

START-UP COMPANY FINANCE

Professor John Orcutt

Fall Semester 2005

FINAL EXAMINATION**Instructions:**

1. This is an open-book examination. You may bring any materials you wish to the examination with the exception of computers, telephones or other electronic devices. Calculators, however, are permitted.
2. This is a 3-hour examination and is worth 130 points.
3. This examination consists of four "groups" of short-answer questions.
▶ Question 1 = 38 points ▶ Question 3 = 16 points
▶ Question 2 = 38 points ▶ Question 4 = 38 points

It is your responsibility to apportion your time appropriately amongst the four questions. If you base your time on the number of possible points per question, the time apportionment should be:

- | | |
|-----------------------------|-----------------------------|
| ▶ Question 1 = 52.5 minutes | ▶ Question 3 = 22.5 minutes |
| ▶ Question 2 = 52.5 minutes | ▶ Question 4 = 52.5 minutes |
4. The grading of examinations is anonymous. So, you must write your examination number on the examination and each blue book that you use. **YOU MAY NOT WRITE YOUR NAME ON ANYTHING – YOU MAY ONLY USE YOUR EXAM NUMBER.**
 5. Please write your answers in blue books. Remember to write your examination number on each blue book that you use. The only answers that will be graded are the answers written into a blue book. While you are free to use scratch paper, answers written on scratch paper, or anything else other than a blue book, will not be read and will not be counted for any credit. Please write only on the front side of the pages in the blue book. Please remember that organization, persuasiveness, neatness and legibility all count in determining your grade on an answer. To improve the organization of an answer, you may wish to quickly outline the answer on a separate sheet of paper prior to writing your full answer in the blue book.
 6. Should you find it necessary in answering a question to assume a fact not given in the problem as stated, you may do so. However, you should clearly indicate that you are making an assumption and you should explain why you consider it a reasonable assumption to make.
 7. I have tried my best to write and proofread the exam so that there are no distracting typos or other errors – but, I may not have been totally successful. If you believe there is a typo or other error that makes it difficult to answer a particular question, please point out the error in your blue book and any assumption you used to answer the question.

Good luck on the examination!

DO NOT TURN TO PAGE 2 UNTIL THE PROCTOR TELLS YOU TO BEGIN

QUESTION NO. 1 (38 points possible):

December 8, 2005 (assume you are answering this question on December 8, 2005):

You are an associate at Milkem and Bilkem, where you have been specializing in capital raising transactions for start-up companies for quite some time. One of your firm's start-up clients is Burst Technologies, Inc. ("Burst"), which develops software for high-speed Internet access via cell phones. Burst would like to conduct a substantial equity capital raise. It is imperative that the financing be exempt from the registration requirements of §5 of the Securities Act of 1933.

Burst has completed three prior capital raises. Summaries of those three financings are set forth immediately below:

Amount Raised	Type of Security Sold	Purchasers	Exemption Relied On	Date Deal Started	Date Deal Closed
\$250,000	Common Stock	The 3 founders	§4(2)	Dec. 1, 2002	Dec. 1, 2002
\$2,000,000	Series A Convertible Preferred	Angel Investors (all accredited)	Rule 506	Jan. 1, 2004	May 1, 2004
\$9,000,000	Series B Convertible Preferred	All VCs	Rule 506	May 1, 2005	July 30, 2005

Regarding the currently proposed offering, you have been provided with the following additional information:

- Burst is looking to raise \$35 million of Series C Convertible Preferred Stock. Burst expects the offering to focus on venture capitalists, Burst's senior management and a relatively large number of friends and family of Burst's CEO. As well, Burst would like to make a portion of the Series C offering available to its 153 employees. The employees would be expected to purchase roughly \$1.5 million of the Series C stock.
- It is expected that the Series C offering will be structured under Rule 506.
- Burst would like to start the offering immediately.

Please answer the following questions regarding Burst.

- (a) Why do you suppose that Burst's Series A offering was conducted as a Rule 506 transaction rather than a §4(2) transaction or a Rule 505 transaction?
- (b) Will it be possible to conduct the proposed Series C offering entirely under Rule 506? Please analyze and advise Burst. Please also discuss any issues for which Burst should be made aware when planning the Series C transaction.
- (c) Please discuss any potential integration issues that may arise under the proposed Series C offering. What, if anything, should be done to address these potential integration issues?

QUESTION NO. 2 (38 points possible):

Please assume that you are an attorney working for Milkem and Bilkem, who serves as outside legal counsel to TechnoCad, Inc. ("TechnoCad").

TechnoCad is in the process of conducting an offering of Series A Preferred Stock. After discussions with several different VC groups, it looks as though a group led by Greed Izgood Investors will be the purchasers of \$5 million of Series A Preferred Stock from TechnoCad. Legal counsel for the Greed Izgood group is Billem Moore & Moore. You have been provided with a copy of the current draft of the Stock Purchase Agreement (a copy of which is attached as Exhibit A), which (a) was prepared by Milkem and Bilkem and (b) includes hand-marked comments from Billem Moore & Moore.

Please note the Exhibit A copy of the Stock Purchase Agreement is the same copy that I provided to you for our class assignments on Stock Purchase Agreements.

- (a) It is now time to negotiate the Stock Purchase Agreement. TechnoCad has asked you to answer the following specific question regarding a comment to the Stock Purchase Agreement made by Billem Moore & Moore (counsel for the Greed Izgood group). The Stock Purchase Agreement contains (on page 5) a representation/warranty entitled "Environmental Laws".¹ Billem Moore & Moore has proposed removing the following language from the Environmental Laws representation/warranty: "To the best of the Company's knowledge." In considering Billem Moore & Moore's request to strike the knowledge qualifier from the Environmental Laws representation/warranty, you have gathered the following information:
- You have spoken to Jane Doerr, President and CEO of TechnoCad. She does not want to eliminate the knowledge qualifier because while she truly does not think that TechnoCad has any environmental problems, it would be impossible for her to be 100% certain about the information requested in the Environmental Laws representation/warranty. Jane feels as though she would be lying if the knowledge qualifier were removed.
 - You have spoken to Billem Moore & Moore and you sincerely believe that the Greed Izgood group will not enter into the Stock Purchase Agreement unless the knowledge qualifier for the Environmental Laws representation is eliminated.

Please advise your client on the consequences of eliminating the knowledge qualifier for the Environmental Laws representation/warranty and whether it might be a reasonable thing for TechnoCad to do.

- (b) What is the significance of the representations and warranties of the investors contained in Section 3 of the Stock Purchase Agreement? Why are they included in the Stock Purchase Agreement?

¹ The Environmental Laws representation/warranty was originally labeled as Section 2(u), but in the Billem Moore & Moore mark-up, Billem Moore & Moore has labeled it Section 2(y).

QUESTION NO. 3 (16 points possible):

Cool Gaming Software, Inc. ("CSGI") is in the process of conducting an offering of Series C Preferred Stock. CSGI has begun talks with a number of potential lead investors. Talks have advanced the furthest with Greed Izgood Investors ("Greed Izgood"), a leading VC fund that was the lead investor in CSGI's Series B round of financing. Greed Izgood has delivered a term sheet for the Series C round. You have been provided a copy of the Series C term sheet that was furnished by Greed Izgood (attached as Exhibit B).

Please note the Exhibit B Term Sheet is the same copy that I provided to you for our class assignments on Term Sheets.

Please answer the following questions:

- (a) In the CSGI Term Sheet, Greed Izgood has requested that it receive three board seats as part of the deal. We have discussed in class certain problems that impact investing. Namely, we have discussed the impact of information problems and agency problems on investing. How do the board seats help Greed Izgood to cope with these problems?
- (b) In general, are there any legal concerns that a VC fund should be aware of prior to taking board seats in a start-up company in which the VC fund is investing (or has invested)?

QUESTION NO. 4 (38 points possible):

December 8, 2005 (assume you are answering this question on December 8, 2005):

You are an associate at Milkem and Bilkem, a leading law firm, where you have been specializing in representing start-up companies and investors in start-up companies. One of your more important clients is Verbyl Belch

Ms Belch has come to you for advice on the following matter. Ms Belch has made an investment in a start-up company called Genomix, Inc. ("Genomix"), which develops new genomic procedures for diagnosing and treating various forms of cancer. Specifically, Ms Belch purchased 5,000,000 shares of Series C convertible preferred stock of Genomix in a Rule 506 transaction on December 21, 2003. Ms Belch would now like to sell 100% of her Genomix common stock as soon as possible.

Please answer the following questions:

- (a) For purposes of Question 4(a) only, please assume the following additional facts:

- Ms Belch purchased the 5,000,000 shares of Series C stock in cash.
- On January 12, 2005, Genomix conducted an IPO and is now quoted on the Nasdaq National Market. The IPO was a firm commitment, underwritten public offering registered under the Securities Act of 1933. Genomix's pre-money valuation for the IPO was \$200 million and Genomix raised \$50 million in the IPO.
- In connection with the IPO, all of Genomix's outstanding convertible preferred stock (including the Series C convertible preferred stock held by Ms Belch) was automatically converted into Genomix common stock pursuant to Article IV.2 of Genomix's Amended and Restated Certificate of Incorporation. The relevant provision is set forth immediately below:

"Article IV: Conversion of Preferred Stock into Common Stock . . .

2. Automatic Conversion into Common Stock . . .

2.3 Series C Preferred Stock: Each share of Series C Preferred Stock shall automatically be converted into one share of Common Stock upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, other than pursuant to an employee benefit plan, with a pre-money equity value of at least \$100 million and aggregate proceeds to the Corporation and/or any selling shareholders of at least \$20 million (after deduction of underwriters' discounts and other expenses borne by the Corporation and any selling shareholders)."

- Genomix is a reporting company under the Securities Exchange Act of 1934 and is in compliance with all of its reporting requirements.

- From December 21, 2003 until October 15, 2005, Ms Belch served as a director on Genomix's board of directors.

- Genomix has 300 million shares of common stock outstanding and the average trading volume of Genomix common stock for the four calendar weeks ending last Friday is 2,000,000 shares per week.

QUESTION 4(a): Please advise Ms Belch on her ability to sell the shares. Can she sell all of her shares immediately? If not, please explain why and please provide an analysis of the possibilities available to Ms Belch for when and how she can sell her shares of Genomix common stock. Please explain your advice (including a thorough explanation of the purpose of Rule 144) and cite authority where appropriate.

(b) For purposes of Question 4(b) only, please assume the following additional facts:

- Genomix has not yet conducted an IPO and remains a private company (i.e., it is not a reporting company under the Securities Exchange Act of 1934).

- Ms Belch is not an affiliate of Genomix.

- In order to pay for the 5,000,000 shares of Series C, Ms Belch issued a promissory note to Genomix for the entire purchase price of the shares. The promissory note was completely unsecured. On May 21, 2005, Ms Belch repaid the entire promissory note.

- Acme Ventures is a VC-fund that specializes in the bio-medical sector. Acme has been fascinated with Genomix for some time and acquired Ms Belch's 5,000,000 shares of Series C convertible preferred stock on November 28, 2005.

QUESTION 4(b): Please analyze whether Ms Belch's sale to Acme may have been permissible under federal securities law. Please explain your advice and cite authority where appropriate. In the event that Ms Belch's sale to Acme was permissible, please also analyze when Acme's one-year holding period would be satisfied for purposes of Rule 144.

* * * * *

END OF EXAM

I wish you all a happy and well-deserved break!

EXHIBIT A

Bilkem Moore & Moore

Comments

10/18/05

Milkem and Bilkem

1st DRAFT

Dated 10/14/05

Series A Preferred Stock Purchase Agreement

THIS SERIES A PREFERRED STOCK PURCHASE AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2005, by and between TechnoCAD, Inc., a Delaware corporation (the "Company"), and each of the persons listed on Schedule A hereto (each of which is herein referred to as an "Investor").

Section 1. Purchase and Sale of Stock

(a) **Sale and Issuance of Series A Preferred Stock.** On the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Company agrees to sell and issue to each Investor at the Closing (as defined below) and each Investor agrees to purchase at the Closing that number of shares of the Company's Series A Preferred Stock set forth opposite each Investor's name on Schedule A at a purchase price of \$2.00 per share. The Series A Preferred Stock will have the rights, preferences, privileges and restrictions set forth in the Amended and Restated Certificate of Incorporation, the form of which is attached hereto as Exhibit A (the "Restated Certificate").

severally and not jointly,

(b) **The Closing Date.** The purchase, sale and delivery of the shares of Series A Preferred Stock shall take place at the offices of Milkem & Bilkem, 2 White Street, Concord, NH 03301 on December 1, 2005, or at such other time and place as the Company and Investors acquiring in the aggregate more than half the shares of Series A Preferred Stock being sold pursuant hereto shall mutually agree, either orally or in writing (such time, place and date of payment and delivery being herein called the "Closing").

(c) **Payment for, and Delivery of, the Shares.** At the Closing, the Company shall deliver to each Investor a certificate representing the shares of Series A Preferred Stock that such Investor is purchasing against payment of the purchase price therefore by check or by wire transfer, in each case payable to the order of the Company.

January 1

(d) **Subsequent Sale of Series A Preferred Stock.** If less than all of the authorized shares of Series A Preferred Stock are sold at the Closing, then, subject to the terms and conditions of this Agreement, the Company may sell, on or before ~~May 15~~, 2006, up to the balance of the authorized but unissued shares of Series A Preferred Stock to such persons as the Board of Directors of the Company may determine at the same price per share as the Series A Preferred Stock purchased and sold at the Closing. Any such sale shall be made upon the same terms and conditions as those contained herein, and such persons or entities shall become parties to this Agreement, that certain Investors' Rights Agreement, dated as of 11, 2005, by and among the Company and the Investors, the form of which is attached hereto as Exhibit B (the "Investors' Rights Agreement"), and that certain Co-Sale Agreement, dated as of 11, 2005, by and among the Company, the Investors and the founders of the Company named herein, the form of which is attached hereto as Exhibit C (the "Co-Sale Agreement"), and shall have the same rights and obligations of an Investor hereunder and the founder.

the Closing

the Closing

to be

Section 2. Representations and Warranties of the Company.

The Company hereby represents, warrants and covenants to each Investor, as of the date of this Agreement, as follows:

(a) *Incorporation and Good Standing of the Company.* The Company has been duly organized and is validly existing as a corporation or limited liability company, as the case may be, in good standing under the laws of the State of Delaware with full corporate power and authority to own its properties and conduct its business as described in the Business Plan (as defined below) ~ Insert 2A

and is a valid and binding agreement of,

(b) *Series A Stock Purchase Agreement.* This Agreement has been duly authorized, executed and delivered by the Company ~ Insert 2B

(c) *Other Agreements.* Each of the Investors' Rights Agreement and the Co-Sale Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as rights to indemnification thereunder may be limited by applicable law and except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(d) *Valid Issuance of Preferred and Common Stock.* The Series A Preferred Stock that is being purchased by the Investors hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under this Agreement and the Investors' Rights Agreement and under applicable state and federal securities laws. The Common Stock issuable upon conversion of the Series A Preferred Stock has been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Restated Certificate, will be duly and validly issued, fully paid and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under this Agreement and the Investors' Rights Agreement and under applicable state and federal securities laws.

(e) *Disclosure.* The Company has provided each Investor with all the information reasonably available to it without undue expense that such Investor has requested for deciding whether to purchase the Series A Preferred Stock. ~ Insert 2C

(f) *Business Plan.* The Business Plan dated October 1, 2005 previously delivered to each Investor, a copy of which is attached hereto as Exhibit D (the "Business Plan") was prepared in good faith by the Company. ~ Insert 2D

(g) *Company's Accounting System.* The Company maintains a system of accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

~ Insert 2E

Insert 2A

, and is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction which requires such qualification

Insert 2B

, enforceable in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles

Insert 2C

and all information that the Company believes is reasonably necessary to enable such Investor to make such decision. Neither this Agreement nor any other agreements, written statements or certificates made or delivered in connection herewith contains any untrue statements or certificates made or delivered in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading

Insert 2D

and does not contain any untrue statement of a material fact nor does it omit to state a material fact necessary to make the statements therein not misleading, except that with respect to assumptions, projections and expressions of opinion or predictions contained in the Business Plan, the Company represents only that such assumptions, expressions of opinion and predictions were made in good faith and the Company believes there is a reasonable basis therefore

Insert 2E

(g) *Preparation of the Financial Statements.* The Company has delivered to each Investor its audited financial statements (**[list the financial statements delivered, typically it would be:]** balance sheet at ____, 200_ and income statement, statement of cash flows and statement of stockholders' equity for the year ended ____, 200_) and its unaudited financial statements (**[list the financial statements delivered, typically it would be:]** balance sheet at ____, 200_ and income statement for the ___ period ended ____, 200_) (collectively, the "Financial Statements"). The Financial Statements present fairly the financial position of the Company as of and at the dates indicated and the results of its operations and cash flows for the periods specified, subject in the case of the unaudited Financial Statements to normal year-end audit adjustments. The Financial Statements have been prepared in conformity with U.S. generally accepted accounting principles ("U.S. GAAP") applied on a consistent basis throughout the periods involved, except that unaudited Financial Statements may not contain all footnotes required by U.S. GAAP as may be expressly stated in the related notes

thereto. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation.

Insert 3A

(j) (i) *Subsidiaries of the Company.* The Company does not own or control, directly or indirectly, any corporation, association or other entity. The Company is not a participant in any joint venture, partnership or similar arrangement.

(k) (i) *Material Contracts.* Except as set forth in the Schedule of Exceptions attached hereto, there are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party to or, to its knowledge, by which it is bound which may involve (i) obligations (contingent or otherwise) of, or payments to, the Company in excess of \$100,000 (other than obligations of, or payments to, the Company arising from purchase or sale agreements entered into in the ordinary course of business), (ii) the transfer or license of any patent, copyright, trade secret or other proprietary right to or from the Company (other than licenses arising from the purchase of "off the shelf" or other standard products), (iii) provisions restricting the development, manufacture or distribution of the Company's products or services or (iv) indemnification by the Company with respect to infringements of proprietary rights (other than indemnification obligations arising from purchase or sale or license agreements entered into in the ordinary course of business).

(l) (i) *Related-Party Transactions.* Except as set forth in the Schedule of Exceptions, there are no business relationships or related-party transactions involving the Company and any employee, officer, stockholder or director. Insert 3B

(m) (k) *Capitalization.* The authorized, issued and outstanding capital stock of the Company is as set forth in Schedule B hereto. The Series A Preferred Stock and the Common Stock conform in all material respects to the description thereof contained in the Restated Certificate. None of the outstanding shares of Common Stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those accurately described in Schedule B. The description of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in Schedule B accurately and fairly presents the rights, preferences, privileges and restrictions of such plans, arrangements, options and rights.

(n) (i) *No Consents, Approvals or Authorizations Required.* No consent, approval, authorization, filing with or order of any court or governmental agency or regulatory body is required in connection with the transactions contemplated herein, except (i) the filing of the Restated Certificate with the Secretary of State of the State of Delaware, (ii) such filings as have been made prior to the Closing, except any notices of sale required to be filed with the Securities and Exchange Commission under Regulation D of the Securities Act of 1933, as amended (the "Securities Act"), or such post-closing filings as may be required under applicable state securities laws, which will be timely filed in the applicable periods therefore.

(o) (m) *u.c. Non-Contravention of Existing Instruments Agreements.* ~~to the best of the Company's knowledge~~ neither the issue and sale of the Series A Preferred Stock nor the consummation of any other of the transactions herein contemplated nor the fulfillment of the terms hereof will conflict with, result in a breach or violation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to, (i) the charter or by-laws of the Company, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company is a party or bound or to which its property is subject or

Insert 3A

(i) *No Material Adverse Change.* Subsequent to the ____, 200__ [**insert the most recent date of the Financial Statements**]: (i) there has been no material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business, operations or prospects, whether or not arising from transactions in the ordinary course of business, of the Company (any such change or effect, where the context so requires, is called a "Material Adverse Change"); (ii) the Company has not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business; and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or repurchase or redemption by the Company of any class of capital stock.

Insert 3B

or any member of their immediate families. None of such persons has any direct or indirect ownership interest in any firm, corporation or other business entity with which the Company has a business relationship or competes, except that employees, officers, stockholders or directors or members of their immediate families may own stock in publicly traded companies (representing less than 1% of such company) that have a business relationship or compete with the Company

(iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or any of its subsidiaries of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any of its subsidiaries or any of its or their properties.

(P) ~~(ii) No Defaults or Violations. To the best of the Company's knowledge,~~ The Company is not in violation or default of (i) any provision of its charter or by-laws, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which it is a party or bound or to which its property is subject or (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any of its properties, as applicable, except any such violation or default which would not, singly or in the aggregate, result in a Material Adverse Change.

(6) (2) *No Actions, Suits or Proceedings.* No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or its property is pending or, to the best knowledge of the Company, threatened that (i) could reasonably be expected to have a Material Adverse Change on the performance of this Agreement or the consummation of any of the transactions contemplated hereby or (ii) could reasonably be expected to result in a Material Adverse Change.

(P) (p) *All Necessary Permits, Etc.* The Company possesses such valid and current certificates, authorizations or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct its business, and the Company has not received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could result in a Material Adverse Change.

(+) (9) *Tax Law Compliance.* The Company has filed all necessary federal, state and franchise tax returns or have properly requested extensions thereof and has paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them except as may be being contested in good faith and by appropriate proceedings. These returns and reports are true and correct in all material respects. The Company is not aware of any tax deficiency that has been or might be asserted or threatened against the Company that could result in a Material Adverse Change.

(4) (1) *Intellectual Property Rights.* ~~To the best of its knowledge (but without having conducted any special investigation or patent search),~~ The Company owns or possesses adequate rights to use all patents, patent rights or licenses, inventions, collaborative research agreements, trade secrets, know-how, trademarks, service marks, trade names and copyrights which are necessary to conduct its businesses as described in the Business Plan; the expiration of any patents, patent rights, trade secrets, trademarks, service marks, trade names or copyrights would not result in a Material Adverse Change; the Company has not received any notice of, and has no knowledge of, any infringement of or conflict with asserted rights of the Company by others with respect to any patent, patent rights, inventions, trade secrets, know-how, trademarks, service marks, trade names or copyrights; and the Company has not received any notice of, and has no knowledge of, any infringement of or conflict with asserted rights of others with respect to any patent, patent rights, inventions, trade secrets, know-how, trademarks, service marks, trade names or copyrights which, singly or in the aggregate, if the

Insert 4A

(s) *Title to Properties.* The Company has good and marketable title to all the properties and assets reflected as owned in the Financial Statements, in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, claims and other defects, except such as do not materially and adversely affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company. The real property, improvements, equipment and personal property held under lease by the Company are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company.

subject of an unfavorable decision, ruling or finding, might have a Material Adverse Change. There is no claim being made against the Company regarding patents, patent rights or licenses, inventions, collaborative research, trade secrets, know-how, trademarks, service marks, trade names or copyrights. The Company does not in the conduct of its business as now or proposed to be conducted as described in the Business Plan infringe or conflict with any right or patent of any third party, or any discovery, invention, product or process which is the subject of a patent application filed by any third party, known to the Company or any of its subsidiaries, which such infringement or conflict is reasonably likely to result in a Material Adverse Change.

(w) *Insert IA*

(g) *Insurance*. The Company is insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for its business including, but not limited to, policies covering real and personal property owned or leased by the Company against theft, damage, destruction, acts of vandalism and earthquakes, general liability and Directors and Officers liability. The Company has no reason to believe that it will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Change. The Company has not been denied any insurance coverage which it has sought or for which it has applied.

(x) (h) *Labor Matters*. To the best of Company's knowledge, no labor disturbance by the employees of the Company exists or is imminent. *Insert SB*

(y) (i) *Environmental Laws*. ~~To the best of Company's knowledge,~~ The Company (i) is in compliance with all rules, laws and regulations relating to the use, treatment, storage and disposal of toxic substances and protection of health or the environment ("Environmental Laws") which are applicable to its business, except where the failure to comply would not result in a Material Adverse Change, (ii) has received no notice from any governmental authority or third party of an asserted claim under Environmental Laws, and (iii) is not currently aware that it will be required to make future material capital expenditures to comply with Environmental Laws. No property which is owned, leased or occupied by the Company has been designated as a Superfund site pursuant to the Comprehensive Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.), or otherwise designated as a contaminated site under applicable state or local law.

Insert SC

Section 3. Representations and Warranties of the Investors.

Each Investor hereby represents, warrants and covenants to the Company, as of the date of this Agreement, as follows:

as to such Investor severally and not jointly

(a) *Authorization*. Such Investor has full power and authority to enter into this Agreement. This Agreement, when executed and delivered by such Investor, will constitute a valid and legally binding obligation of such Investor.

(b) *Investment Purpose*. This Agreement is made with each Investor in reliance upon such Investor's representation to the Company, which by such Investor's execution of this Agreement such Investor hereby confirms, that the Series A Preferred Stock to be purchased by such Investor and the Common Stock issuable upon conversion thereof (collectively, the "Securities") will be acquired for investment for such Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such

Insert 5A

(v) *Proprietary Information and Inventions Agreement.* Each current and former employee, officer and director of the Company and each current and former consultant to the Company has executed a Proprietary Information and Inventions Agreement substantially in the form or forms which have been delivered to counsel for the Investors. No current or former employee, officer, director or consultant has excluded works or inventions made prior to his or her employment or consulting relationship with the Company from his or her assignment of inventions made prior to his or her employment or consulting relationship with the Company from his or her assignment of inventions pursuant to such person's Proprietary Information and Inventions Agreement.

Insert 5B

; and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers, subassemblers, value added resellers, subcontractors, original equipment manufacturers, authorized dealers or distributors that might be expected to result in a Material Adverse Change.

Insert 5C

(z) *Qualified Small Business.* The Company covenants that so long as any of the shares of Series A Preferred Stock, or the Common Stock into which such shares are converted, are held by an Investor (or a transferee in whose hands such shares or Common Stock are eligible to qualify as Qualified Small Business Stock as defined in Section 1202(c) of the Internal Revenue Code of 1986, as amended (the "Code"), it will comply with any applicable filing or reporting requirements imposed by the Code on issuers of Qualified Small Business Stock.

(aa) *No Unlawful Contributions or Other Payments.* Neither the Company nor, to the best of the Company's knowledge, any employee or agent of the Company, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law.

Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, each Investor further represents that such Investor does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

(c) *Investors' Representations.* Each Investor understands that the Series A Preferred Stock is not, and any Common Stock acquired on conversion thereof at the time of issuance may not be, registered under the Securities Act on the ground that the sale provided for in this Agreement and the issuance of securities hereunder is exempt from registration under the Securities Act, and that the Company's reliance on an exemption from the Securities Act is predicated on the Investors' representations set forth herein and in the Investors' Questionnaire, the form of which is attached hereto as Exhibit E (the "Investors' Questionnaire"). Each Investor confirms the accuracy and truthfulness of each representation and warranty made under each of this Agreement and the Investors' Questionnaire.

(d) *Receipt of Information.* Each Investor believes that such Investor has received all the information such Investor considers necessary or appropriate for deciding whether to purchase the Series A Preferred Stock. Each Investor further represents that such Investor has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Series A Preferred Stock and the business, prospects and financial condition of the Company and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify the accuracy of any information furnished to such Investor or to which such Investor had access.

Insert 6A

(e) *Investor Experience.* Each Investor represents that such Investor is experienced in evaluating and investing in private placement transactions of securities of companies in a similar stage of development and acknowledges that such Investor is able to fend for himself, herself or itself, can bear the economic risk of such Investor's investment, and has such knowledge and experience in financial and business matters that such Investor is capable of evaluating the merits and risks of the investment in the Series A Preferred Stock. If other than an individual, Investor also represents such Investor has not been organized for the purpose of acquiring the Series A Preferred Stock.

(f) *Accredited Investors.* Each Investor represents to the Company that the information furnished by such Investor in the Section entitled "Accredited Investor Status" of the Investors' Questionnaire is true and correct and can be relied on by the Company.

(g) *Restricted Securities.* Each Investor understands that the Series A Preferred Stock (and any Common Stock issued on conversion thereof) may not be sold, transferred or otherwise disposed of without registration under the Securities Act or an exemption therefrom, and that in the absence of an effective registration statement covering the Series A Preferred Stock (or the Common Stock issued on conversion thereof) or an available exemption from registration under the Securities Act, the Series A Preferred Stock (and any Common Stock issued on conversion thereof) must be held indefinitely. In particular, each Investor is aware that the Series A Preferred Stock (and any Common Stock issued on conversion thereof) may not be sold pursuant to Rule 144 of the Securities Act unless all of the conditions of Rule 144 are met. Among the conditions for use of Rule 144 may be the availability of current information to the public about the Company. Such information is not now available and the Company has no present plans to make such information available.

Insert 6A

The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of the Investors to rely thereon.

(h) *Legends.* To the extent applicable, each certificate or other document evidencing any of the Series A Preferred Stock or any Common Stock issued upon conversion thereof shall be endorsed with the legends substantially in the form set forth below:

(1) The following legend under the Securities Act:

"THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SUCH ACT, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

(2) Any legend imposed or required by the Company's by-laws or applicable state securities laws.

(i) *Public Sale.* Each Investor agrees not to make, without the prior written consent of the Company, any public offering or sale of the Series A Preferred Stock (or any Common Stock issued upon conversion thereof) although permitted to do so pursuant to Rule 144(k) of the Securities Act, until the earlier of (i) the date on which the Company effects its initial registered public offering pursuant to the Securities Act or (ii) the date on which the Company becomes a registered company pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended.

Section 4. Conditions of the Obligations of the Investors at Closing.

The obligations of each Investor to purchase and pay for the shares of Series A Preferred Stock set forth next to its name on Schedule A are subject to fulfillment on or before the Closing of each of the following conditions:

the waiver of which shall not be effective against any Investor who does not consent in writing thereto

(a) *Corporate Proceedings.* All corporate proceedings and other legal matters in connection with this Agreement and the transactions contemplated hereby shall have been completed. *Insert 7A*

(b) *Filing of the Restated Certificate.* The Company shall have adopted and filed the Restated Certificate with the Secretary of State of the State of Delaware on or before the Closing.

(c) *Performance.* The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement and that are required to be performed or complied with by it on or before the Closing.

(d) *Qualifications.* All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Series A Preferred Stock pursuant to this Agreement shall be duly obtained and effective as of the Closing. *Insert 7B*

(e) *Representations and Warranties.* The representations and warranties of the Company contained in Section 2 shall be true on and as of the Closing with the same effect as

h

Insert 7A

, and all documents incident thereto shall be reasonably satisfactory to Investors' Counsel, and such counsel shall have been furnished with such papers and information as they may reasonably have requested to enable them to pass upon the matters referred to in this Section

Insert 7B

(e) *No Material Adverse Change.* Subsequent to the execution and delivery of this Agreement and prior to the Closing, or any subsequent closing, as the case may be, there shall not have been any Material Adverse Change in the condition (financial or otherwise), earnings, operations, business or business prospects of the Company.

(f) *Opinion of Counsel for the Company.* Each Investor shall have received on the Closing an opinion of Milkem and Bilkem, counsel for the Company, substantially in the form of Exhibit F attached hereto, dated the Closing, addressed to the Investors and with reproduced copies or signed counterparts thereof for each of the Investors.

(g) *Opinion of Intellectual Property Counsel for the Company.* Each Investor shall have received on Closing an opinion of [NAME OF PATENT COUNSEL], intellectual property counsel for the Company substantially in the form of Exhibit G attached hereto, dated the Closing, addressed to the Investors and with reproduced copies or signed counterparts thereof for each of the Investors.

though such representations and warranties had been made on and as of the date of the Closing.

i (i) → **1** **Officers' Certificate.** Each investor shall have received on Closing a certificate of the Company, dated the Closing, signed by the Chief Executive Officer and Chief Financial Officer of the Company, to the effect that the representations and warranties of the Company in this Agreement are true and correct, as if made on and as of the Closing, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing.

HP(1)

j (g) **Investors' Rights Agreement.** The Company and each Investor shall have entered into the Investors' Rights Agreement in the form attached hereto as Exhibit B.

Insert 8 A

k (h) **Co-Sale Agreements.** Greed Izgood Investors shall have entered into a Co-Sale Agreement in the form attached hereto as Exhibit C.

Section 5. Conditions of the Obligations of the Company at Closing.

The obligations of the Company to issue and sell to each Investor the shares of Series A Preferred Stock set forth next to such Investor's name on Schedule A are subject to fulfillment on or before the Closing of each of the following conditions by the Investors:

(a) **Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Series A Preferred Stock pursuant to this Agreement shall be duly obtained and effective as of the Closing.

Insert 8A

(2) Subsequent to the date of this Agreement, there has not been (a) any material adverse change in the condition (financial or otherwise), earnings, operations, business or business prospects of the Company, (b) any transaction that is material to the Company, except transactions entered into in the ordinary course of business, (c) any obligation, direct or contingent, that is material to the Company, incurred by the Company, except obligations incurred in the ordinary course of business, (d) any change in the capital stock or outstanding indebtedness of the Company that is material to the Company, (e) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company, or (f) any loss or damage (whether or not insured) to the property of the Company which has been sustained or will have been sustained which has a material adverse effect on the condition (financial or otherwise), earnings, operations, business or business prospects of the Company.

(b) *Representations and Warranties.* The representations and warranties of each Investor contained in Section 3 shall be true on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the date of the Closing.

(c) *Minimum Investment.* The Investors shall purchase an aggregate of at least 2.5 million shares of Series A Preferred Stock at the Closing.

Section 6. Payment of Expenses.

Irrespective of whether the Closing is effected, the Company shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement. If the Closing is effected, the Company shall, at the Closing and upon receipt of a bill therefor, reimburse the reasonable fees and expenses of one counsel for the Investors in an amount not to exceed \$25,000.

Section 7. Miscellaneous.

(a) *Entire Agreement.* This Agreement and the documents referred to herein constitute the entire agreement among the parties and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants, except as specifically set forth herein or therein.

(b) *Survival of Warranties.* The warranties, representations and covenants of the Company and the Investors contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing.

(c) *Notices.* All communications hereunder shall be in writing and shall be mailed, hand delivered or faxed and confirmed to the parties hereto as follows:

If to the Company:

2 White Street
Concord, NH 03301
Facsimile: (555) 555-1212
Attention: Jane Doerr

If to an Investor:

At such address or fax number as is set forth on the signature page hereto.

Any party hereto may change the address for receipt of communications by giving written notice to the others.

(d) *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto, and to their respective successors, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Series A Preferred Stock (or the Common Stock issuable upon conversion thereof) as such from any of the Investors merely by reason of such purchase.

(e) *Partial Unenforceability.* The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

(f) *Governing Law Provisions.*

(1) *Governing Law.* This agreement shall be governed by and construed in accordance with the internal laws of the state of New ~~Hampshire~~ ^{York} applicable to agreements made and to be performed in such state.

(2) *Consent to Jurisdiction.* Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby ("Related Proceedings") may be instituted in the federal courts of the United States of America located in the City of ~~Concord, New Hampshire~~ ^{New York, New York} or the courts of the State of ~~Hampshire~~ ^{New York} located in the City of ~~Concord, New Hampshire~~ (collectively, the "Specified Courts"), and each party irrevocably submits to the personal jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a "Related Judgment"), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

(g) *General Provisions.* This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

(h) *Amendments and Waivers.* Any terms of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of more than 50% of the Common Stock not previously sold to the public that is issued or issuable upon conversion of the Series A Preferred Stock. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities have been converted), each future holder of all such securities and the Company.

(i) *Effect of Amendment or Waiver.* Each Investor acknowledges that by the operation of Section 7(h) hereof, the holders of more than 50% of the Common Stock not previously sold to the public that is issued or issuable upon conversion of the Series A Preferred Stock will have the right and power to diminish or eliminate all rights of such Investor under this Agreement.

[The remainder of this page has been intentionally left blank.]

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

Very truly yours,

TECHNOCAD, INC.

By: _____

Name: Jane Doerr
Title: President and CEO

GREED IZGOOD INVESTORS

By: _____

Name:
Address:
Tel. Number:
Fax Number:

VULTURE INVESTMENTS

By: _____

Name:
Address:
Tel. Number:
Fax Number:

RICHIE RICH

By: _____

Name:
Address:
Tel. Number:
Fax Number:

SCHEDULE A

Investors	Number of Shares of Series A Preferred Stock To be Purchased
Greed Izgood Investors.....	2,000,000
Vulture Investments	250,000
Richie Rich	<u>250,000</u>
Total.....	2,500,000

EXHIBIT B

COOL GAMING SOFTWARE, INC.

Term Sheet for Series C Round of Financing¹

Set forth below are the proposed general terms and conditions of the proposed investment by a group of investors led by Greed Izgood Investors in Cool Gaming Software, Inc. (the "Company").

I. Principal Terms of the Securities

A. Type of Security	Series C Preferred Stock
B. Number of Shares	10 million shares
C. Price	\$1.00 per share
D. Dividends	Mandatory (if earned) but non-cumulative dividends of \$0.10 per share per annum. The Series B mandatory and cumulative dividend must be eliminated.
E. Liquidation Preference	Series C will be the senior class of the Company's capital stock. The liquidation preference will be \$1.00 per share plus all accrued but unpaid dividends. Thereafter, Series C participates in liquidating distributions with the Common Stock (and the Series A and B) on an as-converted basis. Acquisitions of the Company are treated as liquidations.
F. Redemption ²	There will be no redemption provision.

¹ In order not to get overly bogged down in detail, many of the provisions of this Term Sheet template have been substantially simplified from what one would expect in an actual term sheet.

² Most venture capital financings do not include redemption provisions. A redemption provision allows the investors to require that the Company redeem the securities purchased at, or over, a certain prescribed time. In short, the Company has to buy back the securities, and sometimes at a premium. In most cases, the investors have the ability to waive or defer the redemption if they desire. Whenever you see redeemable preferred stock, you should consider whether the preferred stock is really functioning as a debt security rather than an equity security.

<p>G. Conversion Features:</p> <p>1. Conversion Price</p> <p>2. Voluntary Conversion</p> <p>3. Automatic Conversion Events</p> <p>4. Antidilution Protection (including exceptions)</p>	<p>Each share of Series C shall be convertible into one share of Common Stock, subject to adjustment</p> <p>At a holder's option, at any time</p> <p>(a) Upon completion of a firmly underwritten public offering of the Company's Common Stock with a pre-money valuation of at least \$150 million</p> <p>(b) Upon a vote or written consent of at least 2/3's of the Series A Preferred Stock then outstanding</p> <p>(a) Proportional adjustments for splits, dividends, recapitalizations and the like.</p> <p>(b) Weighted-average ratchet adjustment for issuances below the Purchase Price. Exceptions for Common Stock issuable upon conversion of Preferred Stock and for shares of Common Stock issued pursuant to employee and other compensation plans and for issuances pursuant to currently outstanding options and warrants. The Series B full-ratchet anti-dilution adjustment must be eliminated.</p>
<p>H. Voting Rights</p>	<p>(a) General Voting: Holders of Series C have number of votes equal to largest number of full shares of Common Stock into which Series C may be converted.</p> <p>(b) Election of Directors: Series C will be entitled to elect three out of the Company's seven directors.</p> <p>(c) Company needs consent of 50+% of Series C, voting as a class, to engage in a "sale" of the company</p>

I. Restrictions and Limitations	<p>(a) Company needs consent of two-thirds of Series C:</p> <p>(i) to repurchase any equity securities (exception for buy-backs under employee and related plans);</p> <p>(ii) to authorize or issue any senior or pari passu³ equity security;</p> <p>(iii) to amend the Certificate of Incorporation in a way that changes the rights, preferences or privileges of Series C Preferred Stock</p>
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II. Principal Terms of the Purchase Documents

<p>A. Preferred Stock Purchase Agreement</p> <p>1. Closing</p> <p>2. Expenses</p>	<p>December 21, 2005</p> <p>If the transaction closes, the Company will pay reasonable fees and expenses of special counsel for the Investors</p>
<p>B. Investors' Rights Agreement</p> <p>1. Registration Rights</p>	<p>(a) Cover common stock issuable upon conversion of Series C Preferred Stock</p> <p>(b) Two demand registrations; 50% to request; minimum of \$5 million to be sold; standoff and blackout provisions; demand cannot be made before earlier of 3 years after Series A closing and 1 year after IPO</p> <p>(c) Piggyback rights, with underwriter cutbacks</p> <p>(d) Resale registration statement once Company is S-3 eligible</p> <p>(e) Company pays usual registration expenses (including one counsel for selling shareholders)</p>

³ Pari passu means at an equal status with.

2. Covenants	<p>(f) Shareholders will covenant to enter into standard lock-up agreements (180 days IPO/90 days follow-on) if Company conducts public offerings</p> <p>(g) Rights expire on the earlier of (i) the date all of such person's stock may be sold under Rule 144 during any 90-day period and (ii) 3 years after IPO</p> <p>(a) Annual and quarterly financials</p> <p>(b) Monthly financials, budgets and additional information rights to Investors who purchase in excess of \$1 million of Series A</p>
C. Co-Sale Agreement	The Series C Investors must be included in any sale of 50% or more of the ownership interests or assets of the Company.

III. Employee Stock Purchase Plan

A. Employee Stock Purchase Plan	One shall be adopted for the key employees of the Corporation.
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IV. Exclusivity

Upon execution of this Term Sheet and until December 21, 2005 or such earlier date on which the Investors inform the Company that they are no longer interested in financing the Company, the Company will not initiate, respond to, or participate in any way, in any discussions regarding, or accept any proposal for, any equity financing or sale of the Company.

* * * * *

Except with respect to the "Exclusivity" provision, this Term Sheet does not create any legally binding obligations on the parties, and no such obligations will be created unless and until a Series C Preferred Stock Purchase Agreement is executed and delivered by the parties. Without limiting the generality of the foregoing, it is the parties' intent that, until that event, with the exception of the "Exclusivity" provision, no agreement shall exist between them and that there be no obligations whatsoever based on such as parol evidence, extended negotiations, "handshakes", oral understanding or courses of conduct (including reliance and changes of positions). Except with respect to the "Exclusivity" provision, no legally binding obligations whatsoever are to be created, implied or inferred until a document explicitly entitled "final" has been executed and delivered.

TECHNOCAD INC.

GREED IZGOOD INVESTORS

Name: Jane Doerr
Title: President and CEO
Date: _____, 2005

/s/ GILLIAN AIRE

Name: Gillian Aire
Title: Partner
Date: October 25, 2005