

# **Introduction To Private Placement Memorandums**

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- **Engagement Letter.** An engagement letter is typically prepared by the investment bank and given to the entrepreneur. It contains many of the same terms as in the term sheet -- basically even a higher-level overview of the proposed terms. Many times before a term sheet is kicked out by the investment bank, an engagement letter will be sent as a show of commitment and as an initial introduction to the general terms that the investment banker is considering.
- **Term Sheet.** Commentary on the term sheet, the terms, and how to get an investment bank to consider taking you on as a client.

Note: that the term sheet and the actual PPM are for different deals. The point that is attempting to be made is that if the investment bank agrees to represent the entrepreneur in the placement, the investment bank will issue the entrepreneur a term sheet that outlines the terms of the deal and fee structure for the raise. There are many negotiating points within this document and it should be given very careful review by the management team and legal council.

- **Due Diligence Checklist** that the investment bank will give to the management team during the preparation of the PPM.
- **Private Placement Memorandum** (company name omitted) that raised \$10 million from individuals and institutions
- **Subscription Agreement** that accompanies the Private Placement and commentary on what is an "accredited investor"

## INTRODUCTION

This commentary on the process of raising capital via a private placement memorandum originates from my experiences raising capital for Internet startups and other more traditional growth companies. Others may have different opinions and / or views. These writings are to help inform entrepreneurs of the options that are available and to provide the entrepreneur with information that will aid in his/her decision-making on a go forward basis.

For starters, type in the URLs below and read more about the Securities and Exchange Commission rules surrounding the solicitation, registration and formation of a Private Placement Memorandum. I suggest doing extensive research on the topic, and also note the references to the regulatory bodies in the attached memorandum. It's important that your capital raise be in accordance with all state blue-sky laws and all SEC provisions and guidelines. You can pay your attorney to review all of these details in depth, or you can mine the Internet, become better educated and then consult your attorney. I suggest the latter.

### **Private Placement Memorandum and Reg. D**

[http://www.lawcommerce.com/corporate/art\\_private\\_placement.asp](http://www.lawcommerce.com/corporate/art_private_placement.asp)

### **Drafting the Business Plan and Private Placement**

[http://www.lawcommerce.com/corporate/art\\_drafting\\_business.asp](http://www.lawcommerce.com/corporate/art_drafting_business.asp)

At this point, you should be fairly well versed on the mechanics of a private placement, and it's time to decide whether to go solo and attempt the capital raise in-house, or make the decision to interview several investment banks and pay them to raise the capital.

I am not going to attempt to make the decision for you, but I will throw out some considerations for evaluating both options.

1. How large is your personal network of friends, fools and family?
2. How long before you need the funds?
3. How well do you pitch and present?
4. Are you charismatic, outgoing and friendly?
5. Are your business plan, executive summary and business overview (PowerPoint) prepared?
6. Are your due diligence documents in order (see attachment)?
7. Can you afford to spend nearly 100% of your time researching, contacting, pitching, traveling and following up with potential investors?
8. Do you have experience "closing the deal"?
9. Can you leverage your existing and / or new customers as investors as well as customers?

## Why Retain an Investment Bank for a Private Placement?

In the past several years venture capital has become more difficult to obtain (or rather, we have “reverted to the mean”). One venture capitalist I know described his firm and the current fundraising environment this way, “it’s like nuclear winter, all the citizens of the neighboring cities are dead; we are alive, but there is no sun and there is no water.” Many venture firms are still stinging from the excesses of the late 90’s. Most are doing very few new deals. The majority of their time is being spent with existing portfolio companies and also working with the remaining limited partners.

What this means to entrepreneurs is that unless you are a serial entrepreneur with an amazing business opportunity, it will be very difficult to obtain VC funding. One CEO who closed on \$40 million in recent funding, stated at a recent conference that they had contacted 100 venture firms, of the initial 100 contacts, 18 wanted to hear the pitch, of the 18 pitches, 6 agreed to take a second look via an on-site visit, and of the 6, 2 funded the company. The numbers are not good. The CEO mentioned above did not have the time or the resources to contact and follow-up with a 100 firms, who does? The question is, “how do you value your time?” He retained an investment bank.

In the late 90’s investment banks did far fewer private placements. Venture money was very prevalent, which caused most PPMs to be viewed with skepticism. The fee money was in M&A and underwriting at the time. That has changed in the last couple years. Today, investment banks are allocating more resources to the private placement sectors and scaling back on M&A and underwriting.

### Top Tier vs. Niche

Choose your investment bank wisely!! Investment banks operate in niches. There are thousands of investment banks in the United States. They range from one-man shows to firms with hundreds on staff. The top tier firms typically only represent companies with phenomenal business models that are seeking to raise \$15 million or more. This is because investment banks generally need to generate a \$1 million dollar minimum fee and only get paid when they successfully place the deal. If they don’t believe they can place the deal, they won’t take agree to take on the entrepreneur as a client. Here is a list of a few of the top investment banks:

<b>Morgan Stanley</b>	<a href="http://www.ms.com">http://www.ms.com</a>
<b>Salomon Smith Barney Inc.</b>	<a href="http://www.salomonsmithbarney.com">http://www.salomonsmithbarney.com</a>
<b>Goldman Sachs &amp; Co.</b>	<a href="http://www.gs.com">http://www.gs.com</a>
<b>Credit Suisse First Boston Inc.</b>	<a href="http://www.csfb.com">http://www.csfb.com</a>
<b>Merrill Lynch &amp; Co. Inc.</b>	<a href="http://www.ml.com">http://www.ml.com</a>

The top tier firms are very selective. In all honesty, if you are reading this document you are probably not in the running to retain a top tier investment bank. However if you can get a referral and actually speak to one of their investment bankers, use the opportunity to pitch your deal, ask questions and always network for referrals (i.e. if you can't help me, can you refer me to someone who can?). If they cannot help you, get a referral into someone who can. Raising money is all about referrals. Going into the offices of a venture capitalist, angel or investment bank without a referral is very tough and is not the best use of your time. Spend your time networking and learning about all the various firms in your community and / or region.

### **Go Local or to the Coasts?**

Most early stage venture capitalists like to do the majority of their deals locally. The old adage is "if I can do a deal in my own backyard, why would I do a deal that requires me to get on a plane?" The same is true with your investment banker. I strongly suggest searching for a firm that is local and has the talent and understanding of your space to fully sell and represent your deal. Sometimes I will look to the coasts (Silicon Valley, NYC or Boston) for a firm, but only when I have an exceptionally strong company, with a proven track record and some experience raising capital. Strong investment banks can sell a deal with those characteristics regardless of locale, and the management team is most likely experienced enough that the hand-holding of the investment bank is most likely not necessary or desired. In some deals though, the entrepreneur will need to meet with the investment banker on a weekly or bi-weekly basis. Negotiations can be long. A local investment bank will save the entrepreneur considerable travel dollars and save loads of critical time.

### **Due Diligence**

When selecting an investment bank make sure to ask the investment banker how many clients they are currently representing -- always ask for their "A" team of bankers. Ask for references from their previous clients and research who should be on the "A" team. A big factor in the decision-making process for the entrepreneur should be "time-to-money". How long does the investment bank estimate it will take to raise the funds? Negotiate performance clauses and milestones. Some firms have exceptional ties to angel investors. Angel investors require less due diligence, many times relying on the due diligence of the investment bank.

In my last deal, the firm had a short term need for \$2 million dollars of bridge financing before the \$10 million institutional round. This was the primary

determining factor when choosing our investment bank. One firm committed to the \$10 million round, but had no ties to angel investors, and could not guarantee that the \$10 million would be raised before we ran out of money. Another regional firm had very strong ties to local angels and agreed to a \$2 million dollar bridge in 60 days. Upon successful placement of the bridge, the firm “won” the right to place the \$10 million institutional round.

Do your research! Many entrepreneurs forget that 25% of all private placements never place!! That drives the point home all the harder, do your due diligence!!! Find a firm that will be your partner in all phases of growth and strategy. Find a firm that is familiar with your space. Many investment banks will promise the world, but deliver very little. An investment bank is simply an intermediary. The entrepreneur is paying the investment bank to help prepare the private placement, business plan, and investment pitch.

The CEO and CFO will still be required to go on a road show, pitching to all prospective investors. The investment bank will simply leverage their network to get in the door and pitch. Most entrepreneurs never even make it in the door. If your investment bank has a weak network they will place the offering with lesser-known firms or nobody at all! Be careful!

Many entrepreneurs will stop trying to raise money once the investment bank has been retained. This is foolish. The CEO is the Cash Extraction Officer. He / She must always be building the network and looking for new investors / partners. The biggest mistake to be made is to rely solely on the investment bank. If they fail, your business will fail.

### **The Engagement Letter (see attached sample)**

The engagement letter will be issued by an investment bank after the investment bank has done a thorough bit of due diligence on the client. Once the initial due diligence is complete, an engagement letter will be issued outlining the preliminary terms of the deal. The size of the raise, the risk of the deal, the economic climate and the niche of the investment bank will dictate the terms. The terms **are meant to be negotiated**. Each party is trying to get the best possible deal. This is why the entrepreneur must talk to many firms to get a feel for terms and to find the right fit. More details on the specific negotiation points will be covered in the commentary following the term sheet.

**SAMPLE ENGAGEMENT LETTER**

Sample Company  
Company Address  
City, State Zip

Via Electronic Mail ( \_\_\_\_\_ . \_\_\_\_\_ @ \_\_\_\_\_ )

Re: *Engagement Agreement*

Dear \_\_\_\_\_:

\_\_\_\_\_, \_\_\_\_\_, and I have appreciated the opportunity to meet with you and your team to discuss with you over the last several weeks the exciting business opportunities represented by \_\_\_\_\_, Inc. (the "Company"). During our most recent discussions, we agreed that \_\_\_\_\_, Inc. (hereinafter "\_\_\_\_\_") would serve the Company in a general investment banking capacity, including assisting the Company with both its short-term and its more long-term financing requirements. Consistent with those goals, I am pleased to propose terms (an "Agreement") for the retention of the services of \_\_\_\_\_ beginning on May 1, \_\_\_\_\_:

1. \_\_\_\_\_ will assist and represent the Company on a best efforts basis as its exclusive financial and business advisor through June 30, \_\_\_\_\_ (provided, however, that \_\_\_\_\_ agrees that the Company may continue to undertake, without obligation to \_\_\_\_\_, fund-raising activities consistent with its ongoing investment programs offered to broker-customers and agent-customers and ongoing investments by members of the board of directors of the Company) to consummate a Financing, Financings, Transaction and/or Transactions on behalf of the Company of the types and in the manner substantially described in the Term Sheet attached hereto of even date herewith executed by the Company and \_\_\_\_\_. As used in this Agreement, the term "Financing" or "Financings" shall mean the gross proceeds of any financing that addresses the Company's short-term and long-term capital requirements, including, but not limited to the private or public issuance of \_\_\_\_\_ or debt securities or the solicitation of warrants to or from venture capital firms, strategic partners or entities, institutional investors, accredited investors or retail investors. As used in this Agreement, the term "Transaction" or "Transactions" shall mean an acquisition, merger, joint-venture or the payment of royalties, licensing fees, and/or marketing or other payments in connection with any business relationship entered into by the Company with a third party. The Company acknowledges and agrees that \_\_\_\_\_ shall conduct the Financing and Financings on a "best efforts" basis, without a commitment by \_\_\_\_\_ to purchase any portion of the Financing and that \_\_\_\_\_ shall be required to deliver payment for only such securities as are actually sold to investors less any commissions or unaccountable expenses owed to \_\_\_\_\_.

2. As contemplated herein, \_\_\_\_\_'s advisory services will include, but not be limited, to:

- a. advising the Company on the type of financial securities to issue;

- b. outlining options and developing a strategy for consummating a Financing, Financings, Transaction and/or Transactions;
- c. in coordination with management of the Company, developing a database of prospective investors, partners, and/or purchasers;
- d. assisting, as relevant, in the preparation of a descriptive memorandum that describes the Company's operations, management, results of operations and financial condition and incorporates current financial data and other appropriate information, along with appropriate deal information and investor disclosure;
- e. in coordination with management of the Company, cultivating relationships and maintaining a dialogue with venture capital firms, institutional investors, investment banks, accredited investors, and/or potential strategic and/or synergistic partners with regard to the activities of the Company and the opportunity to participate in a Financing, Financings, Transactions and/or Transactions;
- f. presenting the Company directly to venture capital firms, institutional investors, investment banks, accredited investors, and/or potential strategic and/or synergistic partners and soliciting their interest in participating in a Financing, Financings, Transaction and/or Transactions;
- g. using its best efforts to obtain such Financing or Financings or effectuate a Transaction or Transactions on a short-term basis as well as long-term basis;
- h. advising the Company as to structure and valuation; and
- i. assisting the Company in negotiations with interested candidates.

3. In connection with \_\_\_\_\_'s activities on the Company's behalf, the Company will furnish \_\_\_\_\_ with all information regarding the Company and data concerning the Company and any Financing, Financings, Transaction and/or Transactions, and, to the Company's best knowledge, any prospective financier, financiers, or any other party which \_\_\_\_\_ deems appropriate consistent with \_\_\_\_\_'s duties, and will provide \_\_\_\_\_ with access to the Company's officers, directors, employees, independent accountants and legal counsel. \_\_\_\_\_ will keep all information confidential in accordance with its customary practice. The Company represents and warrants to the best of its knowledge that all information made available to \_\_\_\_\_ by the Company will, at all times during the period of the engagement of \_\_\_\_\_ hereunder, be complete and correct in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances under which statements are made. The Company further represents and warrants that any projections provided by it to \_\_\_\_\_ will have been prepared in good faith and will be based upon assumptions which, in light of the circumstances under which they are made, were reasonable. The Company acknowledges and agrees that, in rendering its services hereunder, \_\_\_\_\_ will be using and relying on the information (and information available from public sources and other sources deemed reliable by \_\_\_\_\_) without independent verification thereof. Furthermore, in evaluating prospective financiers or others, \_\_\_\_\_ will be using information contained in public reports and other information furnished to \_\_\_\_\_ by such prospective financier or otherwise independently developed by \_\_\_\_\_. \_\_\_\_\_ does not assume responsibility for the accuracy or completeness of any information regarding the Company

or any prospective financier or other. Any advice rendered by \_\_\_\_\_ pursuant to this Agreement may not be disclosed publicly without \_\_\_\_\_'s prior written consent.

4. In consideration of our services pursuant to this Agreement, \_\_\_\_\_ shall be entitled to receive, and the Company agrees to pay \_\_\_\_\_, the following compensation:

a. An initial payment of Twenty-Five Thousand Dollars (\$25,000) upon commencement of the engagement;

b. In the event the Company completes a Financing, Financings Transaction and/or Transactions, then:

(i) if \_\_\_\_\_ completes a Financing or Financings on the Company's behalf, the Company shall: (1) pay to \_\_\_\_\_ cash consideration in an amount equal to Ten Percent (10.00%) of the gross proceeds of the Financing plus a non-accountable expense allowance in an amount equal to Three Percent (3.00%) of the gross proceeds of the Financing; and (2) grant to \_\_\_\_\_ a warrant (in the form attached hereto) to purchase Ten Percent (10.00%) of that portion of the common stock of the Company that is sold (when taking into account, if necessary, any convertibility features connected with such security sold) pursuant to any such Financing or Financings at a price equal to the price paid by the investors or at a price into which such relevant instrument is convertible into common stock in the Company.

(ii) If \_\_\_\_\_ completes a Financing or Financings involving a warrant solicitation on the Company's behalf, the Company shall pay to \_\_\_\_\_ cash consideration in an amount equal to Eight Percent (8.00%) of the gross proceeds of the Financing plus a non-accountable expense allowance in an amount equal to Two Percent (2.00%) of the gross proceeds of the Financing.

(iii) If \_\_\_\_\_ completes a Transaction and/or Transactions on the Company's behalf, the Company agrees to compensate \_\_\_\_\_, upon such consummation, with a cash fee equal to Five Percent (5.00%) of the total consideration paid by a purchaser in the Transaction in respect of (a) assets of the Company, (b) capital stock of the Company (and any securities convertible into, or options, warrants or other rights to acquire, such capital stock) and (c) the assumption, directly or indirectly (by operation of law or otherwise), or repayment of indebtedness (including, without limitation, indebtedness secured by assets of the Company) and other liabilities of the Company. In the event a Transaction is consummated in one or more steps, including, without limitation, by way of a second-step merger, any additional consideration paid or to be paid in any subsequent step in the Transaction in respect of (x) assets of the Company, (y) capital stock of the Company (and any securities convertible into, or options, warrants or other rights to acquire, such capital stock) and (z) the assumption, directly or indirectly (by operation of law or otherwise), or repayment of indebtedness (including, without limitation, indebtedness secured by assets of the Company) and other liabilities of the Company,

shall be included for purposes of calculating \_\_\_\_\_'s fee pursuant to this subparagraph 4(b). If all or a portion of the consideration paid in the Transaction is other than cash or securities, then the value of such non-cash consideration shall be the fair market value thereof on the date the Transaction is consummated as mutually agreed upon in good faith by the Company's Board of Directors and \_\_\_\_\_. If such non-cash consideration consists of common stock, options, warrants or rights for which a public trading market existed prior to the consummation of the Transaction, then the value of such securities shall be determined by the closing or last sales price thereof on the date of the consummation of the Transaction; provided, however, that if such non-cash consideration consists of newly-issued, publicly-traded common stock, options, warrants or rights for which no public trading market existed prior to the consummation of the Transaction, then the value thereof shall be the average of the closing prices for the twenty (20) trading days subsequent to the fifth (5th) trading day after the consummation of the Transaction. In such event, the fee payable to \_\_\_\_\_ pursuant to this subparagraph 4(b) shall be paid on the thirtieth (30th) trading day subsequent to the consummation of the Transaction. If no public market exists for the common stock, options, warrants or other rights issued in the Transaction, then the value thereof shall be as mutually agreed upon in good faith by the Company's Board of Directors and \_\_\_\_\_. If the non-cash consideration paid in the transaction consists of preferred stock or debt securities (regardless of whether a public trading market existed for such preferred stock or debt securities prior to consummation of the Transaction or exists thereafter), the value thereof shall be the face or principal amount, as the case may be. Any amounts payable by a purchaser to the Company, and any shareholder of the Company or any affiliate of either the Company or any shareholder of the Company in connection with a non-competition, employment, consulting, licensing, supply or other agreement (on terms and conditions that are not customary for such types of agreement) shall be deemed to be a part of the consideration paid in the Transaction. If all or a portion of the consideration payable in connection with the Transaction includes contingent future payments, then the Company shall pay to \_\_\_\_\_, upon consummation of such Transaction, an additional cash fee, determined in accordance with this subparagraph 4(b) based upon the present value of the reasonably expected maximum amount of such contingent future payments (as such amount is determined in good faith between the Company and \_\_\_\_\_) using a discount rate of Ten Percent (10%).

(iv) Pending the closing or closings, all funds to be received in connection with a Financing and/or Transaction shall be deposited in an escrow account with Century Bank. Funds so deposited will be promptly made available to the Company less any fees due to \_\_\_\_\_.

c. \_\_\_\_\_ shall be entitled to the fees set forth in this paragraph 4 with respect to a Financing, Financings Transaction and/or Transactions consummated during the term or with respect to any Financing, Financings, Transaction and/or Transactions, consummated within one (1) year after the date of termination of this Agreement, if the party to such Financing, Financings,

Transaction and/or Transactions was introduced to the Company by \_\_\_\_\_ during the term of this Agreement.

5. \_\_\_\_\_ may terminate this Agreement at any time upon written notice, without liability or continuing obligation, except as set forth in the following sentence. Neither termination of this Agreement by \_\_\_\_\_ nor completion of the assignment contemplated hereby shall affect: (i) any compensation earned by \_\_\_\_\_ up to the date of termination or completion, as the case may be, (ii) any compensation to be earned by \_\_\_\_\_ after termination pursuant to paragraph 4 hereof, (iii) the reimbursement of expenses incurred by \_\_\_\_\_ up to the date of termination or completion, as the case may be, (iv) the provisions of paragraphs 4-8, inclusive, of this Agreement and (v) the attached Indemnification Provisions which are incorporated herein, all of which shall remain operative and in full force and effect. The Company may terminate this Agreement at its election if during the term of this Agreement \_\_\_\_\_ is the subject of an investigation by the appropriate securities regulatory authorities which results in a material impairment of \_\_\_\_\_'s ability to effectively perform its obligations and duties under this Agreement. Such termination by the Company may be made without liability or continuing obligation, except as set forth in the following sentence. Termination of this Agreement by the Company shall not affect: (i) any compensation earned by \_\_\_\_\_ up to the date of termination, (ii) any compensation to be earned by \_\_\_\_\_ after termination pursuant to paragraph 4 hereof, (iii) the reimbursement of expenses incurred by \_\_\_\_\_ up to the date of termination, (iv) the provisions of paragraphs 4-8, inclusive, of this Agreement and (v) the attached Indemnification Provisions which are incorporated herein, all of which shall remain operative and in full force and effect.

6. The Company agrees to indemnify \_\_\_\_\_ in accordance with the indemnification provisions (the "Indemnification Provisions") attached to this Agreement, which Indemnification Provisions are incorporated herein and made a part hereof.

7. The validity and interpretation of this Agreement shall be governed by the laws of the State of \_\_\_\_\_ applicable to agreements made and to be fully performed therein.

8. The benefits of this Agreement shall inure to the respective successors and assigns of the parties hereto and of the indemnified parties hereunder and their successors and assigns and representatives, and the obligations and liabilities assumed in this Agreement by the parties hereto shall be binding upon their respective successors and assigns.

9. For the convenience of the parties, any number of counterparts of this Agreement may be executed by the parties hereto. Each such counterpart shall be deemed to be an original instrument, but all such counterparts taken together shall constitute one and the same Agreement. This Agreement may not be modified or amended except in writing signed by the parties hereto.

If the foregoing correctly sets forth our agreement, we would appreciate your signing this letter in the space provided and returning it to us.

Sincerely,

\_\_\_\_\_, INC.

\_\_\_\_\_  
President and CEO

Confirmed and agreed to this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, INC.

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

\_\_\_\_\_  
Its: CEO

## INDEMNIFICATION PROVISIONS

The Company (as such term is defined in the Agreement (as such term is defined below)) agrees to indemnify and hold harmless \_\_\_\_\_ against any and all losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses and disbursements (and any and all actions, suits, proceedings and investigations in respect thereof and any and all legal and other costs, expenses and disbursements in giving testimony or furnishing documents in response to a subpoena or otherwise), including, without limitation, the costs, expenses and disbursements, as and when incurred, of investigating, preparing or defending any such action, suit, proceeding or investigation (whether or not in connection with litigation in which \_\_\_\_\_ is a party), directly or indirectly, caused by, relating to, based upon, arising out of or in connection with (a) \_\_\_\_\_'s acting for the Company, including, without limitation, any act or omission by \_\_\_\_\_ in connection with its acceptance of or the performance or non-performance of its obligations under the letter agreement dated April 29, \_\_\_\_\_, between \_\_\_\_\_, Inc. and \_\_\_\_\_, Inc, as it maybe amended from time to time (the "Agreement"), (b) any untrue statement or alleged untrue statement of a material fact contained in, or omissions or alleged omissions from any information furnished to \_\_\_\_\_ or to any party to a Financing, Financings, Transaction and/or Transactions or (c) any Financing, Financings, Transaction and/or Transactions (as such terms are defined in the Agreement); provided, however, such indemnity agreement shall not apply to any portion of any such loss, claim, damage, obligation, penalty, judgment, award, liability, cost, expense or disbursement to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the willful misconduct, gross negligence or negligence of \_\_\_\_\_. The Company also agrees that \_\_\_\_\_ shall not have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company or to any person (including, without limitation, Company shareholders) claiming through the Company for or in connection with the engagement of \_\_\_\_\_, except to the extent that any such liability is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from \_\_\_\_\_'s willful misconduct, gross negligence or negligence.

These Indemnification Provisions shall be in addition to any liability which the Company may otherwise have to \_\_\_\_\_ or the persons indemnified below in this sentence and shall extend to the following: \_\_\_\_\_, its respective affiliated entities, directors, officers, employees, legal counsel, agents and controlling persons (within the meaning of the federal securities laws). All references to \_\_\_\_\_ in these Indemnification Provisions shall be understood to include any and all of the foregoing.

If any action, suit, proceeding or investigation is commenced, as to which \_\_\_\_\_ proposes to demand indemnification, it shall notify the Company with reasonable promptness; provided, however, that any failure by \_\_\_\_\_ to notify the Company shall not relieve the Company from its obligations hereunder. \_\_\_\_\_ shall have the right to retain counsel of its own choice to represent it, and the Company shall pay the fees, expenses and disbursements of such counsel; and such counsel shall, to the extent

consistent with its professional responsibilities, cooperate with the Company and any counsel designated by the Company. The Company shall be liable for any settlement of any claim against \_\_\_\_\_ made with the Company's written consent, which consent shall not be unreasonably withheld. The Company shall not, without prior written consent of \_\_\_\_\_, settle or compromise any claim, or permit a default or consent to the entry of any judgment in respect thereof, unless such settlement, compromise or consent includes, as an unconditional term thereof, the giving by the claimant to \_\_\_\_\_ of an unconditional release from all liability in respect of such claim.

In order to provide for just and equitable contribution, if a claim for indemnification pursuant to these Indemnification Provisions is made but is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for indemnification in such case, then the Company, on the one hand, and \_\_\_\_\_, on the other hand, shall contribute to the losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses and disbursements to which the indemnified person maybe subject in accordance with the relative benefits received by the Company, on the one hand, and \_\_\_\_\_, on the other hand, and also the relative fault of the Company on the one hand and \_\_\_\_\_ on the other hand, in connection with the statements, acts or omissions which resulted in such losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements and the relevant equitable considerations shall also be considered. No person found liable for a fraudulent misrepresentation shall be entitled to contribution from any person who is not also found liable for such fraudulent misrepresentation. Notwithstanding the foregoing, \_\_\_\_\_ shall not be obligated to contribute any amount hereunder that exceeds the amount of fees previously received by \_\_\_\_\_ pursuant to this Agreement.

**Neither termination nor completion of the engagement of \_\_\_\_\_ referred to above shall affect these Indemnification Provisions**

\_\_\_\_\_, INC.  
**TERM SHEET**  
**(Insert Date)**

This term sheet summarizes the principal terms of anticipated financings by \_\_\_\_\_, Inc. (the "Agent") on behalf of \_\_\_\_\_, Inc. (the "Company"). This term sheet by itself is not intended to be and does not constitute a legally binding obligation. No other legally binding obligations will be created, implied, or inferred until documents in final form related to the specific terms of the financings are executed and delivered by all the parties. Without limiting the generality of the foregoing, it is the parties intent that, until that event, no agreement shall exist among them regarding the terms of the financings and there shall be no obligations whatsoever based on such things as parol evidence, extended negotiations, "handshakes," oral understandings, or courses of conduct (including reliance and changes of position).

Company/Issuer: \_\_\_\_\_, Inc.

**1-A Convertible Bridge Loan Transaction**

Security: \$2,000,000 in the form of a convertible bridge loan (the "Convertible Bridge Loan") with a 20% over-allotment option at the Company's election.

Coupon: 8% annual rate.

Term: Earlier of one year, the date at which the Company secures funds from any financing source in the amount of at least \$3 million, or the date at which the Company secures at least \$10 million in additional financing through the transaction denoted below.

Amortization: Monthly interest payments with principal balloon at end of term.

Security: Senior security interest in assets of the Company.

Anticipated Closing Date: 75 days following completion of offering documents, although funds may be made available to the Company in \$500,000 increments as such funds are received.

Conversion Terms: The Convertible Bridge Loan is convertible into common stock in the Company at anytime prior to repayment at \$2.50 per share.

Warrant: Investor shall receive a seven year warrant to purchase one-quarter of one share of the Company's common stock for each dollar invested in the Convertible Bridge Loan with an exercise price equal to \$3.00 per share.

Representations and Warranties: The officers of the Company shall execute personal representations and warranties regarding the financial condition of the Company which include, but are not limited to, the representation and warranty that the Company's financial statements provided to the Agent and included in the Convertible Bridge Loan offering documents will not differ by more than 10% from the audited financials to be obtained for such years for each year since inception.

Registration Rights: The Company shall undertake to register for resale the common stock of the Company underlying the Warrant via an S-3 or other applicable registration statement within 180 days after the Company completes an initial public offering

(the "IPO"). The Company, moreover, will use its best efforts to cause such the registration statement to become effective within 270 days after such IPO. If the registration statement has not been declared effective within 270 days from the IPO, then the Company will be liable for liquidated damages. The liquidated damages will be in the amount of 1.00% for every 30 day period until the registration statement has been declared effective. The liquidated damages will be payable in cash upon demand.

Agent: \_\_\_\_\_, Inc.

Agent Compensation: At closing, Company shall pay Agent a cash commission equal to 10.00% of the total proceeds received by Company in the transaction and a 3.00% unaccountable expense allowance. Additionally, at closing, Company shall grant to Agent a warrant (subject to standard anti-dilution protections and containing demand and piggyback registration rights and a cashless exercise feature) to purchase ten percent (10.00%) of the security sold (or a like percentage of that amount into which the security sold is convertible into common stock of the Company) at a price equal to the price at which such security is sold to investors or the conversion price related thereto; provided, however, in the event that the Agent does not succeed in raising at least \$1,000,000 in the Convertible Bridge Loan, then the Agent will forego its warrant compensation.

*Agent Board Representation:*

*Agent shall appoint one representative to the Company's board of directors for a two year minimum term; thereafter, if appropriate, such representative may be re-nominated for additional annual terms.*

**Retail/Institutional Private Placement Transaction**

Security: \$10-12,000,000 in the likely form of a convertible preferred instrument.

Anticipated Valuation for Company: \$25,000,000.

Anticipated Closing Date: \_\_\_\_\_.

\_\_\_\_\_, INC.

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

\_\_\_\_\_, INC.

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

## **DUE DILIGENCE CHECKLIST**

\_\_\_\_\_ Investments, Inc. (“\_\_\_\_\_”) utilizes the following checklist as part of its due diligence investigation and evaluation of your entity. This due diligence checklist is representative of the usual issues that need to be addressed to prepare a private placement memorandum and to raise money from our investors.

### **I. Due Diligence Basic Documentation.**

1. Organizational Structure and Good Standing Status  
Documentation required:
  - 1.01 Certificate of Incorporation, as amended.
  - 1.02 By-Laws.
  - 1.03 Good-Standing Certificates (long form) and Tax Status Certificates.
  - 1.04 List of states where the Company is (or should be) qualified as a foreign corporation, or has offices (then secure certificates of authority, good standing and tax status certificates).
  - 1.05 Minutes and stock books of the Company, including minutes of executive and other committees (board and non-board).
  - 1.06 Partnership or joint venture affiliation agreements.
  
2. Capitalization and Shareholders  
Documentation required:
  - 2.01 List of shareholders, cross-checked against stock certificate book.
  - 2.02 Preemptive rights confirmation.
  - 2.03 Shareholders’ status--minors, trustees, etc.
  - 2.04 Trust agreements or other documents if shares are held in a fiduciary or entity capacity.
  - 2.05 ESOP, stock bonus or other agreements to issue shares.
  - 2.06 Letter from auditors regarding fully paid and non-assessable character of shares and correct accounting entries.
  - 2.07 Power of Attorney and Stock Escrow Agreements.
  
3. Authorization; Corporate Resolutions  
Review of documents:
  - 3.01 Review specific authorizing resolutions.
  - 3.02 Review stockholder approvals of previous transactions.
  - 3.03 Confirm fiduciary or entity powers to approve.
  - 3.04 Voting trusts, outstanding proxies or agreements as to voting.
  - 3.05 Restrictive share transfer agreements (if so, confirm prior compliance).

4. Financial Statements and Quality  
Documentation required:
  - 4.01 Five years consolidated and consolidating statements, with access to auditors and work papers.
  - 4.02 Most recent unaudited statements, with comparable statements for prior year.
  - 4.03 All projections.
  - 4.04 Auditors' letters to management for five years.
  - 4.05 Auditors' inquiry letters and replies for five years.
  - 4.06 Arrangements for businessperson's review or other review by Company's auditors.
  - 4.07 Accounts Receivable Review (quality, aging, special cases).
  - 4.08 Inventory Valuation, Turnover and Obsolescence Review.
  - 4.09 Secure credit reports.
  - 4.10 SG&A and factory overhead.
  - 4.11 Backlog.
  - 4.12 Cost Accounting (Government Contracts); Small business and minority business subcontractors.
  
5. Tax Filings (Federal & State)  
Documentation required:
  - 5.01 Copies of returns for latest closed and all open years (federal, state, and local).
  - 5.02 Audit and revenue agents' reports (federal, state and local).
  - 5.03 Settlement documents and correspondence for three years.
  - 5.04 Agreements waiving statute of limitations or extending time.
  
6. Employees, Benefit Plans and Salaries, Labor Disputes  
Documentation required:
  - 6.01 Union agreements.
  - 6.02 Management and employment agreements; secrecy agreements.
  - 6.03 Pension plans and actuarial reports; confirm current assumptions.
  - 6.04 Profit-sharing plans and agreements.
  - 6.05 ESOP and stock bonus plans and arrangements.
  - 6.06 Calculations of liabilities and of fund assets using various assumptions of PBGC and Company.
  - 6.07 Fringe benefits, perquisites, holidays, vacation.
  - 6.08 Labor disputes, requests for arbitration, grievance proceedings, etc.
  - 6.09 History of recent union negotiations.
  - 6.10 Employee size, turnover, absentee history, distribution.

7. Other Contracts and Commitments

Documentation required:

- 7.01 All loan agreements (bank loans, IDA, Small Business, etc.).
- 7.02 Customer lists.
- 7.03 Supply and customer contracts.
- 7.04 Deeds.
- 7.05 Leases.
- 7.06 Compensating balance arrangements.
- 7.07 Contracts with insiders or other arrangements.
- 7.08 Samples of all forms of purchases orders, invoices, etc.
- 7.09 Installment sale agreements above designated dollar amount.
- 7.10 Secrecy or non-complete agreements.
- 7.11 Membership agreements or other relations with trade associations.
- 7.12 Terms review and possible renegotiation of contracts being assumed or continued.
- 7.13 Guarantees.

8. Licenses

Documentation required:

- 8.01 Material license agreements running to and from Company.
- 8.02 Material permits of governmental consents.

9. Insurance

Documentation required:

- 9.01 All insurance contracts.
- 9.02 Key-man insurance and present value calculation.
- 9.03 Contact Company's carrier regarding continuation of coverage.
- 9.04 Workers' Compensation.

10. Litigation

Documentation required:

- 10.01 Complete litigation list.
- 10.02 Contact Phone numbers of local counsel.
- 10.03 Confirm acceptance of insurance coverage.
- 10.04 Consent decrees and applicable injunctions, etc.
- 10.05 Pending or threatened proceedings.
- 10.06 Regulatory Compliance (FTC, F&DA, OSHA, EPA, EEOC).
- 10.07 Questionable Payments.

11. Patents and Trademarks

Documentation required:

- 11.01 Patent list and arrange for patent analysis.
- 11.02 Trademarks list (confirm continuation notices).
- 11.03 Copyright list.
- 11.04 Examine common-law protections.

12. Properties

Documentation required:

- 12.01 Title reports and insurance policies.
- 12.02 UCC searches in relevant states.
- 12.03 Judgment searches in relevant states.
- 12.04 Condition of plant, machinery and equipment.
- 12.05 Energy sources and cost.
- 12.06 Government-owned equipment.
- 12.07 Depreciation and Investment Credit Check (calculate recapture).

13. Inventory

Documents required:

- 13.01 Inventory schedule and valuation assumptions.
- 13.03 Turnover and Obsolescence.

14. Broker or Finders Agreements

**II. Private Placement Schedule.**

1. What will the offering be? Written agreement on:
  - a. Type of offering - stock, warrants, debt
  - b. Amount of offering
    - (1) minimum to break escrow
  - c. Pricing of stock, conversions,
  - d. Agency agreement (copies to Company counsel for review)
    - (1) compensation to agent & subagents
    - (2) length of offering
  - e. Blue sky: where will it be offered.
2. Board of Directors: authorizing resolution.
3. Draft private placement memorandum.
4. Escrow agent:
  - a. Escrow agreement from the bank. (review costs)
5. Copies of due diligence books to broker-dealers.

6. Blue sky in relevant states. (Company counsel)

### **III. Preparation of PPM.**

1. Description.
  - 1.1 Stock, (type), bond (type), warrants.
  - 1.2 Price
  - 1.3 Escrow arrangements.
  - 1.4 Business plan
  - 1.5 Subscription agreement.
2. Schedule first closing.
3. Review \_\_\_\_\_X closing procedures with Company counsel.
4. Final Closing: opinion letters - Company counsel, Agents counsel
  - 4.01 Representations and Warranties of Company and Shareholders.
  - 4.02 Representations in accordance with due diligence results.
  - 4.03 No material misstatements or omissions.
  - 4.04 No adverse change.
5. Indemnification provisions.
6. Client representations.
7. Client indemnification.
8. Conduct of business prior to closing.
9. Conditions of Client's Obligations.
  - 9.01 Representations and warranties true; covenants performed.
  - 9.02 Related agreements, if any, executed.
  - 9.03 No litigation.
  - 9.04 Opinions.
  - 9.05 Auditors' letters.
  - 9.06 Consents, Assignments, Approvals.
  - 9.07 Other conditions.
10. Conditions of Company's Obligations.
  - 10.01 Representations and warranties true.
  - 10.02 Other agreements executed.
  - 10.03 No litigation.
  - 10.04 Opinions.
  - 10.05 Other conditions.

11. Other Agreements of Company and Shareholders, if any.
12. Guarantee of Parent of Acquisition Vehicle, if necessary.
13. Survival of Representations and Any Negotiated Limits on Scope of Indemnification.
14. Expenses.
15. Entire Agreement.
16. Arbitration (if agreed).
17. No Brokers.
18. Publicity Provisions.
19. Miscellaneous.
  - 20.01 Binding effect.
  - 20.02 No assignment (include avoidance language).
  - 20.03 Counterparts.
  - 20.04 Governing law.
20. Notices.

#### **IV. Draft Employment Agreements.**

1. Engagement and Term.
2. Duties.
3. Compensation, Vacation, Travel.
4. Termination (Cause, Death or Disability, etc.).
5. Covenant Not to Compete.
6. Trade Secrets and Confidential Information.
7. Injunctive Relief.
8. Survival.
9. Entire Agreement.
10. Arbitration (if agreed).

11. Miscellaneous.
  - 11.01 Binding effect.
  - 11.02 No assignment (include avoidance language).
  - 11.03 Counterparts.
  - 11.04 Governing law.
12. Notices.

**V. Consents.**

1. Antitrust Review (Hart Scott Rodino or Business Review Letter).
2. Loan Agreements.
3. Lease Agreements.
4. License Agreements.
5. Supply and Distribution Arrangements.
6. Confirm Continuation of Non-Contractual Arrangements, if material.

**VI. Receipt of Required Audits, Appraisals and Interim Financials.**

**VII. Closing Preparation.**

1. Closing Memorandum and Checklist.
2. Schedules to Agreement.
  - 2.01 Remuneration.
  - 2.02 Contracts and Commitment.
  - 2.03 Insurance in Force.
  - 2.04 Litigation.
  - 2.05 Title Exceptions.
  - 2.06 Trademarks.
  - 2.07 Certain Warranties.
  - 2.08 Insider Transactions.
  - 2.09 Pre-Closing Transactions.
3. Definitive Agreement.
4. Definitive Employment Agreements.
5. Escrow Agreement.

6. Powers of Attorney and Stock Escrow Agreements.
7. Certified Certificates of Incorporation.
8. By-Laws Certified by Secretaries.
9. Good-Standing Certificates.
10. Tax Status and Lien Docket Certificates.
11. Certified Resolutions.
12. Representation Certificates.
13. Consents.
14. Assignments, if applicable.
15. Resignations of Certain Directors and Officers.
16. Assignments of Patents, Trademarks and Copyrights.
17. Assignments of Bank Accounts.
18. Legal Opinions.
19. Checks.
20. Promissory Notes.
21. Cross-Receipt.

**VIII. Post-Closing Matters.**

1. Final Closing:  
Bound closing Files - Company's Legal counsel  
Opinion Letter: \_\_\_\_\_ counsel
2. Stock Certificates  
Company letter  
Company mails certified or FedEx

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## CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

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### Company Name, Inc.

**600,000 Shares (\$1,500,000)**

Company Name, Inc. is offering 600,000 shares of its Common Stock (the "Common Stock" or the "Shares") at a price of \$2.50 per share (the "Offering"). The Shares are being offered only to "accredited investors" (as defined by Regulation D of the Securities Act of 1933, as amended (the "Act")). We require a minimum investment of \$30,000 but reserve the right to waive this minimum at our discretion.

We also reserve the right to increase the offering to 690,000 shares to cover over-subscriptions. In the event all 690,000 shares are sold the total proceeds to the Company would be \$1,725,000, before deducting expenses.

We may accept subscriptions as they are received and subscribers have no assurance that all or any minimum portion of the Shares will be sold. We also reserve the right to withdraw, cancel or modify this offering and to reject subscriptions in whole or in part for the purchase of any of the Shares. This offering will terminate on October 31, \_\_\_\_ unless we extend the offering for up to 30 days after October 31, \_\_\_\_\_. No notice of extension is required to be given to investors who have already subscribed before the extension takes place. Instructions for purchasing the Common Stock are in the "Plan of Distribution" section of this memorandum.

We are offering our Common Stock through our officers and directors. Subject to the approval of our board of directors, we may also enter into selling agreements with other individuals or firms and pay an agent's fee to such individuals or firms of up to 10% of the price of each Share sold by such individuals or firms, as well as certain expenses of such individuals or firms. We may also issue options or warrants to such individuals or firms. We will not pay any cash commissions to our officers and directors in connection with this offering, but we will reimburse their out-of-pocket expenses.

***An investment in Company Name is speculative and involves a high degree of risk. You should carefully consider the "Risk Factors" beginning on page 8 of this memorandum.***

Number: \_\_\_\_\_

Offeree: \_\_\_\_\_

The date of this Confidential Private Placement Memorandum is July 30, \_\_\_\_\_.

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## **IMPORTANT NOTICES**

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You are urged to read this memorandum carefully. This memorandum is not all-inclusive and does not contain all the information that you may desire in investigating Company Name. You must conduct and rely on your own evaluation of us and the terms of this offering, including the merits and risks involved in making a decision to buy our stock. We will make available to you, prior to the sale of shares described in this memorandum, the opportunity to ask questions of, and receive answers from, our management concerning the terms and conditions of this offering and to obtain any additional information (including information made available to other investors), to the extent we possess it or can acquire it without unreasonable effort or expense, which may be necessary to verify the accuracy of the information in this memorandum. We may require you to sign a confidentiality agreement if you wish to receive additional information that we deem to be proprietary. You may mail questions, inquiries, and requests for information to \_\_\_\_\_ Drive, \_\_\_\_\_, \_\_\_\_\_, or call \_\_\_\_\_, Chief Executive Officer; \_\_\_\_\_, Chief Operating Officer; \_\_\_\_\_, Chief Strategy Officer and Interim Chief Financial Officer, or \_\_\_\_\_, President at \_\_\_\_\_. You, and your representatives, if any, will be asked to acknowledge in the Subscription Agreement that you were given the opportunity to obtain additional information and that you did so or elected to waive the opportunity.

No representations or warranties of any kind are intended nor should any be inferred with respect to the economic viability of this investment or with respect to any benefits which may accrue to an investment in our stock. We, and our directors, officers and employees, do not in any way represent, guarantee or warrant an economic gain or profit with regard to our business or that favorable income tax consequences will flow therefrom. We do not in any way represent or warrant the advisability of buying our shares. Any projections or other forward-looking statements or opinions contained in this memorandum constitute estimates by us based upon sources deemed to be reliable, but the accuracy of this information is not guaranteed nor should you consider the information all-inclusive.

You should not consider the contents of this memorandum as legal, business or tax advice. Prior to making a decision to buy our shares, you should carefully review and consider this memorandum and should consult your own attorneys, business advisors and tax advisors as to legal, business and tax related matters concerning this offering.

### **RESTRICTIONS ON USE OF MEMORANDUM**

This memorandum is for review by the recipient only. The recipient, by accepting delivery of this memorandum, agrees to return this memorandum, all enclosed or attached documents and all other documents, if any, provided in connection with the offering to Company Name if the recipient does not undertake to purchase any of the securities offered hereby. This memorandum is furnished for the sole use of the recipient, and for the sole purpose of providing information regarding the offer and sale of our stock. We have not authorized any other use of this information. Any distribution of this memorandum to a person other than representatives of the person or entity named on the cover page is unauthorized, and any reproduction of this memorandum or the divulgence of any of its contents, without our prior written consent is prohibited. The delivery of this memorandum or other information does not imply that the memorandum or other information is correct as of any time subsequent to the date appearing on the cover of this memorandum.

### **EXCLUSIVE NATURE OF CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM**

The delivery of this memorandum does not constitute an offer in any jurisdiction to any person to whom such offer would be unlawful in such jurisdiction. You should rely only on the information contained in this memorandum. The information contained in this memorandum supersedes any other information provided to potential investors. We have not authorized any person to provide any information or to make any representations except to the extent contained in this memorandum. If any

such representations are given or made, such information and representations must not be relied upon as having been authorized by Company Name. This memorandum is not an offer to sell, nor is it seeking an offer to buy, shares of our Common Stock in any state where the offer or sale is not permitted. The information in this memorandum is accurate as of the date on the front cover, but the information may have changed since that date.

### **RESTRICTED SECURITIES**

We have not registered our Common Stock with the Securities and Exchange Commission. We are offering the Common Stock under exemptions from the registration requirements of the Act and applicable state laws. The Securities and Exchange Commission and state securities regulators have not approved or disapproved of the Common Stock or determined if this memorandum is truthful or complete. It is illegal for any person to tell you otherwise.

No public market currently exists for any of our securities. The Common Stock sold in connection with this memorandum will be “restricted securities” for purposes of federal and state securities laws, and each investor who purchases our Common Stock must do so for the investor’s own account and investment.

### **FORWARD-LOOKING STATEMENTS**

Certain statements in this memorandum constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements that address expectations or projections about the future, including statements about product development, market position, expected expenditures and financial results, are forward-looking statements.

Some of the forward-looking statements may be identified by words like “expects,” “anticipates,” “plans,” “intends,” “projects,” “indicates,” and similar expressions. Any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. These statements are not guarantees of future performance and involve a number of risks, uncertainties and assumptions. Accordingly, actual results or performance of Company Name may differ significantly, positively or negatively, from forward-looking statements made herein. Unanticipated events and circumstances are likely to occur. Factors that might cause such differences include, but are not limited to, those discussed under the heading “Risk Factors,” which investors should carefully consider. These factors include, but are not limited to, risks that our products and services may not receive the level of market acceptance anticipated; anticipated funding may prove to be unavailable; intense competition in our market may result in lower than anticipated revenues or higher than anticipated costs, and general economic conditions, such as the rate of employment, inflation, interest rates and the condition of the capital markets may change in a way that is not favorable to us. This list of factors is not exclusive. We undertake no obligation to update any forward-looking statements.

### **EXHIBITS AND INFORMATION AVAILABLE UPON REQUEST**

This memorandum is supplemented by the **Financial Statements** attached as Exhibit A and the **Subscription Agreement** attached as Exhibit B. We will make certain information available to investors upon request including our financial projections for the five years ending December 31, \_\_\_\_ through December 31, \_\_\_\_, our Certificate of Incorporation, our Bylaws and other corporate records.

## OFFERING SUMMARY

*In this memorandum, "Company Name," "Company," "company," "we," "our," and "us" refer to Company Name, Inc. "You" refers to the reader of this memorandum. This summary highlights the information contained elsewhere in this memorandum. Because this is only a summary, it does not contain all of the information that may be important to you. For a more complete understanding of this offering, we encourage you to read this entire memorandum and the documents to which we refer you. You should read the following memorandum together with the more detailed information and financial statements and the notes to those statements appearing elsewhere in this memorandum.*

### Company Name

We are a development stage company formed to enable real estate brokers and agents to make effective use of technology in listing and selling residential real estate while providing consumers with comprehensive "real time" information on available properties. We plan to provide agents with tools that will allow them to send a new listing, including pictures and information, to our website. We are designing our website to allow consumers to search these listings quickly and easily without bombarding them with distracting advertisements. With our technology, brokers and agents will be able to reach homebuyers more quickly with better information than traditional real estate listing processes, and thereby sell more houses.

Our strategy is to help the traditional real estate industry bridge the digital divide that has been created by existing online real estate companies. These companies have grown rapidly by gathering listings from the MLS's (Multiple Listing Services) that are generated by traditional brokers and agents and presenting them to consumers online. Some online real estate companies have even encouraged consumers to list their homes online without the help of a traditional broker or agent. Except for a few brokers and agents who have developed their own internet listing websites, most of the traditional real estate industry has continued to operate without significant changes while the online real estate industry has grown. We plan to offer traditional brokers and agents a technology platform from which they can participate more fully in the online real estate industry. Our model is franchise/broker/agent friendly.

Our executive offices are located at \_\_\_\_\_; our telephone number is \_\_\_\_\_. Our Web site address is [www.companyname.com](http://www.companyname.com). Information contained on our Web site does not constitute a part of this memorandum.

### The Offering

<b>Securities Offered</b> .....	600,000 Shares of our Common Stock. We may increase the offering to 690,000 shares if necessary to cover over-subscriptions.
<i>Offering Price</i> .....	\$2.50 per share of Common Stock.
<i>Voting Rights</i> .....	You are entitled to one vote for each share of Common Stock held by you.
<b>Investor Qualifications</b> .....	We are offering the shares only to accredited investors (as defined by Regulation D under the Securities Act of 1933, as amended). We will require each investor to represent in the Subscription Agreement that the investor is able to evaluate the merits of this investment, and that the investor is accredited.

<b>Subscription Agreement</b> .....	Each investor will be required to enter into a Subscription Agreement in the form attached as Exhibit B to this memorandum.
<b>Minimum Investment</b> .....	12,000 shares of Common Stock (\$30,000), unless waived by us.
<b>Offering Period</b> .....	The offering will terminate on October 31, ____, unless we extend the Offering for up to 30 days after October 31, _____. We reserve the right to terminate the Offering at any time. We will not provide any notice that we have extended the offering.
<b>Use of Proceeds</b> .....	We will use the net proceeds of this offering for general corporate purposes, including working capital and capital expenditures.
<b>Restrictions on Transferability</b> .....	The Common Stock sold in this offering will be restricted securities under the Securities Act of 1933, as amended, and will not be transferable except in compliance with the Securities Act and applicable state securities laws.
<b>Stock Outstanding Before the Offering</b> .....	5,416,354 shares of Common Stock.
<b>Stock Outstanding After the Offering</b> .....	If the entire offering amount of 600,000 shares is sold, we will have 6,016,354 shares of Common Stock outstanding.

*The information above regarding shares of outstanding stock excludes 2,283,000 shares of our Common Stock subject to outstanding incentive and nonqualified stock options granted under our \_\_\_\_ Equity Incentive Plan and 786,676 shares of our Common Stock subject to outstanding warrants.*

## Summary Financial Data

You should read the following summary financial data together with our financial statements and notes included in this memorandum. The statement of operations data presented below for the year ended December 31, \_\_\_\_, the six months ended June 30, \_\_\_\_ and the period from inception through June 30, \_\_\_\_, and the balance sheet data presented below as of December 31, \_\_\_\_ and June 30, \_\_\_\_, has not been reviewed by our independent accountants and is subject to year-end audit adjustment. The "As Adjusted" balance sheet data as of June 30, \_\_\_\_ reflects the application of the net proceeds from the sale of 600,000 shares offered by this memorandum after deducting estimated offering expenses.

	Year Ended December 31, ____	Six Months Ended June 30, ____	Period from Inception (January 1, ____) through June 30, ____
<b>Statement of Operations Data:</b>			
Revenues	---	\$ 3,505	\$ 3,505
Gross Profit	---	\$ 2,170	\$ 2,170
Development Stage Expenses	\$ 1,610,933	\$ 1,121,410	\$ 2,732,343
Operating Profit (Loss)	<u>\$(1,610,933)</u>	<u>\$( 1,119,240)</u>	<u>\$( 2,730,173)</u>

	December 31, ____	<u>June 30,</u>	
<b>Balance Sheet Data:</b>		<b>Actual</b>	<b>Adjusted</b>
Cash & equivalents .....	\$1,485,971	\$1,870,796	\$3,330,796
Accounts receivable, net .....	---	3,505	3,505
Total current assets.....	1,510,769	2,402,085	3,862,085
Fixed assets, net .....	334,146	319,722	319,722
Total assets.....	1,920,515	2,797,206	4,257,206
Total current liabilities .....	259,085	289,149	289,149
Long term liabilities .....	19,163	15,520	15,520
Total stockholders' equity .....	\$1,642,267	\$2,508,057	\$3,968,057

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## RISK FACTORS

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*You should carefully consider the risks and uncertainties described below before you decide to buy our Common Stock. While these are the risks and uncertainties we believe are most important for you to consider, you should know that they are not the only ones facing us. If any of the following risks actually occurs, our business, financial condition or results of operations would likely suffer. In these circumstances, the value of our stock could decline, and you could lose all or part of the money you paid to buy our stock.*

### ***Risks Related to Our Business***

#### **We have no operating history.**

Company Name, Inc. was incorporated on December 30, \_\_\_\_ and initially funded on January 2, \_\_\_\_\_. To date we have engaged primarily in finalizing our business plan, developing our products and services, establishing the corporate and other formalities necessary to begin operations, and negotiating relationships with strategic business partners. Accordingly, we have no operating history on which to base an evaluation of our business and prospects. Our prospects must be considered in light of the risks, expenses and difficulties frequently encountered by technology companies in their early stages of development. We cannot assure you that we will be successful in addressing the risks we may encounter, and our failure to do so could have a material adverse effect on our business, prospects, financial condition and results of operations.

#### **The future of Company Name, Inc. is entirely dependent on the successful development of the Company's technology, products and services.**

We are in the final stages of the development of our member benefit packages (consisting of bundled products and services) for real estate agents and brokers, and there is no assurance that when development is finished they will perform as expected. We rolled out our broker package in late May of \_\_\_\_ with the installation with our first broker customer and will have additional broker customers turned on in August of \_\_\_\_\_. We continue to add functionality and features to our broker products. The agent member benefit package will be initially rolled out in August of \_\_\_\_\_. Our ability to continue operations will depend on the success of our development and integration of leading edge technology products and services for the residential real estate community, and there is no assurance that the development and integration will be successful.

#### **The market acceptance of bundled technology solutions is uncertain.**

Even if we are successful in the development of our member benefit package, our success will depend upon the acceptance by residential real estate agents and brokers of the package in meeting their technology needs. We believe that recommendations by agents and brokers will be essential for the development and successful marketing of these products and there can be no assurance that any such recommendations will be obtained. Any of the foregoing factors, or other factors, could limit or detract from market acceptance of our member benefit packages. Insufficient market acceptance of these products would have a material adverse effect on our business, financial condition and results of operations.

**We will incur losses once we begin operations for the foreseeable future.**

Once we begin operations we expect to incur operating losses until we have increased memberships to a significant level. The size of those losses will depend, in part, on the rate of growth in our one-time and monthly revenues from member agents and brokers. The size of our future losses may also be impacted by non-cash stock-based charges relating to deferred stock-based compensation, stock option issuances, and amortization of intangible assets. We also intend to spend significant funds on marketing initiatives to develop brand awareness in the business-to-business and business-to-consumer sides of our business. Therefore, we expect our operating expenses to increase significantly in future years. As a result, we may never achieve or sustain profitability, and, if we do achieve profitability in any period, we may not be able to sustain or increase profitability on a quarterly or annual basis.

**We will need to expand our skilled personnel at all levels in a labor market that is extremely tight and retain those personnel that we do hire.**

We will be required to hire and retain skilled employees at all levels of our operations in a market where such qualified employees are in high demand and are subject to receiving competing offers. The inability to hire needed employees on a timely basis and/or the inability to retain those that we do hire could have a material adverse effect on our ability to meet the schedules of its strategic plan.

**We will need to successfully manage our growth that will be significant for the foreseeable future.**

We plan on growing at a rapid pace which will require, in part, the constant addition of new personnel in all areas of our operations. Even if we are successful in finding and hiring the appropriate personnel, there will be a significant strain placed on our managerial, operation, reporting, and financial resources. We have taken preliminary steps to put in place the necessary legal, accounting, human resource management, and other relationships and tools to enable us to deal with this growth more efficiently. However, there is no assurance that we will be able to successfully manage this rapid growth.

**We must reach agreements with third parties to supply us with the hardware, software and infrastructure necessary to provide our services, and the loss of access to this hardware, software or infrastructure or any decline or obsolescence in functionality could cause our customers' businesses to suffer, which, in turn, could decrease our revenues and increase our costs.**

We have certain contemplated strategic vendor relationships that will be critical to our strategy. We cannot assure you that these relationships can be maintained or obtained on terms favorable to us or at all. Our success depends substantially obtaining relationships with strategic partners, such as suppliers of handheld wireless devices, laptop computers, wireless connectivity infrastructure, and software. If we are unable to obtain or maintain our relationship with strategic partners, our business, prospects, financial condition and results of operations will be materially adversely affected.

**We are dependent on certain key personnel.**

The Company is dependent on the services of \_\_\_\_\_, its Chief Executive Officer, \_\_\_\_\_ its Chief Operating Officer, \_\_\_\_\_, its Chief Strategy Officer and Interim CFO, and \_\_\_\_\_, its President. The loss of services of either of these individuals could impair the Company's ability to complete the national rollout of its products and services or to bring its website to a significant level of consumer acceptance and could have a material adverse effect on the Company's business, financial condition and results of operations.

**We may be impacted by general economic conditions.**

The real estate industry is susceptible to negative trends in the national and/or regional economies. The success of our business depends, in part, on a number of factors related to spending patterns in the overall economy and in particular by real estate agents and brokers. Recent economic reports indicate that the rate of growth of the U.S. economy is slowing and that consumers are spending less. These trends may adversely affect the residential real estate industry and could have an adverse impact on our ability to grow or achieve financial profitability.

**The rates we charge for our services may decline over time, which would reduce our revenues and adversely affect our profitability.**

As our business model gains acceptance and attracts the attention of competitors, we may experience pressure to decrease the fees for our services, which could adversely affect our revenues and gross margin. If we are unable to sell our services at acceptable prices, or if we fail to offer additional services with sufficient profit margins, our revenue growth will slow and our business and financial results will suffer.

**We must dedicate significant resources to market our products and services to real estate professionals.**

Because the anticipated price that we plan to charge for products and services sold to real estate professionals is relatively low, we depend on obtaining sales from a large number of these customers. It may be difficult to reach and enroll new subscribers cost-effectively. In addition, we expect that our sales personnel generally will not be able to efficiently contact real estate professionals on an individual basis and instead must rely on sales presentations to groups of agents and/or brokers. Real estate agents are generally independent contractors rather than employees of brokers. Therefore, even if a broker uses our products and services, its affiliated agents may not be required to use them.

**We must obtain listings from real estate agents and brokers.**

We believe that our success depends in large part on the number and quality of real estate listings received from agents and brokers. If owners of large numbers of property listings, such as large brokers, in key real estate markets choose not to create relationships with us, our web site could become less attractive to other real estate industry participants or consumers.

**It is important to our success that we support our real estate customers.**

Since many real estate professionals are not sophisticated computer users and often spend limited amounts of time in their offices, it is important that these customers find that our products and services significantly enhance their productivity and are easy to use. To meet these needs, we intend to provide customer training and develop a customer support organization that seeks to respond to customer inquiries as quickly as possible. If our real estate professional customer base grows, we may need to expand this support organization to maintain satisfactory customer support levels. If we need to enlarge our support organization, we would incur higher overhead costs. If we do not maintain adequate support levels, these customers could choose to discontinue using our service.

**The market for web-based real estate listings and related services is intensely competitive.**

Our products and services compete with products and services offered by a number of other entities. Because we currently have no patented technology that would bar competitors from our market, and other barriers to entry in our market are relatively low, we also expect new competitors to enter our market in the future.

We believe that our primary competitors for real estate professionals and service providers, home buyers, homeowners, sellers and related content include:

- web sites offering real estate listings together with other related services, such as Homestore.com, Microsoft's HomeAdvisor.com, Homeseekers.com, Homes.com, RealEstate.com, Virtual Properties.com and NewHomeNetwork.com;
- web sites offering real estate related content and services such as mortgage calculators and information on the home buying, selling and renting processes such as local REALTOR associations and financial institutions and other lenders;
- general purpose consumer web sites such as AltaVista and Yahoo! that also offer real estate-related content on their sites; and
- traditional print media such as newspapers and magazines.

The barriers to entry for web-based services and businesses are low, making it possible for new competitors to proliferate rapidly. Many of our existing and potential competitors have longer operating histories in the Internet market, greater name recognition, larger consumer bases and significantly greater financial, technical and marketing resources than we do. Some of our competitors may also be able to provide customers with additional benefits at lower overall costs in an effort to increase market share. We cannot be sure that we will be able to match cost reductions by our competitors. Our competitors and other companies may form strategic relationships with each other to compete with us. These relationships may take the form of strategic investments, joint-marketing agreements, licenses or other contractual arrangements, which arrangements may increase our competitors' ability to address customer needs with their product and service offerings. We believe that there is likely to be consolidation in our markets, which could lead to increased price competition and other forms of competition that could cause our business to suffer.

**We need to continue to develop our content and our product and service offerings.**

To remain competitive we must continue to enhance and improve the ease of use, responsiveness, functionality and features of our web site. These efforts may require us to develop internally or to license increasingly complex technologies. In addition, many companies are continually introducing new Internet-related products, services and technologies, which will require us to update or modify our technology. Developing and integrating new products, services or technologies into our web site could be expensive and time consuming. Any new features, functions or services may not achieve market acceptance or enhance our brand loyalty. We have not completed development and testing of certain of our proposed web site features. If we fail to develop and introduce or acquire these features or other new features, functions or services effectively and on a timely basis, we may not continue to attract new users and may be unable to retain our existing users. Furthermore, we may not succeed in incorporating new Internet technologies, or in order to do so, we may incur substantial expenses.

**Our business is dependent on the strength of the real estate industry, which is both cyclical and seasonal.**

The real estate industry traditionally has been cyclical. During \_\_\_\_ and much of \_\_\_\_, sales of real estate in the United States were at historically high levels. Recent economic reports indicating that the rate of growth in the U.S. economy is slowing may adversely affect sales of real estate in the U.S. Economic swings in the real estate industry may be caused by various factors. When interest rates are high or general national and global economic conditions are or are perceived to be weak, there is typically less sales activity in real estate. A decrease in the current level of sales of real estate and products and services related to real estate could adversely affect demand for our web site and our products and services.

We may experience seasonality in our business. The real estate industry experiences a decrease in activity during the winter. However, because of our lack of an operating history, we do not know if or when any seasonal pattern will develop or the size or nature of any seasonal pattern in our business.

***Internet Industry Risks***

**We may not be able to protect the web site address that is important to our business.**

Our web site address, or domain name, is important to our business. The regulation of domain names is subject to change. Some proposed changes include the creation of additional top-level domains in addition to the current top-level domains, such as “.com,” “.net” and “.org.” It is also possible that the requirements for holding a domain name could change. Therefore, we may not be able to obtain or maintain relevant domain names for all of the areas of our business. It may also be difficult for us to prevent third parties from acquiring domain names that are similar to ours, that infringe our trademarks or that otherwise decrease the value of our intellectual property.

**We depend on increased use of the Internet to expand our real estate related products and services.**

If the Internet fails to become a viable marketplace for real estate content and information, our business will not grow. Broad acceptance and adoption of the Internet by consumers and businesses when searching for real estate and related products and services will only occur if the Internet provides them with greater efficiencies and improved access to information.

**Government regulations and legal uncertainties could affect the growth of the Internet.**

A number of legislative and regulatory proposals under consideration by federal, state, local and foreign governmental organizations may lead to laws or regulations concerning various aspects of the Internet, including online content, user privacy, access charges, liability for third-party activities and jurisdiction. Additionally, it is uncertain as to how existing laws will be applied to the Internet. The adoption of new laws or the application of existing laws may decrease the growth in the use of the Internet, which could in turn decrease the usage and demand for our services or increase our cost of doing business.

Some local telephone carriers have asserted that the increasing popularity and use of the Internet have burdened the existing telecommunications infrastructure, and that many areas with high Internet use have begun to experience interruptions in telephone service. These carriers have petitioned the Federal Communications Commission to impose access fees on Internet service providers and online service providers. If access fees are imposed, the costs of communicating on the Internet could increase

substantially, potentially slowing the increasing use of the Internet. This could in turn decrease demand for our services or increase our cost of doing business.

**Taxation of Internet transactions could slow the use of the Internet.**

The tax treatment of the Internet and electronic commerce is currently unsettled. A number of proposals have been made at the federal, state and local level and by various foreign governments to impose taxes on the sale of goods and services and other Internet activities. Recently, the Internet Tax Information Act was signed into law placing a three-year moratorium on new state and local taxes on Internet commerce. However, future laws may impose taxes or other regulations on Internet commerce, which could substantially impair the growth of electronic commerce.

**We depend on continued improvements to our computer network and the infrastructure of the Internet.**

Any failure of our computer systems that causes interruption or slower response time of our web sites or services could result in a smaller number of users of our web site. If sustained or repeated, these performance issues could reduce the attractiveness of our web sites to consumers and our products and services to real estate professionals, providers of real estate related products and services and other Internet advertisers. Increases in the volume of our web site traffic could also strain the capacity of our existing computer systems, which could lead to slower response times or system failures. This would cause the number of real property search inquiries, other revenue producing offerings and our informational offerings to decline, any of which could hurt our revenue growth and our brand loyalty. We may need to incur additional costs to upgrade our computer systems in order to accommodate increased demand if our systems cannot handle current or higher volumes of traffic.

The recent growth in Internet traffic has caused frequent periods of decreased performance. Our ability to increase the speed with which we provide services to consumers and to increase the scope of these services is limited by and dependent upon the speed and reliability of the Internet. Consequently, the emergence and growth of the market for our services is dependent on the performance of and future improvements to the Internet.

**Our internal network infrastructure could be disrupted.**

Our operations depend upon our ability to maintain and protect our computer systems. Although we have not experienced any material outages to date, we currently do not have a redundant system for our web site and other services at an alternate site. Therefore, our systems are vulnerable to damage from break-ins, unauthorized access, vandalism, fire, earthquakes, power loss, telecommunications failures and similar events. Although we maintain insurance against fires and general business interruptions, the amount of coverage may not be adequate in any particular case.

Experienced computer programmers, or hackers, may attempt to penetrate our network security from time to time. Although we have not experienced any material security breaches to date, a hacker who penetrates our network security could misappropriate proprietary information or cause interruptions in our services. We might be required to expend significant capital and resources to protect against, or to alleviate, problems caused by hackers. We do not currently have a fully redundant system for our web site. We also may not have a timely remedy against a hacker who is able to penetrate our network security. In addition to purposeful security breaches, the inadvertent transmission of computer viruses could expose us to litigation or to a material risk of loss.

**We could face liability for information on our web sites and for products and services sold over the Internet.**

We provide third-party content on our web site, particularly real estate listings. We could be exposed to liability with respect to this third-party information. Persons might assert, among other things, that, by directly or indirectly providing links to web sites operated by third parties, we should be liable for copyright or trademark infringement or other wrongful actions by the third parties operating those web sites. They could also assert that our third party information contains errors or omissions, and consumers could seek damages for losses incurred if they rely upon incorrect information.

We may enter into agreements with other companies under which we share with these other companies revenues resulting from the purchase of services through direct links to or from our web site. These arrangements may expose us to additional legal risks and uncertainties, including local, state, federal and foreign government regulation and potential liabilities to consumers of these services, even if we do not provide the services ourselves. We cannot assure you that any indemnification provided to us in our agreements with these parties, if available, will be adequate. Even if these claims do not result in liability to us, we could incur significant costs in investigating and defending against these claims. Our general liability insurance may not cover all potential claims to which we are exposed and may not be adequate to indemnify us for all liability that may be imposed.

***Risks Related to this Offering***

**We are effectively controlled by our principal shareholders and management, which may limit your ability to influence shareholder matters or to receive a premium for your shares through a change in control.**

Upon completion of this offering (assuming 600,000 shares are sold), our executive officers, directors and principal shareholders and their affiliates will own 4,276,334 shares, or 71.1%, of the outstanding shares of common stock. As a result, they will effectively control us and direct our affairs, and have significant influence in the election of directors and approval of significant corporate transactions. The interests of these shareholders may conflict with those of other shareholders. This concentration of ownership may also delay, defer or prevent a change in control of our company and some transactions may be more difficult or impossible without the support of these shareholders.

**We will need to raise additional financing in the foreseeable future to fund our operations, which may not be available to us on favorable terms or at all.**

We will need to raise significant additional capital in the future to fund continued operations. Assuming the sale of 600,000 shares in this offering, we expect that we will need additional funding at some point after approximately 10 months, and potentially sooner depending on the risks and uncertainties associated with our business and inherent in our rapidly growing and evolving industry. In addition, we may desire to raise additional financing at times when we believe terms are favorable and it is advantageous to our growth strategy. We will require additional financing to:

- further develop products and services that we plan to offer to members;
- fund additional marketing expenditures;
- hire additional personnel;
- respond to competitive pressures; and
- working capital.

If we raise additional funds through the issuance of equity or convertible debt securities, it will reduce the percentage ownership of our stockholders. We cannot assure you that additional financing will be available on terms favorable to us, or at all. The terms of securities we issue in the future could also impose restrictions on our operations. If adequate funds are not available or are not available on acceptable terms, our ability to fund our operations, take advantage of unanticipated opportunities, develop or enhance our products and services or otherwise respond to competitive pressures would be significantly limited.

**You will be relying on the judgment of our management regarding our use of proceeds.**

We have not designated any specific use for the net proceeds from our sale of common stock described in this memorandum. Rather, we expect to use the net proceeds for general corporate purposes, including working capital and capital expenditures. Consequently, our management will have significant flexibility in applying the net proceeds of this offering. You will be relying on the judgment of our management regarding the application of the proceeds. Our management will have the ability to apply the proceeds of this offering as it deems appropriate without shareholder approval.

**We have arbitrarily determined the price of the shares.**

There is no present market for the shares. We have arbitrarily set the price of the shares with reference to the general status of the securities market and other relevant factors. The offering price for the shares should not be considered an indication of the actual value of the shares and is not based on our net worth or prior earnings. We cannot assure you that the shares could be resold by you at the offering price or at any other price.

**You will incur substantial dilution.**

If you purchase shares, you will incur immediate and substantial dilution in pro forma net tangible book value.

**There is no public market for our securities and there will be restrictions on the transferability of our stock.**

There is currently no public market for any of our securities. We cannot assure you that any such public market will ever develop. Moreover, even if a public market does develop, any sale of our Common Stock may be made only pursuant to an effective registration statement under federal and applicable state securities laws or exemptions from such laws.

**We do not intend to pay dividends.**

We currently intend to retain any future earnings to fund growth and, therefore, do not expect to pay any dividends in the foreseeable future.

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## **USE OF PROCEEDS**

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If the entire offering amount of 600,000 shares of Common Stock is sold, we estimate that the net proceeds to us will be approximately \$1,460,000 after deducting the estimated offering expenses payable by us. If, as a result of over-subscriptions, we sell 690,000 shares of our Common Stock, we estimate that the net proceeds will be approximately \$1,685,000 after deducting the estimated offering expenses payable by us.

We expect to use the net proceeds from this offering for general corporate purposes, including working capital and capital expenditures. We may use a portion of the net proceeds to acquire complementary products, technologies or businesses when the opportunity arises; however, we currently have no commitments or agreements with respect to any acquisitions. As of the date of this memorandum, we cannot specify with certainty the particular uses for the net proceeds we will receive in this offering. Accordingly, our management will have broad discretion in applying our net proceeds of this offering. Pending the uses described above, we intend to invest the net proceeds in investment grade, interest-bearing instruments.

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## **DIVIDEND POLICY**

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We have not declared or paid cash dividends. We currently intend to retain any earnings for use in operating and expanding our business and therefore do not anticipate declaring or paying any cash dividends in the foreseeable future. Payment of future dividends, if any, will be at the discretion of our board of directors after taking into account various factors, including our financial condition, operating results and current and anticipated cash needs.

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## CAPITALIZATION

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The following table sets forth our capitalization as of June 30, \_\_\_\_\_. We have presented our actual capitalization and our pro forma capitalization, as adjusted to reflect the sale of 600,000 shares in this offering. You should read this table in conjunction with our financial statements (including the notes thereto) included elsewhere in this memorandum.

	<u>Actual</u>	<u>As Adjusted</u>
Long-term debt.....	\$ 15,520	\$ 15,520
Stockholders' equity:		
Common Stock, \$.00001 par value per share; 60,000,000 shares authorized; 5,416,354 and 6,016,354 shares issued and outstanding respectively .....	54	60
Additional paid-in-capital .....	5,238,176	6,698,170
Accumulated deficit .....	<u>(2,730,173 )</u>	<u>(2,730,173 )</u>
Total stockholders' equity.....	2,508,057	3,968,057
Total capitalization .....	\$2,523,577	\$3,983,577

*The information above regarding shares of outstanding stock excludes 2,283,000 shares of our Common Stock subject to outstanding incentive and nonqualified stock options granted under our \_\_\_\_\_ Equity Incentive Plan and 786,676 shares of our Common Stock subject to outstanding warrants.*

## DILUTION

Our net tangible book value as of June 30, \_\_\_\_ was approximately \$2,432,657 or \$.45 per share of Common Stock. We determined net tangible book value per share by dividing our net tangible book value, which consists of tangible assets less liabilities, divided by the aggregate number of shares of Common Stock outstanding on June 30, \_\_\_\_.

After giving effect to the sale of the 600,000 shares offered hereby, the adjusted pro forma net tangible book value would have been \$3,892,657 or \$.65 per share. This represents an immediate increase in pro forma net book value of \$.20 per share to existing shareholders and an immediate dilution of \$1.85 per share to new investors in this offering. The following table illustrates the per share dilution to new investors:

	<b>600,000 Shares Sold</b>
Price to investors	\$2.50
.....	
Net tangible book value per share as of June 30, ____	0.45
.....	
Increase per share attributable to this offering	<u>0.20</u>
.....	
Adjusted pro forma net tangible book value per share after this offering	<u>0.65</u>
.....	
Dilution per share to purchasers of Common Stock	<u>\$1.85</u>
.....	

The following table summarizes, on a pro forma basis as of June 30, \_\_\_\_, the differences between the founders of the Company, the other existing shareholders and the new investors with respect to the number of shares of Common Stock purchased, the total consideration paid and the average price paid per share, assuming the sale of 600,000 shares in this offering:

	<u>Shares Purchased</u>		<u>Total Consideration</u>		<u>Average</u>
	<u>Number</u>	<u>%</u>	<u>Amount</u>	<u>%</u>	<u>Price/Share</u>
Existing shareholders.....	5,416,354	90.0%	\$5,238,230	77.7%	\$0.97
Founders(1).....	2,370,000	39.4%	\$ 378,200	5.6%	\$0.16
Other Existing Shareholders .....	3,046,354	50.6%	\$4,860,030	72.1%	\$1.60
Purchasers of Common Stock under this offering .....	<u>600,000</u>	<u>10.0%</u>	<u>\$1,500,000</u>	<u>22.3%</u>	<u>\$2.50</u>
Total.....	<u>6,016,354</u>	<u>100.0%</u>	<u>\$6,738,230</u>	<u>100.0%</u>	<u>\$1.12</u>

(1) Founders include \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.

*The information in the table above excludes 2,283,000 shares of our Common Stock subject to outstanding incentive and nonqualified stock options granted under our \_\_\_\_ Equity Incentive Plan and 786,676 shares of our common stock subject to outstanding warrants. Additional dilution may be incurred if holders of stock options, whether currently outstanding or subsequently granted, exercise their options, if warrant holders exercise their warrants to purchase common stock, or if we sell more than 600,000 shares in this offering.*

## **Executive Summary**

**Vision:** Company Name enables real estate agents and brokers to engage in \_\_\_\_\_ by directly uploading listings to the web, and allowing consumers to connect directly to the listing agent. Similar to how eBay has created an online marketplace, Company Name connects the real estate industry and consumers.

**Opportunity:** Residential real estate is one of the largest industries in the United States. A recent study found that use of the Internet by homebuyers in the U.S. has increased from 2% just four years ago to over 60% today, indicating that the Internet is the most efficient means of providing information on properties and service providers. Homestore.com (HOMS) has proven this as reflected in their approximate \$3 billion market cap. There are many other companies in this sector but Homestore is the largest.

**Market:** The real estate industry generates over \$50 billion of commissions annually. Each year, over \$3 billion is spent advertising in newspapers, over \$500 million in dues for maintaining the MLS's (Multiple Listing Services), over \$300 million with Homestore and over \$1 billion on additional technology. Much of the spending has been ineffective and the industry has started to respond. Agents and brokers are looking for a vertical solutions provider that understands their needs and can deliver the complete internet marketing solution in a cost effective manner.

### **Products and Services for the \_\_\_\_\_ Industry**

Company Name will offer real estate agents and brokers a value-added bundle of technology products and services in exchange for a one-time payment and a monthly subscription fee. The agent and broker packages are competitively priced while maintaining appropriate margins. In addition, Company Name is providing an outstanding consumer experience by designing its Industry Portal, Company Name, to be the best real estate web-source available.

**Agent Solution:** The \_\_\_\_\_ Solution is comprised of: (i) \_\_\_\_\_, (ii) a digital camera that allows agents to upload an unlimited number of Virtual Tours (both Photo and Video), (iii) a personal, customized website where their property listings are hosted and marketed, (iv) significant exposure and lead generation on the Company Name Industry Portal, (v) personalized OnlineOffice and e-mail (vi) ongoing priority training, information resources and enhanced customer support, and (vii) a single provider for technology issues and needs.

Agents may purchase this solution for a one-time payment of \$799.95 and monthly fees of \$99.95. This solution provides a more cost-effective marketing tool than is currently available. The agent package allows the capture of new listing information and Virtual Tours efficiently for use on the Internet. This content is then posted to their personal website, their broker website and on the Company Name Industry Portal. The Company has not sold products or services to any agents as of the date of this memorandum. We will begin selling to agents in August of \_\_\_\_.

**Broker Solution:** The web-based \_\_\_\_\_ is comprised of: (i) an integrated, custom broker website, (ii) company Intranet, (iii) standardized company e-mail solutions, (iv) significant exposure and lead generation on the Company Name Industry Portal, (v) company-wide transaction management capabilities, (vi) ongoing priority training, information resources and enhanced customer support, and (vii) a single provider for technology questions and needs. Brokers purchase this package of products and services for a one-time payment of up to \$50,000 and monthly fees of up to \$20.00 per user. Discounts are available for early adopters. We began providing services to our first broker customer in June of \_\_\_\_ and we have seven additional broker customers which we have entered into agreements with and will begin providing services to during the balance of \_\_\_\_.

**Margins:** Company Name focuses on product margins in both the initial sale and monthly subscription fees. For the agent package, we estimate that the one-time and monthly margins will be approximately 20% and 60%, respectively. For the broker package, they are estimated to be between 20% and 50%. These margin estimates may change in the future depending on a variety of factors.

**Customers:** The initial target customers of Company Name are the top 250,000 agents and 500 brokers (located in the largest 250 metro U.S. markets) that generate the most production. Company Name has signed agreements with numerous influential broker investor/customers that have thousands of agents in their organizations. The first broker solution launched in June \_\_\_\_ and the first agent bundles are scheduled to be sold in August \_\_\_\_.

## **Consumer Website**

Our consumer website is under development but can be viewed in its unfinished form at "demo.Company Name". We have designed our website to allow homebuyers to find real estate listings meeting their parameters with a minimum of clicks. . Studies confirm consumers want a personal online home-viewing experience including multiple photos and comprehensive property information. Real-time content combined with simple navigation and no distracting ads significantly differentiates Company Name. With few clicks and minimum scrolling, consumers quickly find newly listed homes, preview multiple pictures of these homes and directly contact a real estate professional. These principles are based on the Google.com website. Not long ago, Google was unknown. Yet in June \_\_\_\_, due to its ease of use, it ranked the 19th most visited website in the U.S. by MediaMetrix.com. Google enjoys 13.5 million unique visitors per month, with simple word of mouth marketing driving its user growth. We plan to minimize ads and emphasize ease of use in order to become the preferred website for consumers' real estate needs.

## **Marketing and Distribution**

We plan to market our products and services initially through a network of key real estate industry participants including brokers, speakers and other influencers. We believe the experience and credibility of these participants will be effective in convincing real estate agents to become members of our program by using our products and placing their listings on our website. \_\_\_\_\_

In the \_\_\_\_\_ market, the recent addition of \_\_\_\_\_ to our Board of Directors and his engagement as an advisor to the executive team will be a significant benefit in reaching our penetration

goals in the \_\_\_\_\_ market. We plan to continue to build our network of industry influencer/endorsers.

We also plan to market our products and services to large brokers with the view that these brokers can assist in convincing their own agents to become members of our program. \_\_\_\_\_, one of our directors and investors, is the owner and president of \_\_\_\_\_ Real Estate, which has over 2600 sales associates in over 100 offices throughout \_\_\_\_\_. We plan to work with \_\_\_\_\_ to distribute our products and services throughout his organization. We plan to launch our services in the Seattle market in the fourth quarter of \_\_\_\_\_. Similar to \_\_\_\_\_, we have established agreements with nine other brokers in different markets throughout the US which will provide us with a direct opportunity to market our products to their agents.

## **Competition**

We anticipate that the Company will be in competition with both traditional and online companies engaged in providing services to real estate and related business. Over the past few years, the size and revenue potential of the real estate market has created a crowded field of first generation dot com companies.

The largest real estate destination on the Internet is HomeStore.com, a publicly-traded company, built largely from the National Association of REALTORS' attempt to create an internet extension of the MLS, resulting in well over a million listings, mostly MLS compilations with a link to the agent's personal web site. However, the MLS was never intended to be a public resource, thus individual property data is often cryptic and inaccurate and many properties have already been sold by the time the listings are posted. HomeStore.com is also largely advertiser-driven, with few benefits for member real estate professionals.

Other competitors include \_\_\_\_\_ in the summer of 1998. \_\_\_\_\_ is a fully-integrated Internet guide for real estate buying and selling which benefits from Microsoft Network consumer traffic and strategic alliances with mortgage providers. \_\_\_\_\_, a publicly-traded company, emphasizes business-to-business technology solutions. \_\_\_\_\_ subscription fees increase in relation to the technological complexity obtained by the user. \_\_\_\_\_ web site allows consumers to view 80% of all MLS listings at any given time.

Many of our competitors are established and have far greater financial resources, more experience, and larger staffs than do we. Additionally, many have proven operating histories, which we lack. Company Name expects to face strong competition from both well-established companies and small independent companies. Significant competitive factors in our market include: the total number of real estate listings and the number of listings in the consumer's geographic area; the degree of membership benefits for REALTORS; the ease of use of the competitor's web site; and ability to attract consumers to the competitor's web site.

## **Employees; Corporate Headquarters**

COMPANY NAME currently employs 16 persons in the following capacities: 4 executive officers, 3 general administrative, 1 sales and marketing, and 8 technology personnel, respectively. We consider our relations with our employees to be good. We have never had a work stoppage, and none of our employees is represented by collective bargaining agreements. We believe that our future success will depend in part on our ability to attract, integrate, retain and motivate highly qualified personnel, and upon the continued service of our senior management and key technical personnel. None of our key personnel are bound by employment agreements that prohibit them from ending their employment at any

time. Competition for qualified personnel in our industry and geographical location is intense. We cannot assure you that we will be successful in attracting, integrating, retaining and motivating a sufficient number of qualified employees to conduct our business in the future.

Our corporate headquarters are located at \_\_\_\_\_.

### **Legal Proceedings**

We are not currently subject to any pending legal proceedings.

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**MANAGEMENT**

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**Directors, Executive Officers and Key Employees**

Our directors, executive officers and key employees are listed below. The number of directors is determined by our Board of Directors. All directors hold office until the next annual meeting of the Board or until their successors have been duly elected and qualified. Officers are elected by the Board of Directors and their terms of office are, except to the extent governed by employment contract, at the discretion of the Board. Our Board has a compensation committee, which provides recommendations concerning salaries and other compensation to be paid to our executive officers, and is responsible for administering our \_\_\_\_ Equity Incentive Plan.

<u>Name</u>	<u>Position</u>
<i>Directors, Executive Officers &amp; Other Key Employees:</i>	
.....	Chief Executive Officer and Director
.....	Chief Operating Officer, Secretary and Director
.....	President
.....	Director
.....	Chief Strategy Officer and Interim Chief Financial Officer

\_\_\_\_\_  
(1) Member of our Compensation Committee

\_\_\_\_\_ co-founded Company Name in December \_\_\_\_ and has served as chief executive officer since that time. Prior to starting Company Name, \_\_\_\_\_ founded and served as chief executive officer of \_\_\_\_\_, a consulting firm focused on defining, designing and implementing technology-related solutions for a variety of companies. In 1992, \_\_\_\_\_ co-founded \_\_\_\_\_ Computing, a provider of personal productivity education, technology products and services to real estate companies and agents. \_\_\_\_\_ attended the University of \_\_\_\_\_ and is a licensed real estate salesperson and broker.

\_\_\_\_\_ co-founded Company Name in December \_\_\_\_ and has served as chief operating officer since that time. Prior to this, \_\_\_\_\_ co-founded \_\_\_\_\_, a consulting firm focused on defining, designing and implementing technology-related solutions for a variety of companies. In 1992, \_\_\_\_\_ co-founded and served as chief operating officer of \_\_\_\_\_ Computing, a provider of personal productivity education, technology products and services to real estate companies and agents. \_\_\_\_\_ attended the University of \_\_\_\_\_ and \_\_\_\_\_ and is a licensed REALTOR.

\_\_\_\_\_ has been a REALTOR® since 1968 involved in all facets of real estate including residential and commercial, sales and management (including his own multi-office company for 11 years). He has a bachelor's degree in real estate from the University of North Texas and holds four professional designations. He successfully developed \_\_\_\_\_ that during ten years became one of the leading agent productivity packages with over 20,000 users. It was sold to \_\_\_\_\_ in \_\_\_\_\_. His contributions to real estate as a national speaker, author, and developer have earned him the recognition and respect as one of the industry's authorities.

\_\_\_\_\_ became a member of our board of directors in August \_\_\_\_\_. Mr. \_\_\_\_\_ is currently the president and chief executive officer of \_\_\_\_\_, Inc., a consulting and resources firm focusing on the theory, principles, definition, and practice of quality service delivery for professional service providers. Previously, Mr. \_\_\_\_\_ served as executive vice president of \_\_\_\_\_ Affiliates and as executive vice president and general manager of Coldwell Banker Residential Brokerage. Mr. \_\_\_\_\_ received a B.A. from the \_\_\_\_\_ and an M.B.A. from the \_\_\_\_\_.

\_\_\_\_\_ has been a member of our board of directors since August \_\_\_\_\_. \_\_\_\_\_ is currently the owner and president of \_\_\_\_\_ Real Estate. \_\_\_\_\_ earned his B.S. in business administration from the \_\_\_\_\_ and is a member of the National Association of REALTORS, the Young President's Organization, Rotary International and the Realty Alliance, a national think tank of the nation's top independent real estate companies. \_\_\_\_\_ has served on several technology-related advisory committees and holds the Certified Residential Broker (CRB) designation.

\_\_\_\_\_ joined our board of directors in August \_\_\_\_\_. Mr. \_\_\_\_\_ previously served as a regional owner and president/chief executive officer for RE/MAX of Southwestern Pennsylvania and Delaware. During his tenure with RE/MAX, Mr. \_\_\_\_\_ received the RE/MAX Founders Commemorative Crystal Award, the RE/MAX Distinguished Service Award, and the RE/MAX Premier Service Award. Mr. \_\_\_\_\_ also founded and served on the board of directors of TreND MLS, one of the largest MLSs in the country.

\_\_\_\_\_ has been a member of our board of directors since August \_\_\_\_\_. Mr. \_\_\_\_\_ is currently president of \_\_\_\_\_ Enterprises, an investment and business development company in \_\_\_\_\_, which he founded in 1987. From 1983 to 1987, Mr. \_\_\_\_\_ served as chairman of the board and chief executive officer of \_\_\_\_\_, which was acquired in 1987 by \_\_\_\_\_. From 1956 to 1983, Mr. \_\_\_\_\_ served as president of \_\_\_\_\_, Inc. Mr. \_\_\_\_\_ currently serves as a director of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, Inc., \_\_\_\_\_, and \_\_\_\_\_.

\_\_\_\_\_ has been a licensed REALTOR in the state of \_\_\_\_\_ for twenty years and has been affiliated with \_\_\_\_\_ and its predecessors since 1982. Well respected as an industry leader and consummate professional, he has been the top producer in the state for many years, having sold in excess of \$60 million in residential real estate in calendar year \_\_\_\_ alone. He also serves as a member of the Board of Directors of the \_\_\_\_\_ Area Association of REALTORS. Prior to entering the real estate industry, \_\_\_\_\_ worked in a variety of marketing and financial management positions. \_\_\_\_\_ is a graduate of Princeton University and the Harvard Business School.

\_\_\_\_\_ . \_\_\_\_\_ has served as interim chief financial officer and chief strategy officer since June \_\_\_\_\_. Prior to joining us, \_\_\_\_\_ co-founded \_\_\_\_\_ Moquist & Associates, LLC, a full service CPA firm in \_\_\_\_\_. \_\_\_\_\_ also previously served as a Senior Manager for Price Waterhouse LLP, working in the \_\_\_\_\_, Chicago, and National (New

York) offices. \_\_\_\_\_ received his B.S. in accounting from Roosevelt University in Chicago after attending the U.S. Military Academy at West Point. He is a licensed certified public accountant.

### **Compensation of Directors**

Each of the Company's non-employee directors received an option to purchase 25,000 shares of the Company's Common Stock at a price of \$3.00 (for Mr. \_\_\_\_\_ at \$5.00) per share upon joining the board of directors. These options become exercisable in equal installments of 8,333 shares on each of the first, second and third anniversaries of the date the option was granted and terminate on the fourth anniversary of the date of grant. Each non-employee director (except Mr. \_\_\_\_\_) also received cash compensation of \$4,000 per month for his service as a director of the Company during \_\_\_\_ starting with the month that each became a director. As part of the Company's cash expense reduction plan, for the first six months of \_\_\_\_, each director received a five-year option for the purchase of 24,000 shares exercisable at a price of \$3.50 per share. The Company intends to present a plan at the next Board of Director's meeting based on input from the Compensation Committee of the Board to provide for additional option grants in lieu of resuming cash compensation for the next twelve-month period. Directors may be reimbursed for actual out-of-pocket expenses incurred by them in attending meetings and in the performance of their duties as directors.

### **Director Liability and Indemnification**

Our bylaws require that we indemnify our officers and directors from certain claims, liabilities and expenses under certain circumstances and subject to certain limitations and the provisions of Delaware law. Under Delaware law, a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, against expenses actually and reasonably incurred by him in connection with an action, suit or proceeding if the person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation. With respect to a criminal action or proceeding, such officer, director or employee must have had no reasonable cause to believe his conduct was unlawful. We have obtained a director and officer liability insurance policy with limits of \$1,000,000. We are negotiating to increase our director and officer insurance limits.

To the extent that indemnification for liabilities arising under the Securities Act of 1933 may be permitted to our directors, officers and controlling persons as described above, or otherwise, we have been informed that in the opinion of the Securities and Exchange Commission that such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable.

### **Executive Compensation**

We have entered into employment agreements with each of our executive officers and key employees. These agreements can be terminated by us at any time, subject to certain severance obligations as described below, and by the employee upon thirty (30) days advance written notice. The employment agreements also include a confidentiality clause, a non-compete provision, and provisions restricting the solicitation of employees or customers.

Our Employment Agreements with \_\_\_\_\_, our Chief Executive Officer, and \_\_\_\_\_, our Chief Operating Officer and Secretary, became effective January 1, \_\_\_\_ and pursuant to these agreements during the year ended December 31, \_\_\_\_, \_\_\_\_\_ received a salary of \$108,500 and \_\_\_\_\_ received a salary of \$108,500. Beginning January 1, \_\_\_\_, the Agreements provide that the

salary for each of \_\_\_\_\_ and \_\_\_\_\_ was to increase to a monthly base rate of \$12,500. As part of the Company's cash expense reduction plan instituted on January 25, \_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ agreed to defer \$4,000 per month of their base salary. The cumulative deferral amounts for \_\_\_\_\_ and \_\_\_\_\_ are \$26,000 each. The Company has agreed to pay these deferrals by the end of \_\_\_\_ unless \_\_\_\_\_ or \_\_\_\_\_ agree to continue to defer all or a portion of their amounts beyond December 31<sup>st</sup>, \_\_\_\_\_. In July of \_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ agreed to a reduction of their base salary to \$10,000 per month effective August 1<sup>st</sup>, \_\_\_\_ to assist the Company in reaching its profitability goals. During \_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ also earned income from speaking engagements performed by \_\_\_\_\_ on behalf of \_\_\_\_\_, a company owned and operated by \_\_\_\_\_ and \_\_\_\_\_. We anticipate that \_\_\_\_\_ and \_\_\_\_\_ may continue these speaking engagements during \_\_\_\_ on a limited basis. We believe that these speaking engagements benefit Company Name by strengthening \_\_\_\_\_'s reputation as a technology leader in the real estate industry.

Our Employment Agreements with \_\_\_\_\_ and \_\_\_\_\_ require that we make severance payments to the employee if his or her employment is terminated by us without "cause" or by the employee with "good reason." Both "cause" and "good reason" are defined in the Employment Agreements. If such termination is effective on or before December 31, \_\_\_\_, we are obligated to pay six months of severance at the employee's then current salary and premiums for six months of COBRA continuation coverage for group medical, dental and life insurance plans. If such termination is effective on or after January 1, 2002, we are obligated to pay severance and premiums for twelve months.

Our Employment Agreement with \_\_\_\_\_, our President, became effective June 1, \_\_\_\_, and provides for a monthly base rate of \$12,500. The Employment Agreement with \_\_\_\_\_ requires that we make severance payments to \_\_\_\_\_ if his employment is terminated by us without "cause" or by \_\_\_\_\_ with "good reason". Both "cause" and "good reason" are defined in the Employment Agreement. If such termination is effective on or before December 31, 2002, we are obligated to pay six months of severance at \_\_\_\_\_'s then current salary and premiums for six months of COBRA continuation coverage for group medical, dental and life insurance plans. If such termination is effective on or after January 1, 2003, we are obligated to pay severance and premiums for twelve months.

Our Employment Agreement with \_\_\_\_\_, our Chief Strategy Officer and Interim Chief Financial Officer, became effective June 1, \_\_\_\_ and pursuant to this Agreement we paid \_\_\_\_\_ a salary of \$87,500 during \_\_\_\_\_. Beginning January 1, \_\_\_\_, the Agreement provides that \_\_\_\_\_'s salary was to increase to a monthly base rate of \$12,500. As part of the Company's cash expense reduction plan instituted on January 25, \_\_\_\_, \_\_\_\_\_ agreed to defer \$4,000 per month of his base salary. The cumulative deferral amount for \_\_\_\_\_ is \$26,000. The Company has agreed to pay these deferrals by the end of \_\_\_\_ unless \_\_\_\_\_ agrees to continue to defer all or a portion of these amounts beyond December 31<sup>st</sup>, \_\_\_\_\_. In July of \_\_\_\_, \_\_\_\_\_ agreed to a reduction of his base salary to \$10,000 per month effective August 1<sup>st</sup>, \_\_\_\_ to assist the Company in reaching its profitability goals.

Our Employment Agreement with \_\_\_\_\_ requires that we make severance payments to \_\_\_\_\_ if his employment is terminated by us without "cause" or by \_\_\_\_\_ with "good reason." Both "cause" and "good reason" are defined in the Employment Agreements. If such termination is effective on or before December 31, \_\_\_\_, we are obligated to pay three months of severance at \_\_\_\_\_'s then current salary and premiums for three months of COBRA continuation coverage for group medical, dental and life insurance plans. If such termination is effective on or after January 1, 2002, we are obligated to pay severance and premiums for six months.

## Option Grants During \_\_\_\_ and \_\_\_\_

The following table provides information related to stock options granted to the named executive officers during the year ended December 31, \_\_\_\_ and during \_\_\_\_ through the date of this memorandum.

Name	Individual Grants			
	Number of Shares Underlying Options Granted	Percentage of Total Options Granted to Employees To Date ____	Exercise Price per Share	Expiration Date
_____	250,000	15.23%	\$5.00	1/1/07
_____	250,000	15.23%	\$5.00	1/1/07
_____	230,000	14.00%	\$5.00	1/7/07
_____	350,000	21.32%	\$5.00	6/30/08

## Change of Control Agreements

We have entered into Change of Control Agreements with each of our executive officers providing for severance payments and accelerated vesting of options in the event the employment of the executive officer is terminated in connection with a Change of Control. Change of Control is defined in these Agreements to include (i) mergers or consolidations in which our shareholders own less than 50% of the resulting company; (ii) acquisition by a person or group of 20% or more of the total combined voting power of our outstanding securities; (iii) sale of substantially all of our property or assets to anyone other than a wholly-owned subsidiary; (iv) a change in the Board of Directors which results in continuing directors representing less than 70% of the Board; and (v) entering into a letter of intent or agreement relating to one of the preceding events that actually results in a Change of Control or commencement of a tender offer, exchange offer or proxy contest that ultimately results in an event described in items (ii) or (iv) preceding. In the event of a "Change of Control Termination," which is defined to include termination of employment by the executive officer if he or she believes that certain actions adverse to him or her have occurred in connection with a Change of Control, the executive officer is entitled to severance benefits, continued coverage under the employer's life, health and dental plans and immediate vesting of all stock options held by the executive officer. The severance benefit ranges from 125% of the executive officer's annual base salary if the Change of Control Termination occurred currently to 250% of the executive officer's base salary if Change of Control Termination takes place on or after January 1, 2003. The Company is obligated to pay 20% of the severance benefit within 15 days of the Change of Control Termination and the balance within 45 days of the Change of Control Termination.

## Benefit Plans

\_\_\_\_ *Equity Incentive Plan*. Our Board of Directors and shareholders adopted our \_\_\_\_ Equity Incentive Plan to provide for the granting of stock options and restricted stock awards to employees, consultants, advisors and directors. Our Incentive Plan permits the granting of incentive stock options meeting the requirements of Section 422 of the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder, and also non-qualified stock options that do not meet the requirements of Section 422. We have reserved 3,500,000 shares of our Common Stock for issuance upon exercise of options granted under our stock option plan. As of July 30, \_\_\_\_ we had outstanding options to purchase an aggregate of 2,283,000 shares under our stock option plan. The plan terminates on August 8, 2010, ten years from the effective date of the Plan.

We may not grant incentive stock options at exercise prices less than the fair-market value of our common stock on the date of the grant, or, for an option granted to a person holding more than 10% of our voting stock, at less than 110% of fair-market value, and we may not grant nonqualified options at an exercise price less than 85% of the fair-market value on the date of grant. Incentive options may not be transferred other than by will or by the laws of descent and distribution and may be exercised during the lifetime of an optionee only by the optionee. The term of each incentive option, which is fixed at the date of grant, may not exceed ten years from the date the option is granted, except that an incentive option to a person holding more than 10% of our voting stock may be exercisable for only five years. Nonqualified stock options may be transferred by the optionee, with the permission of the plan administrator, to a member of the optionee's immediate family, to trusts with members of the immediate family as beneficiaries, or to partnerships in which immediate family members are the only partners. Until the risks of forfeiture have lapsed, restricted stock awards may not be transferred other than by will or by the laws of descent and distribution.

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### CERTAIN TRANSACTIONS

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On May 25, \_\_\_\_, we entered into a Consulting Agreement with \_\_\_\_\_ Marketing, Ltd., (“\_\_\_\_\_”), a corporation wholly owned by \_\_\_\_\_, one of our directors. \_\_\_\_\_ agreed to provide general business, marketing, investment, business development consulting, advisory and related management services in exchange for Ten Thousand Dollars (\$10,000) per month through May 31, \_\_\_\_.

On July 1, \_\_\_\_, we entered into a Consulting Agreement with J. \_\_\_\_\_, one of our directors, whereby \_\_\_\_\_ agreed to provide general business, marketing, investment, business development consulting, advisory and related management services to us in exchange for Five Thousand Dollars (\$5,000) per month through December 31, \_\_\_\_.

In August of \_\_\_\_, we engaged \_\_\_\_\_ to provide advisory services to the Chief Executive Officer and the management team, in greater depth and frequency than would be expected of the other directors. Mr. \_\_\_\_\_ agreed to provide such services for a term of three years ending on August 14, 2003. In consideration for these additional services, we granted to Mr. \_\_\_\_\_ an option to purchase 90,000 shares of our Common Stock exercisable at \$3.50 per share, which option shall become exercisable to the extent of 7,500 shares beginning December 31, \_\_\_\_ and in equal installments of 7,500 shares at the end of each calendar quarter thereafter until fully exercisable. The option shall terminate on August 15, 2006. This is a non-qualified stock option granted pursuant to the \_\_\_\_ Equity Incentive Plan.

In June \_\_\_\_, we engaged \_\_\_\_\_ to provide advisory services to the Chief Executive Officer and the management team, in greater depth and frequency than would be expected of the other directors. Mr. \_\_\_\_\_ agreed to provide such services for a term of three years ending on June 14, 2004. In consideration for these additional services, we granted to Mr. \_\_\_\_\_ an option to purchase 90,000 shares of our Common Stock exercisable at \$5.00 per share, which option shall be come exercisable to the extent of 7,500 shares beginning September 30, \_\_\_\_, and in equal installments of 7,500 shares at the end of each calendar quarter thereafter until fully exercisable. The option shall terminate on August 15, 2007. This is a non-qualified stock option granted pursuant to the \_\_\_\_ Equity Incentive Plan.

## PRINCIPAL STOCKHOLDERS

The following table sets forth certain information with respect to the beneficial ownership of our Common Stock as of June 30, \_\_\_\_, before this offering and as adjusted to reflect the sale of 600,000 shares in such offering, by (1) each director; (2) our executive officers; (3) all of our directors and executive officers as a group; and (4) all those known by us to be beneficial owners of more than 5% of our Common Stock.

Unless otherwise specified, the business address of the shareholder is our address as set forth in this memorandum. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally means sole or shared power to vote or direct the voting or to dispose or direct the disposition of any Common Stock. Except as indicated by footnote, and subject to community property laws where applicable, the persons named in the table below have sole voting and investment power with respect to all shares of Common Stock shown as beneficially owned by them.

<u>Beneficial Owner</u>	<u>Beneficial Ownership<sup>(1)</sup> Before Offering</u>		<u>Beneficial Ownership After Offering<sup>(1)</sup></u>	<u>Warrants and Options exercisable within 60 days<sup>(1)</sup></u>
	<u>Shares</u>	<u>Percentage</u>	<u>Percentage</u>	
.....	1,000,000	18.5%	16.6%	---
.....	1,000,000	18.5%	16.6%	---
.....	500,000 <sup>(2)</sup>	9.0%	8.1%	166,666
.....	424,334 <sup>(2)</sup>	7.8%	7.0%	32,334
.....	424,334 <sup>(2)</sup>	7.8%	7.0%	32,334
.....	424,334 <sup>(2)</sup>	7.8%	7.0%	32,334
.....	421,834 <sup>(2)</sup>	7.6%	6.9%	124,834
.....	370,000	6.8%	6.1%	---
.....	250,000 <sup>(2)</sup>	4.5%	4.1%	150,000
All directors and executive officers as a group (9 persons) .....	4,814,836 <sup>(2)</sup>	80.9%	73.5%	538,502

\* Less than one percent.

(1) Assumes no shares are purchased in this offering by the persons identified above.

(2) Shares not outstanding but deemed beneficially owned by virtue of the individual's right to acquire them as of July 30, \_\_\_\_, or within 60 days of such date, are treated as outstanding when determining the percent of the class owned by that individual and when determining the percent owned by the group. Unless otherwise indicated, each person named or included in the group has sole voting and investment power with respect to the shares of Common Stock set forth opposite the stockholder's name.

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## DESCRIPTION OF CAPITAL STOCK

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Upon completion of this offering, our authorized capital stock will consist of 60,000,000 shares of capital stock, of which 40,000,000 shares have been designated as Common Stock, with a par value of \$.00001, and 20,000,000 shares have been designated as Preferred Stock, with a par value of \$.00001.

### **Common Stock**

As of the date of this memorandum, we have 5,416,354 shares of Common Stock outstanding, held of record by 40 persons. Holders of Common Stock are entitled to one vote per share on all matters to be voted upon by shareholders. All shares of Common Stock rank equally as to voting and all other matters. The shares of Common Stock have no preemptive or conversion rights, no redemption or sinking fund provisions and are not entitled to cumulative voting rights. Subject to the rights of holders of preferred stock, holders of Common Stock are entitled to receive dividends when and as declared by the board of directors out of funds legally available for dividends. Upon our liquidation, creditors and holders of our preferred stock with preferential liquidation rights will be paid before any distribution to holders of our Common Stock.

### **Preferred Stock**

As of the date of this memorandum, there are no shares of Preferred Stock outstanding. Under Delaware law and our Certificate of Incorporation, no action by our stockholders is necessary, and only action of our Board of Directors is required to authorize the issuance of any Preferred Stock. The Board of Directors is authorized to establish one or more classes or series of shares, to designate each class or series and to fix the terms of each class or series, including terms with respect to redemption, sinking fund, dividend, liquidation, preemptive, conversion and voting rights and preferences. Accordingly, the Board of Directors, without stockholder approval, may issue Preferred Stock having rights, preferences, privileges or restrictions, including voting rights, that may be greater than the rights of holders of Common Stock.

We cannot predict the actual effect of the issuance of any shares of additional Preferred Stock upon the rights of holders of Common Stock until the board of directors determines the specific rights of the holders of the additional Preferred Stock. However, the effects may include, among other things, restricting dividends on the Common Stock, diluting the voting power of the Common Stock, impairing the liquidation rights of the Common Stock and delaying or preventing a change in control of Company Name, Inc., without further action by the stockholders. We have no present plans to issue any shares of Preferred Stock.

### **Warrants**

We have outstanding warrants to purchase 786,676 shares of our common stock at exercise prices ranging from \$3.00 to \$7.00 per share.

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## PLAN OF DISTRIBUTION

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### The Offering

We are offering for sale to “accredited investors” (as defined by Regulation D under the Securities Act of 1933, as amended) 600,000 shares (690,000 if necessary to cover over-subscriptions) of our Common Stock at a price of \$2.50 per share. We are offering the Common Stock through our officers, directors, and employees without commission. Subject to the approval of our board of directors, we may retain individuals or firms to act as our agents in this offering and may pay such individuals or firms compensation in the form of cash or rights to purchase common stock. We have established a minimum investment of \$30,000, which we may waive at our discretion.

We may accept subscriptions as they are received and subscribers have no assurance that all or any minimum portion of the Shares will be sold. We also reserve the right to withdraw, cancel or modify this offering and to reject subscriptions in whole or in part for the purchase of any of the Shares. This offering will terminate on October 31, \_\_\_\_ unless we extend the offering for up to 30 days after October 31, \_\_\_\_\_. No notice of extension is required to be given to investors who have already subscribed before the extension takes place. However, we reserve the right to terminate the Offering at any time. No notice of extension is required to be given to investors who have already subscribed.

Prospective investors who desire to purchase the Common Stock in this offering must complete a subscription agreement in substantially the form attached as Exhibit B to this memorandum and deliver it to us together with a wire transfer of same day funds, or a check made payable to “Company Name, Inc.,” for the amount subscribed. Subscribers should indicate their status as accredited investors by marking the applicable paragraph in the Subscription Agreement. The Common Stock will be issued in such names as shall be provided for in the accepted Subscription Agreements and shall be delivered by us to the investors as soon as practicable following our acceptance. The shares will be delivered to the address specified in the subscription agreements. We reserve the right to accept, or reject, any subscription in whole or in part, in our sole discretion. In the event a subscription is rejected, all funds delivered to us with such subscription will be returned to the subscriber as soon as practicable following rejection, without interest.

### Investor Qualifications

We are offering the Common Stock only to “accredited investors” as defined in Rule 501(a) of Regulation D of the Securities and Exchange Act of 1933, as amended. Joint purchasers must each separately qualify under one or more of the tests. As so defined, “accredited investors” generally include:

- (a) Any individual whose net worth, or joint net worth with his or her spouse, exceeds \$1,000,000;
- (b) Any individual whose income exceeded \$200,000 in both \_\_\_\_ and \_\_\_\_, or whose joint income with his or her spouse exceeded \$300,000 in each of those years, and who reasonably expects an income reaching the same level in \_\_\_\_;
- (c) Most banks and savings and loan associations, whether acting in their individual or in fiduciary capacities, most registered broker-dealers, most insurance companies, most investment companies, certain business development companies and small business investment companies, and employee benefit plans subject to the provisions of the Employee Retirement Income Security Act of 1974 that have total assets in excess of \$5,000,000, or as to which investment decisions are made by a fiduciary which is either a bank, insurance company, or registered investment advisor, or that

are self-directed plans with investment decisions made solely by persons that are accredited investors;

(d) Organizations qualified under Section 501(c)(3) of the Internal Revenue Code, corporations, Massachusetts or similar business trusts, and partnerships, not formed for the specific purpose of purchasing Shares, with total assets in excess of \$5,000,000;

(e) Any trust with total assets in excess of \$5,000,000 not formed for the specific purpose of acquiring Shares, whose purchase is directed by a sophisticated person as described in Regulation D; or

(f) Any entity all of whose equity owners separately meet the criteria set forth in (a), (b), (c), (d), or (e) above.

We will review the subscription agreements with ordinary due diligence and will rely on the representations made by the investors therein in assessing the investor's ability to qualify as an accredited investor.

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### **RESTRICTIONS ON TRANSFER**

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We have not registered our Common Stock under the Securities Act of 1933, as amended, or any state securities laws. We offer these securities in reliance on certain exemptions from registration contained in the Securities Act and applicable state laws. As a consequence, purchasers may not sell these securities unless they are subsequently registered under the Securities Act and applicable state laws or an exemption from such registration is available. Accordingly, any purchaser must bear the economic risk of investment in the shares for an indefinite period of time.

We will restrict the sale or assignment of the shares by (i) placing a legend on all certificates evidencing the shares stating that we have not registered the shares evidenced by such certificate under the Securities Act or any state laws and that the holder may not sell or assign the shares without registration or an available exemption therefrom, according to an opinion of counsel acceptable to us, (ii) referring to the above-described restrictions in our stop transfer records, and (iii) requiring each purchaser, in the Subscription Agreement, to represent that the purchaser will not sell or assign the shares without registration under the Securities Act and applicable state laws, or appropriate exemptions therefrom.

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### **ADDITIONAL MATERIAL AVAILABLE UPON REQUEST**

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We have agreed to make available to each prospective investor, prior to the sale of the Common Stock, the opportunity to ask questions of, and receive answers from, our officers concerning the terms and conditions of the offering and to obtain any additional information, to the extent we possess such information or can acquire it without unreasonable effort or expense, which may be necessary to verify the accuracy of the information set forth herein. You may mail questions, inquiries, and requests for information to \_\_\_\_\_ Drive, \_\_\_\_\_, \_\_\_\_\_, or call \_\_\_\_\_, Chief Executive Officer, or \_\_\_\_\_, Chief Strategy Officer and Interim Chief Financial Officer, at \_\_\_\_\_. You may be required to sign a confidentiality agreement if you wish to receive additional information that we deem to be proprietary. You, and your representatives, if any, will be asked to acknowledge in the Subscription Agreement that you were given the opportunity to obtain additional information and that you did so or elected to waive the opportunity.

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**LEGAL MATTERS**

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The validity of the securities offered hereby will be passed upon for us by \_\_\_\_\_ & \_\_\_\_\_,  
P.A., \_\_\_\_\_, \_\_\_\_\_.

**EXHIBIT A**

**FINANCIAL STATEMENTS**

**Company Name, Inc.**  
**Confidential Financial Statements**

**Notes to the Reader of the following financial statements:**

The following financial statements of Company Name, Inc. include Balance Sheet statements at December 31, \_\_\_\_ and June 30, \_\_\_\_ and Profit and Loss statements for the year ended December 31, \_\_\_\_, the five months ended June 30, \_\_\_\_, and the period from inception (January 1, \_\_\_\_ ) through June 30, \_\_\_\_ . These statements are unaudited and were prepared by management for discussion and analysis purposes. The Company believes that all material items that would affect these statements have been entered therein. However, the Company can give no assurance that, upon audit by an independent Certified Public Accounting firm, other adjustments will not be necessary to properly reflect the Company's financial situation under generally accepted accounting principles. The Company is considered a development stage company, and as such, special accounting rules are applicable.

The attached financial information is **highly confidential** and should be treated as such.

EXHIBIT B

## **SUBSCRIPTION AGREEMENT**

Company Name, Inc.

**SUBSCRIPTION AGREEMENT**

**INSTRUCTIONS TO SUBSCRIBER**

Use this Agreement to subscribe for the shares of common stock (“Shares”) and accompanying warrants (“Warrants”) of Company Name, Inc. **By signing this agreement, you are agreeing to invest money if your subscription is accepted.**

Please complete all applicable blank spaces. If you want us to register the Shares and Warrants in the names of more than one person, each person must sign the documents. **Please sign the appropriate signature page.** If you are a corporation, partnership, LLC, trust or estate, please attach appropriate documents showing that the purchase of Shares and Warrants is authorized.

Mail or deliver this Agreement, a check for the purchase price, appropriate documentation of authority (if applicable), and a purchaser representative disclosure statement (if applicable), to:

Mr. \_\_\_\_\_, CEO  
Company Name, Inc.  
\_\_\_\_\_ Drive  
\_\_\_\_\_, \_\_\_\_\_

We will give you notice after we receive and accept your subscription. We reserve the right to accept or reject a subscription for any reason whatsoever.

Company Name, Inc.

**SUBSCRIPTION AGREEMENT  
INCLUDING INVESTMENT REPRESENTATIONS**

The undersigned, \_\_\_\_\_ hereby invests a total amount of \$\_\_\_\_\_ as a subscription for the purchase of \_\_\_\_\_ shares of Company Name, Inc. (the “Company”) common stock (the “Securities”) at a price of \$2.50 per Share. Unless otherwise agreed to by the Company, the undersigned herewith submits the undersigned’s check payable to “Company Name, Inc.” in full payment for such Shares along with this Agreement.

1. Certain Representations of the Subscriber. In connection with, and in consideration of, the sale of the Securities to the undersigned, the undersigned hereby represents and warrants to the Company and its officers, directors, employees, agents and shareholders that the undersigned:

(a) Has received and is familiar with a copy of the Company’s Private Placement Memorandum dated July 30, \_\_\_\_\_.

(b) Has been given access to full and complete information regarding the Company and has utilized such access to his/her satisfaction for the purpose of obtaining information; and has either attended or been given reasonable opportunity to meet with representatives of the Company for the purpose of asking questions of, and receiving answers from, such representatives concerning the terms and conditions of the offering of the Securities and to obtain any additional information necessary to verify the accuracy of information provided to the undersigned and does not desire further information.

(c) Realizes that a purchase of the Securities represents a speculative investment involving a high degree of risk.

(d) Can bear the economic risk of an investment in the Securities for an indefinite period of time, can afford to sustain a complete loss of such investment, has no need for liquidity in connection with an investment in the Securities, and can afford to hold the Securities indefinitely.

(e) Realizes that there are significant restrictions on the transferability of the Securities, that the Securities have not been registered for sale under the Securities Act of 1933, as amended (the “Act”) or applicable state securities laws (the “State Laws”), and may be sold only pursuant to registration under the Act and State Laws, or an opinion of counsel that such registration is not required.

(f) Is experienced and knowledgeable in financial and business matters, capable of evaluating the merits and risks of investing in the Securities, and does not need or desire the assistance of a knowledgeable representative to aid in the evaluation of such risks (or, in the alternative, has a knowledgeable representative whom such investor intends to use in connection with a decision as to whether to purchase the Securities).

2. Investment Intent. The undersigned has been advised that the Securities have not been registered under the Act or the relevant State Laws but are being offered, and will be offered, and sold pursuant to exemptions from the Act and State Laws, and that the Company’s reliance upon such exemptions is predicated in part on the undersigned’s representations contained herein. The undersigned

represents and warrants that the Securities are being purchased for the undersigned's own account and for long term investment and without the intention of reselling or redistributing the Securities, that the undersigned has made no agreement with others regarding any of the Securities, and that the undersigned's financial condition is such that it is not likely that it will be necessary for the undersigned to dispose of the Securities in the foreseeable future. The undersigned is aware that (i) in the view of the Securities and Exchange Commission, a purchase of Securities with an intent to resell by reason of any foreseeable specific contingency or anticipated change in market values, or any change in the liquidation or settlement of any loan obtained for the acquisition of the Securities and for which the Securities were or may be pledged as security would represent an intent inconsistent with the investment representations set forth above and (ii) the transferability of the Securities is restricted and (A) requires the written consent of the Company, and (B) will be further restricted by a legend placed on the certificate(s) representing the Securities containing substantially the following language:

*“The Securities represented by this certificate have not been registered under either the Securities Act of 1933 or applicable state securities laws and may not be sold, transferred, assigned, offered, pledged or otherwise distributed for value unless there is an effective registration statement under such Act and such laws covering such securities, or the Company receives an opinion of counsel acceptable to the Company stating that such sale, transfer, assignment, offer, pledge or other distribution for value is exempt from the registration and prospectus delivery requirements of such Act and such laws.”*

The undersigned further represents and agrees that if, contrary to the undersigned's foregoing intentions, the undersigned should later desire to dispose of or transfer the Securities in any manner, the undersigned shall not do so without first obtaining (i) an opinion of counsel satisfactory to the Company that such proposed disposition or transfer may be made lawfully without the registration of such Securities pursuant to the Act and applicable State Laws, or (ii) registration of such Securities (it being expressly understood that the Company shall not have any obligation to register such Securities ).

3. Residence. The undersigned represents and warrants that the undersigned is a bona fide resident of (or if an entity is organized or incorporated under the laws of, and is domiciled in), the State (or Country if not in USA) of \_\_\_\_\_ (**INSERT NAME OF STATE OR COUNTRY**) and that the Securities are being purchased by the undersigned in the undersigned's name solely for the undersigned's own beneficial interest and not as nominee for, on behalf of, for the beneficial interest of, or with the intention to transfer to, any other person, trust, or organization.

PARAGRAPHS 4 AND 5 ARE REQUIRED IN CONNECTION WITH THE EXEMPTIONS FROM THE ACT AND STATE LAWS BEING RELIED ON BY THE COMPANY WITH RESPECT TO THE OFFER AND SALE OF THE SECURITIES. ALL OF SUCH INFORMATION WILL BE KEPT CONFIDENTIAL, AND WILL BE REVIEWED ONLY BY THE COMPANY AND ITS COUNSEL. The undersigned agrees to furnish any additional information, which the Company or its counsel deems necessary in order to verify the responses set forth below.

4. Accredited Status. The undersigned represents and warrants as follows (CHECK IF APPLICABLE):

**INDIVIDUALS – Check All That Apply**

\_\_\_\_ (a) The undersigned is an individual with a net worth, or a joint net worth together with his or her spouse, in excess of \$1,000,000. (In calculating net worth, you may include equity in personal property and real estate, including your principal residence, cash, short-term investments, stock and securities. Equity in personal property and real estate should be based on the fair market value of such property minus debt secured by such property.)

\_\_\_\_ (b) The undersigned is an individual that had an individual income in excess of \$200,000 in each of the prior two years and reasonably expects an income in excess of \$200,000 in the current year; or

\_\_\_\_ (c) The undersigned is an individual that had with his/her spouse joint income in excess of \$300,000 in each of the prior two years and reasonably expects joint income in excess of \$300,000 in the current year.

\_\_\_\_ (d) The undersigned is a director or officer of Company Name, Inc.

**ENTITIES Check All That Apply**

\_\_\_\_ (e) The undersigned, if other than an individual, is an entity all of whose equity owners meet one of the tests set forth in (a) through (d) above.

\_\_\_\_ (f) The undersigned is an entity, and is an “Accredited Investor” as defined in Rule 501(a) of Regulation D under the Act. This representation is based on the following (check one or more, as applicable):

\_\_\_\_ (i) The undersigned (or, in the case of a trust, the undersigned trustee) is a bank or savings and loan association as defined in Sections 3(a) (2) and 3(a)(5)(A), respectively, of the Act acting either in its individual or fiduciary capacity.

\_\_\_\_ (ii) The undersigned is an insurance company as defined in Section 2(13) of the Act.

\_\_\_\_ (iii) The undersigned is an investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a) (48) of that Act.

\_\_\_\_ (iv) The undersigned is a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

\_\_\_\_ (v) The undersigned is an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 and either (check one or more, as applicable):

\_\_\_\_ (a) the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser; or

\_\_\_\_\_ (b) the employee benefit plan has total assets in excess of \$5,000,000;  
or

\_\_\_\_\_ (c) the plan is a self-directed plan with investment decisions made solely by persons who are “Accredited Investors” as defined under the 1933 Act.

\_\_\_\_\_ (vi) The undersigned is a private business development company as defined in Section 202(a) (22) of the Investment Advisers Act of 1940.

\_\_\_\_\_ (vii) The undersigned has total assets in excess of \$5,000,000, was not formed for the specific purpose of purchasing the Shares and is one or more of the following (check one or more, as appropriate):

\_\_\_\_\_ (a) an organization described in Section 501(c) (3) of the Internal Revenue Code; or

\_\_\_\_\_ (b) a corporation; or

\_\_\_\_\_ (c) a Massachusetts or similar business trust; or

\_\_\_\_\_ (d) a partnership.

\_\_\_\_\_ (viii) The undersigned is a trust with total assets exceeding \$5,000,000, which was not formed for the specific purpose of purchasing the Securities and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the investment in the Securities. (IF ONLY THIS RESPONSE IS CHECKED, please contact the Company to receive and complete an information statement before this subscription can be considered by the Company.)

5. Entities. If the undersigned is an entity, the individual signing on behalf of such entity and the entity jointly and severally agree and certify that:

(a) the undersigned was not organized for the specific purpose of acquiring the Securities; and

(b) this Agreement has been duly authorized by all necessary action on the part of the undersigned, has been duly executed by an authorized officer or representative of the undersigned, and is a legal, valid, and binding obligation of the undersigned enforceable in accordance with its terms.

6. Relationship to Securities Brokerage Firms. (PLEASE ANSWER EACH OF THE FOLLOWING QUESTIONS BY CHECKING THE APPROPRIATE RESPONSE.)

(a) \_\_\_\_\_ YES \_\_\_\_\_ NO: Are you a director, officer, partner, branch manager, registered representative, employee, shareholder of, or similarly related to or employed by, a securities brokerage firm? (IF YES, please contact the Company to provide additional information before your subscription can be considered.)

(b) \_\_\_\_ YES \_\_\_\_ NO: Is your spouse, father, mother, father-in-law, mother-in-law, or any of your brothers, sisters, brothers-in-law, sisters-in-law or children, or any relative which you support, a director, officer, partner, branch manager, registered representative, employee, shareholder of, or similarly related to or engaged by, a securities brokerage firm? (IF YES, please contact the Company to provide additional information before your subscription can be considered.)

(c) \_\_\_\_ YES \_\_\_\_ NO: Does the Subscriber own voting securities of any securities brokerage firm? (IF YES, please contact the Company to provide additional information before your subscription can be considered.)

(d) \_\_\_\_ YES \_\_\_\_ NO: If the undersigned is an entity, is any director, officer, partner or 5% owner of the undersigned also a director, officer, partner, branch manager, registered representative, employee, shareholder of, or similarly related to or employed by, a securities brokerage firm? (IF YES, please contact the Company to provide additional information before the Subscriber's subscription can be considered.)

7. Miscellaneous.

(a) Manner in Which Title Is to Be Held: (check one)

- \_\_\_\_\_ Individual Ownership
- \_\_\_\_\_ Joint Tenant with Right of Survivorship
- \_\_\_\_\_ Partnership
- \_\_\_\_\_ Tenants in Common
- \_\_\_\_\_ Corporation
- \_\_\_\_\_ Other \_\_\_\_\_ (describe)

(b) The undersigned agrees that the undersigned understands the meaning and legal consequences of the agreements, representations and warranties contained herein, agrees that such agreements, representations and warranties shall survive and remain in full force and effect after the execution hereof and payment for the Shares, and further agrees to indemnify and hold harmless the Company, each current and future officer, director, employee, agent and shareholder from and against any and all loss, damage or liability due to, or arising out of, a breach of any agreement, representation or warranty of the undersigned contained herein.

(c) This Agreement shall be construed and interpreted in accordance with \_\_\_\_\_ law.

8. 180-Day Restriction on Transfer After A Public Offering. The undersigned Subscriber understands that the Company at a future date may file a registration or offering statement (the "Registration Statement") with the Securities and Exchange Commission to facilitate an initial public offering of its securities. The undersigned Subscriber agrees, for the benefit of the Company, that should such an initial public offering be made and should the managing underwriter of such offering require, the Subscriber, or any transferee of the Subscriber, will not, without the prior written consent of the Company and such underwriter, during the 180-day period commencing on the effective date of the Registration Statement (the "Lockup Period") (i) sell, transfer or otherwise dispose of, or agree to sell, transfer or otherwise dispose of any of the Shares beneficially held by the Subscriber during the Lockup Period, (ii) sell, transfer or otherwise dispose of, or agree to sell, transfer or otherwise dispose of any options,

rights or warrants to purchase any of the Shares beneficially held by the Subscriber during the Lockup Period, or (iii) sell or grant, or agree to sell or grant, options, rights or warrants with respect to any of the Shares. The foregoing lockup would not prohibit, during the Lockup Period, gifts to donees or transfers by will or the laws of descent to heirs or beneficiaries provided such donees, heirs and beneficiaries shall be bound by the restrictions set forth herein.

**INDIVIDUAL SUBSCRIBERS:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Signature (If more than one individual subscriber)

\_\_\_\_\_  
Name (Typed or Printed)

**ENTITY SUBSCRIBERS:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Typed or Printed) and Title

\_\_\_\_\_  
Name of Entity

**ALL SUBSCRIBERS:**

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Business Telephone Number

\_\_\_\_\_  
Fax Telephone Number

\_\_\_\_\_  
Tax I.D. # or Social Security Number

Company Name, Inc. hereby acknowledges receipt from \_\_\_\_\_ of such subscriber's check in the amount of \$ \_\_\_\_\_, and accepts this subscription for \$ \_\_\_\_\_ as of \_\_\_\_\_, \_\_\_\_\_.

Company Name, Inc.

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

Its: \_\_\_\_\_