

EMERGING TECHNOLOGY FUND II

SUMMARY OF DEAL TERMS*

I. Pre-Seed Deal Summary

A. General Overview

The Pre-Seed deals are structured around the following two key documents:

1. The Texas Emerging Technology Fund Award and Security Agreement (the “Agreement”); and
2. The Investment Unit (the “Unit”).

Under the terms of the Agreement, the State of Texas, acting by and through the Office of the Governor Economic Development and Tourism (the “OOGEDT”), will make one or more cash disbursements to the Company as specified in the Agreement (such amounts being referred to as the “Award”).

The Company promises to use the Award for the commercialization and introduction into the market of its product based on certain milestones that are listed in an exhibit attached to the Agreement. In addition, the Company promises that a substantial percentage of new or expanded commercialization or manufacturing that results from the Award will be in Texas, and that the Company will also maintain, during the term of the Agreement, its principal place of business and executive offices in Texas. The term of the Agreement is 10 years.

B. Disbursements of the Award.

The initial Award disbursement occurs shortly after execution of the Agreement upon certain conditions set forth in the Agreement having been met. Subsequently, after the Company completes (or substantially completes) the initial milestones mentioned above, the Company may request one or more additional disbursements and submit new milestones for the OOGEDT’s approval. The OOGEDT may decide, in its sole discretion, whether to disburse additional amounts. If the OOGEDT decides to disburse additional amounts, such additional amounts become part of the Award and the Company’s new milestones will then be added to the appropriate exhibit to the Agreement.

C. The Investment Unit.

*This summary is qualified in its entirety by reference to the full terms and provisions of the Award Agreement and the Investment Unit. This is a summary of general structure which does not pick up many of the details and specifics in the documents. This summary is not binding on the State or the Office of the Governor and each entity participating in the ETF program should make sure they have a full and complete understanding of the terms of any agreement entered into.

Prior to the initial disbursement of the Award, the Company must issue the Unit to the OOGEDT. The Unit consists of two separate instruments, which are simply contained within this one document. The two instruments contained in the Unit are as follows:

1. A promissory note (the “Note”); and
 2. A right to purchase equity securities (the “Right to Purchase”).
- (i) *The Note.*

The Award amount disbursed to the Company is the principal under the Note, which the Company promises to repay under certain circumstances.

As mentioned above, the Agreement has a 10 year term. The Note is a promise by the Company to repay the Award with interest if the Company decides to terminate the Agreement before the expiration of the Agreement’s term. For example, if the Company decides to relocate to another state, it may repay the Award by paying back the principal and interest due under the Note, after which the Agreement will be cancelled and the Company will no longer be subject to its covenants. Please note, however, that repayment of the Note does not in any way affect the OOGEDT’s right to purchase equity under its Right to Purchase or the OOGEDT’s subsequent holding of stock. In addition, the OOGEDT may demand repayment of the Note if the Company defaults under the Agreement or the Unit.

If the Company complies with the terms of the Agreement and the Unit during the 10 year term, then, at the expiration of that term, the Agreement expires and all principal and interest under the Note is forgiven.

To secure the Company’s obligations under the Note during the initial period after the Award is disbursed, the OOGEDT will take a first priority security interest in the assets of the Company commencing on the date that the first disbursement of the Award is made and ending on date that the OOGEDT exercises its Right to Purchase under the Unit (or the Right to Purchase expires). Please note that, after the OOGEDT exercises its Right to Purchase and holds equity, the Note still survives and the Company is still obligated to repay the principal and interest under Note (unless it is forgiven upon expiration of the 10 year term). However, after the Right to Purchase is exercised, the OOGEDT’s first priority security interest in the Company’s assets will cease and the debt under Note will thereafter be unsecured.

- (ii) *The Right to Purchase.*

The Right to Purchase under the Unit permits the OOGEDT to purchase, for a nominal price per share, a certain number of shares of either the

Company's common stock ("Common Stock") or shares of the same class and series ("Next Financing Shares") that are purchased by investors in the Company's "First Qualifying Financing Transaction" (as defined in the Unit).

Section 2.3 of the Unit sets forth the calculation of the number of shares that the Right to Purchase represents. The number of shares will be equal to the total amount of the Award disbursed on the date the OOGEDT exercises the Right to Purchase divided by a certain per share value.

That "certain per share value" referred to above depends on when and if the Company has its First Qualifying Financing Transaction after the effective date of the Agreement and the Unit (the "Effective Date").

If the Company closes a First Qualifying Financing Transaction on or before 90 days after the Effective Date, then this per share value will be the same as the per share price at which equity is sold in that First Qualifying Financing Transaction.

If the Company closes a First Qualifying Financing Transaction after 90 days but before the 30 month anniversary of the Effective Date, then the per share value for this calculation will be 0.80 multiplied by the per share price at which equity is sold in the First Qualifying Financing Transaction.

If there is no First Qualifying Financing Transaction within 30 months, the per share value for this calculation will be a set amount that is determined during the OOGEDT's due diligence process with the Company (which value is simple inserted in the Unit under Section 2.3(b)(iii) prior to the Unit's issuance by the Company).

For example, if the Company has a First Qualifying Financing Transaction in which shares of Series A Preferred Stock are sold at \$1.00 per share and the closing of that transaction occurs within 90 days after the Effective Date, then the OOGEDT will have the Right to Purchase, for a nominal purchase price per share, 500,000 shares (\$500,000 disbursed divided by \$1.00 per share).

If the above described transaction occurred after 90 days but before the 30 month anniversary, then the OOGEDT would have the Right to Purchase 625,000 shares (\$500,000 disbursed divided by the product of 0.80 multiplied by \$1.00 per share).

Please note that, although the OOGEDT must exercise its Right to Purchase prior to the right's expiration (which occurs 90 days after a First Qualifying Financing Transaction or after the expiration of the 30 month period), the OOGEDT retains the option to decide whether to purchase Common Stock or Next Financing Shares. Of course, if no First Qualifying Financing Transaction occurs within 30 months, the OOGEDT

will only have the option to exercise for Common Stock (as there will be no Next Financing Shares).

Also, as mentioned above, the Note is a separate instrument that survives and is not affected by the exercise of the Right to Purchase (other than with respect to the OOGEDT's first priority security interest which ends after an exercise).

Once the OOGEDT holds equity after its exercise of the Right to Purchase, it will execute a Revocable Proxy that gives all other holders of the same series and class of stock the right to vote the OOGEDT's shares on a pro rata basis based on each of the other holders' relative holdings. Thus, as a general rule, the OOGEDT will not be involved in the Company's affairs voting as a shareholder.

II. **Subchapter D "20/20" Model Deal Summary**

The Subchapter D "20/20" Model deals work in the exact same way as the Pre-Seed deals described above, with the following four differences:

1. Instead of a 30 month window during which the Company must have a First Qualifying Financing Transaction to set the number of shares represented by the Right to Purchase, there will be an 18 month window;
2. In addition to having the option to purchase Common Stock instead of Next Financing Shares (or being forced to purchase Common Stock because there has been no First Qualifying Financing Transaction), the OOGEDT will have the option to purchase shares of whatever class and series were issued in the Company's last financing transaction which occurred prior to the issuance of the Unit;
3. If there is no First Qualifying Financing Transaction within the 18 month window, the per share value used for purposes of determining the number of shares represented by the Right to Purchase will be equal to the product of 1.20 multiplied by the price per share at which shares were sold in the prior financing transaction (same as the typical 20/20 model currently used in the Fund I deals); and
4. There will be exactly two disbursements of the Award, the second of which will depend upon the Company making progress towards its milestones.

III. **Outright Equity Model**

The OOGEDT may purchase equity outright in some companies depending on whether the timing is appropriate to allow the OOGEDT to participate along side the other investors in a financing transaction. The details of this arrangement are still being formulated.