



DSM USA

RAISING CAPITAL SEMINAR

SEPT. 21, 2017

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Raising Capital Seminar

September 21, 2017

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Welcome

- Thank you for joining us
- Logistics
 - Phones
 - Bathrooms
 - Breaks
- Goal of today
 - Overview of the process and documents
 - This is a lot of work. You need to internalize this.

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Thank You



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Morning Agenda

8:40 **Timeline and Key Points** - Charise Flynn

- Timeline
- Mapping the financing journey
- How much to raise
- Valuation
- Stage of company & average size of rounds
- Top 5 Terms

9:45 **Common Mistakes** - Chris Sackett/Charise Flynn

10:00 **Break**

10:15 **Before You Raise** - Charise Flynn

- Networking
- Get organized
- Build momentum
- Know your business
- Financials - JD Geneser

11:45 **Lunch**

- Lessons learned – Jon Fialkov

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Afternoon Agenda

12:45 Things You Need

- One Pager - Mike Colwell
- Pitch Deck - Charise Flynn
- The Ask - Charise Flynn
- Online Platforms – Tej Dhawan

1:30 The Raise

- Finding investors - Charise Flynn
- Angel perspective – Tej Dhawan
- Post investment – Tej Dhawan

1:45 Break

2:00 The Raise (cont)

- The lead investor - Mike Colwell
- Managing potential investors - Mike Colwell
- Term sheet - JD Geneser/Chris Sackett
- Negotiations - JD Geneser/Chris Sackett
- Managing the close - Charise Flynn

2:45 Final Q & A / Wrap-up - Chris Sackett/Mike Colwell

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Timeline and Key Points

Charise Flynn
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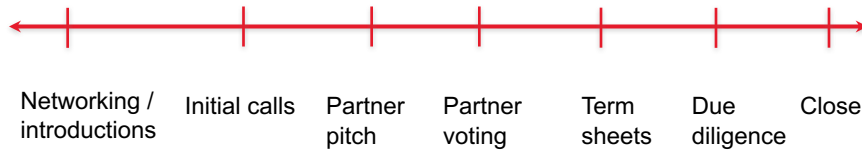
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Fundraising takes time!

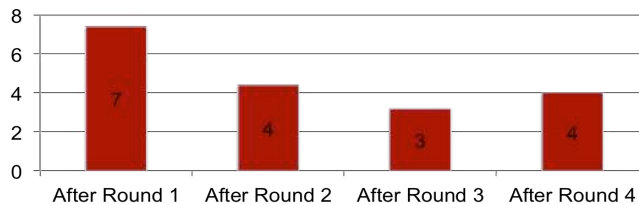
- 3 months minimum
- 6 to 9 months likely
- Relationships, preparation and demand can shorten the process



Important to map your financing journey

- Round sizes tend to increase by ~5x between each financing round
- E.g. If your previous round was \$500K, the following one will be expected to total ~\$2.5M
- As you develop how much to raise, ensure your plan falls within the perimeters of 3x to 7x increase between each round

Average multiple of next round



Source: AngelList/Crunchbase

How much to raise?

- Raise enough money to achieve a set of milestones that will attract a subsequent round of investment
- Typically raise for a 15 -18 month runway
- The market will set your timing. You cannot fall behind chasing the best deal on capital.
- Focus on getting done fast and back to work

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Valuations often determined by investor ownership %

Because investors expect 20-25% ownership after the round, your valuation is typically 3 - 4x the amount you are looking to raise.

Example:

- \$1M raise
- Investor likely expects a \$3–4M pre-money valuation
- \$1M = 25% of the \$4M post-money valuation
- Or \$1M = 20% of \$5M post money valuation

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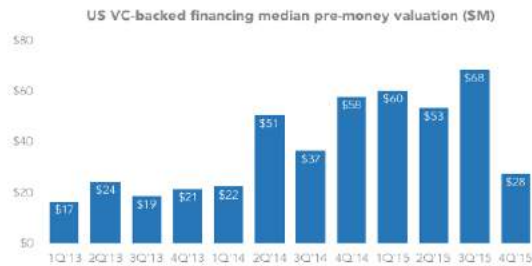
How much to raise?

“While having more money makes today easier, having a lower valuation makes tomorrow easier. So just consider the trade-offs as you plot your journey.”

- Mark Suster

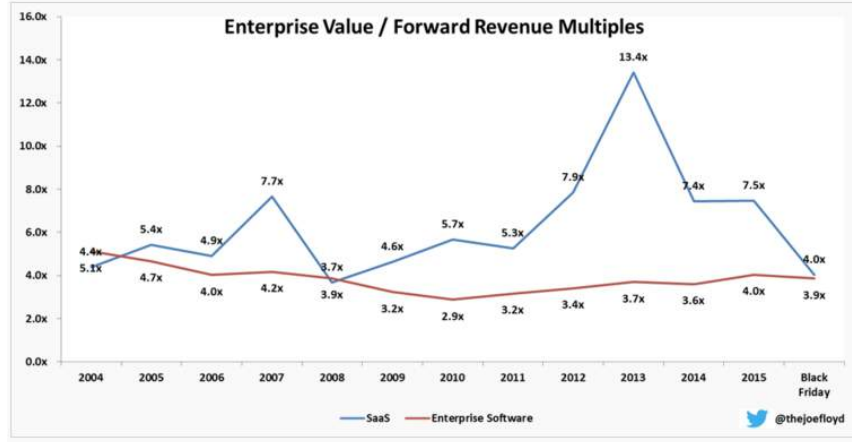
Valuations are influenced by fluctuating markets

Private market valuations rose unsustainably with a massive correction Q4 2015



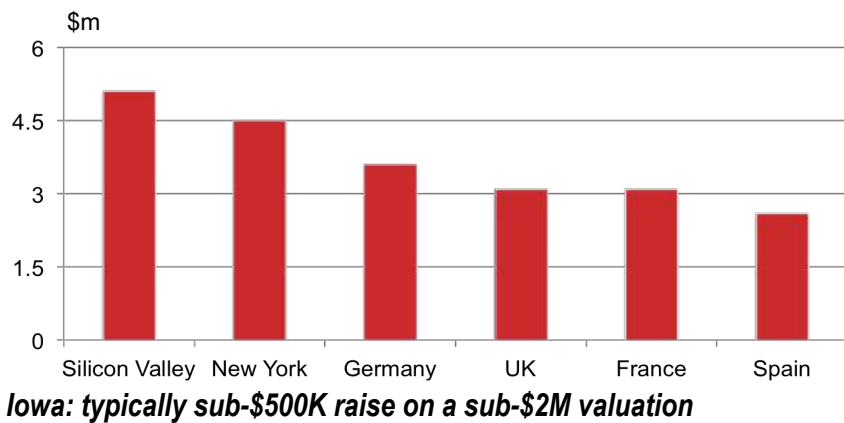
12 Source: Dow Jones VentureSource, Venture Capital Research Q215, Upfront analysis

Another look at valuations



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Seed/Angel valuations



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What am I raising? Seed? Angel? A?

“...none of it will matter unless you build shit people care about and use en masse and thus you can attract capital even if you call it a Z-round. But my advice to entrepreneurs--stop sweating the silly optics. It's more likely a negative signal to VCs than a positive one.”

- Mark Suster

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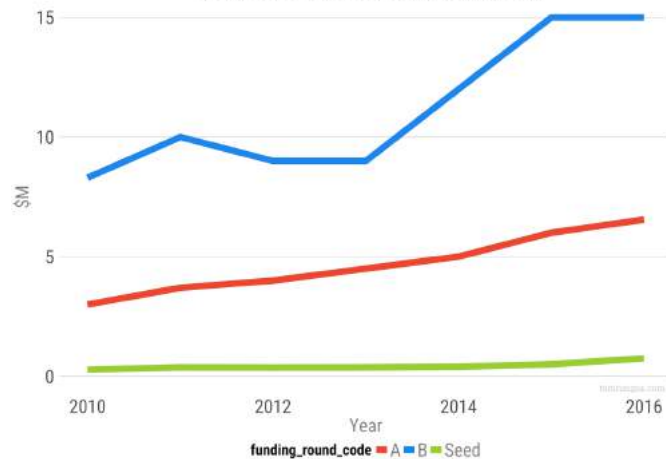


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Funding sizes are increasing



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Series A round- what influences size?

Investors perspective:

•\$3M deal: “This is an experiment. I like the team and the concept, but one or more critical hypotheses needs to be proven out, or the business will need to overcome a few hurdles.”

•\$6M deal: “I see a path to generating real revenue over the next 12 months, but it’s early. There is not enough data to give me 80%+ confidence that the company will hit its projections.”

•\$10M deal: “This is a HOT deal. I need to win it! I expect the company will get multiple term sheets based on the uniquely good team/traction/unit economics/product.”

Source- <http://www.nea.com/blog/what-size-series-a-round-can-you-expect-to-raise>

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General Stages

review handout

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Typical Fundraising Stages and Expectations				
	Pre-Seed	Seed	Series A	Series B
\$'s RAISED	\$50,000 - \$250,000	\$250,000- \$2m	\$3-\$10m average ((low: typically \$1.5MM to \$2MM)	\$10m- \$25m average (LOW:\$2MM+)
VALUATION		\$750k-\$8m	\$10m-\$40m (low: \$4.5m-\$8m)	\$30m-\$100m (low: \$8m-\$10m+)
INVESTORS	Friends & Family Angels	Angels, Micro VC's	VC's	VC's
OWNERSHIP %	less than 5% ownership	no more than 20% ownership	average 20% ownership	average 20% ownership
BOARD SEAT	no	no	yes	yes
*MRR	-	\$0-50k	\$100-250k	\$350k-800k
PREFERENCE		1x	1x	1x
TEAM	Smart, committed with relevant experience	Found market fit: E.G. sales DNA, product design DNA, strong tech for API companies	No star VP's yet but often good director-level hires. Ability to attract and manage great people.	Senior leadership in most function and proven ability to recruit senior people
PRODUCT MARKET FIT	Market research indicates strong need for the product	Strong indication of product/market fit from early customers and pilot users	Clear product market fit (PMF) and increasing evidence of PMF in large market	
TECH	Strong tech co-founder with relevant experience	Proven ability to move fast	Proven ability to attract and manage great engineers (product scales but still breaks)	Excellent tech leadership. Product doesn't break and meets SLA's (3-4 9's availability). Meets security, compliance and disaster recovery requirements of enterprise clients
OPERATIONS			Regular P&L and Balance Sheet, Human Resources is formal (benefits, salaries, taxes)	Financial maturity demonstrated in projections
SALES & MARKETING	Understand best practices, good ideas	Strong indications of demand (e.g. organic trial signups)	Strong organic demand. Success with at least one customer acquisition channel. Decent understanding of funnel and pipeline conversion rates.	Excellent understanding of sales and marketing costs and CAC payback times by channel. Increasing confidence in scalability of the sales / marketing machine.
MARKET POTENTIAL		Conviction that there is a \$100m Annual Recurring Revenue (ARR) potential	Increasing conviction of a \$300m Annual Recurring Revenue (ARR) potential	Increasing confidence in exit potential (large strategic buyers or IPO)
TRACTION		If pre-monetization, growing waiting list, trial user base	Get from 0-\$100k MRR within 12-18M	Growing 2.5 X y/y

* MRR = Monthly Recurring Revenue



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Advisory Boards

- Not expected but can be helpful if managed thoughtfully
 - Know what you want from them
 - Manage the time you invest getting them up to speed
 - Map out the role you want them to play
- Don't overplay in your pitch
 - Investors realize the minimum impact they can actually have



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10 Common Mistakes in Raising Capital

Charise Flynn & Chris Sacket
September 21, 2017

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10 Common Mistakes

1. Poor corporate “housekeeping”

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10 Common Mistakes

2. Overcomplicating the company or offering structure

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10 Common Mistakes

3. Prior round mistakes

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10 Common Mistakes

4. Using equity as a “cash substitute”

10 Common Mistakes

5. Thinking an amazing pitch deck will get you there

• *If the idea and execution are lacking, then no pitch deck will get you investors.*

10 Common Mistakes

6. Failing to understand that fundraising is a process that takes a ton of time

- *Start fundraising well before you run out of \$\$ and develop a process to keep it organized and on track.*

10 Common Mistakes

7. Not understanding your company/clueless about your financials

- *You may not be a CFO, but you need to know and understand your numbers.*
- *You should have a clear roadmap for why you are raising \$ and what you will accomplish with it.*
- *Some startups fail to take off because they are unable to keep track of their cash flows, do proper financial calculations, or even work on their monetization plan.*

10 Common Mistakes

8. Picking the wrong investors

- *Money is a commodity. Find investors who bring value to your company in a non-monetary way; such as a network, business assets, or mentorship.*

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10 Common Mistakes

9. Not understanding your market potential and having a large enough opportunity to get investors excited

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10 Common Mistakes

10. Not having the right team(s)

- *Many VC's are looking for companies that have tech founders / co-founders.*

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Break

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Before You Raise

Charise Flynn
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Start networking before you need \$

- It takes time to build relationships with VCs
 - Choose carefully what metrics you talk about
 - VCs take note of everything and try to detect trends
 - Be clear when you are and are not raising
- Whoever leads your Series A will likely ask for a board seat
 - You can't really get rid of a board member. It is important to start getting to know them early

Get organized

- Start a Dropbox or Box with all the anticipated due diligence documents (handout – “*Data Room: Information Request List*”)
- Create a detailed tracking sheet of all investor contacts; what stage they invest in, when and who you talked to, next steps
- Create folders for each investor you start to share material with to track versions/data you share

Build momentum

- It will be hard to raise if you aren't demonstrating momentum
- At different stages this will look different
 - product / tech momentum
 - early users
 - sales traction
 - industry traction / news
 - partnerships

A team of professional advisors helps

- Legal
- Financial
- HR

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Anticipate questions, know your business

- Know how your type of business is being measured and demonstrate you know these numbers
 - SaaS business example: MRR, ARR, CAC, LTV, Run rate, cash burn
- Know your customers
 - Be able to give clear-use cases
 - Explain succinctly why they buy
- Know your industry/competitors

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Financials

JD Geneser
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Capitalization (Cap) Table

Documentation of capitalization or ownership stakes in a company, including:

- Common shares/units
- Preferred shares
- Rounds of financings
- Options
- Warrants
- Price paid by the stakeholders

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Capitalization (Cap) Table

Keep cap table current at all times

- Assists you in making good decisions quickly
 - Running scenarios on pre-money valuation on new financing or future rounds of financing
 - Analyzing dilution impact of different sizes of financing round
 - Impact of option pool or granting of specific amount of options to a new hire
 - REQUIRED DURING INVESTOR DILIGENCE



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Cap Table

- Keep it organized and simple to understand
 - Illogical organization causes confusion and can slow down investment process
- Tailor cap table to supporting corporate
 - Have all supporting documents complete and in good order
- Hire a good attorney!!!



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Forecast

- Take the time and effort to develop a realistic and detailed financial forecast
- Grounded in realistic assumptions
- 3 - 5 year forecast
- First 12 -18 months critical and must be supported

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Forecast Revenue

Revenue Assumptions

- Tied to marketing/distribution plan
 - Target market, market segments, geography, size, etc.
- Know who is making purchasing decision and how you get to them. Direct, Indirect, etc.
- Pricing model tested and proven

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Forecast Expenses

Expense Assumptions

- Cost to serve revenue – **KNOW YOUR GROSS MARGIN!!**
 - Manufacturer – cost of goods, warranties, support
 - Service/SaaS – on boarding, ongoing support costs
- Cost to sell – resources, commissions, revenue share
- Operating Costs – personnel, general and administrative
- Capital Expenditures – equipment, computers, furniture

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Cash Flow

- Good operators manage to cash flow
- Know your cash requirements and manage the process
- Spend wisely, be thrifty
- Find creative ways to bring on resources or delay hiring
- Reduce salaries or take no salary
- **ALWAYS HAVE DETAILED CASH FLOW FORECAST OF AT LEAST 60 DAYS!! MANAGE YOUR CASH!!**

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Break for Lunch

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Lunch

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Lessons Learned

Jon Fialkov
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One Page Summary

Mike Colwell
September 21, 2017

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One Pager

- A public document to raise awareness
- "5-minute" business plan document
- Make SURE you run this by your lawyer first



Business Summary:
Torsion Helle is a family-owned and operated business for over 30 years. We are currently seeking a public document to raise awareness and increase our visibility in the market. Our business is based on high-quality, custom-made products for the construction and industrial markets.

Customer Problem:
Our customers are facing a significant challenge in finding high-quality, custom-made products that meet their specific needs. They are often frustrated by the lack of options and the long lead times associated with traditional manufacturing processes.

Product Solution:
Torsion Helle offers a wide range of custom-made products that are designed to meet the specific needs of our customers. Our products are made from high-quality materials and are built to last. We offer a wide range of options and can deliver products quickly and efficiently.

Target Market Customers:
Our target market consists of construction and industrial companies that require high-quality, custom-made products. These companies are looking for products that can meet their specific needs and provide a long-lasting solution.

Value Proposition:
Torsion Helle offers a wide range of custom-made products that are designed to meet the specific needs of our customers. Our products are made from high-quality materials and are built to last. We offer a wide range of options and can deliver products quickly and efficiently.



Company Overview:
Mojaba is a family-owned and operated business for over 30 years. We are currently seeking a public document to raise awareness and increase our visibility in the market. Our business is based on high-quality, custom-made products for the construction and industrial markets.

Customer Problem:
Our customers are facing a significant challenge in finding high-quality, custom-made products that meet their specific needs. They are often frustrated by the lack of options and the long lead times associated with traditional manufacturing processes.

Product Solution:
Mojaba offers a wide range of custom-made products that are designed to meet the specific needs of our customers. Our products are made from high-quality materials and are built to last. We offer a wide range of options and can deliver products quickly and efficiently.

Target Market Customers:
Our target market consists of construction and industrial companies that require high-quality, custom-made products. These companies are looking for products that can meet their specific needs and provide a long-lasting solution.

Value Proposition:
Mojaba offers a wide range of custom-made products that are designed to meet the specific needs of our customers. Our products are made from high-quality materials and are built to last. We offer a wide range of options and can deliver products quickly and efficiently.

Referral Source - Vice-President & CEO:
I have known the owner of Torsion Helle for over 20 years. I have seen the company grow from a small family-owned business to a successful public company. I have seen the owner's dedication to quality and customer service. I believe that Torsion Helle is a company that is well-positioned to succeed in the market.

Referral Source - President & CEO:
I have known the owner of Mojaba for over 20 years. I have seen the company grow from a small family-owned business to a successful public company. I have seen the owner's dedication to quality and customer service. I believe that Mojaba is a company that is well-positioned to succeed in the market.

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Pitch Deck

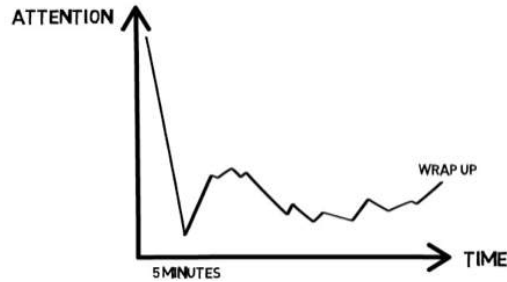
Charise Flynn

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60-Minute Mistake

Assumption that if you get a 60-minute meeting, you get 60 minutes worth of attention. **You don't.**



First 5 minutes are critical to hooking interest for the rest of the meeting.

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Typical Pitch Decks

	500 Startups	SEQUOIA CAPITAL	AIRBNB
SLIDES	12	11	12
Problem	X	X	X
Solution / Value Proposition	X	X	X
Market Validation/Why Now		X	X
Product	X	X	X
Market Size	X	X	X
Business Model	X	X	X
Underlying Magic	X		
Competition	X	X	X
Competitive Advantage	X		X
Marketing Plan / Go-to Market	X		X
Founding Team	X	X	X
Board/Advisors		X	
Traction / Milestones	X		
Press / User Testimonials			X
Fundraising	X	X	X
Financial / Use of Funds		X	

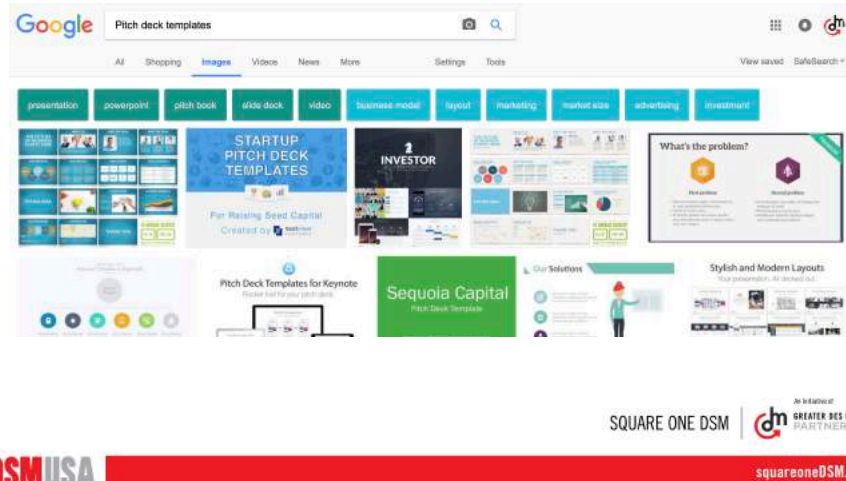
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Use Google for examples

You can find a ton of examples by googling “pitch deck templates”



Tell a compelling story

Slide titles

- Short, punchy, and explain exactly each slide
- Instead of the blatant “Problem” “Solution” “Team” slide headings, a compelling deck tells a story through your headings
- Example: “The Right Mix of Passion and Experience” instead of “TEAM”

Language

- Avoid obvious phrases that everybody uses (disruptive, innovative, world-class)
- Use your voice - It needs to sound like a story you would tell

The Problem: What is the pain you are alleviating?

- The goal is to get everyone to buy in
- Describe the pain your customer feels
- Outline how the customer addresses the issue today
- Avoid looking like you are a solution looking for a problem

If you cannot convince an investor there's something broken, they will not be interested in a solution.

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Get creative on how you weave multiple storylines

Great example of working market size into the problem slide



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Product Roadmap

- Product lineup (features, functionality, architecture, IP)
- Most coastal VC's care most about your product / tech innovation

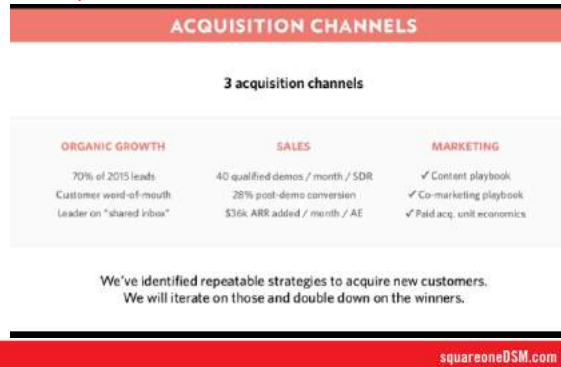
Example



Business Model: Demonstrate effective go-to-market strategy

- Revenue model / pricing
- Average account size / lifetime value
- Sales and distribution model
- Customer / pipeline list

Example



Team

- Highlight any special talents or experiences that make the team well suited to building the business
- Key players, board of directors, advisory board
- Don't be afraid of having some holes in your team. Show that you understand the hole and are willing to fix them.

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Financials

- Keep it simple: 5-tab financial model
 - P&L annual
 - P&L monthly
 - Revenue
 - Expenses
 - Headcount
- A simple timeline can be used to show how you spend money (e.g. headcount) in relation to achieving specific milestones (e.g. launching service)

Have P&L, Balance Sheet, Cash Flow, Cap Table prepared but do not go through in first meeting

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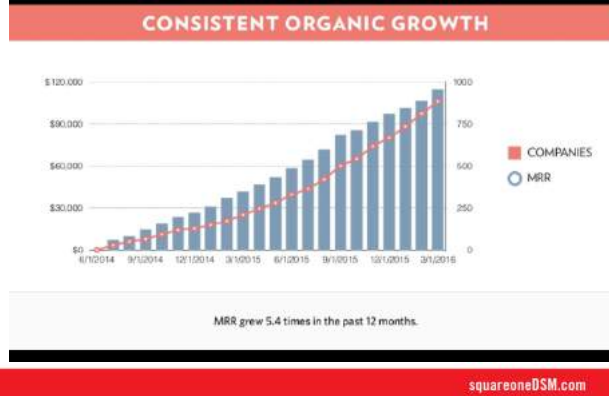
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Need to demonstrate traction

Accomplishments to date

- Product / launches
- Sales
- Partners

Example



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Wrapping Up

- Plan to get through the entire presentation in 20 minutes
- Save time for discussion afterwards
- Best meetings feel more like conversations than presentations

THE OPPORTUNITY

Slack proved that businesses are ready to buy good communication tools.
They're going after the internal communications market.

We're going after the bigger opportunity.
Front will own the external communications space.

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The Ask / Initial Terms

Charise Flynn
September 21, 2017

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Be clear and consistent on your ask

- How much are you raising?
- Do you have a valuation in mind or are you going to let the market determine it?
- Are you looking for a new board member?
- When are you looking to receive term sheets?

Example

**RAISING \$10M SERIES A
TO ACCELERATE GROWTH**



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Online Platforms


Mike Colwell
September 21, 2017

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Platforms

- Gust
- AngelList
- Other crowdfunding platforms

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Why Online

- It's part of your startup's resume & identity
- Documents existence
- Recruiting tool
- Fundraising tool
- Single point of data-room dissemination

Gust

- Popular platform for pitch events
- Absolute necessity for angel funds and networks
- Startup controls access to their data
- Easy to share deal docs
- Non-trivial – needs time commitment to be current

Gust – Best Practices

- Always upload a pitch video
- Ensure financials typed in are SAME as those uploaded in business plans
- Ensure an understanding of valuation, runrate, etc. when filling in #s
- Review your one pager as most Investors look at this document FIRST
- Remove access from disinterested parties Immediately

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AngelList

- Popular platform for accredited crowdfunding
- De-facto site for syndicated funding rounds
- A recruiting and fundraising tool

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AngelList For Startups

- Profile needs to be simple, complete, fresh
- Reporting needs to be frequent
- Video profiles a necessity
- It is a social network also – Ensure key connections properly documented – founders, investors, advisors
- Use this profile for recruiting talent

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AngelList For Investors

- Profile needs to be simple, complete, true
- It is a social network also – ensure key connections properly documented – investments and interests
- Follow relevant syndicates
- Understand syndicate firms' rules/SOP
- Time commitment can be high at times
- Due diligence ability may be limited due to time
- Heavily standardized

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AngelList Investment Process

- VC/fund creates lead investment and invests \$
- VC/fund creates syndicate (single purpose LLC)
 - VC representative is managing member
 - Syndicate members receive deal notification
 - First 98 syndicate members to fill round Invest
 - Amounts may be varied amongst members
 - Closing in 2-3 weeks

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ANGELLIST – Post Investment

- Monthly/quarterly email reports
- Annual K-1 for interest/dividend if any
- First priority to follow-on future rounds (if any)
- Little to no control on exits/future rounds

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Finding Investors

Charise Flynn
September 21, 2017

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Finding Investors - do your research

- Get clear on what stage you are
- Research who invests in your industry and stage
- Crunchbase is an excellent tool
- Google, Google, Google
- Ask other entrepreneurs
- Consider trade-offs of angels, strategics, VCs

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Trade-offs of Strategic Investors

Strategic Investors

- May help by:
 - Opening the door to a commercial deal
 - Legitimizing the company
 - Lending domain expertise
- May hurt by:
 - Doing what is in their selfish self-interest
 - Having a disproportionate influence on the direction of the company
 - Inhibiting certain competitors from doing business with you
 - Blocking future investment rounds

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Hustle to get the conversation


- Warm introductions can make or break if you get a response
 - Get to know other entrepreneurs who can make introductions
 - Get to know advisors in the community who can make introductions
- Press helps drive name recognition
- Conferences with speaking opportunities can open doors

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Angel Perspective

Tej Dhawan
September 21, 2017

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Angel Perspective

Background:

- Raised over \$400M as President/CEO
- Made over 75 angel investments
 - Over 20 investments through AngelList
 - Over 20 investments directly or through seed fund

What I'm trying to understand when being pitched

- Does he / she get it?
 - Do they have a well-thought-out idea?
 - Have they built something already?
 - Do they have revenue?
 - What are the clients and prospects saying?
 - Do they have a team?
 - Are they prepared to grow and manage a team?

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Who are they as an entrepreneur?

- They may be smart but can they oversee all the pains and opportunities of growth?
- How do they handle questions?
- Do they realize taking \$\$ means more accountability?
- Are they prepared for more questions and more updates?

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What is my confidence for a return?

- It may start with an idea, but can they be a team that is willing to do what it takes to do all the other not-so-cool stuff to really grow and build a company and team to a profitable company?
- What is my confidence in them doing this so I can get a return?
- Do I believe in the use case / market potential?
- *Angels get virtually all of their return from 1 or 2 out of every 10 investments*

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When I invest

- I write a check when I have confidence they have:
 - Right team
 - Right idea
 - What it takes to grow a successful business
 - Ability to execute
 - Willingness to take advice
 - Ability to bring in professional management along the way

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Post-Investment

Tej Dhawan
September 21, 2017

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Overview

- Stay connected
- Be truthful
- Ask for help
- Share bad news early

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Stay Connected

- Early and angel investors want to be part of team
- Email monthly or quarterly updates
 - Runway
 - Sales progress
 - HR needs
 - Key wins and losses
- Annual in-person meeting will go a long way

Truths

- You're no longer pitching – share real numbers
- Projections should be based on **known** pipeline
- Share team dynamics – Warts and all
- Fibs catch up and hurt future investment potential

Ask for Help

- Startup investors are rarely passive investors
- Use their experience
- Leverage their network
- Ask for guidance, mentorship, advice
- Investors can often step in at times of HR voids

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Share Bad News Early

- There are lots of indicators – share them
 - Operating: Maybe you thought about expenses
 - Make payroll: Maybe you've thought about layoffs
 - Obligations: You did notice A/P growing
 - Landlord: You negotiated
 - Miracles: don't happen – You control them through resources

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STAY in TOUCH

frequently

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Break

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The Lead Investor

Mike Colwell
September 21, 2017


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Lead Investor Role

- Sets terms of the deal
- More than just being first
 - Typically 25% of total raise or more
 - Willing to help with other investors
 - Experienced and knowledge that is relevant to your company
- May be a board member
- Should help facilitate the next round

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Follow-up and staying in contact

- What is generally accepted is a monthly or bi-monthly email that:
 - Doesn't have to be long; can be one page
 - Needs to provide a runway update and most importantly a sales update. Also update any other milestones.
 - e.g., hired new person or platform is launching next Friday

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Term Sheet

JD Geneser & Chris Sackett
September 21, 2017

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National Venture Capital Association

- Term sheet handout
- nvca.org – helpful resource

Term Sheet

The term sheet is the document that outlines the basic terms by which an investor (angel or venture capital investor) will make a financial investment in your company

Term Sheet Includes

- Financial terms
 - Amount raised
 - Pricing / valuation
- Investor preferences / rights
 - Dividends
 - Liquidation
 - Anti-dilution
- Corporate governance
 - Board seats
 - Voting / approval rights
 - Information rights



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Valuation/Pricing

- Pre-Money Valuation
 - Value of a company prior to investment or financing
- Post-Money Valuation
 - Value of a company after an investment has been made. This value is equal to the sum of the pre-money valuation and the amount of new financing received.



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Valuation/Pricing, cont

- Pre-Money \$2,000,000 Shares 1,000,000 \$2/share
- Capital Raise \$1,000,000 \$2/share = 500,000 shares
- Post-Money \$3,000,000 Total Shares 1,500,000






Valuation/Pricing, cont

- Valuation/Pricing
 - Ownership % founder / other early investors
 - \$2,000,000 / \$3,000,000 = **66.7%**
 - Shares 1,000,000 / 1,500,000 = **66.7%**
 - Ownership % new investor
 - \$1,000,000 / \$3,000,000 = **33.3%**
 - Shares 500,000 / 1,500,000 = **33.3%**






Liquidation Preference

- Determines the payout order in case of a corporate liquidation and/or sale of the company
- Investors often make it a condition for their investment that they receive their investment money back first before other shareholders

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Liquidation Preference

- $\$2,000,000 / 1,000,000 \text{ shares} = \$2 / \text{share}$
- New money $\$1,000,000 / \$2 = 500,000 \text{ shares}$ (33.3%)
 - 2X Preference = $\$4 / \text{Share}$
- Business sold for $\$4,000,000$
 - New investor receives $500,000 \times \$4 / \text{share} = \$2,000,000$ or 50% of sales price while holding 33% ownership

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Stock Option

- Employee stock option (ESO) provides employee the right to buy company shares priced at date of grant
 - Priced at today's value with expectation of increasing value over time
 - Usually vested over time (3 – 5 years)
 - Provides employee the opportunity to participate in the upside and increased valuation of the company over time

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Option Pool

- Pool of shares available to be granted
- Average pool approximates 10% of outstanding shares
- Employee is granted a certain amount of shares that vest over a period of time, priced at today's share price
- **Most investors require that the pool be established prior to their investment – so as to not be diluted by the option pool**

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Key Employees

- Founders salaries – influx of cash can alter the incentives and behavior in a company, including such major items as founder compensation as well as minor items like benefits
- Term sheets may dictate how much or if the founder can give themselves a raise

Board / Governance

- New money means new bosses / governance
- If no board exists, term sheet will call for establishment
- Term sheet will outline number of board seats required by new investors into this round
- Generally 1 seat (based upon 5 member board)
- Negotiable

Preferred Shareholder Protective Provisions

- Preferred Shareholder approval required for “fundamental” transactions
- Carefully consider the list and thresholds
- Blocking versus affirmative rights
- Minimum ownership requirement?

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Management and Information Rights

- Major investors want (need?) certain rights
- Financial Statements, budget, tax returns, etc.
- Carefully consider the list – balance need with interference

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Matters Requiring Preferred Director Approval

- Preferred director approval required for certain “operational” decisions
- Carefully consider the list and board makeup
- Blocking versus affirmative rights
- Minimum ownership requirement?

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Right of First Refusal and Co-Sale

- ROFR typically runs to company and certain (all?) investors
- Consider which shares are covered by ROFR
- Consider which shares are benefitted by co-sale
- Minimum ownership requirement?

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Drag-Along

- Requires shareholders to vote in favor of specified events – generally exit transactions
- Consider balance of power

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Term Sheet - Control

- Right to Participate in Future Rounds

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Term Sheet - Control

- All The Rest
 - Intellectual Property/Assignment of Inventions
 - Confidentiality and Restrictive Covenants
 - Employment Agreements

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Negotiations

JD Geneser & Chris Sackett
September 21, 2017

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Getting to Agreement

- Know what you want and what you will be willing to accept
- Understand the other party's interests and situation
- External pressures? Anyone desperate?
- If you know you will need more money, be very aware of giving away too much of the company too early

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Getting to Agreement (CONT.)

- Do your homework on the investor - you are going to be working with them in the future
 - Speak to other founders and companies they invested in
 - If you expect strategic value, make sure they have delivered in the past
 - Share strategic vision?

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Getting to Agreement (CONT.)

- Negotiation approach: reasonable deal or best deal possible
- Create a sense of urgency, more than one suitor – get best deal sooner so they can stay in the running
- Don't negotiate against yourself (don't give something that someone doesn't ask for)

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Walking Away

- Dollars are important, but what are you willing to give up?
- Know what has value to you, have a hard line
 - MSL Chicago investor story
 - Wanted the world for only \$150,000
 - What you give away now you will definitely give away later

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Legalities Behind Negotiation

- NDAs
- Term sheets, LOIs, no-shop provisions
- Formal documentation
 - Get the general deal agreed before doing the big drafting. If you can't agree on the economics there is no point in paying to have all of the documents drafted.

Manage The Close

- Set expectations for a close date
- Create a closing checklist - it requires time and organization to keep the close on track
- Determine roles of all parties involved (e.g. your lawyers, investors lawyers, internal team that may help with logistics)
- Keep close communication with your board and when you will need them
- Set expectations with all parties who need to sign paperwork



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Final Thoughts

Mike Colwell & Chris Sackett
September 21, 2017


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Thank You!

- Final thoughts
 - Survey
 - Stay in touch
 - Plains Angels
 - Square One DSM

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GOING FORWARD

- plainsangels.com
- squareonedsm.com

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Mike Colwell



Currently Mike is Executive Director of Entrepreneurial Initiatives of the Greater Des Moines Partnership. In this role Mike spends his days coaching, mentoring, consulting, networking and generally asking very tough questions, the kinds of questions most entrepreneurs would rather he did not ask. After spending more than 20 years in the mobile computing and wireless networking markets, Mike brings his knowledge and battle scars to bear with the goal of expanding the central Iowa entrepreneur ecosystem.

Focusing on high-growth-potential companies, he works with businesses ranging from a single person with an idea to \$10 million companies looking to grow to \$25 million. Mike assists with business strategy, business planning, business plan execution and business model development. Mike is the co-founder and co-manager of the Plains Angels, an angel investor group with over 60 members. Mike also has had instrumental roles in starting the Global Insurance Accelerator and an agricultural technology accelerator.

Mike is an angel investor, author and builder. Mike majored in management information systems and minored in computer science at the University of Iowa.

Charise Flynn



Starting her first business at the age of 13, Charise Flynn, owner of C.Results, LLC, has over 20 years of experience cultivating companies from the ground up. Most recently as the Chief Operating Officer of Dwolla, Charise established and led teams in the areas of legal, compliance, risk, customer support, human resources and finance. Raising over \$32M in tier-one venture capital, and overseeing the Des Moines-based company's expansion to San Francisco, Charise played an instrumental role in guiding Dwolla's growth.

Throughout her career she has designed and executed business plans, developed leaders, and coached executives. Currently as the owner of C.Results, Charise consults with high growth individuals to help them achieve results

through strategic planning, executive leadership, team leadership, operational execution and raising capital.

Charise was named as one of The Business Records "40 Under 40", awarded the Simpson College Alumni Achievement Award and the Technology Association of Iowa's Small Business Innovation and Leadership Award. Charise graduated Magna Cum Laude from Simpson College with degrees in Philosophy and Religion.



Chris Sackett

Chris has practiced law for more than twenty years, focusing primarily on mergers and acquisitions, angel, venture capital, and private equity funded companies and related transactions. He represents founders, investors/funds and portfolio and target companies, including representation with respect to initial structure, organization and capitalization, later stage capitalization, strategic partnerships, channel distribution/licensing, intellectual property matters, and ultimately exit transactions. Chris also represents numerous clients in general business, corporate and transactional matters.

Chris is a recognized leader in his areas of expertise, having been recognized by *Chambers USA*® as a leading practitioner in corporate/mergers and acquisitions and business law and selected for inclusion in *Best Lawyers*® in the area of business organizations (including LLCs and Partnerships). Chris is well known in the state of Iowa in the private equity, venture and angel investor communities, where he has extensive relationships that he is often able to leverage for the benefit of his clients.

Chris currently serves on the Board of Directors of the Association of Business and Industry, the Education and Workforce Development Board for the Greater Des Moines Partnership, and the Board for Iowa Corn Opportunities investment fund. Chris is also a strategic advisor to the Iowa Economic Development Authority on appropriate structure and operation of angel investor tax credit programs and serves as an expert panelist for VentureNet Iowa.

J.D. Geneser



J.D. Geneser is a Senior Partner and Shareholder with LWBJ Capital Advisors, LLC. J.D. delivers more than 30 years of leadership experience in business and financial operations. He has held executive positions in both private and publicly traded companies and has substantial expertise in M&A and capitalization.

J.D. directs LWBJ Capital Advisors' consulting and investment banking practices, assisting clients in the areas of:

- mergers and acquisitions
- succession planning
- capital formation and financing strategies
- valuation services
- due diligence
- business and strategic planning
- business start-ups
- operational and financial consulting

J.D. is a CPA and holds the following Securities Licenses – Series 7, 24, 63, 79, 82 and 99.

Tej Dhawan



Tej Dhawan is a fixture in Des Moines' startup scene. He is a co-founder of Plains Angels and StartupCity Des Moines, and he serves as Interim Director of the Iowa AgriTech Accelerator. He is also a Partner in Entrepreneurial Technologies, Mango Seed Investments and Formation Partners.

Jonathan Fialkov



Dr. Jonathan Fialkov is a urologist in West Des Moines, IA with over 15 years of experience. Dr. Fialkov was born in East London, South Africa and moved to the United States when he was seven. He spent his formative years in Pittsburgh, PA and attended Allegheny College in Meadville, PA where he graduated with honors. He completed his Medical Degree at the University of Pittsburgh School of Medicine and went on to complete a residency in Urological Surgery at the University of Iowa Hospitals and Clinics. Dr. Fialkov has conducted numerous research studies and presented at regional, national and international conferences on multiple occasions over the course of his career.

Dr. Fialkov is a Fellow of the American College of Surgeons (FACS), meaning his education and training, professional qualifications, surgical competence, and ethical conduct have passed a rigorous evaluation and have been found to be consistent with the high standards established and demanded by the College.

Dr. Fialkov's extensive experience in his field and the health industry gives him profound insight into the problems that exist in the healthcare space today, as well; as an extensive network to whom to promulgate his products.

Typical Fundraising Stages and Expectations

	“Pre-Seed”	Seed	Series A	Series B
\$'s RAISED	\$50,000 - \$250,000	\$250,000- \$2m	\$3-\$10m average ((lowa: typically \$1.5MM to \$2MM)	\$10m- \$25m average (IOWA:\$2MM+)
VALUATION		\$750k-\$8m	\$10m-\$40m (lowa: \$4.5m-\$8m)	\$30m-\$100m (lowa \$8m-\$10m+)
INVESTORS	Friends & Family Angels	Angels, Micro VC's	VC's	VC's
OWNERSHIP %	less than 5% ownership	no more than 20% ownership	average 20% ownership	average 20% ownership
BOARD SEAT	no	no	yes	yes
*MRR	-	\$0-50k	\$100-250k	\$350k-800k
PREFERENCE		1x	1x	1x
TEAM	Smart, committed with relevant experience	Found market fit: E.G. sales DNA, product design DNA, strong tech for API companies	No star VP's yet but often good director-level hires. Ability to attract and manage great people.	Senior leadership in most function and proven ability to recruit senior people
PRODUCT MARKET FIT	Market research indicates strong need for the product	Strong indication of product/market fit from early customers and pilot users	Clear product market fit (PMF) and increasing evidence of PMF in large market	
TECH	Strong tech co-founder with relevant experience	Proven ability to move fast	Proven ability to attract and manage great engineers (product scales but still breaks)	Excellent tech leadership. Product doesn't break and meets SLA's (3-4 9's availability). Meets security, compliance and disaster recovery requirements of enterprise clients
OPERATIONS			Regular P&L and Balance Sheet. Human Resources is formal (benefits, salaries, taxes)	Financial maturity demonstrated in projections
SALES & MARKETING	Understand best practices, good ideas	Strong indications of demand (e.g. organic trial signups)	Strong organic demand. Success with at least one customer acquisition channel. Decent understanding of funnel and pipeline conversion rates.	Excellent understanding of sales and marketing costs and CAC payback times by channel. Increasing confidence in scalability of the sales / marketing machine.
MARKET POTENTIAL		Conviction that there is a \$100m Annual Recurring Revenue (ARR) potential	increasing conviction of a \$300m Annual Recurring Revenue (ARR) potential	increasing confidence in exit potential (large strategic buyers or IPO)
TRACTION		If pre-monetization, growing waiting list, trial user base	Get from 0-\$100k MRR within 12-18M	Growing 2.5 X y/y

* MRR = Monthly Recurring Revenue



Company Profile:
URL: www.torsionmobile.com
Industry: Mobile Internet
Employees: 6
Founded: August, 2010

Contact Information:
Richard Kirsner
206 6th Ave, Suite 1103
Des Moines, IA 50309
(515) 724-7045
rkirsner@torsionmobile.com

Product:

Mojaba

Product Stage:

Shipping, Jan. 2012

Management:

Christian Gurney, CEO
Richard Kirsner, CFO
Cade Cannon, CTO

Advisors:

Drew McLellan, Marketing

Investors:

Co-Founders
Friends & Family
IA DED Demo Fund Grant

Business Summary:

Torsion Mobile sells a web-based service for designing and publishing mobile-optimized websites. Sold to creative professionals, our Software as a Service platform, called Mojaba™, provides an easy to use, intuitive interface for the creation of mobile websites by non-technical persons.

Customer Problem:

Google research shows that nearly 80% of websites do not offer a mobile-optimized version. Kleiner Perkins predicts that by 2015, more people will access the Internet via mobile phones than by a laptop or desktop computer. Consumers expect any place/any time access to web content. Creative professionals do not have a cost-effective way to create mobile websites. They often rely on outsourced web programmers that create mobile web solutions with costs that far exceed the typical client's budget.

Product/Services:

Mojaba is our turnkey solution that enables creative professionals, with no HTML knowledge or skills, to rapidly create mobile-optimized websites for mobile users, no matter what brand or type of mobile phone those users have. Mojaba provides the complete hosting and analytics reporting environment. Mojaba is an agency-only tool that offers a generous margin/mark up potential. There is no software to buy, install or maintain.

Target Market/Customers:

Our target market is the small to mid-tier advertising, marketing, creative and web services agencies that already have relationships with clients and provide those clients web and Internet solutions. We leverage those relationships and do not engage in expensive demand creation amongst end-users. There are approximately 35,000 advertising agencies and creative professionals in the United States, the majority fitting the mid to small size description and having less than 20 employees.

Sales/Marketing Strategy:

We are building out from a core group of agencies acquired through an exclusive invitation-only beta tester program. We will leverage this core for referrals and case studies. We will execute traditional direct marketing to the agency population which includes social media advertising, speaking at regional

and national conferences, affiliate programs with other providers of services to agencies and email marketing. Our marketing initiatives are built on 60-day cycles for feedback and adjustment.

Business Model:

Our pricing model is an annual subscription fee of \$300 per published mobile website. Basic features are included in a base-pricing tier with premium features to be offered for an additional charge. Our subscription model produces a recurring revenue stream that creates an attractive and lucrative business for both Torsion Mobile and our agency customers. Unlike a direct-to-consumer model, by selling to agencies, we think that we will see multiple sites created for each agency customer acquired. Acquisition costs are thus covered by the first subscription, with subsequent subscriptions generating attractive gross margins.

Competitors:

The competitive landscape is clustered around low-cost direct-to-business players, very high-cost companies focused on international brands and celebrities and few direct competitors. Low-cost direct-to-business entrants include Mofuse, MobiSiteGalore, WebsiteSource, Movitas, GetGoMobi, 2eogoPublish, MobilizeToday, and Dudamobile. High-cost competitors include Digby and Mobify. Direct competitors include FiddleFly and Pijinz.

Competitive Advantage:

- Turnkey solution that offers mobile site build and hosting
- No software to buy or maintain
- Build tool does not require HTML knowledge/skills
- Any agency employee, with 30 minutes of tutorial exposure, can build a site – regardless of technical skills
- Automatically adjusts for all mobile platforms to optimize user experience
- GeoAnalytics reporting provides ability to analyze behavior tied to consumer location
- Mojaba is an agency only tool – clients cannot access
- Generous agency margin/mark up potential
- The subscription model provides agencies with a client retention tool



Company Leadership

Christian Gurney, President & CEO

A co-founder of the company, Christian is responsible for leading the Torsion Mobile team. Since 1988, Christian has been designing, developing and delivering award-winning desktop, Internet and mobile software solutions and leading sophisticated business organizations. He is well-versed in the challenges of leading a technology business, having helped many companies resolve complex software development and product delivery issues.

Christian is past-president of NASDAQ-listed firm CE Software. That company was an Internet product pioneer producing QuickMail, one of the first comprehensive, business-class E-mail solutions that was used by millions worldwide.

Prior to CE Software, Christian was the Director of IT for Catalog Media Corporation, a company started by Priceline.com founder Jay Walker to bring the benefits of overnight package delivery to the American catalog consumer.

As a past member of a special information technology modernization planning subcommittee appointed by the governor of Iowa, Christian helped formulate the structure of a Technology Governance Board, portions of which were enacted into law by the Iowa legislature.

Christian is also co-founder of KG InterDev, which developed and implemented the web technologies used by the leading collector car auction firm, Mecum Auctions, whose live television broadcasts are seen by millions on Discovery Network's Velocity channel (formerly HD Theater). Christian's first startup was Race Legends, a firm dedicated to representing the great champions of the golden age of sports car and Formula One auto racing.

Christian is a graduate of the University of Wisconsin.

Product Profile:

URL: www.Mojaba.com

Type: Software as a Service

Employees: 6

Available: January, 2012

Technical Requirements:

Windows, Mac OS

Web Browser: Internet Explorer, Safari, Firefox or Chrome

Supported Mobile OS:

Apple iOS, Google Android, Windows Phone 7, BlackBerry 5+, XHTML-MP/WAP

Product Infrastructure:

Amazon Web Services
PHP/MySQL (via AWS RDS)
Linux with Apache
Kohana PHP Framework
Backbone JS Framework
jQuery Mobile
Akamai CDN

Richard Kirsner, Vice-President & CFO

A co-founder of the company and CFO, Richard is responsible for all finance, accounting, and investor relations activities of the company. Richard's is a certified public accountant and has ten years of experience as a tax accountant and manager with KPMG Peat Marwick and Coopers & Lybrand.

Prior to forming Torsion Mobile, Richard co-founded KG InterDev, a web technologies firm. Richard is also past-president of CE Software prior to its NASDAQ listing and later was in charge of business development. Richard's varied business career includes having served as CFO of a Rolls-Royce dealership in Florida and a telecommunications company in Dallas, Texas; he owned and operated a film animation company in St. Louis and a custom acoustic guitar factory in New Hampshire; and he was a founder of Sud Cable Services, a cable television provider located in the Provence Region of Southern France.

Richard's multi disciplinary educational background includes having studied architecture at the University of Illinois and received degrees in studio art and business from the University of Iowa.

Cade Cannon, President & CTO

Cade Cannon leads the Torsion Mobile development team. Cade is past primary architect and development team lead for Synapse Multimedia's content management system, used by mid-market local television stations to reach over 1.5 million audience members and deliver over 60 million advertising impression per month. These systems included solutions for desktop websites as well as native mobile applications for Apple iOS and Google Android. Cade is an expert practitioner of agile software development, particularly SCRUM. Other notable achievements include bio-informatics systems development for the Louisiana State University Health Science Center providing for the storage, retrieval and dissemination of micro-array experiment related data, results and discoveries, including integration with an 80-node supercomputer cluster for advanced computation and analysis.

Cade is a graduate of LSU Shreveport.

Data Room: Information Request List

Note: Preferred file formats are Excel, Word and Powerpoint (otherwise PDF); files can be put into a data room (Google Drive, Dropbox, etc.)

1 Corporate

- 1.01 All legal governing documents (articles of incorporation, shareholders' agreement, bylaws, etc.)
- 1.02 Summary of any IP / patents and technology
- 1.03 Fully diluted cap table in Excel including any/all options and stock grants

2 Management and Employees

- 2.01 Summary bios of senior management team
- 2.02 Organization chart (current)
- 2.03 List of projected hires in the next 12 months
- 2.04 Copy of key employee agreements and standard employment agreement template
- 2.05 Details regarding employees that have left the business and brief description of reason (new opportunity, grievance, change in pay/commission, etc.)

3 Metrics and Financials

- 3.01 Summary of accounting policies (specifically revenue recognition and cost allocation)
- 3.02 Excel files of monthly financial statements (IS, BS and CFS) for most recent 18 months
- 3.03 Excel financial model with income statement projections for next 3-5 years
- 3.04 Summary of assumptions for the income statement projections
- 3.05 Annual financial statements prepared by accounting firm
- 3.06 State and Federal tax filings for history of company
- 3.07 Summary of key performance indicators on a monthly basis for 18 most recent months
- 3.08 Uses of funds in excel by month/quarter demonstrating key spending: hires, advertising/marketing, inventory, capital commitments (debt), other
- 3.09 Detailed accounting schedule of inventory balance sheet account (current)
- 3.10 Breakdown of revenue forecast itemizing: repeat orders, repeat order growth rate, new customers acquired - paid, new customers acquired - organic/free, etc.

4 Market, Customers and Products

- 4.01 List of all customers (name or other unique identifier), date of order/s, dollar amount of order/s, location/zip (if available) in excel for the last 18 months
- 4.02 Summary of customer contracts (amount, term, structure, etc.)
- 4.03 Contact details of 10 reference customers
- 4.04 Industry research in regards to market size and competitors
- 4.05 Comparison of MSL's product/technology and pricing positioning versus competitors
- 4.06 Summary of the technology and product development roadmap (features, timing, costs, etc.)
- 4.07 Review of customer acquisition costs (CAC) for the past 18 months showing detailed calculations in excel

5 Partners, Suppliers and Agreements

- 5.01 Summary of any partnerships or other strategic relationships
- 5.02 Summary of any major suppliers / vendors
- 5.03 Material contracts including existing / pending bank/debt financing

6 PR & Customer Reviews

- 6.01 Document and link to Press and Media covering your company
- 6.02 Links to customer reviews, survey data, etc.

This sample document is the work product of a national coalition of attorneys who specialize in venture capital financings, working under the auspices of the NVCA. This document is intended to serve as a starting point only, and should be tailored to meet your specific requirements. This document should not be construed as legal advice for any particular facts or circumstances. Note that this sample document presents an array of (often mutually exclusive) options with respect to particular deal provisions.

TERM SHEET

Preliminary Note

This term sheet maps to the NVCA Model Documents, and for convenience the provisions are grouped according to the particular Model Document in which they may be found. Although this term sheet is perhaps somewhat longer than a "typical" VC Term Sheet, the aim is to provide a level of detail that makes the term sheet useful as both a road map for the document drafters and as a reference source for the business people to quickly find deal terms without the necessity of having to consult the legal documents (assuming of course there have been no changes to the material deal terms prior to execution of the final documents).

TERM SHEET
FOR SERIES A PREFERRED STOCK FINANCING OF
[INSERT COMPANY NAME], INC.
[_____, 20__]

This Term Sheet summarizes the principal terms of the Series A Preferred Stock Financing of [_____] Inc., a [Delaware] corporation (the “**Company**”). In consideration of the time and expense devoted and to be devoted by the Investors with respect to this investment, the No Shop/Confidentiality [and Counsel and Expenses] provisions of this Term Sheet shall be binding obligations of the Company whether or not the financing is consummated. No other legally binding obligations will be created until definitive agreements are executed and delivered by all parties. This Term Sheet is not a commitment to invest, and is conditioned on the completion of due diligence, legal review and documentation that is satisfactory to the Investors. This Term Sheet shall be governed in all respects by the laws of [_____] the ¹.

Offering Terms

Closing Date: As soon as practicable following the Company’s acceptance of this Term Sheet and satisfaction of the Conditions to Closing (the “**Closing**”). [provide for multiple closings if applicable]

Investors: Investor No. 1: [_____] shares ([_]%), \$[_____]

Investor No. 2: [_____] shares ([_]%), \$[_____]

[as well other investors mutually agreed upon by Investors and the Company]

Amount Raised: \$[_____], [including \$[_____]] from the conversion of principal [and interest] on bridge notes].²

Price Per Share: \$[_____] per share (based on the capitalization of the Company set forth below) (the “**Original Purchase Price**”).

¹ The choice of law governing a term sheet can be important because in some jurisdictions a term sheet that expressly states that it is nonbinding may nonetheless create an enforceable obligation to negotiate the terms set forth in the term sheet in good faith. Compare *SIGA Techs., Inc. v. PharmAthene, Inc.*, Case No. C.A. 2627 (Del. Supreme Court May 24, 2013) (holding that where parties agreed to negotiate in good faith in accordance with a term sheet, that obligation was enforceable notwithstanding the fact that the term sheet itself was not signed and contained a footer on each page stating “Non Binding Terms”); *EQT Infrastructure Ltd. v. Smith*, 861 F. Supp. 2d 220 (S.D.N.Y. 2012); *Stanford Hotels Corp. v. Potomac Creek Assocs., L.P.*, 18 A.3d 725 (D.C. App. 2011) with *Rosenfield v. United States Trust Co.*, 5 N.E. 323, 326 (Mass. 1935) (“An agreement to reach an agreement is a contradiction in terms and imposes no obligation on the parties thereo.”); *Martin v. Martin*, 326 S.W.3d 741 (Tex. App. 2010); *Va. Power Energy Mktg. v. EQT Energy, LLC*, 2012 WL 2905110 (E.D. Va. July 16, 2012). As such, because a “nonbinding” term sheet governed by the law of a jurisdiction such as Delaware, New York or the District of Columbia may in fact create an enforceable obligation to negotiate in good faith to come to agreement on the terms set forth in the term sheet, parties should give consideration to the choice of law selected to govern the term sheet.

² Modify this provision to account for staged investments or investments dependent on the achievement of milestones by the Company.

Pre-Money Valuation: The Original Purchase Price is based upon a fully-diluted pre-money valuation of \$[_____] and a fully-diluted post-money valuation of \$[_____] (including an employee pool representing [__]% of the fully-diluted post-money capitalization).

Capitalization: The Company's capital structure before and after the Closing is set forth on Exhibit A.

CHARTER³

Dividends: [*Alternative 1:* Dividends will be paid on the Series A Preferred on an as-converted basis when, as, and if paid on the Common Stock]

[*Alternative 2:* The Series A Preferred will carry an annual [__]% cumulative dividend [payable upon a liquidation or redemption]. For any other dividends or distributions, participation with Common Stock on an as-converted basis.]⁴

[*Alternative 3:* Non-cumulative dividends will be paid on the Series A Preferred in an amount equal to \$[_____] per share of Series A Preferred when and if declared by the Board.]

Liquidation Preference: In the event of any liquidation, dissolution or winding up of the Company, the proceeds shall be paid as follows:

[*Alternative 1 (non-participating Preferred Stock):* First pay [one] times the Original Purchase Price [plus accrued dividends] [plus declared and unpaid dividends] on each share of Series A Preferred (or, if greater, the amount that the Series A Preferred would receive on an as-converted basis). The balance of any proceeds shall be distributed pro rata to holders of Common Stock.]

[*Alternative 2 (full participating Preferred Stock):* First pay [one] times the Original Purchase Price [plus accrued dividends] [plus declared and unpaid dividends] on each share of Series A Preferred. Thereafter, the Series A Preferred participates with the Common

³ The Charter (Certificate of Incorporation) is a public document, filed with the Secretary of State of the state in which the company is incorporated, that establishes all of the rights, preferences, privileges and restrictions of the Preferred Stock.

⁴ In some cases, accrued and unpaid dividends are payable on conversion as well as upon a liquidation event. Most typically, however, dividends are not paid if the preferred is converted. Another alternative is to give the Company the option to pay accrued and unpaid dividends in cash or in common shares valued at fair market value. The latter are referred to as "PIK" (payment-in-kind) dividends.

Stock pro rata on an as-converted basis.]

[*Alternative 3 (cap on Preferred Stock participation rights)*]: First pay [one] times the Original Purchase Price [plus accrued dividends] [plus declared and unpaid dividends] on each share of Series A Preferred. Thereafter, Series A Preferred participates with Common Stock pro rata on an as-converted basis until the holders of Series A Preferred receive an aggregate of [_____] times the Original Purchase Price (including the amount paid pursuant to the preceding sentence).]

A merger or consolidation (other than one in which stockholders of the Company own a majority by voting power of the outstanding shares of the surviving or acquiring corporation) and a sale, lease, transfer, exclusive license or other disposition of all or substantially all of the assets of the Company will be treated as a liquidation event (a “**Deemed Liquidation Event**”), thereby triggering payment of the liquidation preferences described above [unless the holders of [_____] % of the Series A Preferred elect otherwise]. [The Investors' entitlement to their liquidation preference shall not be abrogated or diminished in the event part of the consideration is subject to escrow in connection with a Deemed Liquidation Event.]⁵

Voting Rights:

The Series A Preferred shall vote together with the Common Stock on an as-converted basis, and not as a separate class, except (i) [so long as [*insert fixed number, or %, or “any”*] shares of Series A Preferred are outstanding,] the Series A Preferred as a class shall be entitled to elect [_____] [()] members of the Board (the “**Series A Directors**”), and (ii) as required by law. The Company’s Certificate of Incorporation will provide that the number of authorized shares of Common Stock may be increased or decreased with the approval of a majority of the Preferred and Common Stock, voting together as a single class, and without a separate class vote by the Common Stock.⁶

Protective Provisions:

[So long as [*insert fixed number, or %, or “any”*] shares of Series A Preferred are outstanding,] in addition to any other vote or approval required under the Company’s Charter or Bylaws, the Company will not, without the written consent of the holders of at least [_____] % of the Company’s Series A Preferred, either directly or by amendment, merger, consolidation, or otherwise:

- (i) liquidate, dissolve or wind-up the affairs of the Company, or

⁵ See Subsection 2.3.4 of the Model Certificate of Incorporation and the detailed explanation in related footnote 25.

⁶ For corporations incorporated in California, one cannot “opt out” of the statutory requirement of a separate class vote by Common Stockholders to authorize shares of Common Stock. The purpose of this provision is to “opt out” of DGL 242(b)(2).

effect any merger or consolidation or any other Deemed Liquidation Event; (ii) amend, alter, or repeal any provision of the Certificate of Incorporation or Bylaws [in a manner adverse to the Series A Preferred];⁷ (iii) create or authorize the creation of or issue any other security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to or on parity with the Series A Preferred, or increase the authorized number of shares of Series A Preferred; (iv) purchase or redeem or pay any dividend on any capital stock prior to the Series A Preferred, [other than stock repurchased from former employees or consultants in connection with the cessation of their employment/services, at the lower of fair market value or cost;] [other than as approved by the Board, including the approval of [] Series A Director(s)]; or (v) create or authorize the creation of any debt security [if the Company’s aggregate indebtedness would exceed \$[]][other than equipment leases or bank lines of credit][unless such debt security has received the prior approval of the Board of Directors, including the approval of [] Series A Director(s)]; (vi) create or hold capital stock in any subsidiary that is not a wholly-owned subsidiary or dispose of any subsidiary stock or all or substantially all of any subsidiary assets; [or (vii) increase or decrease the size of the Board of Directors].⁸

Optional Conversion:

The Series A Preferred initially converts 1:1 to Common Stock at any time at option of holder, subject to adjustments for stock dividends, splits, combinations and similar events and as described below under “Anti-dilution Provisions.”

Anti-dilution Provisions:

In the event that the Company issues additional securities at a purchase price less than the current Series A Preferred conversion price, such conversion price shall be adjusted in accordance with the following formula:

[*Alternative 1:* “Typical” weighted average:

$$CP_2 = CP_1 * (A+B) / (A+C)$$

CP₂ = Series A Conversion Price in effect immediately after new issue

CP₁ = Series A Conversion Price in effect immediately prior to new issue

⁷ Note that as a matter of background law, Section 242(b)(2) of the Delaware General Corporation Law provides that if any proposed charter amendment would adversely alter the rights, preferences and powers of one series of Preferred Stock, but not similarly adversely alter the entire class of all Preferred Stock, then the holders of that series are entitled to a separate series vote on the amendment.

⁸ The board size provision may also be addressed in the Voting Agreement; see Section 1.1 of the Model Voting Agreement.

- A = Number of shares of Common Stock deemed to be outstanding immediately prior to new issue (includes all shares of outstanding common stock, all shares of outstanding preferred stock on an as-converted basis, and all outstanding options on an as-exercised basis; and does not include any convertible securities converting into this round of financing)⁹
- B = Aggregate consideration received by the Corporation with respect to the new issue divided by CP₁
- C = Number of shares of stock issued in the subject transaction]

[Alternative 2: Full-ratchet – the conversion price will be reduced to the price at which the new shares are issued.]

[Alternative 3: No price-based anti-dilution protection.]

The following issuances shall not trigger anti-dilution adjustment:¹⁰

- (i) securities issuable upon conversion of any of the Series A Preferred, or as a dividend or distribution on the Series A Preferred; (ii) securities issued upon the conversion of any debenture, warrant, option, or other convertible security; (iii) Common Stock issuable upon a stock split, stock dividend, or any subdivision of shares of Common Stock; and (iv) shares of Common Stock (or options to purchase such shares of Common Stock) issued or issuable to employees or directors of, or consultants to, the Company pursuant to any plan approved by the Company’s Board of Directors [including at least [_____] Series A Director(s)].

Mandatory Conversion:

Each share of Series A Preferred will automatically be converted into Common Stock at the then applicable conversion rate in the event of the closing of a [firm commitment] underwritten public offering with a price of [_____] times the Original Purchase Price (subject to adjustments for stock dividends, splits, combinations and similar events) and [net/gross] proceeds to the Company of not less than \$[_____] (a “QPO”), or (ii) upon the written consent of the holders of [_____] % of the Series A Preferred.¹¹

[Pay-to-Play:

[Unless the holders of [_____] % of the Series A elect otherwise,] on any

⁹ The "broadest" base would include shares reserved in the option pool.

¹⁰ Note that additional exclusions are frequently negotiated, such as issuances in connection with equipment leasing and commercial borrowing. See Subsections 4.4.1(d)(v)-(viii) of the Model Certificate of Incorporation for additional exclusions.

¹¹ The per share test ensures that the investor achieves a significant return on investment before the Company can go public. Also consider allowing a non-QPO to become a QPO if an adjustment is made to the Conversion Price for the benefit of the investor, so that the investor does not have the power to block a public offering.

subsequent [down] round all [Major] Investors are required to purchase their pro rata share of the securities set aside by the Board for purchase by the [Major] Investors. All shares of Series A Preferred¹² of any [Major] Investor failing to do so will automatically [lose anti-dilution rights] [lose right to participate in future rounds] [convert to Common Stock and lose the right to a Board seat if applicable].¹³

*Redemption Rights:*¹⁴

Unless prohibited by Delaware law governing distributions to stockholders, the Series A Preferred shall be redeemable at the option of holders of at least []% of the Series A Preferred commencing any time after [] at a price equal to the Original Purchase Price [plus all accrued but unpaid dividends]. Redemption shall occur in three equal annual portions. Upon a redemption request from the holders of the required percentage of the Series A Preferred, all Series A Preferred shares shall be redeemed [(except for any Series A holders who affirmatively opt-out)].¹⁵

STOCK PURCHASE AGREEMENT

Representations and Warranties:

Standard representations and warranties by the Company. [Representations and warranties by Founders regarding technology ownership, etc.].¹⁶

¹² Alternatively, this provision could apply on a proportionate basis (e.g., if Investor plays for ½ of pro rata share, receives ½ of anti-dilution adjustment).

¹³ If the punishment for failure to participate is losing some but not all rights of the Preferred (e.g., anything other than a forced conversion to common), the Certificate of Incorporation will need to have so-called “blank check preferred” provisions at least to the extent necessary to enable the Board to issue a “shadow” class of preferred with diminished rights in the event an investor fails to participate. As a drafting matter, it is far easier to simply have (some or all of) the preferred convert to common.

¹⁴ Redemption rights allow Investors to force the Company to redeem their shares at cost (and sometimes investors may also request a small guaranteed rate of return, in the form of a dividend). In practice, redemption rights are not often used; however, they do provide a form of exit and some possible leverage over the Company. While it is possible that the right to receive dividends on redemption could give rise to a Code Section 305 “deemed dividend” problem, many tax practitioners take the view that if the liquidation preference provisions in the Charter are drafted to provide that, on conversion, the holder receives the greater of its liquidation preference or its as-converted amount (as provided in the Model Certificate of Incorporation), then there is no Section 305 issue.

¹⁵ Due to statutory restrictions, the Company may not be legally permitted to redeem in the very circumstances where investors most want it (the so-called “sideways situation”). Accordingly, and particularly in light of the Delaware Chancery Court’s ruling in *Thoughtworks* (see discussion in Model Charter), investors may seek enforcement provisions to give their redemption rights more teeth - e.g., the holders of a majority of the Series A Preferred shall be entitled to elect a majority of the Company’s Board of Directors, or shall have consent rights on Company cash expenditures, until such amounts are paid in full.

¹⁶ Founders’ representations are controversial and may elicit significant resistance as they are found in a minority of venture deals. They are more likely to appear if Founders are receiving liquidity from the transaction, or if there is heightened concern over intellectual property (e.g., the Company is a spin-out from an academic institution or the Founder was formerly with another company whose business could be deemed competitive with the Company), or in international deals. Founders’ representations are even less common in subsequent rounds, where risk is viewed as

Conditions to Closing: Standard conditions to Closing, which shall include, among other things, satisfactory completion of financial and legal due diligence, qualification of the shares under applicable Blue Sky laws, the filing of a Certificate of Incorporation establishing the rights and preferences of the Series A Preferred, and an opinion of counsel to the Company.

Counsel and Expenses: [Investor/Company] counsel to draft Closing documents. Company to pay all legal and administrative costs of the financing [at Closing], including reasonable fees (not to exceed \$[____]) and expenses of Investor counsel[, unless the transaction is not completed because the Investors withdraw their commitment without cause].¹⁷

Company Counsel: [_____

_____]

Investor Counsel: [_____

_____]

INVESTORS' RIGHTS AGREEMENT

Registration Rights:

Registrable Securities: All shares of Common Stock issuable upon conversion of the Series A Preferred [and {any other Common Stock held by the Investors}] will be deemed "**Registrable Securities**."¹⁸

Demand Registration: Upon earliest of (i) [three-five] years after the Closing; or (ii) [six] months¹⁹ following an initial public offering ("**IPO**"), persons holding [__]% of the Registrable Securities may request [one][two] (consummated) registrations by the Company of their shares. The aggregate offering price for such registration may not be less than \$[5-15] million. A registration will count for this purpose only if (i) all Registrable Securities requested to be registered are registered, and (ii) it is closed, or withdrawn at the request of the Investors (other

significantly diminished and fairly shared by the investors, rather than being disproportionately borne by the Founders. A sample set of Founders Representations is attached as an Addendum at the end of the Model Stock Purchase Agreement.

¹⁷ The bracketed text should be deleted if this section is not designated in the introductory paragraph as one of the sections that is binding upon the Company regardless of whether the financing is consummated.

¹⁸ Note that Founders/management sometimes also seek limited registration rights.

¹⁹ The Company will want the percentage to be high enough so that a significant portion of the investor base is behind the demand. Companies will typically resist allowing a single investor to cause a registration. Experienced investors will want to ensure that less experienced investors do not have the right to cause a demand registration. In some cases, different series of Preferred Stock may request the right for that series to initiate a certain number of demand registrations. Companies will typically resist this due to the cost and diversion of management resources when multiple constituencies have this right.

than as a result of a material adverse change to the Company).

Registration on Form S-3: The holders of [10-30]% of the Registrable Securities will have the right to require the Company to register on Form S-3, if available for use by the Company, Registrable Securities for an aggregate offering price of at least \$[1-5 million]. There will be no limit on the aggregate number of such Form S-3 registrations, provided that there are no more than [two] per year.

Piggyback Registration: The holders of Registrable Securities will be entitled to “piggyback” registration rights on all registration statements of the Company, subject to the right, however, of the Company and its underwriters to reduce the number of shares proposed to be registered to a minimum of [20-30]% on a pro rata basis and to complete reduction on an IPO at the underwriter’s discretion. In all events, the shares to be registered by holders of Registrable Securities will be reduced only after all other stockholders’ shares are reduced.

Expenses: The registration expenses (exclusive of stock transfer taxes, underwriting discounts and commissions will be borne by the Company. The Company will also pay the reasonable fees and expenses[, not to exceed \$_____,] of one special counsel to represent all the participating stockholders.

Lock-up: Investors shall agree in connection with the IPO, if requested by the managing underwriter, not to sell or transfer any shares of Common Stock of the Company [(including/excluding shares acquired in or following the IPO)] for a period of up to 180 days [plus up to an additional 18 days to the extent necessary to comply with applicable regulatory requirements]²⁰ following the IPO (provided all directors and officers of the Company [and [1 – 5]% stockholders] agree to the same lock-up). [Such lock-up agreement shall provide that any discretionary waiver or termination of the restrictions of such agreements by the Company or representatives of the underwriters shall apply to Investors, pro rata, based on the number of shares held.

Termination: Upon a Deemed Liquidation Event; [and/or] when all shares of an Investor are eligible to be sold without restriction under Rule 144 [and/or] the [____] anniversary of the IPO.

No future registration rights may be granted without consent of the holders of a [majority] of the Registrable Securities unless subordinate to the Investor’s rights.

²⁰ See commentary in footnotes 23 and 24 of the Model Investors’ Rights Agreement regarding possible extensions of lock-up period.

Management and Information Rights:

A Management Rights letter from the Company, in a form reasonably acceptable to the Investors, will be delivered prior to Closing to each Investor that requests one.²¹

Any [Major] Investor [(who is not a competitor)] will be granted access to Company facilities and personnel during normal business hours and with reasonable advance notification. The Company will deliver to such Major Investor (i) annual, quarterly, [and monthly] financial statements, and other information as determined by the Board; (ii) thirty days prior to the end of each fiscal year, a comprehensive operating budget forecasting the Company's revenues, expenses, and cash position on a month-to-month basis for the upcoming fiscal year[; and (iii) promptly following the end of each quarter an up-to-date capitalization table. A "Major Investor" means any Investor who purchases at least \$[_____] of Series A Preferred.

Right to Participate Pro Rata in Future Rounds:

All [Major] Investors shall have a pro rata right, based on their percentage equity ownership in the Company (assuming the conversion of all outstanding Preferred Stock into Common Stock and the exercise of all options outstanding under the Company's stock plans), to participate in subsequent issuances of equity securities of the Company (excluding those issuances listed at the end of the "Anti-dilution Provisions" section of this Term Sheet. In addition, should any [Major] Investor choose not to purchase its full pro rata share, the remaining [Major] Investors shall have the right to purchase the remaining pro rata shares.

Matters Requiring Investor Director Approval:

[So long as the holders of Series A Preferred are entitled to elect a Series A Director, the Company will not, without Board approval, which approval must include the affirmative vote of [one/both] of the Series A Director(s):

- (i) make any loan or advance to, or own any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Company;
- (ii) make any loan or advance to any person, including, any employee or director, except advances and similar expenditures in the ordinary course of business or under the terms of a employee stock or option plan approved by the Board of Directors;
- (iii) guarantee; any indebtedness except for trade accounts of the Company or any subsidiary arising in the ordinary course of business;
- (iv) make any investment inconsistent with any investment policy approved by the Board;
- (v) incur any aggregate indebtedness in excess of \$[_____] that is not already included in a Board-approved budget, other than trade credit incurred in the ordinary course of business;

²¹

See commentary in introduction to Model Managements Rights Letter, explaining purpose of such letter.

(vi) enter into or be a party to any transaction with any director, officer or employee of the Company or any “associate” (as defined in Rule 12b-2 promulgated under the Exchange Act) of any such person [except transactions resulting in payments to or by the Company in an amount less than \$[60,000] per year], [or transactions made in the ordinary course of business and pursuant to reasonable requirements of the Company’s business and upon fair and reasonable terms that are approved by a majority of the Board of Directors];²² (vii) hire, fire, or change the compensation of the executive officers, including approving any option grants; (viii) change the principal business of the Company, enter new lines of business, or exit the current line of business; (ix) sell, assign, license, pledge or encumber material technology or intellectual property, other than licenses granted in the ordinary course of business; or (x) enter into any corporate strategic relationship involving the payment contribution or assignment by the Company or to the Company of assets greater than [\$100,000.00].

*Non-Competition and Non-Solicitation Agreements:*²³

Each Founder and key employee will enter into a [one] year non-competition and non-solicitation agreement in a form reasonably acceptable to the Investors.

Non-Disclosure and Developments Agreement:

Each current and former Founder, employee and consultant will enter into a non-disclosure and proprietary rights assignment agreement in a form reasonably acceptable to the Investors.

Board Matters:

[Each Board Committee shall include at least one Series A Director.]

The Board of Directors shall meet at least [monthly][quarterly], unless otherwise agreed by a vote of the majority of Directors.

The Company will bind D&O insurance with a carrier and in an amount satisfactory to the Board of Directors. Company to enter into Indemnification Agreement with each Series A Director [and affiliated funds] in form acceptable to such director. In the event the Company merges with another entity and is not the surviving

²² Note that Section 402 of the Sarbanes-Oxley Act of 2003 would require repayment of any loans in full prior to the Company filing a registration statement for an IPO.

²³ Note that non-compete restrictions (other than in connection with the sale of a business) are prohibited in California, and may not be enforceable in other jurisdictions, as well. In addition, some investors do not require such agreements for fear that employees will request additional consideration in exchange for signing a Non-Compete/Non-Solicit (and indeed the agreement may arguably be invalid absent such additional consideration - although having an employee sign a non-compete contemporaneous with hiring constitutes adequate consideration in jurisdictions where non-competes are generally enforceable). Others take the view that it should be up to the Board on a case-by-case basis to determine whether any particular key employee is required to sign such an agreement. Non-competes typically have a one year duration, although state law may permit up to two years. Note also that some states may require that a *new* Non-Compete be signed where there is a material change in the employee’s duties/salary/title.

corporation, or transfers all of its assets, proper provisions shall be made so that successors of the Company assume the Company's obligations with respect to indemnification of Directors.

Employee Stock Options:

All employee options to vest as follows: [25% after one year, with remaining vesting monthly over next 36 months].

[Immediately prior to the Series A Preferred Stock investment, [] shares will be added to the option pool creating an unallocated option pool of [] shares.]

Key Person Insurance:

Company to acquire life insurance on Founders [*name each Founder*] in an amount satisfactory to the Board. Proceeds payable to the Company.

RIGHT OF FIRST REFUSAL/CO-SALE AGREEMENT

*Right of First Refusal/
Right of Co-Sale
(Take-Me-Along):*

Company first and Investors second (to the extent assigned by the Board of Directors,) will have a right of first refusal with respect to any shares of capital stock of the Company proposed to be transferred by Founders [and future employees holding greater than [1]% of Company Common Stock (assuming conversion of Preferred Stock and whether then held or subject to the exercise of options)], with a right of oversubscription for Investors of shares unsubscribed by the other Investors. Before any such person may sell Common Stock, he will give the Investors an opportunity to participate in such sale on a basis proportionate to the amount of securities held by the seller and those held by the participating Investors.²⁴

VOTING AGREEMENT

Board of Directors:

At the initial Closing, the Board shall consist of [] members comprised of (i) [*name*] as [the representative designated by []], as the lead Investor, (ii) [*name*] as the representative designated by the remaining Investors, (iii) [*name*] as the representative designated by the Founders, (iv) the person then serving as the Chief Executive Officer of the Company, and (v) [] person(s) who are not employed by the Company and who are mutually acceptable [to the Founders and Investors][to the other directors].

[Drag Along:

Holders of Preferred Stock and the Founders [and all future holders of greater than [1]% of Common Stock (assuming conversion of Preferred Stock and whether then held or subject to the exercise of options)] shall be required to enter into an agreement with the Investors that provides that such stockholders will vote their shares in

²⁴ Certain exceptions are typically negotiated, *e.g.*, estate planning or *de minimis* transfers. Investors may also seek ROFR rights with respect to transfers by investors, in order to be able to have some control over the composition of the investor group.

favor of a Deemed Liquidation Event or transaction in which 50% or more of the voting power of the Company is transferred and which is approved by [the Board of Directors] [and the holders of ___% of the outstanding shares of Preferred Stock, on an as-converted basis (the “**Electing Holders**”)], so long as the liability of each stockholder in such transaction is several (and not joint) and does not exceed the stockholder's pro rata portion of any claim and the consideration to be paid to the stockholders in such transaction will be allocated as if the consideration were the proceeds to be distributed to the Company's stockholders in a liquidation under the Company's then-current Certificate of Incorporation.]²⁵

[Sale Rights:

Upon written notice to the Company from the Electing Holders, the Company shall initiate a process intended to result in a sale of the Company.]²⁶

OTHER MATTERS

Founders' Stock:

All Founders to own stock outright subject to Company right to buyback at cost. Buyback right for [__]% for first [12 months] after Closing; thereafter, right lapses in equal [monthly] increments over following [__] months.

[Existing Preferred Stock:²⁷

The terms set forth above for the Series [__] Preferred Stock are subject to a review of the rights, preferences and restrictions for the existing Preferred Stock. Any changes necessary to conform the existing Preferred Stock to this term sheet will be made at the Closing.]

No Shop/Confidentiality:

The Company agrees to work in good faith expeditiously towards a closing. The Company and the Founders agree that they will not, for a period of [_____] weeks from the date these terms are accepted, take any action to solicit, initiate, encourage or assist the submission of any proposal, negotiation or offer from any person or entity other than the Investors relating to the sale or issuance, of any of the capital stock of the Company [or the acquisition, sale, lease, license or other disposition of the Company or any material part of the stock or assets of the Company] and shall notify the Investors promptly of any inquiries by any third parties in regards to the foregoing. [In the event that the Company breaches this no-shop obligation and, prior to [_____] , closes any of the above-referenced transactions [without providing the Investors the opportunity to invest on the same terms as the other parties to such transaction], then the Company shall pay to

²⁵ See Subsection 3.3 of the Model Voting Agreement for a more detailed list of conditions that must be satisfied in order for the drag-along to be invoked.

²⁶ See Addendum to Model Voting Agreement

²⁷ Necessary only if this is a later round of financing, and not the initial Series A round.

the Investors \$[_____] upon the closing of any such transaction as liquidated damages.]²⁸ The Company will not disclose the terms of this Term Sheet to any person other than officers, members of the Board of Directors and the Company's accountants and attorneys and other potential Investors acceptable to [_____] , as lead Investor, without the written consent of the Investors.

Expiration:

This Term Sheet expires on [_____] , 20[_____] if not accepted by the Company by that date.

EXECUTED THIS [_____] DAY OF [_____] , 20[_____] .

[SIGNATURE BLOCKS]

²⁸ It is unusual to provide for such "break-up" fees in connection with a venture capital financing, but might be something to consider where there is a substantial possibility the Company may be sold prior to consummation of the financing (e.g., a later stage deal).

EXHIBIT A

Pre and Post-Financing Capitalization

Security	Pre-Financing		Post-Financing	
	# of Shares	%	# of Shares	%
Common – Founders				
Common – Employee Stock Pool				
Issued				
Unissued				
[Common – Warrants]				
Series A Preferred				
Total				