UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LENOVO HOLDING COMPANY, INC.,
LENOVO (UNITED STATES) INC., and
MOTOROLA MOBILITY LLC,
Petitioners,

v.

DODOTS LICENSING SOLUTIONS LLC,
Patent Owner.

CASE IPR2019-01279
Patent No. 8,510,407

# DECLARATION OF RAKESH RAMDE

DoDots Exhibit 2003

I declare as follows:

1. I was the sole in-house counsel of DoDots, Inc. for approximately nine months in the 2000-2001 timeframe after having served as DoDots' outside counsel while at a law firm. I am submitting this declaration to provide information about the commercial success of the invention described in U.S. Patent No. 8,510,407 (the "'407 Patent").
2. Led by twin brothers John and George Kembel, the team of scientists from Stanford who invented the groundbreaking technology described in the '407 patent were true internet pioneers. In 1999, more than nine years before the Apple app store opened, these inventors conceived of a novel approach for creating an ecosystem of apps (which they called "Dots") that enabled the delivery of custom-tailored content from the internet without using a web browser and without the need for each Dot to be a standalone application.
3. DoDots, Inc. was able to build a company around the then-patent-pending technology that at its peak was valued at $275 million. DoDots, Inc. built Dots for dozens of companies, including ABC, Edmunds, CNET and many others. Attached as Exhibit A is a copy of the company's customer listing from its website in 2000.
4. I recall that DoDots received much praise and recognition from others for the

technology described in the '407 Patent. Attached as Exhibit B is a true and correct copy of a CNN article dated April 7, 2000 entitled "DoDots: The Web without a browser," which demonstrates that what DoDots was doing at the time was newsworthy.

5. The success the company had was directly related to its technology, as the sole product/service of the company was the DoDots platform described in the specification of the '407 Patent.
6. Unfortunately, the industry-wide dot com crash sank the company, allowing later entrants to eclipse the trailblazing work done by DoDots, Inc. DoDots, Inc. was forced to sell its patent portfolio, which remained dormant for various reasons until recent years.
7. I was one of the owners of a company that owned the patent portfolio after DoDots, Inc., and I continue to have a stake under certain circumstances in any eventual recovery.
8. Stanford Business School put together a case study of DoDots, Inc. in July 2000. A copy of that case study is attached as Exhibit C. The case study includes various attachments, including the summary of a Proposed Private Placement dated March 10, 2000 in which DoDots, Inc. was valued at $275 million. I was still General Counsel of DoDots, Inc. at that time, and was aware of the negotiations relating to the Proposed Private Placement.

9. I have a Bachelor of Science degree in Electrical Engineering from UCLA, a Master of Science Degree in Engineering from USC, a JD degree from the University of Pittsburgh and an MBA from Carnegie Mellon University.

10. Currently, I manage business development, venture investment, software advisory, strategic alliances joint ventures from start-ups to established companies. I also develop and manage corporate and business development activities and initiatives, technology evaluation and diligence, product development/program management, go-to-market and other matters in a wide range of technology and commercial areas for tech clients, law firms and VC clients.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 27, 2020 in Los Altos, California.

Rakesh Rande

Rakesh Ramde

# EXHIBIT A

DoDots™

Dot Solutions
Dot Technology
Developer Zone
Dot Partners
Customer Solutions
Customer Zone
Company
Get Dots
Contact Us
Help

Click Here to Get Dots on your desktop

## Our Customers

The following companies have already adopted Dots as a means of packaging their online content and improving the Internet experience of their target viewers. Click on each company to check out their Dots.

- ABC - television network
- **BizRate** - online store ratings, price and quality comparisons, special offers, best deal on every purchase
- **BlueLight.com** - totally free Internet service
- Broad Daylight, Inc. - interactive Q&A content
- Britannica.com, Inc. - leading provider of information, learning, and knowledge in digital media
- CNET.com - the source for computers and technology
- **DailyRadar.com** - the leading source for game, movie and gadget info on the web
- DealTime - free online comparison-shopping service
- drDrew.com - relationship advice and chat
- **Edmunds.com** - information for automotive consumers empowering informed purchase and ownership decisions
- eHow™ - how to do just about anything
- **Epinions.com** - unbiased advice to help your buying decisions
- **eTour.com** - your personal Web Tour Guide
- FreeShop.com - free, trial and promotional offers from hundreds of well-known companies
- **GoCollect** - premier community and portal for collectors
- GreatRestaurants.com - restaurant reviews and reservations
- HotLinks Network - - find, save, access, and share your favorite links from any computer on the Internet
- **HotVoice** - a leading provider of global e-Communications solutions
- **Iconocast** - source for facts, figures, trend analysis and insider information in the Internet Marketing Industry
- iFuse - new media entertainment and lifestyle brand for youth culture
- **LiveMind** - applications for anywhere, anytime e-commerce
- MapBlast! - accurate interactive maps and driving directions
- Merriam-Webster - online dictionary and thesaurus
- mySimon™ - online shopping assistant
- **NetFlip** - search engine that pays you cash for visiting websites
- Noomedia.net - integrated digital media solutions
- PCWorld.com - online resource for PC users
- PhotoPoint - make photos accessible to the world
- SherpaOnline - B2B content, commerce, and community products
- **Snapfish** - film development and online sharing
- StartSampling - free sample products
- TrafficStation - personalized traffic, transportation and traveler information
- Webhelp.com - provider of real-time, person-to-person services over the Internet
- Work.com - online business portal
- ZDNet - technology news and information

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# EXHIBIT B

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# DoDots: The Web without a browser

From...
PC World

April 7, 2000
Web posted at: 9:40 a.m. EDT (1340 GMT)

by Chris Yurko

(IDG) -- "DoDots" may sound like some new kind of candy, but it's not. And it's not the latest kid-crazy, animated Japanese import.

DoDots is an application made up of small windows called dots. Through these windows, you can take advantage of the features and services offered by certain Web sites without actually visiting them through a browser.

Because the dots are small and operate outside the browser, they provide a faster, more direct link to content providers, according to representatives of DoDots, the new Internet company that makes the application. Each dot handles a specific task.

"Essentially, it's a little Web application on your desktop," says John Kembel, the company's chief technology officer.

"Anything you can do on the Web, you can do on a Dot," adds George Kembel, DoDots' chief executive officer (and John's twin brother).

Here's how it works. First you must download the DoDot "home dot," which sits in the top right-hand corner of your screen regardless of whether your Web browser is open. Then you can pick and choose among any of the other "dots" offered from the company's Web site partners.

Upon DoDots' launch this week, a handful of dots are available. The partners include AnyDay, an online calendar; eHow, a Q&A site; Merriam-Webster, a dictionary and thesaurus; MySimon, a price comparison site; PhotoPoint, a site for posting photographs; Work.com, a business information site; and ZDNet, for

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|---|---|---|
| DJIA | 144.70 | 8257.60 |
| NAS | 3.71 | 1394.72 |
| S&P | 10.90 | 879.91 |

Get Quote

news and information on the computer industry. Other dots let you download MP3s or get the current time.

All of the dots appear in your home dot menu; you simply click on one to open it. Choosing, say, the Merriam Webster dot opens a 1-by-2-inch window where you can enter words you want defined by the Merriam Webster dictionary.

The advantage of this is that if you're working in another application, such as writing a letter, you don't have to launch your Web browser to access a Web resource, George Kembel says. Sometimes, though, the search itself will launch your browser to display the results.

Dots can be bundled or be e-mailed to friends. Also, you can access your dots from any other Dot-enabled PC.

Dots are free of charge, but the beta 1 versions are now available only to users with Internet Explorer 4.0 or later versions of the browser. The application also requires Windows 98, NT, or 2000, although other versions are in development.

DoDots also plans to tackle devices other than the PC. "The desktop is just the start," George Kembel says.

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# EXHIBIT C

# DoDots

*Running out of cash in an otherwise really good company is like running out of gas in an otherwise really good helicopter - Unknown*

It was May 5, 2000, Tony Medrano, President and co-founder of DoDots, an eleven-month old Internet start-up (www.dodots.com), had just hung up the phone with Heidi Roizen, a partner at Softbank Venture Capital (SBVC). Roizen, the lead investor in DoDots' first round of financing and a Director of the Company, had repeated a previous offer to lead the Company's second round if necessary. The Company, a star of the Softbank portfolio, was getting close to running out of cash. On April 17, six weeks after the high-flying company had signed a second round term sheet with Chase H&Q for a large equity investment at a pre-money valuation some 60 times higher than the first round valuation, the deal collapsed, leaving the Company scrambling for financing. Chase had pulled away from the deal in the wake of recent stock market volatility that had sent many Internet stocks well below their initial offering prices. The market was littered with horror stories with some high profile companies such as Chemdex and InfoSpace losing over 70% of their value in two months. (See Exhibits 1 & 2 for a chart of the NASDAQ Composite index and Internet Sector Indices.)

Nothing was wrong with the Company, Chase said, but with the market for new Internet company IPOs questionable or at least depressed for the foreseeable future, Chase could no longer justify the investment at such a high price. Chase said it would consider making a smaller investment at a much lower valuation. The founding team, CEO George Kembel, CTO John Kembel and Medrano, besides being upset over the seeming vaporization of the majority of the value of their Company, worried that if the markets continued to vacillate, and the deal fell through again, the Company would be in serious trouble. To minimize that risk, the team chose to pursue other sources of funding, while continuing to talk to Chase. The team wasn't bitter, they had seen the market and understood the implications, however, they still had a company to fund that was getting closer and closer to running out of cash.

Roizen's offer, to lead the round with a $20 million investment at an $80 million pre-money valuation, albeit at a much lower valuation than the Chase's original offer, was, by any

*This case was prepared by Keith Sigg under the supervision of John Glynn, Lecturer in Management, Stanford University Graduate School of Business, as the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.*

*For confidentiality purposes some facts and numbers in this case have been changed. These changes should not affect the readers conclusions.*

*This case was made possible by a gift from Brook H. Byers.*

standards, still an enormous step up from the first round. Roizen repeated that she and her partners at Softbank felt that the Company had a strong future and was willing to support it. As a rule, Softbank did not pre-emptively lead rounds in which they were already invested, preferring to have new investors involved both for purposes of objectivity as well as for the added benefits that additional investors brought to the Company. In this case, Softbank had decided to make an exception for various reasons including market conditions and the partnership's expectations for the Company. Medrano appreciated her offer, but didn't want to take it unless necessary. He saw it mainly as a safety net. Medrano and his co-founders felt that having the first round lead investor also lead the second round, would not look good and was not necessarily in the best interests of the Company. The Company wanted to get additional value-added investors on board to expand the Company's network and spread the control amongst multiple investors. Besides, Softbank and Roizen, as first round shareholders were conflicted. On one side as a board member she had a fiduciary duty to the Company, on the other side, as a venture capitalist, she wanted to invest in the Company for the lowest price possible. Medrano and the Kembels still felt the Company was worth more.

The founders welcomed the safety net provided by Roizen's offer as they negotiated with shaken investors who were cautious about putting money to work in the wake of recent market events. The Company still had enough cash to last until the end of May (see Exhibit 3 for DoDots financial statements), so there was still some but not much time to pursue additional investors. To make things more complicated, the Company faced significant dilution from the exercise of warrants by a creditor if the second round was not closed by May 15th. A condition had been written into the contract with the creditor that stated if the second round was not closed by that date, the conversion price for the warrants would switch from the Series B to the Series A price. As a result, the number of shares of stock issued to the creditor would increase dramatically. This meant that the Company would in effect be giving a much larger slice of equity to the creditor. While this wasn't life threatening to the Company, it provided a strong incentive to get a deal done sooner rather than later.

The Company's other option if it didn't secure financing in short order, was to take a bridge loan at Softbank's standard bridge loan terms, while it continued to look for investors. Although Softbank's terms were more favorable to the borrower than those of some other investors, bridge loans in general were often viewed as a last resort by companies and investors and in extreme cases carried draconian terms. (See Exhibit 4 for the terms of the Softbank bridge loan.)

## **BACKGROUND:**

George Kembel, John Kembel and Tony Medrano began working in the spring of 1999 on an idea for a new type of Internet company. (See Exhibit 5 for founders' biographies.) George and John Kembel, identical twins, graduated from Stanford University with B.S. degrees in Mechanical Engineering in 1994. George pursued a sales and marketing career path while John focused on a more technical career in computer science. Both returned to Stanford for M.S. degrees in Product Design. George focused on technical marketing and John concentrated on software and product design. While in graduate school they met Medrano through personal contacts. Tony, a former naval officer, high school physics teacher and JD/MBA student at Stanford, joined George and John in developing a business around technology which John had created and patented.

The idea was to bring consumer packaging and distribution to web content. The Company, DoDots, would provide online and offline companies with technology to enable web content to be "packaged, branded, and distributed" to customers outside of a web browser. Dots, as the team called them, were small windows able to deliver specific information and features such as weather, games, a dictionary, financial information or e-commerce (see Exhibit 6 for some examples of Dots). Dots could be open along with other applications on a desktop, and because of their small size, Dots displayed in about one tenth the time of a normal web page. Companies, the team felt, would want to use Dots to distribute content because of the benefits of having a single purpose, small window sporting that company's branding and style that could stay visible as users used other applications. Similarly, users would like the simplicity, ability to multitask, and fast downloads.

Through June and July 1999, Medrano and the Kembels met with venture capitalists to discuss their idea and show a working prototype of their application. The team used personal and academic contacts to put together meetings with several technology-focused venture capitalists.

In early July, the team was referred to Softbank partner Heidi Roizen by Tom Kosnik, a former professor of George and John whom Heidi had know for several years, as well as by Pete Hartigan, an associate at Softbank who worked closely with Heidi. Hartigan knew Medrano through his fiancé who had been a classmate of Medrano at the business school.

## SOFTBANK VENTURE CAPITAL[1]

In early 1996, SBVC was formed when Gary Rieschel joined Softbank Holdings to head up their venture capital activities. The Softbank family of companies was headed by the vibrant Masayoshi Son, an entrepreneur who founded Softbank in 1981 as a software distribution company and by 1999 had developed it into a multinational diversified high technology organization with a market capitalization of nearly $80 billion. Son developed an ambitious 300-year plan for Softbank that included the creation of a worldwide Internet "zaibatsu," in which synergies among the many companies in which Softbank held stakes would be leveraged for maximum advantage. In keeping with this strategy, some of Softbank's central holdings were infrastructure companies like Yahoo!, E-Trade and ZDnet, which had distribution or other resources to offer other Softbank-backed companies.

Rieshel and his partners took Son's zaibatsu vision to heart when they began directing Softbank's US investments, choosing deal and sectors that supported the global Softbank goal of "building a compelling, long-lasting Internet infrastructure."[2] By early 2000, SBVC had $4.9 Billion under management. Rieshel told an interviewer that "because of the information that travels between [Softbank] companies and our portfolio and how we really encourage them to work and communicate with each other…we get better information as investors."[3] The synergies between companies were good for SBVC as well as for the companies involved, because they strengthened the overall network by fortifying each with its components.

[1] Special thanks to HBS High Tech Fellow Mary Rotelli for her research on Softbank which is included here
[2] Alex Gove, "Softbank Antes Up," Red Herring 6/1/96
[3] Interview with Bruce Francis, CNNfn Anchor, Digital Jam 2/4/99

Softbank had considerable Internet investing experience upon which SBVC could draw. Son envisioned Softbank as "the hub of a huge digital marketplace,"[4] and began investing heavily in Internet companies as early as 1995. Softbank's early stake in Yahoo! yielded not only enormous financial gains but also global business synergies: its presence in Softbank's portfolio gave other Softbank companies access to one of the most powerful distribution engines in the Internet economy of the late 1990's.

**Heidi Roizen**

Roizen, an outgoing, personable, former entrepreneur, joined Softbank as an investing partner in the spring of 1999[5]. Roizen had spent the first decade of her career as CEO of T/Maker, the software company she co-founded while at the Stanford Business School. Through her roles as CEO of T/Maker, President of the Software Publishers Association, and later vice president of worldwide developer relations at Apple Computer, Roizen had developed a network that included many of the most powerful business leaders in the technology sector. Roizen was widely known for using the network that she had created to the benefit of many, and effectively combining social, community, and business relationships. She followed a set of guidelines that she had developed for how to leverage her relationships in a constructive manner to create win-win relationships for those involved. Roizen wove her family and home life into her career as well, and the family house was the site of everything from community planning sessions and dinner parties with the likes of Bill Gates of Microsoft and Scott McNeally of Sun Microsystems to company retreats.

The team's first meeting with Roizen took place at her home one morning at 8:00 AM before her daily jog. She was leaving town for a week, but on a strong recommendation from Hartigan wanted to meet with the team sooner rather than later. During the meeting, the team showed their product technology and answered her questions. The team and Roizen immediately hit it off. George recalled, "Heidi told us that she liked what we had shown her and she liked our work ethic even though she recognized that we were young and inexperienced in running a company. She put us in contact with another of her partners, Scott Russell, to also hear our pitch."

Two days later the team met with Scott Russell. Russell also liked the idea, the technology and the team. Based on that meeting and Russell's input from Roizen, Russell made the team a tentative offer on the spot. Russell discussed how Softbank could help the Company. DoDots, he told them, would fit in well with the Softbank portfolio, and be an excellent platform for the content produced by many of Softbank portfolio of over 100 Internet companies (see Exhibit 7 for a partial list of Softbank's portfolio). Scott explained that Softbank associates (known as Netbatsu Development Officers) had specific responsibility for facilitating business development deals between the portfolio companies (in fact, approximately 50% of the NDOs' time was slated for the purpose). With so many Internet companies in the portfolio, the potential value to a "platform" company like DoDots was substantial. Following the meeting, Russell offered to draw up a term sheet and asked for the team's input on what they wanted to see in it.



[4] Brian Bremner and Linda Himelstein, "Softbank Cyber Keirstsu," Business Week, 4/5/99
[5] For an excellent discussion of the career of Heidi Roizen, see HBS Case study N9-800-228 80 January 18, 2000

George and John had given Tony full responsibility for investor negotiations especially those aspects dealing with legal matters. Tony himself had drafted several term sheets between his years in law school while working at Cooley Godward, a law firm specializing in venture law. Tony went over the terms that were important to the Company. Medrano was conscious of the fact that once terms were included in the first round term sheet it was very difficult to change them later. His goals were to ensure that the terms protected the founders and to avoid any terms that limited the upside potential of the Company or had the potential to cause problems in future fundraising rounds. (See Exhibit 8 for a discussion of typical terms of preferred stock.) Tony also wanted John and George to receive a portion of their equity with immediate vesting for the work they had already done towards creating the technology and prototype. Board composition was also an important consideration and the DoDots team wanted to ensure that they did not lose control of the Company. With DoDots' input, Russell had the term sheet drawn up and had it in their hands by that evening. The team considered the resulting terms (see Exhibit 9) to be extremely entrepreneur friendly.

To date, the team had been impressed with Softbank on several levels: Softbank had been very responsive, arranging meetings and preparing documents in short order. The extensive Internet portfolio, or "ecosystem" as Hartigan had referred to it looked promising for deal flow. To that end, the partnership espoused a philosophy of actively facilitating and supporting relationships between the portfolio companies. In addition, the team felt that Roizen and Russell seemed to "get it", that is they shared the vision of the founders for the Company. As Roizen would be the partner to sit on the Company's Board, along with George and John, the DoDots founders were very alert to the way in which she would interact with the Company. Because Heidi had just recently started working at Softbank she did not have a large number of investments she was overseeing. To DoDots, this meant that they would get more of her time at the critical formation stages of the Company. She was very interested in using her skills to help companies grow and had been explicit in communicating and committing to what she would be willing to do.

During the same time period, the team also began to have serious discussions with Menlo Ventures (Menlo). Medrano had originally approached Menlo based on a personal relationship he had developed with one of the Menlo partners, Doug Carlisle, while in business school. Menlo, a well-known and respected firm that had been in business for 23 years had numerous investments in Internet, e-commerce, communications, software and health care companies. Menlo was very interested in doing the deal. The DoDots team also felt comfortable with Doug Carlisle, having met with him several times to discuss the Company and the value that Menlo could bring. Attractive to the team was the fact that the firm was actively involved with the vast majority of its portfolio companies, taking board seats on over 80% of them. However, the portfolio, while broad, had fewer content companies that would be candidates to partner with DoDots.

## Closing the First Round

By the beginning of August, the team had received two term sheets - one from Menlo Ventures and one from SOFTBANK.

The Company was looking to raise $3 million from two investors. Softbank proposed a $4.5 million pre-money valuation with Softbank investing $1.5 million, and another yet to be determined investor also investing $1.5 million. Menlo Ventures had proposed a $5 million pre-money valuation. The Menlo offer, although higher, carried with it some restrictive terms that would provide Menlo with warrants on 20% of the Company in series B with no more than a $25 million pre-money valuation. While at the time $25 million seemed generously high when compared to the current valuation, Medrano and the Kembels did not like the idea of signing a document now that capped the upside of value of the Company in the future.

The team considered taking funding from both Softbank and Menlo, but the desire by each VC to lead the round left the Company with a choice. Medrano and the Kembels felt that the good chemistry between themselves and Heidi Roizen, Softbank's entrepreneur friendly reputation, which had been backed up by their own experience to date, and the value of the Softbank portfolio led the DoDots team to accept the Softbank offer on August 21, 1999.

## DEBT FINANCING

After DoDots received the term sheet from Softbank, the team continued to look for a complementary investor for the Company. At the same time, itching to begin building the Company, George, John, and Tony did not want to wait until venture money was "in the bank" to begin hiring people, getting office space, and buying necessary equipment. In early August, Medrano approached a personal contact who ran a commercial bank and obtained a $250K line of credit for the Company based on the pending equity financing. Medrano described the use of the funds and the implications on the value of the Company.

> "With this money, we signed a lease for our first office space and John hired Reactivity, a technology consulting company, to convert the prototype client to the production client. In the meantime we're talking to customers and getting initial customer verification of the product. Next we began hiring people internally. The result was that everyday the Company was getting more valuable and we still hadn't closed our first round of equity financing. We decided to pursue more forms of debt financing with the goal of stretching the Company's cash as far as possible. Give us a long 'runway' as they call it. Our goal was to finance as much of the growth of the Company as possible with debt. We decided to forgo selling any more equity in the Company than necessary. Letting another investor into the first round at a $4.5 million pre-money valuation seemed foolish at this point. We were already worth much more."

Rather than raising $3 million in the first round as originally intended, the Company raised $2M from Softbank at the previously agreed upon $4.5 pre-money valuation. By the time that the investment closed on Sept 15, the Company was employing six people. In early October 1999, Joseph Vetter, a former Microsoft Officer and Softbank limited partner asked to invest in the Company. Medrano recalled,

> "Vetter really liked the Company and wanted to put a significant amount of money to work in it. He wanted to invest at the first round price, which we told him was impossible. We had specifically removed the provision from the Series A closing documents that would allow additional investors to come into the round after the closing[6]. We also told him that we planned to raise the second round early in the next

[6] Often, the deal documents allow for additional investors to come in after the closing for some predetermined length of time.

> year, but intended to take financing from venture capital investors and couldn't guarantee that there would be space in the round for individual investors at that time. However, if he chose, Vetter could purchase convertible debt. His investment would earn 10% interest and be senior to equity in the case of a liquidation, so there was less risk than an equity investment, however, at the time of the closing of the second round, his loan would convert into an equity investment at the B share price. It was good for the Company and would also allow him to invest in the second round. He agreed and in early November purchased $1.25 million in convertible debt."

As the Company grew and George and John concentrated on steering the Company and developing the technology, Medrano continued to pursue additional forms of debt financing to fuel its growth. Following the convertible loan from Vetter, in December the Company negotiated an equipment line of credit from Western Technology Investments for the purchase of computer equipment and software in the amount of $1.5 million. The equipment loan was secured by the assets purchased with the loan proceeds. The loan carried a 10% annual interest rate with the payments spread over 36 months, and 6% warrant coverage at the Series B share price. However an additional caveat was written into the contract which would price the warrants at the Series A price if a B round was not closed by May 15.[7]

In February, the Company further increased its leverage by obtaining $2 million in commercial debt from Lighthouse Capital Partners. The terms of this loan included an APR of 10%, a balloon payment at the end of 36 months and 3.75% warrant coverage. These warrants were to be priced at the B round price.

Through this phase Roizen was continuously surprised by the DoDots team's ability to raise such advantageous debt financing,

> "They stretched a $2 million equity investment further than any company I had ever seen. Often investors frown on debt because it makes their interest further subordinated in the case that the company's assets are liquidated. Or, it makes the company less attractive to new investors because rather than their funds going to build the company they are going to repay loans which the company previously took out. In this case however, we felt the Company was strong and Tony, John and George had raised very attractive debt financing with very good terms that wouldn't require repayment for quite some time. We were in full support of it because it was good for the Company."

Hartigan commented on the effect of the Company's fundraising efforts.

> "Two of most important things to the growth of an Internet start-up, or any start-up for that matter are time and cash. DoDots used debt to get both."

Besides being supportive of the DoDots financing strategy, Softbank, specifically Roizen and Hartigan, helped extensively in recruiting and business development. Roizen's network and her strong belief in the idea and the team made her ideal for helping to find and "closing" key employees.

[7] Western Technology Investments would receive stock warrants to purchase $90,000 of DoDots stock (6% of the $1.5 million loan). The actual number of shares would be calculated based on the share price in the B round, or in the event the B round was not closed by May 15, the conversion would be based on the share price in the A round ($0.55).

"Tony, John, George and I have an excellent working relationship. Much of this stems from the way we communicate. The team doesn't take up my time discussing every key decision they make. Rather they just keep me informed. For example, the team will often BCC me on important emails. If I feel I need to interject myself, I do. If they need me to take some action, they tell me exactly what it is. When they needed me to close on the VP of marketing, George sent me an email with the person's resume, his thoughts on why he wanted to hire this person, and when this person was expecting my phone call. I love that, that's efficiency."

George Kembel seconded Roizen's thoughts,

"Heidi has always done what is good for the Company, and when we do well, like we have been the whole way, she's let us run with it. She's been there ready and waiting for what we ask her to do. We try to only ask her to do things that are fast and right up her alley and don't waste her time on things she shouldn't be doing."

## GROWING THE COMPANY

Through the fall and winter the Company continued to beat expectations relative to its milestones in terms of technology development, product development, partnerships, and growth. The founders and the Softbank team had planned for rapid growth and had put in place the infrastructure to enable it. From the hiring of the first employee, the issues of scale were addressed. The Company's first hires were aimed at helping the Company to grow rapidly while allowing the founders to focus on critical business and technical issues. The Company's first hire was the Director of Human Resources, Dani Apgar. Medrano explained,

"We felt that if we intended to build a real company and grow quickly, we needed to be able to hire a large number of people and not have us spending all our time on that. We also needed someone to figure out how to pay everyone and set up benefits and other policies. The same goes for I.T. We quickly hired the director of I.T. to set up the office, the network, our servers, and make sure all that ran smoothly. The last thing you want in a technology company is to have your CTO configuring laptops. By putting the infrastructure in place early we really facilitated our growth."

The topic of replacing the founders as the Company grew had come up on a fairly regular basis in discussions among the founders. George, John and Tony wanted to ensure that the Company had the right management as the Company grew and had asked Roizen when would be the right time to find replacements. Roizen's response had been that if and when the time came that the job exceeded the founders' capabilities then the Company could start a search for executive management. However, as long as the founders continued to excel as they had, Softbank was in favor of leaving the founding team in place. Roizen explained, "The only way to really get good entrepreneurs is to let them grow. We want to build leaders that we can fund in their next businesses too, knowing that those businesses will even bigger and better because of the skills the entrepreneurs have developed."

## PARTNERSHIPS

The DoDots team felt their technology would be valuable to just about any company that delivered content on the Internet. It would be especially valuable to those companies that benefited from frequent or constant contact with their users or that provided timely information that might be useful while users worked in other applications. Examples included calendars, news, and applications such as a dictionary dot that could be open alongside a word processor to allow users to quickly look up a word as they worked.

Softbank had been critical in helping DoDots to arrange its many of first partnerships with Internet content companies. In November 1999, SOFTBANK held its Annual Forum to give member companies a formal opportunity to meet and develop cross relationships within the portfolio. While most companies presented in a trade show format, DoDots, which was still in stealth mode, did not present on the floor. Roizen and Hartigan arranged for a separate room for DoDots to use and brought potential partner companies to meet with them privately. At the end of the forum, several companies had expressed strong interests in partnering with DoDots.

Softbank had also recently opened an incubator, termed the "Hotbank". Although DoDots was not located in the incubator, they took advantage of many of its benefits. Hotbank, located on the lower level of Softbank's new Mountain View offices, offered many of Softbank's seed-stage companies assistance with infrastructure items, outfitted office space provided at cost and perhaps most importantly incubated businesses had extensive informal access to their VCs because their offices were all housed in the same building. Business development and interaction between the companies was fueled by the shared spaces and resulting familiarity amongst the portfolio. DoDots team members would make regular visits to Hotbank to formally and informally interact with several of the companies that were a good fit with the DoDots platform.

By the end of December, as the beta version of the Dot® client neared completion, the Company began finalizing its first strategic partnerships. Three of its first partners: AnyDay, ZDnet, and PhotoPoint, all Softbank portfolio companies, had been introduced to DoDots through the efforts of Roizen and Hartigan. By April 2000, the number of partners inside and outside of SOFTBANK was 15 and growing.

## RAISING THE SECOND ROUND

In February, by just about any measure, the Company was "hot", even relative to other Internet companies that were riding a giant wave of investor interest that was pushing valuations and public offerings to new levels. Several private investors had expressed interest in the Company. DoDots' partners and users were also pleased with the performance of the product. For the companies that distributed content via dots, duration and frequency, two key measures, were significantly higher in comparison to browser based page views. Duration, a measure of how long a customer would keep the window open was up on average by over 1800% by DoDots' measures when compared with browser based page views. In addition several dot's linked to the sites themselves and resulted in increased traffic to the sites. Because DoDots provided both a distribution platform and a packaging technology as well as links and a subscription service, the Company benefited from multiple revenue streams from its partners. Revenue had also exceeded expectations as the number of users and their use of the Dots grew ahead of expectations. Underlying all the performance based value were the Company's numerous proprietary patented technologies that had significant value in themselves.

In mid February, the executive team made a presentation to the SBVC partners, as a "warm-up" for the presentations that they would be making to potential financiers over the next month. This marked the first time that some of the Softbank partners had met the team in person. In the presentation, the Company showed its progress to date and discussed the plans for the future. When the question of valuation came up, Medrano stated that under a conservative revenue scenario, they felt the Company was worth $150 million pre-money, however if things really went the way the Company expected on revenues, growth, and expected partnerships, the Company could be worth $300 million pre-money. If so, the Company could raise enough capital at that valuation to allow it to grow even faster, pursue the acquisition of strategic targets and take it to an IPO. Not knowing what reaction to expect by proposing such a high valuation, he was somewhat surprised when the partners, although noting that $300 million pre seemed on the high side, encouraged the team to get a great investor at what the market would offer. Following the presentation, the partners applauded. Roizen indicated that Softbank would follow with their pro-rata (33% of the round) at whatever valuation the lead investor and the Company determined.

Medrano described the effect that the meeting had on the Company,

> "The Softbank partners, were amazingly supportive. After our presentation in February, they started introducing us to all their portfolio companies, even more so than they had before. They began advocating us to the press. They helped establish other business development relationships. Really all of Softbank kind of came by and said, 'Wow, this is a great company. We're all really going to get behind you and do whatever we can to help leverage you guys in our companies. That was a great experience."

Within a week of starting to pursue additional funding the team had met with several investors including Kleiner Perkins Caufield and Byers, Technology Crossover Ventures, Bowman Capital, and Chase H&Q.

## CHASE H&Q

Following two meetings with Chase in San Francisco, a group of Chase partners went to the DoDots office on March 10, 2000 for further discussions. Charlie Walker, a partner that had recently joined Chase as a part of the merger with Hambrecht and Quist led the group. Walker didn't mince words. The Company was very attractive to Chase, however the business model was new and there was significant risk. There were not comparables on to base a valuation and if Chase was going to invest, DoDots was going to have to agree to numerous terms which protected Chase in a number of scenarios. Medrano described the discussion,

> "Charlie has a very strong style, very much what I would call 'Chicago banker'. It was a far cry from our initial discussions with Softbank, but these stakes were also a lot higher. Before the meeting, I had pretty good idea of what to expect in the discussion so I made sure that as a management team, George, John, some of our other senior people and I discussed the various scenarios that we would accept so that I could comfortably speak for the team in the negotiations. For example, Walker wanted downside protection for his investment, including a full ratchet, which meant the risk to founders losing control and equity in the case of financial difficulties was much higher. We would only agree to that with some limits and a high valuation."

The discussion was heated with Medrano and Walker going head to head on a number of issues. By the end of the four-hour meeting, the parties had agreed to a set of terms (see Exhibit 10) and a pre-money valuation of $275 million. Chase along with its affiliate, Access Technology Partners, would invest $25 million of a total round of near $60 million. Walker put the terms on the table and told the management team, "This is a one time deal, either you agree to the terms now and sign the term sheet, or we pull it off the table. I can barely justify this type of valuation." After a five minute private meeting of the management team with Medrano briefly explaining the implications and confirming George and John's consensus, Medrano agreed to the terms. The term sheet, while non-binding would be the basis for the much more detailed closing documents that Chase's lawyers would put together over the coming weeks.

That same day, March 10, 2000 marked a peak of the NASDAQ index. The following weeks saw precipitous drops in the market indices with Internet stocks leading the fall. Tony began receiving indications, directly and indirectly that many of the Chase partners were uncomfortable with the deal as negotiated.

Through this period, Roizen was fully behind the Company. Medrano recalled, "Heidi was very supportive and was trying to help us close the round. She would be on the phone with Chase saying, '...you guys need to do this deal, this is great, here are some things they've done, here's more people to talk to and more references...' "

In early April as the market continued its slide, Walker called saying that Chase had decided to not invest $25 million but would put in $20 million if Softbank would also contribute the same. Roizen approached her partners with the offer, Softbank's pro rata was 33% and Roizen had discussed with the Company several times that Softbank didn't want to take much more than that because it wasn't good for the Company to have one investor with too big of a share. However, still realizing that the deal was great for the Company, Roizen and her partners agreed to put in $20 million if that would convince Chase to close the deal. Softbank even agreed to terms that would give Series B shares better liquidation preference than Series A shares. Meanwhile, the team continued to talk to potential third investors. Several potential investors were interested in the Company, but not at the price. Others were watching the market and stated they were not making investments until things settled down. "We're just not putting money to work right now", was a common response.

In the meantime, the market continued to slide and the deal still hadn't made much progress. Keeping a close eye on the Company's cash, Medrano became frustrated with the delays. They had started the fundraising process with 3 months of cash in the bank. But as of mid-April with a month and a half almost gone, 80 people on the payroll and still no closed deal, he started to get concerned.

> "Fortunately, we had been conservative in how much time it would take to close the round, so we weren't in immediate trouble, but we weren't exactly comfortable. Several other company's with less cash reserve, suffering from the same market jitters in the investment community were having to take bridge loans at very unfavorable terms, 50% warrant coverage and the like, other were planning for fire sales. That was not a position that I wanted this company to be in. Theoretically we might have been able to convince some of the potential investors that we spoke with to come in at a lower price, but with a term sheet sitting on the table at 275, we didn't want to shoot ourselves in the foot by taking less unless it became necessary. Besides, we were, admittedly fixated on the valuation that Chase had given us, and we desperately wanted to close that deal!"

On April 17th, Medrano received a call from Roizen breaking the news that Chase had decided to pass on the deal. "They thought it would be a good idea if I talked to you first", she said, "Talk to them and listen to what they have to say. Then let's see what else we can put together. I have no doubts that this company is a going concern. We're not going to let it run out of money."

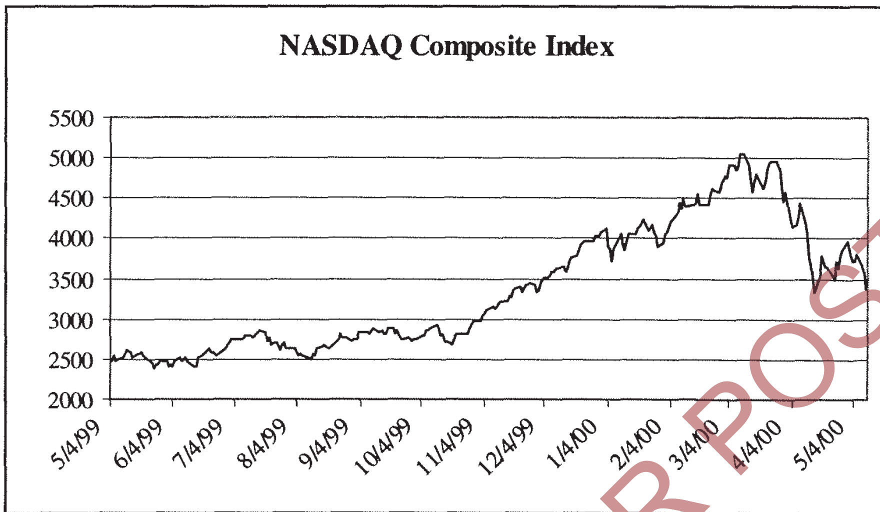
Chase offered to renegotiate and possibly lead the round. The Company, still wanting a well known investor, but cautious of putting all the Company's eggs in one basket began pursuing other options, including re-approaching some of the investors that had expressed interest but didn't like the price. With the previous deal off, the price was back on the table. Medrano found that several investors were interested, but after seeing the lead pull out, and with the market continuing to fall, many had adopted a wait and see attitude.

One potential investor had been interested in the Company for several months. Jon Staenberg, a Stanford GSB alumnus and ex-Microsoft executive who ran Staenberg Venture Capital, a small VC fund out of Seattle, had wanted to invest in the Company the previous autumn when he found out about DoDots through an introduction from Roizen. Roizen had felt Staenberg's connections and location made him potentially a strategically attractive investor for DoDots. Staenberg's fund had investments in a broad portfolio of companies, in which he often took an advisory role. The fund typically made smaller investments as a follow-on investor with none of its investments to date over $3 million. Following several rounds of discussions, On May 2, Staenberg offered to invest $2 million and lead the round at a $125 million pre-money valuation. Medrano knew that having a small investor who was not very well known in the valley lead a deal with a relatively small investment was a risky strategy, but the Company needed cash, and if it happened quickly the Company would also avoid the additional dilution caused by repricing of Western Technologies' warrants.

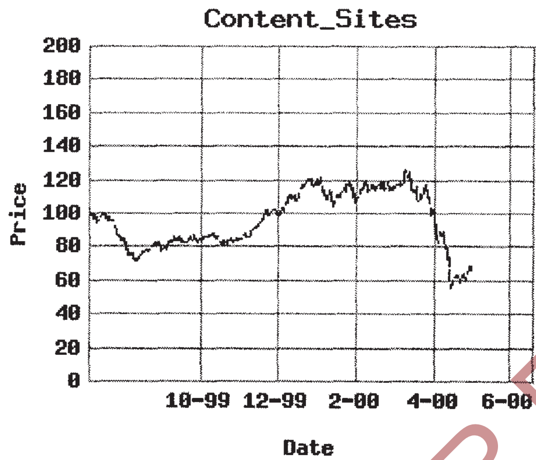
The lead investor generally sets the terms, sets the valuation for the company, puts in the largest investment, and often takes a seat on the company's Board of Directors. In this case, Staenberg would set the terms and valuation, but would not take a Board seat nor, if all went well, be making the largest investment.

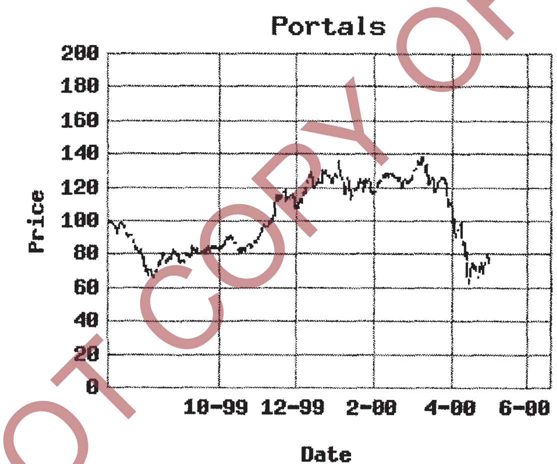
Medrano took a moment to think about the current situation as well as the future of the Company. Medrano strongly believed the Company had a great future. He knew that the decisions that they made now would have long reaching implications. Two months before, when the Company started to raise this round of financing, everything had seemed to proceed to plan and the Company's options looked great. Now, a huge portion of the valuation had disappeared, the Company was scrambling to get money, and the Company had pretty limited short-term options. Should the Company try to close the round with Staenberg as the lead investor? Medrano wondered if other investors would follow and what the impact would be on future rounds. The Company was rushing to close the deal to avoid the repricing of the Western Technology warrants on May 15th. In the grand scheme of things, Medrano wondered if that was worth it. Regardless, the Company still needed cash or at least would in a couple of weeks. If not Staenberg, should the Company take the bridge loan and hope to attract other investors or did having Softbank lead with an equity investment make sense?

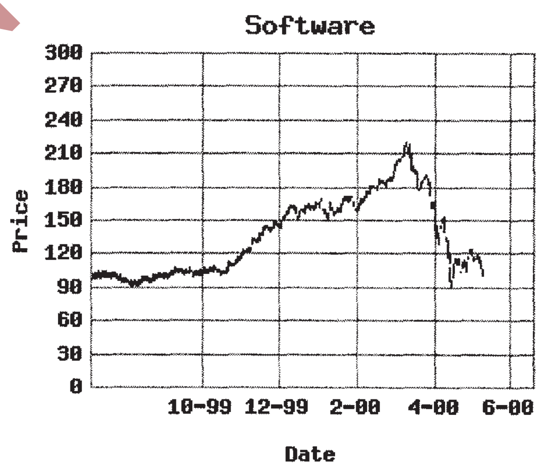
## EXHIBIT 1 – NASDAQ COMPOSITE INDEX MAY 1999 TO MAY 2000



## EXHIBIT 2 – INTERNET SECTOR INDICES



## EXHIBIT 3 – DODOTS CASH FLOW AND INCOME STATEMENTS



### DoDots, Inc

**Income statement**
**Month of March 2000**

| | actual | forecast | variance | |
|---|---|---|---|---|
| | $'000 | $'000 | $'000 | % |
| Revenue | - | 1 | (1) | -100% |
| Cost of revenue | - | - | - | n/a |
| Gross profit | - | 1 | (1) | -100% |
| Operating expenses: | | | | |
| Product development | (602) | (402) | (200) | 50% |
| Sales and marketing | (268) | (439) | 171 | -39% |
| General and administrative | (226) | (269) | 43 | -16% |
| Total operating expenses | (1,097) | (1,110) | 13 | -1% |
| Operating loss | (1,097) | (1,109) | 12 | -1% |
| Interest income | 1 | 8 | (7) | -88% |
| Interest expense | (23) | (46) | 23 | -50% |
| Net loss | (1,119) | (1,147) | 28 | -2% |

The overall loss is near budgeted levels. Product development expenses are larger than planned primarily as a result of call center start up costs and an increase in allocated depreciation expenses.

Sales and marketing expenses are lower than forecast primarily as a result of headcount being less less than planned. General and administrative expenses are below forecast largely due to product development bearing a larger proportion of depreciation expenses than originally planned.

### DoDots, Inc

**Income statement**
**Month of April 2000**

| | actual | forecast | variance | |
|---|---|---|---|---|
| | $'000 | $'000 | $'000 | % |
| Revenue | - | 7 | (7) | -100% |
| Cost of revenue | - | - | - | n/a |
| Gross profit | - | 7 | (7) | -100% |
| Operating expenses: | | | | |
| Product development | (459) | (387) | (72) | 19% |
| Sales and marketing | (260) | (480) | 220 | -46% |
| General and administrative | (376) | (304) | (72) | 24% |
| Total operating expenses | (1,096) | (1,171) | 75 | -6% |
| Operating loss | (1,096) | (1,164) | 68 | -6% |
| Interest income | 1 | 5 | (4) | -84% |
| Interest expense | (62) | (46) | (16) | 35% |
| Net loss | (1,157) | (1,205) | 48 | -4% |

The overall loss is near budgeted levels. Product development expenses are larger than planned primarily as a result of call center start up costs and an increase in allocated depreciation expenses.

Sales and marketing expenses are lower than forecast primarily as a result of headcount being less less than planned. General and administrative expenses are above forecast largely due to placement fees incurred during the period.

## EXHIBIT 3 (CONT)

**Cash flow statement**
**Month of March 2000**

| | actual | forecast | variance | |
|---|---|---|---|---|
| | $'000 | $'000 | $'000 | % |
| **Cash flows from operating activities** | | | | |
| Net profit/(loss) | (1,119) | (1,146) | 27 | -2% |
| Adjustments to net profit/(loss) | | | | |
| Depreciation and amortization | 123 | 58 | 65 | 111% |
| Movement in interest accruals | 11 | 27 | (16) | -60% |
| Movement in accounts payable | (597) | 51 | (648) | -1276% |
| Movement in deferred revenue | 20 | 20 | - | n/a |
| Movement in prepaids and other assets | 21 | - | 21 | n/a |
| **Net cash used in operating activities** | (1,541) | (916) | (552) | 60% |
| **Cash flows from investing activities** | | | | |
| Purchase of property and equipment | (48) | (155) | 107 | -69% |
| **Net cash used in investing activities** | (48) | (155) | 107 | -69% |
| **Cash flows from financing activities** | | | | |
| Procceds from issuance of common shares | 4 | - | 4 | n/a |
| Proceeds from capital lease financing | 519 | 155 | 364 | 235% |
| Proceeds from other borrowings | 1,980 | - | 1,980 | n/a |
| Repayment of principal on capital leases | (28) | (33) | 5 | -14% |
| **Net cash provided by financing activities** | 2,475 | 122 | 2,353 | 221% |
| **Net movement in cash and cash equivalents** | 886 | (949) | 1,835 | -193% |
| Cash and cash equivalents at beginning of period | 783 | 2,756 | (1,973) | -72% |
| **Cash and cash equivalents at end of period** | 1,669 | 1,807 | (138) | -8% |

Overall cash inflow is approximately $1.9 million greater than expected. This is largely a result of the $2 million subordinated loan being drawn down in March, the month following the planned draw down date.
The movement in accounts payable is attributable to payments in respect of capital equipment which were subsequently financed on the capital lease line - this increased proceeds from capital leases during the month.

**Cash flow statement**
**Month of April 2000**

| | actual | forecast | variance | |
|---|---|---|---|---|
| | $'000 | $'000 | $'000 | % |
| **Cash flows from operating activities** | | | | |
| Net profit/(loss) | (1,157) | (1,205) | 48 | -4% |
| Adjustments to net profit/(loss) | | | | |
| Depreciation and amortization | 119 | 57 | 62 | 109% |
| Movement in interest accruals | 10 | 28 | (18) | -64% |
| Movement in accounts payable | 243 | 25 | 218 | 875% |
| Movement in deferred revenue | - | 5 | (5) | n/a |
| Movement in prepaids and other assets | (204) | - | (204) | n/a |
| **Net cash used in operating activities** | (989) | (1,012) | 101 | -10% |
| **Cash flows from investing activities** | | | | |
| Purchase of property and equipment | (289) | (25) | (264) | 1056% |
| **Net cash used in investing activities** | (289) | (25) | (264) | 1056% |
| **Cash flows from financing activities** | | | | |
| Procceds from issuance of common shares | - | - | - | n/a |
| Proceeds from capital lease financing | 9 | 25 | (16) | -64% |
| Proceeds from other borrowings | - | - | - | n/a |
| Repayment of principal on capital leases | (32) | (34) | 2 | -5% |
| **Net cash provided by financing activities** | (23) | (9) | (14) | -69% |
| **Net movement in cash and cash equivalents** | (1,301) | (1,046) | (255) | 24% |
| Cash and cash equivalents at beginning of period | 1,668 | 1,807 | (139) | -8% |
| **Cash and cash equivalents at end of period** | 367 | 762 | (395) | -52% |

Overall cash inflow is approximately $250,000 greater than expected. This is largely a result of capital expenditure being greater than forecast. It is expected that much of the equipment purchased will be subsequently financed on an asset backed line.
Prepayments increased as a result of security deposits and prepaid rent relating to the move into new premises.
Accounts payable increased during the period primarily as a result of cash management activities.

## EXHIBIT 4 SAMPLE TERMS OF SOFTBANK BRIDGE LOAN

**SOFTBANK TECHNOLOGY VENTURES V, L.P.**

**Summary of Terms for Proposed Bridge Loan (SAMPLE)**
**xxxx**
**April 30, 2000**

| | |
|---|---|
| Borrower: | Sample |
| Investor(s): | SOFTBANK Technology Ventures V, L.P.; Outside Lender |
| Principal Amount of Loan: | An aggregate of $X million (the "Principal Amount"). The individual investment amounts for each Investor is as follows:<br><br>Softbank $ x,xxx,xxx<br>Outside Lender $ x,xxx,xxx |
| Interest / Payment: | Interest shall accrue on the outstanding Principal Amount at a rate of 8% per annum, simple interest ("Interest"). The outstanding Principal Amount and any accrued and unpaid Interest shall become due and payable on demand at any time on or after July 30th, 2000, unless this loan is converted pursuant to the terms of the loan. |
| Conversion: | Upon completion of the Company's issuance and sale of Series C Preferred Stock (the "Series C Financing") of gross proceeds of at least $XX,000,000, the outstanding Principal Amount and accrued and unpaid Interest shall automatically convert into shares of such Series C Preferred Stock at the price paid by the investors in the Series C Financing (the "Series C Price"). The Series C shares to be issued upon conversion of this loan shall be entitled to the same rights and subject to the same obligations provided in the purchase agreement and related documents entered into with investors with respect to the Series C Financing.<br>Each Investor shall be entitled to convert its full share of the outstanding Principal Amount plus accrued and unpaid Interest as provided above regardless of its pro rata rights in the Series C Financing. |
| Warrant Coverage: | The Investors shall receive warrants to purchase shares of Series C Preferred Stock at the Series C Price in a number equivalent to twenty five percent (25%) of the Principal Amount divided by the Series C Price. If by July $30^{th}$, the Series C Financing, of gross proceeds of at least $XX,000,000, is not closed then the warrant coverage for the Investors will increase in a number equivalent to five percent (5%) of the Principal Amount divided by the price of the Series C financing every 30 days. In the event the Series C Financing does not occur by September 30th, 2000, at the Investors' election, the above warrants shall be issued at the price of the Series B financing in a number equivalent to twenty five percent (25%) of the Principal Amount divided by the price of the Series B financing. |
| Legal Fees & Expenses: | The Company shall bear its own fees and expenses and shall pay the reasonable fees and expenses of Investor Counsel. |

Acknowledged and agreed:

| | |
|---|---|
| **SOFTBANK TECHNOLOGY VENTURES V, L.P.** | **SAMPLE CO** |
| By:____________________ | By:____________________ |
| Print Name____________________ | Print Name____________________ |
| Title:____________________ | Title:____________________ |

## EXHIBIT 5: FOUNDERS' BIOS

**George Kembel, Chief Executive Officer and Founder**
George Kembel, a DoDots™ co-founder, has experience starting and managing successful companies, most recently as founder and president of ENGAJE Corporation. The firm attracted numerous Fortune 500 and prestigious clients; including GVO, LeapFrog, and Interval Research. Previously, as a marketing engineer at the Intel Architecture Lab, George worked on new software technology and conducted frequent press, customer and conference briefings. He has received two national awards for excellence in engineering design. George holds a B.S. degree in Mechanical Engineering from Stanford and a M.S.E. degree in Product Design with focus on high-technology marketing and corporate strategy, also from Stanford.

**John Kembel, Chief Technology Officer and Founder**
John Kembel, a DoDots co-founder, was also a founder of ENGAJE Corporation where he served as chief technology officer focused on new technology architecture and development. The company attracted numerous Fortune 500 and prestigious clients; including GVO, LeapFrog, and Interval Research. Previously, John worked as a software engineer at Intel and holds multiple patents assigned to Intel Corporation for software development. He has also served as a Design Engineer at IDEO, where he worked on consumer and technology product development, and as the lead software and database engineer for a Stanford University archaeological 3D-mapping expedition in the Peruvian Andes. He has received two national awards for excellence in engineering design. John holds a B.S. degree in Mechanical Engineering from Stanford and a M.S.E. degree in Product Design, with focus on embedded software, architecture and protocols, also from Stanford.

**Tony Medrano, President and Founder**
Tony Medrano, a DoDots co-founder, gained his first experience in the venture finance arena at Cooley Godward LLP, where he worked with numerous entrepreneurs, venture capitalists and investment bankers. Previously, he was an Engineering and Operations Officer in the U.S. Navy, where he was awarded the Navy Achievement Medal for outstanding leadership and management of a 100+ person department. He has also taught physics. Tony holds a B.A. from Harvard, an M.A. from Columbia University and attended the J.D. and M.B.A. programs at Stanford University.

## EXHIBIT 6: SOME DOTS


## DODOTS' PARTNERS

**AnyDay.com**™ - online DayPlanner
**BlueLight.com** - totally free Internet service
**Broad Daylight, Inc.** - interactive Q&A content
**drDrew.com** - relationship advice and chat
**eHow**™ - how to do just about anything
**Epinions.com** - unbiased advice to help your buying decisions
**GreatRestaurants.com** - restaurant reviews and reservations
**JumboMall.com** - online shopping mall
**Kibu** - an online world for teen girls
**LiveMind** - applications for anywhere, anytime e-commerce
**Merriam-Webster** - online dictionary and thesaurus
**mySimon**™ - online shopping assistant
**Noomedia.com** - integrated digital media solutions
**PCWorld.com** - online resource for PC users
**PhotoPoint** - make photos accessible to the world
**Snapfish** - film development and online sharing
**StartSampling** - free sample products
**Work.com** - online business portal
**ZDNet** - technology news and information
**Zupit.com** (formerly i2e2) – computer game community

## EXHIBIT 7 – PARTIAL LIST OF SBVC PORTFOLIO COMPANIES

Abuzz Technologies, Inc.
Agentics Ltd.
AnyDay.com Inc.
Art Technology Group, Inc.
Art.com, Inc. (acquired by Getty Images, Inc.)
Asia Online
Automated Trading Systems, Inc. (dba LIMITrader)
beMANY!
BizBlast.com
Biztro (formerly B-Hub, Inc.)
BlueLight.com Corporation
Broad Daylight, Inc.
BUY.COM, Inc.
Career Central Corporation
ChannelWave Software, Inc.
CharitableWay.com, Inc.
Comergent Technologies, Inc.
Communities.com
Connected Corporation
Critical Path, Inc.
Decisive Technologies LLC (acquired by MessageMedia, Inc.)
Differential, Inc.
Digimarc Corporation
DrDrew.com
eCoverage
Electron Economy
E-LOAN, Inc.
E-Trade
Email Publishing (acquired by MessageMedia)
eShare Technologies, Inc. (acquired by Melita International)
Everest Broadband Networks
Evoke Communications, Inc.
Exactis.com
FastParts, Inc.
Finali Corporation
Firefly Network, Inc. (acquired by Microsoft Corporation)
Gamesville.com
GeoCities, Inc. (acquired by Yahoo!)
HotVoice Communications International, Inc.
iBoost Technology, Inc.
iChristian.com
Ignition Corporation
Impulse! Buy Network (acquired by Inktomi Corporation)
Intend Change Group, Inc.
Interliant, Inc.
International ThinkLink Corporation (ITC)
InterTrust Technologies Corporation
INVESTools (acquired by Telescan)
Invisible Worlds, Inc.
iPrint.com
Legal Knowledge Company
Life Cycle Systems, Inc.
MessageMedia, Inc.
More.com
Net2Phone, Inc.
NetMind Technologies, Inc.
PayTrust.com
PENgroup.com
PeoplePC, Inc.
Perfect
PersonaLogic, Inc. (acquired by AOL)
PhotoPoint
planetU, Inc.
Preview Systems, Inc.
Prio, Inc. (formerly SaveSmart, In
Proxinet, Inc.
Pulse Entertainment
ReachCast Corporation
Reciprocal, Inc. (formerly Rights Exchange and SOFTBANK Net Solutions)
Reelplay.com
Rentals.com
Service Metrics Inc.
ServiceMagic.com (formerly Wisen.com)
ShareWave, Inc.
Sonnet Financial, Inc.
Spinway.com
StartSampling
Support.com
TelEvoke, Inc.
TellSoft Technologies, Inc.
Terabeam Networks
The Body Shop Digital
TheStreet.com, Inc.
ThirdAge Media Inc.
Toysrus.com
Urban Media
USWeb/CKS
UTStarcom
VeriSign, Inc.
Yahoo!
Yoyodyne Entertainment (acquired by Yahoo!)
Zip2 (acquired by Compaq)

## EXHIBIT 8 – EXPLANATION OF COMMON PRIVATE PLACEMENT TERMS

The typical convertible preferred stock contains most of the following features:

Liquidation preference. Liquidation preferences come in two types: non-participating and participating.

Non-participating Preferred Stock means the holders of the Preferred Stock can get their money back upon a sale or liquidation of the company, with the balance of the proceeds going to holders of Common Stock. If the holders of Common Stock would get more per share than Preferred Stock holders under this approach, the Preferred Stock holders can convert their stock into Common Stock and share pro rata in the merger or liquidation proceeds. Management and "seed" investors generally favor non-participating Preferred Stock since it puts them and later stage investors in the same boat (they get the same price per share) with respect to merging the company.

Participating Preferred Stock permits investors to receive their money back first in a merger or distribution, with the balance being divided among holders of Common and Preferred Stock on a share-for-share basis. The argument for participating Preferred Stock is that if a company is sold shortly after the investment, the founders may make a lot of money but the investors may not have received much of a return on their money. The counter-argument is that if a company is sold for a high price, everyone is making money so the Preferred Stock holders shouldn't "double dip" and get a higher price than Common Stock holders. In many participating Preferred Stock deals, a cap (usually two or three times the share price of the financing) will be included. If the company is sold or liquidated above that price, all proceeds are distributed to Common and Preferred Stock holders on a share-for-share basis (i.e. no participating feature). This makes sense, since it is equivalent to what would have happened if the company had gone public and all Preferred Stock had been automatically converted into Common Stock on the offering.

Anti-dilution provisions. Anti-dilution provisions come in two types: non-priced based and price-based. Price-based anti-dilution provisions come in at least three types: broad-based weighted average, narrow-based weighted average, and ratchet. Obviously management will favor non-priced based anti-dilution provisions (i.e. where the only adjustment to a prior round of financing is due to a stock split or dividend). Venture investors favor price-based anti-dilution protection, usually broad-based. Weighted average protection refers to a formula adjusting the conversion ratio of the Preferred Stock into Common Stock in an earlier round of financing if the company later sells stock at a lower price (other than exempted issuances such as employee sales). Weighted average formulas less drastically reduce the ownership of founders and employees since they take into account how much stock is sold at the lower price. A weighted average provision is "broad" or "narrow" depending on whether all shares or just the Preferred Stock are included in the formula (the latter is more favorable to the investor and produces bigger price reductions for earlier financing rounds). "Ratchet" anti-dilution means that if a company sells shares at a lower price (regardless of the amount raised), earlier rounds of financings are repriced to that price. It is the most drastic of all price-based anti-dilution provisions and is rarely used in technology company financings, except in bridge financings or where the company has little negotiating power.

Voting rights. The preferred stock usually as a number of votes equal to the number of shares of common stock into which it is convertible, and may have the right to elect a disproportionate percentage of the board of directors, frequently a majority.

Registration rights. Investors generally require "demand" or "piggyback" registration rights to have their common stock registered after the preferred stock has been converted into common stock, normally when the company will be mature enough to merit public registration. The filing and preparation costs for one or two registrations are usually paid for by the company, although the investor usually pays the direct underwriting costs related to the investor's own shares. "Piggy-back" means that investors may sell their own shares in the company's public offering (usually subject to underwriter approval).

These rights are desirable because even after an IPO, the investor may not be able to dispose quickly of large blocks of stock without an underwriting because of securities-law restrictions or market conditions.

Rights of first refusal. Preferred stockholders generally receive the right to participate pro rata in any subsequent offerings of stock by the company. This contractual equivalent of statutory preemptive rights permits the investor's maintenance of a pro rata ownership interest without dilution through the issuance of additional securities to outside investors. . Less common is a full right of first refusal, a.k.a. "Full Gobble" in which the preferred stockholder has first right, but not the obligation, to purchase all securities issued in future rounds of financing.

"Come-along" and "take-along". One of the major exit strategies is a sale of stock. Preferred stockholders obtain the right to sell their stock ("come along") at the same price as the entrepreneur if the entrepreneur sells shares. They may also require that the entrepreneur sell the entrepreneur's stock (i.e. be "taken along") if the investors want to sell, enabling the investors to sell the entire company to a potential buyer.

Negative covenants a.k.a. protective provisions. The company agrees not to take certain actions that can adversely affect preferred stock without preferred stockholders' consent. These actions include: (1) sell additional capital stock (other than under employee stock plans); (2) pay common-stock dividends or repurchase stock; (3) borrow money, or make loans or guarantees (except to or for subsidiaries); (4) merge or sell substantially all of its assets (unless the company is the survivor) and (5) liquidate.

Convertible debt. Convertible debt is debt that is convertible, usually into common stock of the company, at a predetermined conversion rate. This rate may be subject to anti-dilution provisions similar to those described in the convertible preferred stock section. The advantage to the investor is the receipt of interest on the investment while the investor assesses whether the company is successful enough to justify converting debt into stock. [8]

[8] The ABC's of Convertible Preferred Stock, Craig W. Johnson, Chairman, Venture Law Group

## EXHIBIT 9 – ORIGINAL SOFTBANK TERM SHEET PROVIDED TO DODOTS

**DoDots**
**Summary of Terms for Proposed Private Placement**
**of Series A Convertible Preferred Stock**

**August 1999**

| | |
|---|---|
| Issuer: | DoDots ("Company"). |
| Investors: | SOFTBANK Technology Ventures V L.P., SOFTBANK Technology Advisors Fund L.P., and Co-investor ("Investors"). |
| Current Outstanding Securities: | [ ] shares of Common Stock ("Common") issued to initial employees and investors (the "Initial Employees and Investors"). |
| Amount of Investment: | An aggregate of $3,000,000 (based on a $4,500,000 pre-money valuation).<br><br>$1,500,000 – SOFTBANK.<br>$1,500,000 – co-investor |
| Type of Security: | Series A Convertible Preferred Stock ("Series A Preferred"). |
| Number of Shares: | [ ] shares |
| Price per Share: | [ ] ("Original Purchase Price"). |
| Rights, Preferences | (1) <u>Dividend Provisions</u>: The Series A Preferred will be entitled to a non-cumulative dividend of 8% of the Original Purchase Price. In addition, the holders of Series A Preferred will be entitled to participate pro rata in any dividends payable on the Common Stock. Dividends will be payable only if, as and when determined by the Board of Directors.<br><br>Except with the consent of a majority in interest of the Series A Preferred, no dividend will be paid on the Common, and no shares of Common will be repurchased by the Company except for unvested shares repurchased from former employees at their original purchase price.<br><br>(2) <u>Liquidation Preference</u>: In the event of the liquidation or winding up of the Company, the holders of Series A Preferred will be entitled to receive in preference to the holders of Common an amount ("Liquidation Amount") equal to the Original Purchase Price. After the payment of the Liquidation Amount, the remaining assets will be distributed ratably to the holders of Common. A merger, acquisition, sale of voting control or sale of all or substantially all of the assets of the Company, in one or more transactions, shall be deemed a liquidation.<br><br>(3) <u>Conversion</u>: A holder of Series A Preferred will have the right to convert the Series A Preferred, at the option of the holder, at any time, into shares of Common. The total number of shares of Common into which the Series A Preferred may be converted initially will be determined by dividing the Original Purchase Price by the conversion price. The initial conversion price will be the Original Purchase Price.<br><br>(4) <u>Automatic Conversion</u>: The Series A Preferred will be automatically converted into Common, at the then applicable conversion price, in the event of an underwritten public offering of shares of the Common at a public offering price per share that is not less than four times the Original Purchase Price in an offering of not less than $10,000,000 in proceeds to the Company.<br><br>(5) <u>Antidilution Provisions</u>: The conversion price of the Series A Preferred will be subject to proportional adjustment for stock splits, stock dividends, recapitalizations and the like. |

(5) Voting Rights: Except with respect to certain protective provisions, the holders of Series A Preferred will have the right to that number of votes equal to the number of shares of Common issuable upon conversion of the Series A Preferred. The protective provisions will be as described under "Protective Provisions" below.

(6) Protective Provisions: Consent of the holders of at least a majority of the Series A Preferred will be required for (i) any sale by the Company of substantially all of its assets, (ii) any merger of the Company with another entity, (iii) any liquidation or winding up of the Company, (iv) any amendment of the Company's charter or by-laws that adversely affects the Series A Preferred, or (v) any payment of any dividend on Common or Preferred Stock.

Information Rights: So long as any of the Series A Preferred is outstanding, the Company will deliver to each Investor annual and quarterly financial statements.

Registration Rights: (1) Demand Rights: If, at any time after the earlier of the Company's initial public offering and the date three years from the purchase of the Series A Preferred (but not within six (6) months of the effective date of a registration), Investors holding at least 40% of the Common issued or issuable upon conversion of the Series A Preferred request that the Company file a Registration Statement covering at least 20% of the Common issued or issuable upon conversion of the Series A Preferred (or any lesser percentage if the anticipated aggregate offering price would exceed $5,000,000), the Company will use its best efforts to cause such shares to be registered.

The Company will not be obligated to effect more than two registrations (other than on Form S-3) under these demand right provisions.

(2) Registrations on Form S-3: Holders of Common issued or issuable upon conversion of the Series A Preferred will have the right to require the Company to file an unlimited number of Registration Statements on Form S-3 (or any equivalent successor form), provided the anticipated aggregate offering price in each registration on Form S-3 will exceed $1,000,000.

(3) Piggy-Back Registration: The Investors will be entitled to "piggy-back" registration rights on registrations of the Company, subject to the right of the Company and its underwriters to reduce in view of market conditions the number of shares of the Investors proposed to be registered; provided, that except in connection with the IPO, such reduction will not be less than one-third of the total number of shares in the offering.

(4) Registration Expenses: The registration expenses (exclusive of underwriting discounts and commissions) of all of the registrations under paragraphs (1), (2) and (3) above will be borne by the Company.

(5) Transfer of Registration Rights: The registration rights may be transferred to a transferee who acquires at least 10% of an Investor's shares. Transfer of registration rights to a partner, member or shareholder of any Investor will be without restriction as to minimum shareholding.

(6) Other Registration Provisions: Other provisions will be contained in the Purchase Agreement with respect to registration rights as are reasonable, including cross-indemnification, the Company's ability to delay the filing of a demand registration for a period of not more than 90 days in certain circumstances, the agreement by the Investors (if requested by the underwriters in a public offering) not to sell any unregistered Common they hold for a period of 120 days following the effective date of the Registration Statement of such offering, the period of time in which the Registration Statement will be kept effective, underwriting arrangements and the like.

Use of Proceeds: The proceeds from the sale of the Series A Preferred will be used for working capital.

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| Board Representation and Meetings: | Effective upon the purchase of the Series A Preferred, the members of the Board will be George Kembel and John Kembel representing common, Heidi Roizen of SOFTBANK and a representative from the co-investor representing the Series A and one independent outside director. The Company will reimburse expenses of directors and advisors for costs incurred in attending meetings of the Board of Directors and other meetings. |
| Right of First Offer for Purchase of New Securities: | So long as any of the Series A Preferred is outstanding, if the Company proposes to offer any shares (other than Reserved Shares, shares issued in the acquisition of another company, or shares offered to the public pursuant to an underwritten public offering), the Company will first offer a portion of such shares to each holder of not less than [ ] shares of Series A Preferred so as to enable them to maintain their pro rata percentage interest in the Company. |
| Stock Restriction Agreements: | George and John Kembel (the founders) will execute a Stock Restriction Agreement providing for the following vesting for stock held by such founder: 25% immediate vesting, 25% vesting on the first anniversary of the Closing Date with the remaining shares vesting on a monthly basis over three years.<br><br>Each Initial Employee will execute a Stock Restriction Agreement providing for the following vesting for stock held by such Initial Employee: 25% vesting on the first anniversary of the Closing Date with the remaining shares vesting on a monthly basis over three (3) years.<br><br>Any unvested shares may be repurchased by the Company for cost upon termination of employment for any reason. |
| Right of First Refusal: | The Bylaws of the Company shall contain an assignable right of first refusal, in favor of the Company, with respect to any transfer of Common. |
| Co-Sale Agreement: | The Initial Employees will each execute a Co-Sale Agreement with the Investors and the Company providing that before any Initial Employee may sell any of his shares, he will first give the Investors an opportunity to participate in such sale on a basis proportionate to the amount of securities held by the Initial Employee and those held by the Investors. |
| Reserved Shares: | The Company will reserve [ ] shares of Common (20% of its outstanding capital stock, calculated on an as-if-converted basis following the issuance of the Series A) for issuance to directors, officers, employees and consultants (the "Reserved Shares").<br><br>The Reserved Shares will be issued from time to time to directors, officers, employees and consultants of the Company under such arrangements, contracts or plans as are recommended by management and approved by the Board, provided that without the unanimous consent of the Board, (i) the vesting of any such shares (or options therefor) issued to any such person shall not be at a rate in excess of 25% per annum from the date of issuance, and (ii) any issuance of shares in excess of the Reserved Shares will be a dilutive event requiring adjustment of the conversion price as provided above and will be subject to the Investors' first offer right as described above. Holders of Reserved Shares will be required to execute Stock Restriction Agreements generally as described above. |
| Nondisclosure and Developments Agreement: | Each officer, employee and consultant of the Company will enter into a nondisclosure and developments agreement in a form reasonably acceptable to the Investors. |
| The Purchase Agreement: | The purchase of the Series A Preferred will be made pursuant to a Series A Preferred Stock Purchase Agreement drafted by counsel to the Investors. Such agreement shall contain, among other things, appropriate representa- |

tions and warranties of the Company, covenants of the Company reflecting the provisions set forth herein and other typical covenants, and appropriate conditions of closing, including, among other things, qualification of the shares under applicable Blue Sky laws and an opinion of counsel. Until the Purchase Agreement is signed by both the Company and the Investors, there will not exist any binding obligation on the part of either party to consummate the transaction. This Summary of Terms does not constitute a contractual commitment of the Company or the Investors or an obligation of either party to negotiate with the other.

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| Assignment: | Each of the Investors shall be entitled to transfer all or part of its shares of Series A Preferred purchased by it to one or more affiliated partnerships managed by it or any of their respective directors, officers, or partners, provided such transferee agrees in writing to be subject to the terms of the Stock Purchase Agreement as if it were a purchaser thereunder. |
| Incorporation: | The Company shall be incorporated in the State of Delaware. |
| Expenses: | The Company and the Investors will each bear their own legal and other expenses with respect to the transaction (except that, assuming a successful completion of the transaction, the Company will pay the legal fees and expenses of Cooley Godward, LLP, counsel to the Investors). |
| Investors Counsel: | #######, Esq.<br>Cooley Godward LLP<br>Five Palo Alto Square<br>3000 El Camino Real<br>Palo Alto, CA<br>94306-2155 |

Agreed and Accepted:

DoDots
By: ____________________
Name:__________________
Title:__________________
Date:__________________

George Kembel
DoDots Corporation
445-B Cambridge Ave
Palo Alto, CA 94306

*The foregoing term sheet is not a binding commitment and is subject to the completion of due diligence by the Investors as deemed satisfactory to the Investors and by counsel to the Investors and the execution of a Stock Purchase Agreement and related agreements mutually acceptable to the Company and the Investors.*

## EXHIBIT 10 - ORIGINAL CHASE H&Q SERIES B TERM SHEET

CONFIDENTIAL

**DoDots, Inc.**
**Summary of Key Terms for Proposed Private Placement**
**of Series B Convertible Preferred Stock**

***March 10, 2000***

| | |
|---|---|
| Issuer: | DoDots, Inc. (the "Company") |
| Type of Security: | Series B Convertible Preferred Stock ("Series B Preferred") |
| Amount of Investment: | $65,000,000 upto $70m<br>$25 million from SOFTBANK & affiliates<br>$12.5 million from Chase Capital Partners ("CCP")<br>$12.5 million from Access Technology Partners ("ATP")<br>$15 million from other new investors |
| Dividends: | 8%, non-cumulative |
| Pre-money Valuation: | 275 m<br>$~~200-250~~ million fully diluted by unissued options |
| Anti-dilution: | Full ratchet, with customary exceptions 18 months Down to 150 Full Ratchet |
| Liquidation Preference: | 2.5-3x or Participation, at holder's option Below that, Weighted A |
| Right of Redemption: | Redeemable at cost plus accrued dividends on 12/31/04 |
| Board Seat: | Company (2), SOFTBANK (1), ATP/CCP (1) ~~(2)~~, & Industry (1) BD observer |
| Automatic Conversion: | Upon IPO if at 3x cost, plus $20 million in proceeds |
| Voting Rights: | On an as converted basis, except for Protective Provisions |
| Protective Provisions: | Consent of Series B for sale, merger, liquidation, dividends |
| Registration Rights: | As per industry standard |
| Right of First Offer: | Pro Rata on up to 50% of each round for Preferred |
| Employee Stock Option Pool: | Vesting as per Series A term sheet |
| Information Rights: | Monthly, Quarterly and Annual (audited) financials |
| Fees and Expenses: | Company to pay for counsel fees and technology review |
| Conditions to Closing: | Completion of due diligence review;<br>Approval of ATP and CCP Investment Committees;<br>No Material Adverse Changes to Company's Business;<br>Satisfactory Documentation |
| Not a Firm Commitment: | This term sheet shall not constitute a firm, binding commitment |

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