

**NON-BINDING SUMMARY OF TERMS
SERIES A PREFERRED STOCK FINANCING**

NewCo Biosciences, Inc.

March 9, 2013

This Term Sheet summarizes the principal terms of the Series A Preferred Stock Financing of the Company.

Issuer: NewCo Biosciences, Inc. (the “*Company*”).

Investors: ABC Venture Partners IV, LP and its Affiliates (“*ABC*”), XYZ Partners, LP (“*XYZ*,” and each of ABC and XYZ, a “*Co-Lead Investor*”), and other investors approved by both Co-Lead Investors and the Company. Collectively, the Co-Lead Investors, the holders of the bridge notes on an as-converted basis (the “*Bridge Note Holders*”) and other investors and holders of Series A Preferred Stock shall be hereinafter known as *Investors*. Pursuant to the terms of the bridge notes, all outstanding bridge notes will convert into Series A Preferred Stock at the First Tranche Closing.

Amount of Financing: \$15,000,000 to \$17,000,000 in two tranches (the “*First Tranche*” and the “*Second Tranche*”, collectively, the “*Tranches*”) in the amounts set forth below (exclusive of debt converting at the First Tranche Closing), with each such Tranche becoming due as set forth in the “*Closings*” section below.

- First Tranche: 40% of the total investment amount
- Second Tranche: 60% of the total investment amount

The Investors total capital commitments are as follows:

- ABC: Up to \$5,000,000
- XYZ: Up to \$8,000,000
- Others: between \$2 and \$4 million

[NOTE: in the event other Investors are not identified, the Co-Lead Investors will work together to meet the minimum close requirement of \$15 million.]

Type of Security: Series A Participating Preferred Stock (“*Preferred Stock*”), initially convertible on a 1:1 basis into shares of the Company’s Common Stock (the “*Common Stock*”).

Comment [1]: The proposed investment is a range since there may be other investors coming in or the valuation may change during due diligence.

Comment [2]: To reduce their risk, the investors will allocate money in two chunks or tranches, based on milestones. For the company, this guarantees a stock price and valuation for a significant period of time, reducing the amount of negotiations required for a series B.

Comment [3]: Still herding a few cats to get them into the round.

Comment [4]: Preferred Stock is exactly what it sounds like. It has special preferences over common stock that is held by founders and management team. This just states that 1 share of preferred = 1 share of common. See below.

Price: The price per share for the Series A Participating Preferred Stock shall be \$1.534 (the “**Original Purchase Price**”). The Original Purchase Price represents a fully-diluted pre-money valuation of approximately **\$7,000,000**. Such pre-money valuation includes the conversion of outstanding bridge notes into Series A Preferred Stock and an available option pool of approximately 9.22% based on the Company’s fully-diluted capitalization after all Closings.

Comment [5]: The price per share is simply the pre-money valuation divided by the number of outstanding shares, including the option pool and bridge note holders

Capitalization: The Company’s capital structure after the Closing(s) is expected to be as set forth on the pro forma capitalization table (“**Capitalization Table**”) attached hereto as **Exhibit A**.

Comment [6]: This is the most negotiated term of a term sheet. Valuing an early stage company, especially in the life sciences is an art as much as it is a science. Since the investment will be \$15M, the post-money will be \$22M. The amount of money invested relative to the pre-money determines the extent of dilution; in this case significant.

Closing: The funding of the First Tranche (the “**First Tranche Closing**”) shall occur upon the satisfaction of customary conditions, including, among others, the conditions described in “**Conditions to Closing**” below.

Comment [7]: The capitalization or “cap” table lists all of the shareholders, their shares, and % ownership, before and after the transaction.

The funding of the **Second Tranche** shall occur upon the satisfaction of the following milestone (the “**Milestone**”), provided that such satisfaction occurs before the earlier of a Liquidation Event (as defined below), a Qualified Public Offering (as defined below) and 18 months after the First Tranche Closing (the “**Outside Date**”):

Comment [8]: The company will get the first allocation or tranche upon closing of the round (due diligence complete, signing of documents, etc)

- (i) The treatment of the first human subject with a dose of a NewCo compound. Such human subject may be dosed (a) in the US under a cleared IND with the US FDA or outside the US under a similar regulatory designation, or (b) under sponsored clinical protocols appropriately approved and executed outside the US.

Comment [9]: The second allocation or tranche will occur if the company meets a key milestone within 18 months, dosing of human with the company’s compound. This implies completion of pre-clinical development and IND submission to FDA.

In exchange for funding each Tranche, the Investors collectively will receive a **number of shares** of Series A Preferred Stock calculated by dividing the aggregate dollar amount of such Tranche by the Original Purchase Price.

Comment [10]: As outlined in the cap table.

Achievement of the Milestone shall be determined in reasonable good faith by holders of a majority of the outstanding Preferred Stock (an “**Investor Majority**”) (including both Co-Lead Investors). As additional conditions to the funding of each Tranche: (i) the Company’s representations and warranties contained in the Stock Purchase Agreement must be true and correct in all material respects as of such funding date subject to ordinary course of business and/or Board-approved updates to schedule of exceptions and (ii) there has been no material adverse effect on the business, financial condition,

Comment [11]: This gives the investors an out if the milestone is not cut and dry. For example, the dosing in humans many have occurred (milestone achieved) but the toxic side affects were significant. Also, the business has to be in good standing (no lawsuits, etc)

or operations of the business of the Company, including, without limitation, any pending or threatened litigation against the Company which would be reasonably likely to have a material adverse effect on the Company.

Notwithstanding the foregoing, an Investor Majority (including both Co-Lead Investors) may require all Investors to fund the Second Tranche prior to the Outside Date, notwithstanding any failure by the Company to achieve the Milestone.

Each Investor will fund a pro rata portion of each Tranche in accordance with its capital commitment relative to the total capital commitments of all Investors. If an Investor fails to fund its portion of any Tranche in full when due, (a) such Investor's Preferred Stock shall automatically convert into Common Stock at the conversion price in effect immediately prior to such Tranche becoming due, (b) such Investor shall no longer have the rights, benefits or privileges of a holder of Preferred Stock, and (c) the Company shall be entitled to pursue any and all remedies available to it at law or in equity. Further, the remaining Investors shall have the right to increase their respective Tranche investments, as the case may be, pro rata in accordance with their respective Preferred Stock holdings.

For the avoidance of doubt, Bridge Note Holders shall maintain the right, but not the obligation, to fund their pro rata portion of subsequent Tranches. Such pro rata right shall only be maintained to the actual degree that funding is provided in subsequent Tranches, however failure to fund some or all of such pro rata portion shall have no effect on the Bridge Note Holders' Preferred Stock standing.

Comment [12]: Another measure of flexibility in case things don't go as planned.

Comment [13]: Protection for the investors (and the company) if another investor backs out of the funding, first or second tranche

Comment [14]: The company had issued a convertible note, a loan from friends and family. These bridge note holders convert to preferred stock as outlined in the note. They have the right to invest more in the first or second tranche but are not penalized if they don't.

TERMS OF SERIES A PARTICIPATING PREFERRED STOCK

Dividends:

Prior and in preference to any other shares of capital stock, the holders of Series A Preferred Stock shall receive cumulative, non-compounding dividends at a rate of 6% per annum payable upon a Liquidation Event, redemption, conversion or when, as and if declared by the Company's Board of Directors. The holders of Series A Preferred Stock will participate, pro rata, in all permitted distributions on capital stock that is pari passu or junior to the Series A Preferred Stock. The foregoing notwithstanding, in the event of a Liquidation Event that provides the holders of Preferred Stock with a return that is at least five (5) times the Original Purchase Price (including the Original Purchase Price paid pursuant to clause (i) under Liquidation Preference below), such dividends shall not be paid.

Comment [15]: The value of the preferred stock shall increase 6% per year and that dividend will be paid upon liquidation (IPO or acquisition).

Comment [16]: If the stock price at liquidation is 5 times the current price of the Series A, the dividend is forfeited. The investors can get their return either by the dividend or a 5x or more company valuation.

Liquidation Preference: The Preferred Stock shall rank senior in the payment of dividends and distributions with respect to all other capital stock of the Company. The proceeds from a Liquidation Event (which shall include a sale of the Company) (a “*Liquidation Event*”) shall be distributed to the stockholders as follows:

- i. First, the holders of Preferred Stock shall be entitled to receive, in preference to the holders of all other outstanding series or classes of capital stock, a per share amount equal to the Original Purchase Price plus all accrued but unpaid dividends thereon (such amount, in the aggregate, the “*Liquidation Preference*”).
- ii. Thereafter, the remaining assets of the Company shall be distributed ratably to the holders of Common Stock, with the holders of Preferred Stock participating therein on an as-converted basis.

Conversion: The holders of the Preferred Stock shall have the right to convert the Preferred Stock, at any time, into shares of Common Stock. The initial conversion rate shall be 1:1, subject to adjustment as set forth below.

Automatic Conversion: The Preferred Stock shall automatically convert into Common Stock, at the then applicable conversion price, (i) upon the approval of an Investor Majority (including both Co-Lead Investors), or (ii) upon the closing of a firmly underwritten public offering (a “*Qualified Public Offering*”) of shares of Common Stock of the Company in which at least \$30 million of new capital is raised (before deduction of underwriters commissions and expenses) and the offering price per share is at least five (5) times the Original Purchase Price (with the foregoing price subject to adjustment as set forth herein).

Anti-dilution Provisions: Until a Qualified Public Offering, the conversion price for the Preferred Stock will be subject to broad-based weighted-average anti-dilution adjustments in the event that the Company issues additional equity securities at a purchase price less than the Original Purchase Price (other than shares issued from the Stock Option Pool with the approval of the Board and other customary exclusions). The conversion price for all Preferred Stock will also be subject to proportional adjustment for stock splits, stock dividends, consolidations, recapitalizations and the like.

Redemption: Shares of Preferred Stock will be subject to redemption at the option of an Investor Majority (including both Co-Lead Investors)

Comment [17]: Preferred stock holders are first in line to receive the proceeds from a liquidation event (e.g. acquisition). In the event of a not-so-good sale, common shareholders (founders, management) may not receive much. The investors want the right to get their investment back out plus the time value of the investment (the dividend) before anyone else gets paid.

Comment [18]: After the preferred holders have been paid, any cash left is distributed on a pro-rata basis to all the common shareholders. Note: the common shareholders include the preferred shareholders whose shares convert to common upon liquidation.

Comment [19]: Preferred stock has to convert to common to make it liquid during an acquisition or IPO

Comment [20]: This protects the investor in the event of a “down round” a round where the valuation of the company, and thus the stock price, are lower than the Series A.

at any time after the fifth anniversary of the Second Tranche Closing in an amount equal to the greater of: i) the Liquidation Preference or ii) fair market value. Redemption will occur in three equal installments over the two years from the exercise of the redemption right.

Board of Directors:

The initial size of the Company's Board of Directors ("**Board**") shall be set at five (5) members, allocated as follows:

- i. One representative designated by the holders of a majority of outstanding Common Stock held by the [Company's founders] (the "**Founders**"), who will initially be John Smith, Ph.D.;
- ii. One representative from ABC, who will initially be Amy B. Conrad, PhD;
- iii. One representative from XYZ, who will initially be Xavier Y. Zellman, MD;
- iv. One representative who is the CEO of the Company, who will initially be Charles E. Ostermann; and
- v. One independent Board member who shall be mutually agreed by the ABC and XYZ Board members and the remaining Board members. The independent Board member shall be removable by an Investor Majority.

In addition, each Co-Lead Investor will have Board **observer** rights.

Comment [21]: Very typical is for the investors to take board seats.

Voting Rights:

The holders of Preferred Stock shall have the right to a number of votes equal to the number of shares of Common Stock issuable upon conversion of the shares of Preferred Stock owned by such holder. All Preferred Stock shall vote with Common Stock on all matters except as specifically provided herein or as otherwise required by law.

Comment [22]: They can come to the board meetings but cannot vote.

General Protective Provisions:

In addition to class or series voting rights provided by Delaware law, the consent of an Investor Majority shall be required for certain fundamental corporate actions, including (i) creating a class of capital stock senior or on parity with the Preferred Stock, (ii) altering or changing the rights, preferences or privileges of the Preferred Stock, (iii) amending or waiving any provision of the

Company's Certificate of Incorporation or Bylaws, (iv) sale of the Company, (v) changes in the fundamental business of the Company, (vi) incurrence of indebtedness for money borrowed in excess of \$250,000, (vii) redemption or repurchase of any shares of capital stock of the Company (other than Preferred Stock redemption or pursuant to equity incentive agreements with employees and other service providers, and (viii) conversion of the Company into another form of business entity or into a corporation organized under a jurisdiction other than Delaware.

Board Governance: The consent by a majority vote of the Board of Directors shall be required for certain fundamental corporate actions, including (i) incurrence of indebtedness for money borrowed in excess of \$250,000 or guaranteeing the indebtedness of others, (ii) increase in the salary, bonus or other compensation or the grant of options to any officer of the Company except as otherwise provided in the annual budget, or (iii) transactions involving obligations or commitments that exceed \$250,000 except as otherwise provided in the annual budget.

Amendments: The consent of an Investor Majority shall be required to change any of the provisions of the purchase agreement or any stockholders agreements.

Information Rights: The Company shall deliver to Investors (a) the Company's unaudited quarterly financial statements within 45 days of the prior period, and (b) as soon as reasonably possible after the end of each fiscal year commencing with the year ending December 31, 2013 or such later period as may be approved by the Board, but in any event within 120 days of year end, the Company's audited or reviewed annual financial statements. The Investors shall also be entitled to standard inspection and visitation rights. These provisions shall terminate upon a Qualified Public Offering or Liquidation Event.

Registration Rights: The Investors will be granted the same registration rights granted to any future investor in the Company on the same terms.

Preemptive Right: The Investors shall have the right, in the event the Company proposes to offer equity securities to any person (other than shares issued with Board approval to persons under the Stock Option Pool and other customary exclusions), to purchase their pro rata portion of such shares (based on the number of shares then outstanding on an as-converted and as-exercised basis). Such right will terminate upon a Qualified Public Offering or Liquidation Event.

Comment [23]: In the event of another funding round, the current investors have the right to purchase additional shares, based on their current ownership percent. This keeps them from being diluted in subsequent rounds.

Purchase Agreement: The Series A investment shall be made pursuant to a Stock Purchase Agreement acceptable to the Company and the Investors, which agreement shall contain, among other things, appropriate representations and warranties of the Company, covenants of the Company reflecting the provisions set forth herein and appropriate conditions of closing and an opinion of counsel for the Company.

Comment [24]: A separate agreement that covers the selling of stock, since it is private stock, not publically traded.

STOCKHOLDERS' AGREEMENT

Voting Agreement: The holders of Preferred Stock, the Founders and other persons who hold at least 1% of the Common Stock ("**Major Common Stockholders**") shall vote their shares of capital stock to reflect the Board composition outlined above.

Right of First Refusal/Co-Sale: The Company first, and the holders of Preferred Stock and the Founders second, shall have a right of first refusal with respect to any proposed transfer of capital stock of the Company by the Founders or the Major Common Stockholders (other than transfers for estate planning purposes). Before any such person may sell Common Stock, it will give the holders of Preferred Stock and the Founders an opportunity to participate in such sale on a basis proportionate to the amount of securities held by such person and those held by the participating Founders or holders of Preferred Stock. Subject to compliance with applicable securities laws, any Investor will be entitled to transfer or sell shares of Company capital stock, including to its Affiliates, without prior written consent and without triggering the Right of First Refusal/Co-Sale provisions described herein.

Drag-Along Rights: Holders of Preferred Stock, the Founders and the Major Common Stockholders will vote their shares in favor of a sale of the Company that is approved by the Board and an Investor Majority (including both Co-Lead Investors).

EMPLOYEE MATTERS

Stock Option Pool: The term "**Stock Option Pool**" shall include both shares reserved for future issuance to directors, officers, employees and service providers in connection with services provided or to be provided to the Company, as well as current options outstanding. As of the First Tranche Closing, the Stock Option Pool will contain 1,443,025 shares, representing approximately 9.22% of the fully diluted capital stock of the Company after all Closings are fully funded as contemplated herein.

Comment [25]: This is a pool of stock for incentivizing employees and others.

Employment and

Consulting Agreements: The Company shall have in place, to the satisfaction of the Investors, consulting and/or employment agreements with all Founders. Among other provisions, these agreements shall cover the time allocation of each Founder to the Company, compensation and severance terms for the CEO and other senior executives and vesting of each Founders' shares. The vesting of Founders' ownership shall be defined in the Stock Repurchase or Restricted Stock Purchase Agreements.

Comment [26]: Given the early nature of the company, the investors want to make sure the scientific founders are consultants to the company and will devote time to the company.

OTHER MATTERS

D&O Insurance: Within 60 days of the Closing, the Company will purchase a D&O insurance policy covering the directors and the officers of the Company, in form and substance acceptable to the Investors.

Comment [27]: Director and Officer insurance to protect against any actions taken by outside parties against the company.

Indemnification: The Company shall provide customary indemnification for officers and directors, in form and substance acceptable to the Investors.

Legal Fees and Expenses: Counsel to ABC Venture Partners shall draft the transaction documents. If the Closing occurs, the Company shall pay all reasonable out-of-pocket costs and expenses incurred by the Co-Lead Investors in connection with their potential investment in the Company (not to exceed \$75,000), including without limitation their reasonable attorneys' fees and the costs and expenses associated with due diligence of the Company, including a thorough IP review.

Confidentiality: The terms herein and the fact that this Term Sheet has been issued are strictly confidential and will not be disclosed by either party, except to their respective directors, officers, attorneys and advisors, without the prior written consent of the other party.

Governing Law: Delaware

Conditions to Closing: The Closing shall occur on or as soon as practicable following the satisfaction of the below Conditions to Closing:

- i. Completion of full due diligence, including IP review;
- ii. Employment and consulting agreements as discussed above.

Exclusivity: The Company and the Co-Lead Investors agree to work in good faith expeditiously towards a closing. The Company agrees that it will not, for a period of 60 days from the date these terms are accepted, take any action to solicit, initiate, encourage or assist the

submission of any competing financial proposal, negotiation or offer from, or enter into any agreement or arrangement with, any person or entity (other than the Investors) relating to the acquisition or issuance of any capital stock or material assets of the Company (whether by merger or otherwise) or the consummation of any sale of the Company, and the Company shall notify the Investors promptly of any inquiries by any third parties relating to the foregoing. For the avoidance of doubt, the Company shall be free during the period of exclusivity defined herein to pursue sources of non-dilutive funding including, without limitation, the American Cancer Society and SBIR grants.

Comment [28]: This is a “no-shop” clause that prevents the company from shopping for other investment for 60 days.

Expiration: Unless accepted by the Company or otherwise agreed by the parties, this Term Sheet will expire at midnight, on March 9, 2013.

Except as otherwise provided in the “Exclusivity” paragraph, no other legally binding obligations will be created until definitive agreements are executed and delivered by all parties. This Term Sheet is not a commitment to invest, and is conditional upon the completion of due diligence, legal review and documentation that is satisfactory to the Investors. This Term Sheet shall be governed in all respects by the laws of the State of Delaware.

The following parties agree to the terms in this Term Sheet.

ABC PARTNERS IV, LP

Comment [29]: ABC is investing out of their fourth fund

By: _____
Name: _____
Title: _____

XYZ X, LP

Comment [30]: XYZ is investing out of their 10th fund.

By: _____
Name: _____
Title: _____

ACCEPTED AND AGREED:

NEWCO BIOSCIENCES, INC.

By: _____
Name: Charles E. Ostermann
Title: President and Chief Executive Office