



Network of Angel Organizations-Ontario is a member of



ontario network of excellence

helping bridge the gap...

Summary Terms for a Shareholder's Agreement

THIS AGREEMENT made as of the ____ day of [], 200[].

A M O N G:

[Insert: Investor], ("Shareholder")

- and -

[Insert: Full Legal Name of the Company] (the "Company")

(Collectively the Company and the Shareholder are the "Parties").

WHEREAS the Shareholders, as of the date hereof, are the registered and beneficial owners of [Insert: total number of shares of the investors group] the issued and outstanding shares in the capital stock of the Company, a company formed under the laws of the Province of Ontario;

AND WHEREAS the Shareholders have agreed to appoint the Voting Trustee as the Shareholders' voting trustee on the terms and conditions hereinafter contained;

AND WHEREAS the shareholders wish to enter into this Agreement for the purpose of restricting the transfer of shares in the capital stock of the Company, and regulating certain other matters in connection with the business and affairs thereof and of the Company;

NOW THEREFORE in consideration of the foregoing and mutual covenants and agreements contained herein, the parties agree as follows:

Article 1. Authorized and Issued Capital: The parties hereto acknowledge that the authorized capital of the Company consists of an unlimited number of shares of the following classes:

Common

Series A preferred

of which the shares issued and the outstanding as fully-paid and non-assessable and any option to acquire shares in the capital of the Company are set out under Schedule "A."

Article 2. Defined Terms:

- "Agreement" means this agreement including all schedules and exhibits to this agreement and includes any and every agreement made at any time (whether past, present or future) which amends or supplements or restates any agreement which is, or is included in, this Agreement;

-
- “Articles” shall mean the articles of incorporation of the Company dated [];
 - “Book Value per Share” means the book value of the equity of the Company on the relevant date divided by the number of shares on a fully diluted basis.
 - “Business Day” means every day except Saturdays, Sundays and statutory holidays in the Province of Ontario;
 - “Notice” shall mean an instrument in writing;

Article 3. Term of this Agreement: This Agreement shall take effect on the date hereof and shall continue in force until the earlier of:

- the date this Agreement is terminated by written agreement of the Parties;
- the date on which there is only one Shareholder;
- the date there is an initial public offering of shares of the Company;
- the date on which all of the shares of the Company are acquired by a reporting issuer within the meaning of the Securities Act (Ontario);
- the sale of all of the shares of the Company to a third party; or
- the date on which the Company is dissolved, wound up, makes an assignment in bankruptcy or has a receiving order in bankruptcy made against it.

Article 4. Business and Affairs of the Company:

4.0 The business and affairs of the Company shall be managed by a Board of Directors. The Board of Directors shall initially consist of five directors, including (i) the CEO, (ii) One outside Director selected by the management group, (iii) 1 person designated by the [Insert Angel Group name] holders of the Series A Preferred Stock (the “Voting Trustee”) and (iv) two individuals knowledgeable in the industry who are not otherwise affiliated with the Company who are approved by the other two statutory directors (the CEO and the Voting Trustee). The initial Voting Trustee will be designated by the Investors during preparation of documents. Subsequently, any Director that resigns will designate a successor, subject to approval by the Investors. Three (3) directors shall constitute a quorum for the transaction of any business at any meeting of the board of directors. At all meetings of the board of directors, every motion to be carried must receive a majority of the votes cast, subject to the provisions of subparagraphs 4.4 and 4.5. Unless otherwise agreed, board meetings will be held at the head office of the Company.



Network of Angel Organizations-Ontario is a member of



ontario network of excellence

helping bridge the gap...

4.1 In the event that the Voting Trustee of the Series A Preferred Shareholders shall fail to vote and act as a director to carry out the provisions of this agreement, then the shareholders agree to exercise their right as shareholders of the Company and in accordance with the Articles of the Company to remove such Voting Trustee from the Board and to elect in the place or stead thereof such individual who will use his/her best efforts to carry out the provisions of this agreement but only in the event that the Shareholders whose Voting Trustee has been removed fails to appoint a successor within a period of fourteen days from the date such Voting Trustee has been removed.

4.2 The election, appointment and determination of officers and the auditors and advisors of the Company, the defining of their duties and functions and the salaries and remuneration to be paid to them will be a function of the board of directors. Until changed by the board of directors, the Officers of the Company and their annual salaries shall be:

Office Held:	Name:	Annual Salary (\$C):
CEO		
CFO		
And so on...		

All direct out-of-pocket expenses will be reimbursed provided these fall within guidelines set out by the Board of Directors from time to time. Until otherwise agreed, each officer of the Company will commit to spending his/her full time on the affairs of the Company.

Until changed by the board of directors, the auditors and advisors of the Company shall be:

- Auditor: [Insert]
- Legal Advisors: [Insert]

4.3 There shall be kept, in such bank or banks (including trust companies) as may be determined by the board of directors, bank accounts of the Company in which shall be deposited all monies received by the Company in the course of carrying on business from time to time. All payments on account of the Company shall be made by cheques drawn on the bank account and all cheques, drafts or other instruments drawn and made for the purposes of the business of the Company shall be executed by such directors, officers or employees as may from time to time be authorized so to do by the board of directors.

4.4 All parties who are employees of or consultants to the Company shall use their best efforts to promote and maintain the interests of the Company.

4.5 Subject to paragraph 3.6, all decisions relating to the management and control of the business of the Company shall be determined by the board of directors of the Company, provided always that the following matters shall be determined by a Special Directors' Resolution:

- any capital expenditures greater than \$2,000;
- any lease commitments greater than \$2,000;
- the acquisition of any business interests by the Company;
- the elections of officers of the Company;
- the payment of any cash dividends or stock dividends to Shareholders of the Company;
- the issuance of any debt obligations of the Company;
- the disposal of the whole or any part of the business, undertaking, or assets of the Company outside the normal course of business of the Company;
- the transfer of any shares of the Company;
- changes or variations in the objects or powers of the Company;
- the liquidation or winding up of the Company;
- the approval of any contracts or transactions outside the normal course of business;
- the execution of any contract involving a consideration greater than \$5,000 within the normal course of business;
- the lending of money by the Company;
- the guarantee by the Company of the debts or obligations of any other person, firm or body corporate;
- any non-budgeted expenditures greater than \$1,000;
- business plan and/or budgets.

4.6 The following decisions shall be determined by a Unanimous Directors' Resolution:

- alterations, variations or changes to the authorized or issued capital of the Company;

-
- the salaries and bonuses of officers and directors of the Company;
 - the issue, redemption or purchase of any Shares; and
 - changes in the number of directors of the Company.

4.7 The board of directors shall meet at least four times during each fiscal year of the Company. Any director can call a meeting provided 10 days notice is given. Notice may be waived. During the first year from the date of this agreement, the board of directors shall meet on a monthly basis. Directors may elect to attend a board meeting by telephone conference call.

4.8 Each Shareholder shall, for so long as s/he is the owner of shares of the Company devote such of his/her business, time and energy as may be reasonably required to carry on the business of the Company and the Shareholder shall use his/her best efforts, skill and abilities to promote the interests of the Company. Each Shareholder agrees that he/she will not engage, without the consent of the other Shareholders, in a business that is directly competitive to that of the Company.

4.9 The Company agrees to provide to the Shareholders

- audited financial statements or Reviewed (as determined by Investors) for each fiscal year within 90 days after the end of the fiscal year and management-prepared quarterly financial statements for the first three quarters of the year within 30 days after the end of each quarter;
- annual budgets at least 30 days prior to the beginning of each fiscal year;
- quarterly updates on progress and accomplishments and anticipated progress against target in next period;
- notification of any material defaults or litigation; and any other information reasonably requested; and
- The voting trustee also will have standard inspection and visitation rights.

4.10 The Parties agree that a Company Business Plan will be prepared and maintained on an on-going basis with at least annual reviews and updates. This Business Plan will define the operational details of the Company and will include, but not be limited to, items such as: budgets, forecasts, capital expenditures, salaries and wages, hours of operation, market information (products, services, pricing, discounts, etc). The Plan will serve the purpose of giving management direction as to the day-to-day operation of the Company.

Article 5. Right of First Refusal:

5.0 Notice of Third Party Offer: If a Shareholder (the "Transferring shareholder") receives and wishes to accept a bona fide offer from a third party who is arm's length (the "Third Party Offer") to purchase all or any portion of the shares of the Company owned by such Shareholder (the "Offered Shares"), the Transferring Shareholder shall forthwith provide the other Shareholders (the "Recipient Shareholders") with a copy of the Third Party Offer and a written notice setting forth its intention to accept the Third Party Offer.

5.1 Option of Recipient Shareholders: Upon receipt of a Notice delivered pursuant to Section 5.0 hereof, the Recipient Shareholders shall have the right, exercisable within thirty (30) days of the receipt of the notice from the Transferring Shareholder (the "First Refusal Exercise Period"), to purchase the Offered Shares from the Transferring Shareholder (such right being hereinafter called the "Right of First Refusal"), at the same price and upon the same terms and conditions as are contained in the Third Party Offer, provided, however, that each Recipient Shareholder who wishes to exercise the Right of First Refusal (each an "Accepting Shareholder") shall, within the First Refusal Exercise Period, provide the Transferring Shareholder with a written notice setting forth the number of Offered Shares it is willing to purchase. If the total number of Offered Shares set forth in such notices exceeds the actual number of Offered Shares then the sale and purchase of the Offered Shares to the Accepting Shareholders shall occur in the proportion that the number of voting shares of the Company owned by each Accepting Shareholder bears to the total number of voting shares of the Company owned by all of the Accepting Shareholders. If the total number of Offered Shares set forth in such notices is less than the actual number of Offered Shares then the Recipient Shareholders shall be deemed for all purposes to have refused to exercise the Right of First Refusal.

5.2 Effect of Exercise of Right of First Refusal: The exercise by the Accepting Shareholders of the Right of First Refusal shall be deemed to be irrevocable acceptance by the Accepting Shareholders of an offer by the Transferring Shareholder to sell all of the Offered Shares to the Accepting Shareholders at the same price and upon the same terms and conditions as are contained in the Third Party Offer, and in the proportions set forth in Section 5.2 hereof.

5.3 Effect of Failing to Exercise Right of First Refusal: If the Recipient Shareholders do not exercise the Right of First Refusal in the manner set forth above the Transferring Shareholder, subject to the provisions of Article 6 hereof, shall be at liberty at any time within thirty (30) days from the expiry of the First Refusal Exercise Period to accept the Third Party Offer, and thereafter complete the sale of the Offered Shares to the Third Party Purchaser upon the terms and conditions set forth in the Third Party Offer, provided, however, that if the sale is not completed within 180 days from the Expiry of the First Refusal Exercise Period, the Offered Shares shall again be subject to the terms and provisions of this Agreement.

5.4 Terms of Purchase and Sale: The sale and purchase of the Offered Shares pursuant to this Article 5 shall be completed at the price and on the terms and conditions set forth in the Third Party Offer provided, however, that if the third party is purchasing the Offered Shares he shall be required to become a party to this Agreement.

Article 6. Tag-Along and Drag-Along Provisions:

6.0 Trigger for Tag and Drag Along: If, following the operation of the provisions of Article 5, the Transferring Shareholder is selling the Offered Shares pursuant to a Third Party Offer then the provisions of this Article Six shall be applicable.

6.1 Tag-Along Right: Each remaining Shareholder shall have the right to require that the Transferring

Shareholder cause the third party to purchase all of the shares of the Company owned by such remaining Shareholder (the "Tag-Along Shares") along with the Offered Shares (such right being hereinafter called the "Tag-Along Right"), at the same price and upon the same terms and conditions as are contained in the Third Party Offer, provided that:

- a. Exercise Period: If a remaining Shareholder wishes to exercise the Tag-Along Right he must, within at least ten (10) Business Days of the expiry of the First Refusal Exercise Period, deliver a Notice to the Transferring Shareholder setting forth his intention to exercise the Tag-Along Right.
- b. Effect of Exercise of Tag Along Right: The exercise by a remaining Shareholder of the Tag-Along Right shall constitute an irrevocable offer by such remaining Shareholder to sell his Tag-Along Shares to the third party at the same price and upon the same terms and conditions as are contained in the Third Party Offer.
- c. The Transferring Shareholder to Request Acceptance of Tag Along Offer: If a remaining Shareholder exercises the Tag-Along Right, the Transferring Shareholder shall request that the third party deliver to such remaining Shareholder a Notice accepting the offer by the remaining Shareholder to sell his Tag-Along Shares. If the third party refuses, declines or otherwise fails to accept such offer, the Transferring Shareholder shall not be permitted to sell and the third party shall not be permitted to purchase the Offered Shares.
- d. Terms of Purchase and Sale: The sale and purchase of the Tag-Along Shares shall be completed at the price and on the terms and conditions set forth in the Third Party Offer.

Article 7. Anti-Dilution Provision:

In the event that from and including [Closing Date] to and including [the "Adjustment Date" – usually 18 months from closing], the Corporation allots and issues:

1. Any of its Common Shares from treasury, other than in respect of:
 - a. The Warrants;
 - b. The Third Round Dilution Shares;
 - c. The Down Round Dilution Shares;
 - d. Any of the:
 - i. SOP Shares as constituted as of the date hereof; or
 - ii. The Other Share Option Shares as constituted as of the date hereof,

pursuant to option agreements entered into prior to [Closing Date] and at an exercise price that is less than CDN\$[] Cdn. per share and which have been disclosed to the Series A Minority Shareholders in writing;

2. Any options to acquire any of its Common or Preferred Shares from treasury (other than in respect of the Warrants, the Series A Dilution Shares, the Down Round Dilution Shares) (collectively, "Options"); or
3. Any indebtedness, Shares (other than Common Shares) or other securities convertible into or exchangeable for Common Shares (collectively, the "Convertible Securities"),

the Corporation shall, on the Adjustment Date, calculate (consistent with the principles and the numerical example set out in Schedule "D") the weighted average issue price per share of the aggregate of all such Common Share issuances or deemed issuances in the case of Options or Convertible Securities in accordance with the principles set out in Schedule "D" (whether such issuances were in cash or in kind or in services but in the case of in kind and or in services consideration, valued at fair market value). The Corporation shall forthwith communicate the weighted average issue price per share and its method of calculation (which shall be consistent with the principles and the numerical example set out in Schedule "D") to the Series A Round Minority Shareholders. In the event such weighted average issue price per share is calculated to be less than "B", as such letter is defined in the definition of Down Round Dilution Shares per share (a "Down Round" or collectively, the "Down Rounds"), then the Corporation shall:

- a. Issue the Down Round Dilution Shares to the Third Round Minority Shareholders forthwith following the Adjustment Date against payment by the Third Round Minority Shareholders of the nominal subscription price of CDN\$1.00 therefore;

-
- b. Adjust upward the Third Round Dilution Shares (in the event the Third Round Minority Shareholders are entitled to receive the same) by issuing additional Common Shares in an amount equal to the Down Round Dilution Shares forthwith following the Adjustment Date against payment by the Third Round Minority Shareholders of the nominal subscription price of \$1.00 Cdn. therefore; and
 4. in the event that:
 - a. The Third Round Minority Shareholders are entitled to receive the Third Round Dilution Shares, then the Exercise Price (as defined in the Warrants) shall be further adjusted downward (with retroactive effect to June 16th, 2003) to equal "C", as such letter is defined in the definition of Down Round Dilution Shares; or
 - b. The Third Round Minority Shareholders are not entitled to receive the Third Round Dilution Shares, the Exercise Price as defined in the Warrants shall be adjusted downward (with retroactive effect to June 16th, 2003) to equal "C", as such letter is defined in the definition of Down Round Dilution Shares.

Article 8. Provisions Applicable to a Sale and Purchase of Shares:

8.0 Defined Terms: For the purposes of this Article 7, unless there is something in the subject matter or context inconsistent therewith:

- a. "Purchaser" shall mean the person that is purchasing shares of the Company;
- b. "Vendor" shall mean any Shareholder who sells all of their Shares;
- c. Resignation as Director and Officer: If the Vendor or a nominee of the Vendor is an employee or an officer or director of the Company as of the closing date, such person shall tender his written resignation as an employee and/or director and/or from any and all offices with the Company on the closing date.
- d. Credit Loans Repaid: Any Credit Loan of the Vendor shall be repaid by the Company in the same proportions, at the same time or times and in the same manner as the purchase price for the shares being sold and purchased is paid.
- e. Debit Loans Repaid: Any Debit Loan of the Vendor shall be repaid to the Company in the same proportions, at the same time or times and in the same manner as the purchase price for the shares being sold and purchased is paid.
- f. Releases: The Vendor shall execute an absolute release in favour of the Company and the Purchaser dealing with all matters, except payment of the balance of the purchase price and applicable interest, in a form and substance acceptable to the solicitors for the Company.

-
- g. Other Documents: The Vendor and the Purchaser shall execute all such other documents as are necessary to complete the transfer of the shares being sold and purchased, as required by the solicitors for the Purchaser.
 - h. Indemnities: The Company shall make all reasonable attempts to obtain a release of the Vendor from any personal guarantees of the debts of the Company given by the Vendor.

Article 9. Management Contracts and Non-Competition:

9.0 The parties to this Agreement who are salaried full-time employees of the Company shall be required to execute a management contract.

9.1 In addition to standard confidentiality/developments agreements, key employees to execute agreements not to compete with or solicit employees of the Company or its subsidiaries, directly or indirectly, for one year after termination of employment.

9.2 Every director and officer of the Company shall exercise the powers and discharge the duties of his/her office honestly, in good faith and in the best interests of the Company, and in connection therewith shall exercise the degree of care and diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

9.3 It is the responsibility of each director to familiarize him/herself with the legal and regulatory obligations associated with being a director of a company incorporated in Ontario, being especially mindful of potential personal liabilities associated with, among other things, employment matters and taxes.

Article 10. General:

10.0 Severability: Each and every term, condition and provision of this Agreement is and shall be severable one from the other and if any term, condition or provision hereof is at any time declared by a court of competent jurisdiction to be void, invalid or unenforceable, same shall not extend to invalidate, make void or unenforceable any other term, condition or provision of this Agreement.

10.1 Notice: Any Notice or other communication required or permitted to be given to any party under this Agreement shall be in writing and may be given by hand delivery to the party or sent by e-mail or facsimile or by mailing the same by prepaid registered mail, return receipt requested, addressed as follows:

To the shareholders: at his, her or its respective addresses, telephone numbers, fax numbers and electronic mail address in Schedule "A" or "B" as case may be.



Network of Angel Organizations-Ontario is a member of



ontario network of excellence

helping bridge the gap...

If to: the Company: [Company Name]

[Company address]

Attention: [Company CEO]

Telephone No.:

Facsimile No:

If to: the Shareholder [Shareholder Name]

[Address]

Telephone No.:

Facsimile No:

or to any other address, fax number, or person that the party designates. Any notice, if delivered personally, by courier, will be deemed to have been given when actually received; if transmitted by fax before 3:00 p.m. on a Business Day, will be deemed to have been given on that Business Day; and if transmitted by fax after 3:00 p.m. on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

10.2 Good Faith Consideration: Each of the Shareholders and the Company further agree that they will each consider in good faith any reasonable proposals put forward by a Shareholder.

10.3 No Prior Agreements: The provisions of this Agreement shall supersede any and all previous agreements between any of the parties hereto.

10.4 Amendments: No changes or modifications of this Agreement shall be valid or binding upon any party nor shall any waiver of any term or condition hereof be binding on any party unless such change or modification or waiver shall be in writing and signed by at least 66% of the Shareholders. Amendments hereto may be made by written instrument executed by at least 66% of the Shareholders hereto, and when so made shall, together with this instrument, constitute one and the same agreement.

10.5 Enurement: This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective legal representatives (which for greater certainty shall include a trustee in bankruptcy), successors and permitted assigns.



Network of Angel Organizations-Ontario is a member of



ontario network of excellence

helping bridge the gap...

10.6 Counterparts: For the convenience of the parties, any number of counterparts hereof may be executed, and different counterparts may be executed by different parties, and each of such counterparts shall be deemed to be an original instrument, and all of which taken together shall constitute one agreement.

10.7 Other Documents: The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

10.8 Other Acts: The parties hereto covenant and agree that they shall cause all such things and acts to be done to ensure that at all times, the terms of this Agreement are carried out and complied with.

10.9 Time: Time shall be the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

10.10 Independent Legal Advice: Each of the parties hereto acknowledges that he has obtained independent legal advice in connection with the negotiation and execution of this Agreement or, having been advised to do so, has declined to obtain independent legal advice, and further acknowledges and agrees that he has read, understands, and agrees to be bound by all of the terms and conditions contained herein.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written.

Signatures:

Attach Schedules:

A: Founding (and other Existing) Shareholder Particulars (number and class of shares, and contact information)

B: Particulars of Minority Shareholders, Option Holders, Warrant Holders, Rights Holders and Other Potential Shareholders

C: Current Balance of Shareholders' Loans

D: Anti-Dilution Calculation Principles