula
  - b. Parties Entitled to the Right
    - (i) Founders
    - (ii) Majority Shareholders
    - (iii) Investors
  - c. Parties subject to the obligation
    - (i) Investors
      - (a) Venture Investors
      - (b) Angel Investors
    - (ii) Founders
    - (iii) Other Stockholders
  - d. Thresholds
    - (i) Percentage
    - (ii) IRR
- C. Registration Rights
- 1. Demand Rights
    - a. Number
    - b. Thresholds
  - 2. Piggyback Rights
    - a. Number
    - b. Thresholds
    - c. Cutbacks
  - 3. S-3 Rights
    - a. Number
    - b. Thresholds
  - 4. Expenses
    - a. General
    - b. Attorneys fees
    - c. Underwriters Compensation
  - 5. Black-Out Periods



6. Market Stand Off (both ways)
  7. Choice of Managing Underwriter
- D. Protective Provisions
1. Consent Required
    - a. Investor Veto
    - b. Class Veto
    - c. All Preferred Classes Veto
    - d. Supermajority
  2. Veto Rights
    - a. Create new series or classes of equity, pari passu or senior
    - b. Pay dividends
    - c. Increase or decrease the class of stock being purchased
    - d. Grant any additional registration rights with priority over investor stock
    - e. Alter or change the rights of the stock being purchased.
    - f. Reclassify stock to give a preference over the stock being purchased
    - g. Amend the Certificate of Incorporation or bylaws at all or in a way that adversely affects the stock purchased
    - h. Incur debt over certain amount
    - i. Merge, consolidate, lease, license or sell substantially all assets
    - j. Engage in business not specified in business plan
    - k. Purchase stock or make other investment in another entity
    - l. Grant awards or options to employees or other employee compensation
    - m. Enter transactions over a dollar threshold
    - n. Capital expenditure over a dollar threshold
    - o. Related party transactions
    - p. File for bankruptcy
    - q. Change of accountants or auditors
    - r. Acceleration or increase in any existing employee vesting schedule or compensation arrangement
    - s. Creation of a subsidiary
    - t. Adoption of a budget
    - u. Variations from a budget
    - v. Increase or decrease in size of Board of Director
    - w. Settlement of any litigation
    - x. Changes to any of the deal documents
    - y. Any other material transaction
- E. Board Seats or Observer Rights
- F. Documentation
1. Securities Purchase Agreement
  2. Certificate of Incorporation Amendment or Certificate of Designations
  3. Investor Rights Agreement



4. Stockholders Agreement
  5. Voting Agreement
  6. Opinion of Counsel
- G. Miscellaneous
1. Closing conditions
    - a. Simultaneous closing and signing
    - b. Accuracy of Representations and Warranties
    - c. Compliance with Post Closing Conditions
    - d. Third Party and Governmental Consents
    - e. No MAC
  2. SPA Representations and Warranties
    - a. General
    - b. Capitalization
    - c. Intellectual Property
    - d. Environmental
    - e. Litigation, legal proceedings
    - f. Taxes
    - g. ERISA
    - h. Liabilities
    - i. Brokers or Finders
  3. Indemnification
    - a. Attorney's Fees
    - b. Liability Cap
    - c. Deductions
    - d. Thresholds
  4. Attorneys Fees
  5. Lock-up in both Term Sheet and Stock Purchase Agreement
- H. Escrow Arrangements
1. Designate escrow agent
  2. Negotiate escrow agreement
- I. Securities Law Compliance
1. Federal Securities Laws Compliance
    - a. Determination of securities law exemption, 4(2) or Regulation D
    - b. Form D (if applicable)
    - c. Additional information to be disclosed to investors



2. State Securities Laws Compliance
  - a. States determine locations of company and founders/employees who will hold equity
  - b. Compliance with pre-offering “Blue Sky” law requirements (i.e. New York)
  - c. Compliance with post-offering “Blue Sky” law requirements (filing of Form D or state-specific filings)
  
- J. Issue Stock
  1. Update Stock Transfer Ledger
  
  2. Prepare Stock Certificates with appropriate legends (including reference to restrictions in shareholders’ agreements)
  
  3. Receipts to be signed by recipients