FOUNDRY VENTURE CAPITAL 2016, L.P.
Summary of Terms

**Company:** ●

**Total Financing:** $● million **[(including approximately $● from the conversion of bridge notes)]. Note that if any notes convert at discount or a capped conversion valuation lower than the pre-money valuation listed below the notes shall convert into combination of: (i) Preferred Stock such that holders receive no more than a 1x non-participating liquidation preference equal to the outstanding principal amount of such notes, plus any agreed interest, and (ii) Common Stock representing the balance of the total shares required to be issued pursuant to the notes.**

**Stock Purchased:** Series ● Preferred (“**Preferred Stock**”)

**Investors and Amounts:** Foundry Venture Capital 2013, L.P. (“**Foundry**”) $●
**[Investor 2 $**●
Total (all investors together, the “**Investors**”) $●

**Unissued Employee Pool:** ●%

**Pre-Money Valuation:** $●

**Voting:** A vote of **[at least \_\_\_%] [a majority]** of the Preferred Stock (the “**Required Preferred**”) will be required for any action by the Preferred Stock.

**Founders:** ● and ●.

The existing vesting terms of the Founders restricted stock shall remain in effect.

**Board of Directors:** TheBoard of Directors (“**Board**”) shall be set at **[three]** directors as follows:

|  |  |  |
| --- | --- | --- |
| Director Seat | Investor Designee | Name |
| Preferred Director | Foundry  | ● |
|  |  |  |
| Common Director | Current CEO  | ● |
| **[Mutual Director** |  | **●]** |
|  |  |  |

**Legal Fee Cap:** $●

**Major Investor Threshold: $250,000**

**Estimated Closing Date:** ●

This Summary of Terms incorporates by reference all of the Foundry Standard Investment Terms attached here to (the “**Standard Investment Terms**”). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Standard Investment Terms. In the event of any conflict between the terms set forth in this Summary of Terms and the Standard Investment Terms (collectively, the “**Terms**”), this Summary of Terms shall control. Except for “No Shop Agreement”, “Confidentiality” and “Governing Law” which are explicitly agreed by the Investors and the Company to be binding upon execution of this Summary of Terms, the Terms are not a legally binding commitment by the Investors or the Company, and any obligation on the part of the Investors shall be subject to the following conditions precedent: completion and execution definitive satisfactory to the Investors, satisfactory completion of due diligence by the Investors, and delivery of all closing deliverables described in the definitive agreements.

**Foundry Venture Capital 2013, L.P.** ●

By: By:

Print Name/Title: Print Name/Title:

Date: Date:

**FOUNDRY STANDARD INVESTMENT TERMS**

The following terms and conditions are Foundry’s standard investment terms (the “**Standard Investment Terms**”). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Summary of Terms to which these Standard Investment Terms are incorporated by reference.

Capitalization: For purposes of the Terms, any reference to “fully-diluted” shall include the conversion of all outstanding Preferred Stock of the Company, the exercise of all authorized and currently outstanding stock options and warrants of the Company, and the Employee Pool (as defined below).

Purchase Price The per share price of the Preferred Stock (the “**Purchase Price**”) shall be calculated by dividing the Pre-Money Valuation set forth in the Summary of Terms by the fully-diluted capitalization (including the Employee Pool) as of immediately prior to the closing.

Board Composition: At the closing the size of the Board shall be set at the number of directors set forth in the Summary of Terms. The Preferred Director(s) set forth in the Summary of Terms shall be elected by the holders of Preferred Stock and shall be designated by the Investors set forth in the Summary of Terms (the “**Preferred Directors**”). The Common Director(s) set forth in the Summary of Terms shall be elected by the holders of Common Stock, one of which shall be the Company’s current chief executive officer (the “**Common Director**”). The Mutual Director(s) set forth in the Summary of Terms shall be elected by the holders of Common Stock and Preferred Stock voting together on an as-converted basis and shall be designated by the mutual consent of the other members of the Board (the “**Mutual Directors**”).

Dividends: Six percent (6%) non-cumulative dividend preference, when and as declared by the Board; pro rata participation in any Common Stock dividends.

Liquidation Preference: In the event of any liquidation or winding up of the Company, the holders of the Preferred Stock shall be entitled to receive in preference to the holders of the Common Stock a per share amount equal to the Purchase Price plus any declared but unpaid dividends (the “**Liquidation Preference**”).

After the payment of the Liquidation Preference to the holders of the Preferred Stock, the remaining assets shall be distributed ratably to the holders of the Common Stock.

A merger, acquisition, sale of voting control in which the stockholders of the Company do not own a majority of the outstanding shares of the surviving corporation, or sale of all or substantially all of the assets of the Company (each a “**Change in Control**”) shall be deemed to be a liquidation. Any acquisition agreement that provides for escrowed or other contingent consideration will provide that the allocation of such contingent amounts properly accounts for the liquidation preference of the Preferred Stock.

Preferred Stock Conversion: Convertible into shares of Common Stock at any time at the election of each holder. The initial conversion rate shall be 1:1, subject to adjustment as provided below.

Automatic Conversion: All of the Preferred Stock shall automatically convert into Common Stock upon the closing of a firmly underwritten public offering of shares of Common Stock of the Company for a total offering of not less than $50 million (before deduction of underwriters commissions and expenses) (a “**Qualified IPO**”). The Preferred Stock shall convert into Common Stock upon the election of the Required Preferred.

Antidilution Provisions: The conversion price of the Preferred Stock will be subject to a weighted-average adjustment to reduce dilution in the event that the Company issues additional equity securities, other than (i) shares or options to purchase shares issued to employees, consultants or directors as approved by the Board; (ii) shares issued for consideration other than cash pursuant to a merger, consolidation, acquisition, or similar business combination approved by the Board; (iii) shares issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board; and (iv) other issuances approved by the Required Preferred from time to time (collectively, “**Excluded Issuances**”). Approval by the Board for any Excluded Issuance must include approval by at least one of the Preferred Directors (the “**Required Board Approval**”). The conversion price will also be subject to proportional adjustment for stock splits, stock dividends, combinations, recapitalizations and the like. In addition, in the event that the fully-diluted capital of the Company immediately following the closing is not as set forth in the Company’s capitalization representations, the conversion price for the Preferred Stock will be automatically adjusted down based on the Pre-Money Valuation set forth in the Summary of Terms and the Company’s actual fully-diluted capital.

Voting Rights: The Preferred Stock will vote together with the Common Stock on as-converted basis, and not as a separate class except as specifically provided herein or as otherwise required by law. The Common Stock may be increased or decreased by the vote of holders of a majority of the Common Stock and Preferred Stock voting together on an as‑if‑converted basis, and without a separate class vote.

Protective Provisions: For so long as any shares of Preferred Stock remain outstanding, consent of the Required Preferred shall be required for any action, whether directly or through any merger, recapitalization or similar event, that (i) alters or changes the rights, preferences or privileges of the Preferred Stock, (ii) increases or decreases the authorized number of shares of Common Stock or Preferred Stock, (iii) creates (by reclassification or otherwise) any new class or series of shares having rights, preferences or privileges senior to or on a parity with the Preferred Stock, (iv) results in the redemption or repurchase of any shares of Common Stock (other than pursuant to equity incentive agreements with service providers giving the Company the right to repurchase shares upon the termination of services), (v) results in any Change in Control or other liquidation of the Company, (vi) amends or waives any provision of the Company’s Certificate of Incorporation or Bylaws, (vii) increases or decreases the authorized size of the Company’s Board, (viii) results in the payment or declaration of any dividend on any shares of Common Stock or Preferred Stock, (ix) issues debt of the Company or any subsidiary in excess of $100,000, (x) makes any voluntary petition for bankruptcy or assignment for the benefit of creditors, or (xi) enters into any exclusive license, lease, sale, distribution or other disposition of the Company’s products or intellectual property.

Major Investor Any Investor investing an amount equal to or greater than the Major Investor Threshold amount set forth in the Summary of Terms shall be deemed a “**Major Investor**”.

Information Rights: The Company shall, upon request, deliver customary audited annual, unaudited quarterly and monthly financial statements and budgets to each Major Investor Each Major Investor shall also be entitled to standard inspection and visitation rights.

Registration Rights: Registration Rights: Two demand registrations, starting the earlier of three years after the closing or 180 days after the Company’s initial public offering, so long as the anticipated aggregate offering price to the public is not less than $15,000,000, and unlimited piggy-back and S-3 registration rights with reasonable and customary terms, including cutback rights to no less than 30% (other than in a Qualified IPO), payment of selling stockholder counsel fees up to $35,000, and no limitations on transfers of registration rights to affiliates and other Major Investors.

Lock-Up Provision: Investors will be subject to a customary 180 day post-IPO lockup provided that all officers, directors, and other 1% stockholders are similarly bound; provided further that any discretionary waiver or termination of lock-up provisions shall also apply pro rata to the Major Investors.

Other Provisions: No stockholder of the Company shall be granted registration rights which would reduce the number of shares includable by the holders of the Registrable Securities in a registration without the consent of the holders of a majority of the Registrable Securities. The Company shall not require the opinion of Investor’s counsel before authorizing the transfer of stock or the removal of Rule 144 legends for routine sales under Rule 144 or for distribution to partners or members of Investors.

Right of First Refusal: Prior to a Qualified IPO, Major Investors shall have the right to purchase their pro rata portions (calculated on a fully diluted basis) of any future issuances of equity securities by the Company (with overallotment rights in the event a Major Investor does not purchase its full allocation), other than Excluded Issuances.

EMPLOYEE MATTERS

Employee Pool: Prior to the Closing, in addition to currently outstanding options, the Company shall reserve for future issuance pursuant to a mutually acceptable stock option plan (the “**Stock Option Plan**”) a number of shares of Common Stock equal tothe percentage of the post-closing fully-diluted capital stock set forth in the Summary of Terms (the “**Employee Pool**”).

Stock Vesting: All stock and stock equivalents issued after the Closing to employees, directors, consultants and other service providers will be issued pursuant to the Stock Option Plan and will be subject to the vesting provisions below unless otherwise approved by the Required Board Approval: 25% to vest on the one year anniversary of the applicable vesting commencement date with the remaining 75% to vest monthly over the next three years. The repurchase option shall provide that upon termination of the employment of the stockholder, with or without cause, the Company or its assignee (to the extent permissible under applicable securities law qualification) retains the option to repurchase at the lower of cost or the current fair market value any unvested shares held by such stockholder. Except as set forth in the Summary of Terms there shall be no accelerated vesting except with Required Board Approval.

 The outstanding Common Stock currently held by the Founders will be subject to the vesting terms set forth in the Summary of Terms. “**Double Trigger Acceleration**” shall mean full acceleration of all unvested shares in the event that (i) a Change in Control (as defined in the Stock Option Plan documents) occurs and (ii) as of, or within thirteen (13) months after, the effective time of such Change in Control the stockholder’s Continuous Service (as defined in the Stock Option Plan documents) with the Company terminates due to an involuntary termination (not including death or disability) without Cause (as defined in the Stock Option Plan documents) or due to a voluntary termination with Good Reason (as defined in the Stock Option Plan documents); *provided that,* as a condition precedent of any accelerated vesting, the stockholder must sign, date and return to the Company a general release of all known and unknown claims in the form satisfactory to the Company (or its successor, if applicable), and must permit the applicable revocation period (if any) to expire unexercised.

Restrictions on Sales: The Company’s Bylaws shall contain a right of first refusal on all transfers of Common Stock, subject to normal exceptions. If the Company elects not to exercise its right, the Company shall assign its right to the Major Investors. The Company’s Bylaws shall also contain a provision providing that no shares of capital stock other than those held by Major Investors may be transferred except as approved by the Board in its discretion, which shall include, without limitation, refusal to allow any transfer to the extent such transfer would increase the number of stockholders of the Company or require it to register, or register any class of equity securities, with the Securities and Exchange Commission. If the Company’s Bylaws cannot be amended to include such provisions, the Company shall take such other steps as are necessary to impose the rights of first refusal and transfer restrictions set forth above on all outstanding shares of the Company’s Common Stock.

Proprietary Information Each current and former officer, employee and consultant of the Company
and Inventions Agreement shall enter into an acceptable proprietary information and inventions
 agreement.

Co-Sale Agreement: The shares of the Company’s securities held by the Founders shall be made subject to a co‑sale agreement (with certain reasonable exceptions) with the Investors such that the Founders may not sell, transfer or exchange their stock unless each Investor has an opportunity to participate in the sale on a pro-rata basis.

Voting Agreement: The Investors, the Founders and each current and future holder of stock, warrants or options to purchase stock shall enter a Voting Agreement that provides the following:

(i) that such stockholders will vote for the election of the members of the Board as provided in the Summary of Terms;

(ii) that such stockholders will vote all of their shares in favor of a Change in Control or transaction in which 50% or more of the voting power of the Company is transferred, provided such Change in Control or other transaction is approved by (i) the Board, (ii) the Required Preferred, and (iii) the holders of a majority of the Common Stock held by stockholders then providing services to the Company as an employee or officer; and

(iii) when a Founder leaves the Company, such Founder will vote all of his or her Common Stock and Preferred Stock (or Common Stock acquired on conversion of Preferred Stock) in the same proportion as all other shares are voted in any vote.

The Company’s Stock Option Plan documents shall require all optionholders to execute a counterpart signature page to the Voting Agreement as a condition precedent to the exercise of any option.

Founders Activities: Each of the Founders and executive officers shall devote 100% of his or her professional time to the Company. Any other professional activities will require the prior approval of the Board.

OTHER MATTERS

Closing Deliverables: The Company shall provide at or prior to the closing: (i) a post-closing capitalization chart; (ii)  a customary management rights letter addressed to Foundry; (iii) a standard opinion of counsel for the Company; and (iv) a QSBS Questionnaire.

Post Closing Matters: Within 30 days of Closing, the Company shall (1) obtain D&O insurance in an amount and upon terms acceptable to Foundry and (2) implement eShares ([http://www.esharesinc.com](http://www.esharesinc.com/)) to manage its capitalization table and to issue share certificates, options, warrants and other securities.

Agreements: The sale of the Preferred Stock shall be made pursuant to a purchase agreement with customary representations and warranties. The purchase agreement, investor rights agreement, co-sale agreement and voting agreement may be amended with the consent of the Company and the Required Preferred, with the co-sale agreement and voting agreement requiring the consent of a majority of the Founders then providing services to the Company as an officer or employee for any change adversely effecting such Founders. Unless otherwise agreed, counsel to the Company will draft the financing documents based on the NVCA form documents.

Legal Fees and Expenses: The Company shall pay at the closing the reasonable fees (not to exceed the legal fee cap set forth on the Summary of Terms) and expenses of Foundry’s counsel in connection with this transaction.

Assignment: Each of the Investors shall be entitled to transfer all or part of its shares of Preferred Stock to one or more affiliated partnerships or funds managed by it or any of their respective directors, officers or partners, provided such transferee agrees in writing to be subject to the terms of the investor rights agreement, co-sale agreement and voting agreement as if it were an original investor thereunder.

Right to Conduct Activities: The Company and each Investor hereby acknowledge that Foundry is a group of professional investment funds, and as such invest in numerous portfolio companies, some of which may be competitive with the Company’s business. Neither Foundry nor any other Investor shall be liable to the Company or to any other Investor for any claim arising out of, or based upon, (i) the investment by Investor in any entity competitive to the Company, or (ii) actions taken by any partner, officer or other representative of such Investor to assist any such competitive company, whether or not such action was taken as a board member of such competitive company, or otherwise, and whether or not such action has a detrimental effect on the Company; provided, however that nothing herein shall relieve any Investor or any party from liability associated with misuse of the Company’s confidential information. The Company’s certificate of incorporation shall contain a limited waiver of the corporate opportunity doctrine with respect to matters or transactions presented to the Series A director other than solely in his capacity as a director of the Company.

No Shop Agreement: The Company agrees to work in good faith expeditiously towards a closing. The Company and the Founders agree that until the 60th day from the date on which the Summary of Terms was signed by both Foundry and the Company they will not, directly or indirectly, (i) take any action to solicit, initiate, encourage or assist the submission of any proposal, negotiation or offer from any person or entity other than the Investors relating to the sale or issuance, of any of the capital stock of the Company or the acquisition, sale, lease, license or other disposition of the Company or any material part of the stock or assets of the Company, or (ii) enter into any discussions, negotiations or execute any agreement related to any of the foregoing, and shall notify the Investors promptly of any inquiries by any third parties in regards to the foregoing. Should both parties agree that definitive documents shall not be executed pursuant to the Terms, then the Company shall have no further obligations under this section.

Confidentiality: The Terms and any related discussions and correspondence are to be held in strict confidence by the Company and may not to be disclosed by the Company to any party (other than counsel to, and the accountants of, the parties to the extent reasonably necessary for such persons to render advice in connection with the proposed transaction and other than to existing stockholders of the Company) without the prior written approval of Foundry.

Governing Law: The Terms shall be governed in all respects by the laws of the State of Delaware.