**Form:** M&A Term Sheet (Selling Company Favorable)

**Description:** This is a very detailed long form term sheet setting out proposed terms for the sale of a company. The orientation of the form is pro-selling company. This is much more detailed than typical letters of intent and term sheets, so that all key points would be negotiated before the selling company is locked up in an exclusivity period.

**CONFIDENTIAL**

## Preliminary Term Sheet

This Preliminary Term Sheet (this "**Term Sheet**") is an expression of interest only, and is not meant to be binding on the parties now or in the future. Accordingly, the parties understand and agree that unless and until a definitive agreement (the "**Merger Agreement**") has been executed by [ Name of Company] (the "**Company**") and [Name of the Buyer] (the "**Buyer**") and delivered, no contract or agreement providing for a transaction between the parties shall be deemed to exist between the parties, and neither party will be under any legal obligation of any kind whatsoever with respect to a transaction, including any obligation to negotiate, by virtue of this Term Sheet or any written or oral expression thereof, except the parties confidentiality obligations set forth in the Confidentiality Agreement, dated as of _____, ____ (the "**NDA**") and except that the following sections of this Term Sheet shall be deemed binding and enforceable: "Confidentiality", "Governing Law" and "Exclusivity". For purposes of the Term Sheet, the term "Merger Agreement" does not include an executed letter of intent or any other preliminary written agreement or offer, unless specifically so designated in writing and executed by both parties. The terms included herein will constitute all material terms in connection with a potential transaction.

**Transaction Structure:** The Buyer proposes to acquire the Company pursuant to the terms and conditions outlined in this Term Sheet. The acquisition will be effected as a merger (the "**Transaction**").

**Consideration:** The aggregate consideration to be paid by the Buyer (including vested options, warrants and other stock in the Company) will be U.S. $_____ (the "**Total Consideration**"). All dollar amounts reflected herein are U.S. dollars. The Buyer will pay at the closing the Company's approximately U.S. $_____ of debt reflected in its financial statements, without offset to the Total Consideration. The Total Consideration shall be increased by the amount the Company's net working capital is greater than $0 at the Closing and decreased by the amount the Company's net working capital is less than $0 at the Closing. "Net working capital" will mean current assets less current liabilities, as calculated consistent with the Company's financial statements; provided, however, that deferred revenues shall not be counted as a liability for determining the adjustment contemplated by the preceding sentence.

**Escrow:** There shall be an escrow fund of $ _____, which shall serve as the exclusive remedy for any breach of representations, warranties, covenants, or otherwise of the Company. The escrow fund will last for 12 months.

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| **Expected Timeline:** | Due diligence completion by Buyer: [ Date ]<br><br>Draft of Merger Agreement provided by Company: [ Date ]<br><br>Comments on draft Merger Agreement by Buyer: [Date]<br><br>Merger Agreement Signing: [Date]<br><br>Targeted Closing Date: [Date] |
| **Confidentiality:** | The terms and conditions described herein, including the existence of this Term Sheet, shall be confidential information and shall not be made public or otherwise be disclosed to any third party, except as permitted by the NDA. |
| **Governing Law:** | This Term Sheet and the Merger Agreement will be governed by and construed in accordance with the laws of the State of Delaware, and any and all disputes arising between the parties shall be resolved solely and exclusively through confidential binding arbitration in San Francisco, California through the commercial arbitration rules of JAMS in existence at the time of the commencement of the arbitration, heard before one arbitrator. Each party shall bear its own attorneys' fees and expert witness fees, and one-half of the arbitrator costs in connection with such arbitration. |
| **Merger Agreement:** | The parties expect to enter into a definitive and binding Merger Agreement for the Transaction, together with ancillary agreements customary for transactions of similar nature. The first draft of the Merger Agreement will be prepared by Company. No stockholder of the Company will be a party to the Merger Agreement. The outline of the principal terms of the Merger Agreement, which is acceptable to the parties, is attached. |
| **Exclusivity:** | Immediately upon the execution of this Term Sheet by both parties, the Company shall, and shall cause its directors, officers, employees, affiliates, advisors (including, without limitation, financial advisors), attorneys, accountants, consultants, stockholders, partners, agents and other representatives, to refrain from having, and cease any discussions and negotiations with |

any third party concerning any alternate acquisition proposal, whether by way of purchase of shares, all or substantially all assets, merger or otherwise, for a period of 21 days (the "Exclusivity Period"). To the extent that Company does not believe that Buyer is making reasonable expedited progress on its due diligence or on the negotiations on the form of a definitive agreement, Company may terminate such Exclusivity Period prior to its expiration.

THE UNDERSIGNED, by their signatures below, acknowledge the matters set forth in this Term Sheet.

| [Buyer] | [Company] |
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| By: _____ | By:_____ |
| Name: | Name: |
| Title: | Title: |

Date: _____

## Outline of the Principal Terms of the Merger Agreement

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| Key Definitions: | "**Closing Merger Consideration**" shall mean U.S. $ _____<br><br>"**Escrow Amount**" shall mean U.S. $_____<br><br>"**Escrow Fund**" shall mean the Escrow Amount held by the escrow agent in accordance with the Merger Agreement.<br><br>"**Escrow Termination Date**" shall mean the date that is twelve (12) months following the closing date.<br><br>"**Knowledge**" means with respect to the Company, with respect to any matter in question, the actual knowledge of the senior executive officers of the Company, _____, _____ and _____.<br><br>"**Material Adverse Effect**" means a material and adverse effect on the business, results of operations or financial condition of the Company and its subsidiaries taken as a whole, excluding customary exclusions.<br><br>**"Material Contracts"** shall mean contracts of the Company involving yearly payments to or from the Company in excess of $100,000.<br><br>"**Outstanding Shares**" shall mean the aggregate number of shares of Company capital stock (on an as converted to Company Common Stock basis), Company options and Company warrants outstanding as of immediately prior to the effective time.[1]<br><br>"**Per Share Closing Consideration**" shall mean (x) the Closing Merger Consideration, *plus* the aggregate exercise prices of the Company options, *plus* the aggregate exercise prices of the Company warrants,[2] *less* the Bonus Pool (which shall be paid in accordance with its terms), *divided* by (y) the Outstanding Shares, subject to any preference rights of the Company's preferred stockholders. |
| The Merger: | Pursuant to the terms and conditions of the Merger Agreement, the merger subsidiary (the "**Merger Sub**") of Buyer will merge with and into the Company (the "**Merger**") and the Company shall continue as the surviving corporation. |
| Company Options: | The Buyer will assume any Company unvested options following the effective time, and convert such options to be exercisable into Buyer's stock. All Company vested options that are not exercised prior to the effective time will be cancelled and paid the merger consideration as |

[1] Outstanding Shares only will include Company options and warrants with exercise prices per share less than the Per Share Closing Consideration.

[2] Per Share Closing Consideration only will include the exercise prices of Company options and warrants with exercise prices per share less than the Per Share Closing Consideration.

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| | follows:<br><br>At the effective time, each vested Company option that is cancelled as a result of not having been exercised prior to the effective time with a per share exercise price that is less than the Per Share Closing Consideration shall be converted into and represent the right to receive an amount of cash (without interest) equal to the product obtained by multiplying (x) the number of shares of Company Common Stock issuable upon the exercise of such Company option by (y) the excess of the Per Share Closing Consideration over the exercise price per share attributable to such Company option. |
| Representations and Warranties of the Company: | The Company shall make customary representations and warranties to Buyer and Merger Sub, as qualified by the disclosure schedule of the Company. Such representations and warranties will be further qualified by Knowledge and materiality where appropriate. The following is a representative set of representations and warranties:<br><br>• Organization; Standing and Power; Charter Documents; Subsidiaries<br>• Capital Structure<br>• Authority; Non-Contravention; Necessary Consents<br>• Financial Statements<br>• Undisclosed Liabilities<br>• Absence of Certain Changes or Events<br>• Taxes<br>• Intellectual Property (including a representation, to the knowledge of the Company, concerning infringement of third party patents)<br>• Compliance; Permits<br>• Litigation<br>• Brokers' and Finders' Fees; Fees and Expenses<br>• Employee Benefit Plans<br>• Real Property<br>• Assets<br>• Environmental Matters<br>• Material Contracts<br>• Insurance |
| Representations and Warranties of the Buyer and Merger Sub: | The Buyer and Merger Sub shall make the following customary representations and warranties to the Company.<br><br>• Organization; Standing and Power; Charter Documents; Subsidiaries<br>• Merger Sub<br>• Authority; Non-Contravention; Necessary Consents<br>• Compliance<br>• Litigation |

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| | • Availability of Funds – Buyer currently has access to sufficient immediately available funds in cash or cash equivalents, and will at the closing have sufficient immediately available funds, in cash, to pay the Closing Merger Consideration and any other amounts to be paid by Buyer or Merger Sub under the Merger Agreement. |
| Conduct by the Company Prior to Closing: | During the period from the date of the Merger Agreement and continuing until the earlier of the termination of the Merger Agreement or the effective time of the Merger, the Company shall, except as otherwise expressly contemplated by the Merger Agreement or to the extent that Buyer shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned), (i) carry on its business in the usual, regular and ordinary course, in substantially the same manner as heretofore conducted and in compliance in all material respects with all applicable laws and regulations, (ii) pay its debts and taxes when due and pay or perform other material obligations when due, and (iii) use commercially reasonable efforts to preserve intact its present business organization.<br><br>The Merger Agreement will set forth various customary actions that may not be undertaken by the Company without the prior written consent of the Buyer (which consent shall not be unreasonably withheld, delayed or conditioned). |
| Confidentiality; Access to Information; | The Company will afford Buyer and Buyer's accountants, counsel and other representatives reasonable access during normal business hours to its properties, books, records and personnel during the period prior to the effective time to obtain all information concerning the Company business, subject to customary exceptions. |
| Public Disclosure: | Without limiting any other provision of the Merger Agreement, Buyer and the Company will consult with each other before issuing, and provide each other the opportunity to review, comment upon and concur with, and agree on any press release or public statement with respect to the Merger Agreement and the transactions contemplated hereby |
| Regulatory Filings; Reasonable Best Efforts: | Each of Buyer, Merger Sub and the Company shall coordinate and cooperate with one another and shall each use its reasonable best efforts to comply with, and shall each refrain from taking any action that would impede compliance with, all legal requirements, and, as promptly as practicable after the date of the Merger Agreement, each of Buyer, Merger Sub and the Company shall make all filings, notices, petitions, statements, registrations, submissions of information, applications or submissions of other documents required by any governmental entity in connection with the Merger and the transactions contemplated hereby. |
| Employee Benefits: | Following the effective time, Buyer shall arrange for each employee of the Company as of the effective time who participates in the Company benefit plans (including all dependents of such employee) who becomes an employee of Buyer, any Buyer subsidiary or the surviving corporation (or |

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| | a dependent of such employee) following the effective time ("**Continuing Employee**") to be eligible for substantially similar benefits as other similarly situated employees of Buyer.<br><br>Buyer expects to enter into employment agreements with key members of the Company's management team as of the effective time. Drafts of such agreements shall be delivered by Buyer within five (5) days of receipt of the initial draft of the Merger Agreement. The Merger Agreement will also contain mutually agreeable provisions regarding the compensation and benefits of Continuing Employees. |
| Indemnification of officers, directors, stockholders and employees of the Company: | For the period of six (6) years following the effective time, Buyer shall, and shall cause the surviving corporation to, indemnify and hold harmless each person who is now, or has been at any time prior to the date of the Merger Agreement or who becomes prior to the effective time, an officer, director, stockholder or employee of the Company or any of its subsidiaries (the "**Company Indemnified Parties**") against all losses, claims, damages, costs, expenses, liabilities or judgments or amounts that are paid in settlement (the "**Company Indemnified Liabilities**") of or in connection with any claim, action, suit, proceeding or investigation by reason of the fact that such person is or was a director, officer, stockholder or employee of the Company or any of its subsidiaries, whether pertaining to any matter existing or occurring at or prior to the effective time and whether asserted or claimed prior to, or at or after the effective time and all Company Indemnified Liabilities based on, or relating to the Merger Agreement or the transactions contemplated thereby (to the extent that such losses, claims, damages, costs, expenses, liabilities or judgments or amounts arose from or are related to the Merger Agreement or the transactions contemplated thereby).<br><br>For a period of six (6) years following the effective time, Buyer shall, and shall cause the surviving corporation to, fulfill and honor in all respects the obligations of the Company pursuant to any indemnification agreements between the Company and the Company Indemnified Parties. For a period of six (6) years following the effective time, the certificate of incorporation and bylaws of the surviving corporation will contain provisions with respect to exculpation and indemnification that are at least as favorable to the Company Indemnified Parties as those contained in the certificate of incorporation and bylaws of the Company as in effect on the date of the Merger Agreement.<br><br>The surviving corporation shall maintain, and Buyer shall cause the surviving corporation to maintain, at no expense to the Company Indemnified Parties, in effect for six (6) years after the effective time insurance "tail" or other insurance policies with respect to directors' and officers' liability insurance with respect to acts or omissions existing or occurring at or prior to the effective time in an amount and scope at least as favorable as the coverage applicable to directors and officers as of the effective time under the Company's directors' and officers' liability insurance policy. |

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| Non-Competition: | The Transaction shall not include any restrictions on competition by the Company's directors or its stockholders. |
| Conditions to the Closing: | The Merger Agreement will contain only the following conditions to the Closing:<br><br><u>Mutual Conditions</u><br><br>(a) Receipt of approval of the stockholders of the Company;<br><br>(b) Absence of any pending litigation or legal proceeding seeking to restrain or enjoin the Transaction;<br><br>(c) Expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act; and<br><br>(d) Receipt of any other required governmental or regulatory approvals.<br><br><u>Conditions in Favor of the Buyer</u><br><br>(a) Absence of an inaccuracy of any representation or warranty in the Merger Agreement by the Company that constitutes a Material Adverse Effect; and<br><br>(b) Absence of a material breach of any material covenant in the Merger Agreement by the Company.<br><br><u>Conditions in Favor of the Company</u><br><br>(a) Absence of an inaccuracy of any representation or warranty in the Merger Agreement by the Buyer that constitutes a Material Adverse Effect; and<br><br>(b) Absence of a material breach of any material covenant in the Merger Agreement by the Buyer. |
| Survival of Representations and Warranties: | All representations and warranties of the Company contained in the Merger Agreement shall survive the consummation of the Merger and continue until the Escrow Termination Date, after which time such representations and warranties shall terminate. |
| Recovery from Escrow Fund: | The Escrow Fund shall be available to compensate each of the indemnified parties for any losses actually suffered or incurred by each such indemnified party resulting from (i) any breach of any representation or warranty of the Company contained in the Merger Agreement or any certificate delivered by the Company pursuant to the Merger Agreement and (ii) any failure by the Company to perform or comply with any covenant of the Company contained in the Merger Agreement prior to the |

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| | closing date.<br><br>Notwithstanding anything to the contrary contained in the Merger Agreement, the Escrow Fund shall not be available to compensate any of the indemnified parties for any losses, and no indemnified party shall be entitled to recover from the Escrow Fund, unless and until the indemnified parties have incurred losses in excess of U.S. $1 million in the aggregate (the "**Deductible Amount**"), and with respect to any given claim for Losses, such claim is individually in excess of U.S. $250,000 (the "**Threshold Amount**"), after which the Escrow Fund, subject to the terms of the Merger Agreement, shall be available to compensate each of the indemnified parties for any losses, and, subject to the terms of the Merger Agreement, the indemnified parties shall be entitled to seek recovery for such losses that are in excess of the Deductible Amount in the aggregate and the Threshold Amount individually.<br><br>There shall be no recovery for any claim for loss relating to or arising from the value or condition of any tax asset (e.g., net operating loss carry forward) of the Company or its subsidiaries or the ability of Buyer, the surviving corporation or their affiliates to utilize such tax asset following the effective time. Any losses recoverable from the Escrow Fund shall be reduced by any tax benefits and insurance proceeds realized by any indemnified party. No losses shall be recoverable from the Escrow Fund hereunder that constitute punitive, consequential, incidental, indirect or special damages or lost profits or could have been avoided through reasonable efforts to mitigate such losses which were not taken by Buyer, the surviving corporation and/or the indemnified parties and the amount of any loss subject to recovery under the Merger Agreement shall be calculated net of any amounts specifically accrued or reserved for in the Company balance sheet. In no event shall an indemnified party be entitled to recover for any losses that are not paid to a third party. |
| Exclusive Remedy: | Recovery from the Escrow Fund shall be the sole and exclusive remedy of the indemnified parties for any losses incurred by any indemnified party (other than for actual fraud by the Company), including with respect to losses for breaches of representations, warranties, covenants, or otherwise. Except as set forth in the preceding sentence, no Company securityholder shall be liable to Buyer, the surviving corporation or any indemnified party for any damages or other remedies arising out of, in connection with or related to the Merger Agreement or the transactions contemplated hereby or any representation, warranty, covenant or agreement contained therein. |
| Securityholders' Representative: | Each of the Company securityholders shall be deemed to have agreed to appoint a securityholders' representative designated by the Company as its agent and attorney-in-fact for and on behalf of the stockholders. |

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| Termination Events: | Prior to the Closing, the Transaction will be terminable upon the occurrence of the following events:<br><br>(a) Upon the mutual agreement of the parties;<br><br>(b) By either party if the Transaction is not completed on or before _____, 2013;<br><br>(c) By either party if there shall be in effect a final non-appealable court order restraining or enjoining the Transaction; or<br><br>(d) By a party upon a breach of the Merger Agreement by the other party which gives rise to a failure of a condition to Closing in favor of the non-breaching party, but if the breaching party is given at least 20 business days' notice and an opportunity to cure the breach. |
| Other Remedies; Specific Performance: | Except as otherwise provided in the Merger Agreement, any and all remedies in the Merger Agreement expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred thereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties agree that irreparable damage would occur in the event that any of the provisions of the Merger Agreement were not performed in accordance with their specific terms or were otherwise breached. Each party is entitled to seek an immediate injunction or injunctions to prevent the failure of any party to perform its agreements and covenants under the Merger Agreement and to enforce specifically the terms and provisions of the Merger Agreement in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which such party may be entitled at law or in equity. |
| Consent to Jurisdiction & Arbitration: | Any and all disputes arising between the parties shall be resolved solely and exclusively through confidential binding arbitration in San Francisco, California through the commercial arbitration rules of JAMS in existence at the time of the commencement of the arbitration, heard before one arbitrator. Each party shall bear its own attorneys' fees and expert witness fees, and one-half of the arbitrator costs in connection with such arbitration. The Merger Agreement shall be governed by and construed in accordance with the laws of the State of Delaware regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof. |