

Model Terms and Conditions for “Angel” Financing

LEGAL DISCLAIMER

This document is offered merely as a model for certain private placement stock purchase agreements. Its applicability may be limited by state law and the circumstances associated with a particular transaction. It is offered with the understanding that neither the author nor the publisher is engaged in rendering legal, accounting, or other professional service. For legal advice or other expert assistance, the services of a competent professional should be sought.

ASSUMPTIONS

These are the assumptions under which the following Stock Purchase Agreement may be used for “angel” financing. If the facts differ from the assumptions, then the Stock Purchase Agreement may have to be modified, or the facts changed to fit the assumptions.

- The Company can issue only Common Stock.
- The Company, at the time of the “Angel” financing, is not a public company.
- The Common Stock has only one vote per share, there is no cumulative voting, and the charter and by-laws of the company have no provisions affecting voting rights.
- The Common Stock has no pre-emptive rights (meaning that every time additional stock is issued, the holder of the common stock does not have the right to purchase more stock to maintain its percentage interest in the company). (Note: Certain state laws provide for such pre-emptive rights unless nullified in the company’s charter documents.)
- The Common Stock sold under this Agreement is newly issued stock, bought from the company (not the entrepreneur) for cash, certified check, or wire transfer.
- If the Company has any debt, it cannot be converted into stock and lender cannot exercise any control unless the Company defaults.
- The Company is a “C” Corporation under the Internal Revenue Code, meaning that the Company itself pays income taxes.
- The Investor (which would include a group of investors who are investing together and are willing to exercise rights through one representative) is accredited as is each member of any group of investors.
- The Investor is willing to provide active guidance to the entrepreneur, and the entrepreneur is willing to listen to the investor.
- All of the existing stockholders of the company, the company itself, and each of the investors will sign this agreement.

The date of this document is _____, 20____. These assumptions and the Stock Purchase Agreement that follows should be reviewed (and, if necessary, revised) no later than five years from this date so that it sufficiently reflects market conditions for this type of investment.

STOCK PURCHASE AGREEMENT

Among

_____ (Company),

_____ (Investor) and

_____ (Stockholders)

_____ (Date)

I. OWNERSHIP

(Who is investing how much for what percent of the company)

Purchase, Sale, Payment.

The Investor(s) identified on Exhibit A to this Agreement (referred to as “Investor” in this Agreement) is hereby buying _____ shares of common stock which equals _____ percent of the outstanding shares of the company (including the shares being bought by Investor) at a price of _____ per share for a total investment of _____ [insert price per share times number of shares being bought]. This agreement will be signed, the Investor will receive the shares and full payment (by cash, certified check, or wire transfer) will be made simultaneously. If there are any options outstanding, the parties will have determined whether or how they affect the calculation of investor’s percentage.

II. CONTROL, GOVERNANCE, AND ADMINISTRATION

(Who has a say in which decisions.)

This section contains various rights of the Investor if the Investor has and maintains a certain level of investment in the company. If the Investor has this level of investment, and wants to exercise some or all of the rights listed below, the Investor may do so by placing a check mark or “x” in the space beside the right, although for the first right relating to the number of directors, all parties must also agree on the numbers of directors and insert those numbers in the blanks. Placing the check mark or “x” (and filling in blanks where necessary) will automatically adopt the paragraphs that are referenced. Parties may (but do not have to) cross out the paragraphs describing rights which are not being exercised. All parties to this agreement agree to take all steps necessary to implement the provisions selected below.

If an Investor invests so that

- (a) the amount of cash the Investor has paid for the shares bought equals 50% or more of total book value of the Company, or
- (b) the Investor owns at least 30% or more of the voting stock of the Company, and
- (c) as long as the Investor has this position,

then the Investor, if it places a check mark or an “x” in the space beside the right (and any blanks in the right are filled in), shall have:

1. _____. The right to appoint and/or nominate _____ director(s) of the total number of _____ directors of the Company. The parties agree to vote for each other’s nominees for director and will provide irrevocable proxies as necessary;
2. _____. The right to approve any change to the salary of the highest paid three individuals in the Company, at least one of which will have approval on any salary taken by the Investor;
3. _____. The right to buy any securities sold by the company (except for stock options issued to employees totaling not more than ten percent (10%) of the outstanding stock of the Company) to maintain the investor’s percentage interest in the Company;
4. Any or all of the following rights, irrespective of whether the Investor takes a board seat, if checked or marked with an “x”:
 - (a) _____. to countersign all checks or other means of payment in excess of ten percent (10%) of the amount invested by Investor (Note: this may require redoing the company’s bank resolutions);
 - (b) _____. to appoint the Chief Financial Officer;
 - (c) to approve:
 - (i) _____. sale of the Company or substantially all of its assets;
 - (ii) _____. amendment of certificate of incorporation and by-laws;
 - (iii) _____. the annual business plan and budget of the Company;
 - (iv) _____. establishing or acquiring any subsidiary or ownership interest in any entity;
 - (v) _____. contracts or other commitments in excess of the amount invested by the Investor;
 - (vi) _____. changing the legal form of the Company (such as from a “C” Corporation to a Limited Liability Company, for example, the principal office or the name of the Company);
 - (vii) _____. dissolving the Company;
 - (viii) _____. mortgaging assets of the Company and/or subjecting the assets of the Company to liens;
 - (ix) _____. selling Company assets other than in the ordinary course of business;
 - (x) _____. borrowing money for any one transaction (or series of related transactions) in amounts in excess of the amount invested by Investor unless provided for in a business plan approved by the Investor;
 - (xi) _____. guaranteeing the obligations of others;
 - (xii) _____. selecting auditors for the Company;
 - (xiii) _____. granting licenses of the Company’s core technology;

- (xiv) _____. approving, modifying, or terminating a contract between the Company and an officer, stockholder, or affiliate of the Company;
- (xv) _____. employing an individual who is a relation of an officer, stockholder, or affiliate of the Company;
- (xvi) _____. changing the size of the board of directors of the company;
- (xvii) _____. declaring dividends;
- (xviii) _____. creation of any committee of the board of directors.

5. All of the rights in this section II terminate upon a subsequent public offering or the company's stock pursuant to section 5 of the Securities Act of 1933 or Regulation A or Rule 504 of Regulation D, pr any other law, rule, or regulation replacing or similar in form and nature to them.

III. NEXT STAGE

(What happens to the investor when the company needs more money, goes public, or the original stockholders or the investor want to sell their shares).

1. Rights to Buy a Selling Stockholder's Shares. If a stockholder (including the Investor) wishes to sell any or all of his or her shares, the company has the first right (a "right of first refusal") to buy them. If the company does not want to buy them, another stockholder or stockholders, (including the Investor), can buy them. If neither the Company nor the other stockholders (including the Investor) wants to buy them, the shares can be sold to a third party (who must agree to be bound by this Agreement as part of the purchase and may not vary any of the elections made under paragraph 4 above). The procedures to be followed are described in Exhibit B attached to this Agreement. The transfer will be subject to compliance with any applicable (at that time) federal or state laws or regulations.

2. "Tag Along" Rights (Rights to Sell Shares When Other Stockholders Sell Shares). If the other stockholders do not exercise their rights of first refusal and the selling stockholder (or group of stockholders acting together, which can include Investor) wishes to sell more than ten percent (10%) of its shares to another party (the "Purchaser") who is not a stockholder, then if that selling stockholder controls fifty percent (50 %) or more of the outstanding common stock, the other stockholders (including the Investor) may (but do not have to) require the Purchaser to buy the same percentage of their shares as the percentage sold by the selling stockholder (or stockholders as a group). The procedures to be followed are described in Exhibit C attached to this Agreement.

3. These rights to buy and "Tag Along" rights described in paragraphs 1 and 2 above terminate upon a public offering of the company's stock.

4. Rights When the Company Goes Public. When the Company goes public, that is when the Company registers its securities in a public offering, except where it is registering only securities for employee plans like a stock option plan, the Investor can "piggyback" the registration of its shares onto that registration, meaning that the Investor can have its own shares registered so they can be traded in the open market. The expense of this "piggyback" registration largely will be paid for by the Company. This "piggyback" registration right is subject to the right of the Company and its underwriters in any public offering to reduce the number of shares proposed to be registered in view of market conditions (to avoid adversely affecting the Company's offering) and any state laws or regulations which may prevent sale of these

shares. Investor will retain its “piggyback” registration rights to the extent needed to sell its stock in the future. The procedures to be followed are described in Exhibit D attached to this Agreement.

IV. MISCELLANEOUS

1. Representations and Warranties. The Company and the Investor are making certain representations and warranties related to the condition of the company, the shares, authorization of the transaction, the sophistication of the investor, access to information and, if applicable, the authorization of the transaction, and the stock being purchased. These representations and warranties are found in Exhibit E attached to this Agreement. By signing this Agreement, the parties make these representations and warranties to each other.

2. Legal Opinions. Counsel to the Company and, in certain circumstances, the Investor will provide to the other as a requirement for completion of this transaction the opinions found in Exhibit F attached to this Agreement.

3. Legends to Be Placed on Stock Certificates. The certificate(s) representing the shares being purchased by the Investor shall have written on them (“legends”) notification of the transfer and restrictions described by this Agreement as set forth in Exhibit G attached to this Agreement.

4. Confidentiality. All information provided by the Company to the Investor or the Investor to the Company in connection with this Agreement and about the Company and its operations shall be kept confidential unless otherwise agreed to in writing.

5. Other Provisions. These are additional terms to which the parties are agreeing. Although they are listed under the heading “Other Provisions,” they are still important. Some of the more important ones are listed below; the others are in Exhibit H to this Agreement.

(A) All parties to this agreement agree to take all steps necessary to implement the provisions of this agreement.

(B) The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. (This means, for example, if someone sells his or her stock to someone who is not a stockholder or Investor, that person will be bound by this Agreement and have the rights, restrictions, and obligations as if they were a stockholder or Investor.)

(C) This Agreement may be executed in two or more counterparts (identical copies), each of which shall be an original, but all of which together shall constitute one and the same instrument (Agreement).

(D) A written document signed by the parties is necessary to amend this Agreement or to waive the observance of any term of this Agreement (either generally or in a particular instance and either retroactively or prospectively).

(E) The Exhibits to this Agreement shall be considered part of and incorporated in this Agreement. (This means that, while certain terms have been placed in Exhibits for convenience, they are still as binding as if they were contained in the Agreement itself. Please read them carefully with that in mind; they are part of what you are agreeing to.)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

_____ [insert name of company]

By: _____ [insert name of authorized officer]

Name:

Title:

INVESTOR(S)

STOCKHOLDER(S)

_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT “A”

Investor(s)

Name(s) and Social Security #	Number of Shares Purchased	Taxpayer ID No(s) Addresses
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EXHIBIT “B”

Procedures to be used when a stockholder is selling its shares (right of first refusal).

Prior to making any sale or transfer of Company shares pursuant to Section III. 1, whoever wishes to sell shares (the Selling Stockholder(s)), shall give the Company the opportunity to purchase those shares in the following manner.

- (a) the Selling Stockholder(s) shall give notice (the “Transfer Notice”) to the Company and to each of the other stockholders (including the Investor) in writing of such intention specifying the amount of shares proposed to be sold or transferred, the proposed price per share (the “Transfer Consideration”), and the other material terms upon which such disposition is proposed to be made.
- (b) The Company shall have the right, exercisable by written notice given by the Company to the seller within thirty calendar days after receipt of the Transfer Notice, to purchase all or part of the shares specified in such Transfer Notice on the terms set forth in the Transfer Notice; provided, however, if the Transfer Consideration is other than cash, the Company may pay such amount in cash equal to the fair market value of such Transfer Consideration.
- (c) If the Company does not exercise its right of first refusal at all or determines not to purchase all the shares within thirty calendar days after receipt of the Transfer Notice, the other stockholders (including the Investor) shall have the right to purchase the shares the Company is not buying, exercisable by written notice given by such stockholders to the seller within forty-five days after

the Company's receipt of the Transfer Notice. If more than one other stockholder gives written notice of intention to exercise this right of first refusal, the electing stockholders shall be entitled to purchase the seller's shares in amounts agreed among themselves or, if they cannot agree, in proportion to their percentages of ownership of the total number of shares held by stockholders who are purchasing.

- (d) If the Company or other stockholder(s) exercises this right of first refusal, the actual purchase of the securities will take place within ninety days after the Company, or such stockholder(s), gives notice of such exercise (or such longer period set forth in the Transfer Notice), which period of time shall be extended, as necessary, in order to comply with applicable securities and other applicable laws and regulations. Upon exercise of this right of first refusal, the Company or other stockholder(s) and the seller shall be legally obligated to consummate the purchase contemplated and shall use their best efforts to secure any required approvals.
- (e) If neither the Company nor other stockholder(s) exercises a right of first refusal hereunder (or all shares being sold are not purchased) within the time specified for such exercise, the seller shall be free, during the period of one hundred twenty (120) calendar days following the expiration of such time for exercise, to sell the securities not purchased at a price not less than the Transfer Consideration and on terms not more favorable to the seller. The purchaser must agree to be bound by the terms of this Agreement as part of the purchase.

EXHIBIT "C"

"Tag Along" Rights

- (a) Any stockholder (or group of stockholders acting together, which can include Investor) (the "Selling Stockholder(s)") who wishes to sell the shares it owns or controls must first give the other stockholders the opportunity to buy them following the procedures set out in Exhibit B. If the other stockholders do not wish to buy those shares, they can be sold to another party (the "Purchaser"), who must agree to the terms of this Agreement, unless the Selling Stockholder(s) controls fifty percent (50%) or more of the outstanding common stock of the Company. If that is the case, then the Selling Stockholder(s) may sell up to ten percent (10%) of the Company's stock it owns during any 365-day period without the Purchaser agreeing to the terms of this Agreement.
- (b) If Selling Stockholder(s) wishes to sell more than (10%) of the Company's stock it owns during any 365-day period then it must as a condition of the sale require that the Purchaser buy the same percentage of the shares of the Company's stock held by other stockholders as the percentage of the stock being sold by the Selling Stockholder(s).
- (c) The Purchaser will send written notice of its intention to purchase the Company's stock from the Selling Stockholder(s) to the other stockholders stating the number of shares it intends to purchase, the percentage of the total Company shares owned by the Selling Stockholder(s) that it is purchasing, the price, and other terms of the purchase and reminding the other stockholders that they may also sell up to the same percentage of their shares to the Purchaser in accordance with these procedures. The other stockholders will each have fifteen (15) calendar days from the receipt of this notice (the "Fifteen-Day Period") to inform the Purchaser in writing whether or not

it will sell shares to Purchaser and, if so, how many. Failure to respond will mean that the stockholder does not want to sell any shares.

- (d) If a stockholder wants to sell shares, then the Purchaser, if it so desires, will either purchase more shares than originally anticipated, or, if it does not wish to do so, will decrease the number of shares purchased from the Selling Stockholder(s) to accommodate purchases from the other stockholders. However, in no event will the Purchaser ever purchase in this transaction a greater percentage of the Company shares owned or controlled by each of the other stockholders than the percentage of the Company shares owned or controlled by the Selling Stockholder(s).
- (e) The closing of this purchase will take place no later than thirty (30) calendar days from the end of the Fifteen-Day Period.

EXHIBIT “D”

“Piggyback” Rights

- (a) If the Company intends to file a registration statement (other than pursuant to a Form S-4, S-8, or Form S-1 solely covering an employee benefit plan) in connection with the proposed sale of any of its securities either for its own account or the account of any other security holder, the Company will give written notice of its intent to the Investor. The Investor may, by delivery of written notice to the Company to be delivered no later than twenty (20) days after its receipt of the Company’s notice, require that the Company include all or any part of Investor’s Common Stock in such registration statement. The Company will use diligent efforts in good faith to cause such registration statement to become effective.
- (b) If the proposed registration of securities by the Company is for a public offering involving an underwriting, the Investor’s rights under this Section shall be conditioned upon the Investor (together with the Company and other securities holders participating in the offering) entering into an underwriting agreement in customary form with the underwriter(s) and undertaking customary related obligations.
- (c) Notwithstanding any other provision of this Section, if the managing underwriter of an offering advises the Company and Investor that in its good faith judgment, the total number of shares to be registered under this Section, together with all other shares to be included in the offering, exceeds the maximum number of shares which can be sold at a price acceptable to the Company, then the number of shares of the Investor and other persons having registration rights to be included in the offering shall be reduced to that number of shares which in the good faith judgment of the managing underwriter can be sold in such offering (except for the shares to be issued by the Company, which shall have a priority). All securities of the Investor which are excluded from the underwriting for any reason shall be withheld from the market by the Investor for a period determined by the managing underwriter to be necessary to effect the offering, not to exceed 120 days.

EXHIBIT “E”

Representations and Warranties [Note: Please fill in blanks.]

1. Representations and Warranties of the Company and the Stockholder(s):

- (a) The Company is a valid corporation under the laws of the State of _____, is in good standing, and is authorized to carry on its business and enter into this agreement.
- (b) The shares owned by the Stockholder(s) who are signing this agreement constitute one hundred percent (100%) of the issued and outstanding shares of the Company, and there are no agreements in existence other than this one that would result in more shares being issued.
- (c) The Company, its officers, directors, and shareholders have taken all action necessary to authorize this agreement and the sale of shares by the Company to the Investor. No one else's consent to this agreement or sale of shares is required.

2. Representations and Warranties of the Investor:

- (a) If the Investor is a corporation: (i) the Investor is a valid corporation under the laws of the State of _____ and is authorized to enter into this agreement, and (ii) the Investor, its officers, directors, and shareholders have taken all action necessary to authorize this agreement and the purchase of shares from the Company, and no other consent to this agreement or purchase is required.
- (b) Investor has received all the information regarding the Company, its present and prospective business, assets, liabilities, and financial condition, that it considers necessary or appropriate for deciding whether or not to buy shares from the Company and has had ample opportunity to ask questions and receive answers from the Company and its officers and to obtain any documents requested in order to supplement or verify any of the information supplied.
- (c) Investor has experience in investing in companies in the developmental stage, such as the Company, and acknowledges that it is able to fend for itself and to assess the economic risk of this purchase, recognizes that this investment involves a high degree of risk and may result in a loss of the entire investment, and has such knowledge and experience in financial and business matters that it can be assumed to be capable of evaluating the merits and risks of this investment and/or protecting its interests in such an investment. Investor is an "accredited investor" as that term is defined in the regulations under Rule 501 of Regulation D of the Securities Exchange Act of 1934, as amended and in the relevant state securities statute and, in the event of inconsistent definitions, whichever definition provides a greater level of sophistication and economic well being.
- (d) Investor understands that the shares of stock it is purchasing are and will be characterized as "restricted securities" under the Securities Act of 1933, as amended, because they are being acquired from the Company in a transaction not involving a public offering and that under that Act the stock may be resold without registration only in certain very limited circumstances. Investor understands that subsequent sales of the stock may be subject to federal and/or state restrictions.

EXHIBIT "F"

Legal Opinions

Opinions of Counsel to the Company

- (a) The obligation of Investor to purchase shares from the Company is subject, unless waived by placing a check mark or an "x" in this space _____, to the receipt by the Investor of an opinion of counsel for the Company to the following effect:

- (i) The Company is validly existing and in good standing under the laws of the State of _____ [insert state of incorporation] and has the requisite corporate power and authority to conduct its business.
- (ii) The Company has the requisite corporate power and authority to execute, deliver, and perform this Agreement. This agreement has been duly and validly authorized by the Company and duly executed and delivered by an authorized officer of the Company.
- (iii) The certificate(s) representing the shares being purchased by the Investor is in due and proper form and has been duly and validly executed by the Company and, upon payment therefor and issuance in accordance with this Agreement, will be duly authorized, validly issued, fully paid, and non-assessable.

Opinion of Counsel to the Investor

- (b) If the Investor is a corporation, the obligation of the Company to sell shares to the Investor is subject, unless waived by placing a check mark or an “x” in this space _____, to the receipt by the Company of an opinion of counsel for Investor to the following effect:
 - (i) The Investor is validly existing and in good standing under the laws of the State of _____ [insert state of incorporation] and has the requisite corporate power and authority to conduct its business.
 - (ii) The Investor has the requisite corporate power and authority to execute, deliver, and perform this Agreement. This agreement has been duly and validly authorized by the Investor and duly executed and delivered by an authorized officer of the Investor.

EXHIBIT “G”

Legends

The certificate representing the shares being purchased by the Investor shall (i) until such time as the same is no longer required under applicable requirements of the Securities Act of 1933, as amended, and the rules and regulations thereunder, contain a legend substantially in the form of subsection (a) below and (ii) until such time as such shares are no longer subject to the restrictions on transfer contained in Sections IV of this Agreement, contain a legend substantially in the form of subsection (b) below (in addition to any legend required under applicable state securities laws):

- (a) “The securities represented hereby have not been registered under the Securities Act of 1933, as amended (the “Act”), or under the securities laws of any states. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Act and the applicable state securities laws, pursuant to registration or exemption therefrom. The holder of the securities represented hereby should be aware that it may be required to bear the financial risks of this investment for an indefinite period of time. The issuer of these securities may require an opinion of counsel in form and substance satisfactory to the issuer to the effect that any proposed transfer or resale is in compliance with the Act and any applicable state securities laws.”
- (b) “The Securities represented by this certificate are subject to restrictions on transfer and a right of first refusal, as set forth in an agreement dated _____, among _____ [Company], _____ [Investor(s)] and _____ [Stockholder(s)]. A copy of such agreement may be obtained at no cost by written request made by the holder of record of this certificate to the secretary of _____ [Company] at its principal executive offices.”

EXHIBIT “H”

Other Provisions [Note: Please fill in blanks.]

- (a) Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.
- (b) This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of _____, [insert state in which the principal office of the company is located] excluding that body of law applicable to conflicts of law.
- (c) Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the party to be notified, upon two business days after delivery to a recognized overnight courier service, or upon five business days after deposit in the United States mail, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address indicated for such party on the signature page hereof, or at such other address as such party may designate by ten days’ advance written notice to the other parties.
- (d) If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.
- (e) This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes all prior negotiations and undertakings.

The largest and most established electronic angel network on the Internet is Access to Capital Electronic Network (ACE-Net). ACE-Net is the simple, secure and low-cost way for investors and small companies to find each other. Developed in late 1996, ACE-Net was an effort by the SBA's Office of Advocacy to create a national marketplace for small company offerings. ACE-Net, since spun out of the SBA, is found at <http://acenet.csusb.edu/>.

ACE-Net operates under the guidance of a no-action letter issued by the staff of the U.S. Securities and Exchange Commission. ACE-Net has also consulted with the North American Securities Administrators Association (NASAA) the national organization of state securities regulators whose mission is investor protection.

Approximately 63 regional Network Operator sites that are nonprofit, university-based or state-based entrepreneurial development centers manage day-to-day operations of ACE-Net in 46 states and Puerto Rico. The Network Operators are established leaders in economic development in their regions, and are experienced in all aspects of angel financing. Along with ACE-Net services, some Network Operators also manage local organized angel networks and mentoring and training programs for both entrepreneurs and investors. The information on Model Terms and Conditions for Angel Financing is provided as a guide and is not to be used as a template or legal document. Contact any of the ACE-Net Operator sites for additional information and guidance.