

**Fast Track, Inc. (B)**

Fast Track responded to the Venture Analysis proposal in early January 2004. Exhibit 1 is a copy of the original proposal, with Fast Track's proposed modifications shown.

When Venture Analysis received the counter-proposal, they set immediately to work analyzing the response.

Several questions were key to Venture Analysis. First, how would their value be different under various scenarios? Second, how would the proposed changes affect their decisions and those of Fast Track management when it came to exercising or not exercising the various options? Third, what if anything did the proposed changes suggest about Fast Track management's beliefs about the value of the venture and their confidence in themselves and the venture's eventual success?

Exhibit 1

**Summary of Proposed Terms**

**Fast Track, Inc.**

This term sheet summarizes the proposed principal terms of the following agreements:

- (1) Purchase of ~~\$5 million to~~ \$7 million of Series A Convertible, Redeemable Participating Preferred Stock (“Series A Preferred Stock”) of Fast Track, Inc. (the “Company” or “Fast Track”), by one or more venture capital investment funds managed by Venture Analysis Group (the “Funds” or “Venture Analysis”) to fund product development, market development, other operating expenses, capital expenditures, and for general corporate purposes.
- (2) The Series A Preferred Stock Purchase Agreement.
- (3) Exclusive Dealings with Venture Analysis

Except for the terms in Section III below, which shall survive the termination or expiration of this term sheet, these terms do not constitute any form of binding contract, but rather are solely for the purpose of outlining those terms pursuant to which definitive agreements may ultimately be entered into. The investment is contingent upon, among other things, the satisfactory completion of due diligence and verification and confirmation of items represented to Venture Analysis by Fast Track in written or oral form and the negotiation and execution of the preferred stock purchase agreement (containing customary closing conditions, terms, covenants, representations, warranties, etc.). It is understood by all parties that any investment by the Funds is contingent upon receiving approval from the investment committee of the Funds.

**I. Series A Preferred Stock**

**A. Investment**

Funds controlled by Venture Analysis and its partners will invest ~~\$5 million to~~ \$7 million in the form of Series A Preferred Stock into Fast Track, Inc. at a pre-money valuation of ~~\$20 million to \$30 million (to be determined)~~ **\$33 million.**

**B. Type of Security: Series A Preferred Stock**

Series A Convertible, Redeemable, Participating Preferred Stock, senior in liquidation preference to the common stock, subject to mandatory redemption by the Company 6 ½ years after the date of this investment, unless previously converted, and containing such other features as described below.

~~The Series A Preferred Stock will earn cumulative dividends at a rate of 7%. The cumulative dividends shall be payable at redemption, sale, or liquidation, and shall be payable in cash or additional Series A Preferred Stock. For purposes of liquidation or redemption (as referenced and subject to the limitations of Sections E and F below) only, the Series A Preferred Stock will earn cumulative dividends at a rate of 7%.~~ Series A Preferred Stock shall be senior to the common stock and other preferred stock in the event of liquidation, sale, or merger of the Company.

#### C. Conversion Features:

1. The Series A Preferred Stock will convert into common stock on a one-for-one basis. The Holder shall have the right to convert at any time.
2. Automatic Conversion Event for Series A Preferred Stock: Upon a firm underwritten public offering ~~by a national investment bank,~~ covering primary sale of common stock completed on or before January 31, 2007, with ~~net-gross~~ proceeds of at least \$25 million at a price of ~~400%~~300% or more of the initial valuation (“qualified offering”).
3. Anti-dilution Protection for Series A Preferred Stock: Full ratchet adjustment for stock splits, stock dividends, recapitalization or any dilutive financing (where any new stock will be issued at less than the price of the Series A Preferred Shares); or the issue of shares at a price below that paid by the holders of Series A Preferred Stock.

#### D. Voting Rights:

Holders of Series A Preferred Stock shall have the number of votes equal to the largest number of full shares of common stock into which such Series A Preferred Stock may be converted.

#### E. Sale or Liquidation Preference:

**In the event of any sale, merger, liquidation, or winding up of the Company, the holders of the Series A Preferred Stock shall be entitled to receive in preference to the holders of any other equity security, common or preferred stock in the following amount:**

1. **In the event the transaction values the company at a price of up to 200% of the original valuation; the holders of Series A Preferred Stock shall receive an amount equal to 2 times the original valuation per share plus any accrued but unpaid dividends (the “Series A Preference”), and the remaining proceeds, if any, will be allocated between the common and preferred shareholders on a pro rata basis, treating the preferred on an as-if-converted basis.**

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~~In the event of any sale, merger, liquidation, or winding up of the Company, (except for a transaction which values the Company's stock at a price of 400% or more of the original conversion price) the holders of the Series A Preferred Stock shall be entitled to receive in preference to the holders of any other equity security, common or preferred, an amount equal to two times the purchase price value of the preferred plus accrued and unpaid dividends. The remaining proceeds will then be allocated between the common and the preferred shareholders on a pro rata basis, treating the preferred on an as if converted basis.~~

- ~~2. In the event the transaction values the company at a price greater than 200% but less than or equal to 300% of the original valuation per share; first, the holders of Series A Preferred Stock shall receive an amount equal to two times the Series A Preference, second, the holders of Series A Preferred Stock and the holders of common stock shall share the remaining proceeds on a linear formula basis such that if the transaction values the company at 300% of the original valuation, the holders of the Series A Preferred Stock would receive an amount equal to the amount the Series A Preferred Stock would receive if the Series A Preferred Stock was fully converted into shares of common stock.~~
- ~~3. In the event the transaction values the company at a price greater than 300% of the original valuation, the proceeds shall be allocated between the Series A Preferred Stock and common stock on a pro rata basis, treating the preferred on an as-if-converted basis.~~

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#### **F. Mandatory Redemption:**

~~If, on the sixth anniversary of the closing of this proposed transaction, the Company has not completed an initial public offering or entered into an agreement with an underwriter to complete an initial public offering; or otherwise completed or entered into an agreement to sell or merge the Company, the Series A Preferred Stock shall be subject to mandatory redemption at a price equal to the greater of (i) the Series A Preference, or (ii) the then fair market value of such shares. If the Company and the holders of a majority of the shares of outstanding Series A Preferred Stock are unable to agree upon the fair market value, the Company shall engage a competent valuation consultant to provide a valuation of the Company. The fees of such valuation consultant shall be borne one-half by the Company and one-half by the holders of Series A Preferred Stock. The mandatory redemption is subject to the Company, following any contemplated financing, having sufficient working capital to meet its reasonable business needs as set forth in its then current business plan,~~

and not otherwise be rendered unable to pay its debts when they become due or become insolvent, or violate any applicable law or regulation governing repurchases of shares. ~~The Series A Preferred Stock and accrued but unpaid dividends will be subject to mandatory redemption 6 ½ years after the date of this investment, unless previously converted.~~ The redemption will be made in equal payments over the following ~~six~~ **twelve** quarters, with the first payment due 6 ½ years after the date of this investment, unless previously converted. **In addition, if the Company fails to redeem the Series A Preferred Stock when due, the dividend rate for the Series A Preferred Stock for the purpose of determining the Series A Preference will increase from 7% to 10%. In addition, if the Company fails to redeem the Series A Preferred Stock when due, the conversion price will decrease at the rate of 5% per quarter, starting from the due date of the redemption of the Series A Preferred Stock. Any missed redemption payments will trigger this 5% conversion price adjustment for the unredeemed portion.**

#### G. Protective Provisions:

The Company needs consent of the holders of the Series A Preferred Stock to take the following actions:

1. merge or sell all or the majority of the Company's assets;
2. amend the Certificate of Incorporation or Bylaws;
3. pay or make any dividends or distributions on or redemptions of any equity securities other than dividends to preferred stock outstanding at the time of this term sheet, and only then if the Series A Preferred is paid current on all dividends and redemptions;
- ~~4. incur funded indebtedness in excess of \$5 million;~~
- ~~5. engage an investment bank, consultant, or other advisor for the purpose of raising capital or refinancing securities or indebtedness;~~
- ~~6.~~4. engage in any transaction that could involve a conflict of interest or that involves dealings between the Company, insiders, or affiliates.

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**In addition to the forgoing Protective Provisions which shall be part of the rights, preferences, and privileges of the Series A Preferred Stock, the Company shall contractually agree that the Company shall not take any of the following actions without the prior written consent of the holders of a majority of the outstanding shares of Series A Preferred Stock, which consent shall not be unreasonably withheld:**

- ~~1. incur funded indebtedness in excess of 33% of the trailing twelve months consolidated revenues of the Company;~~
- ~~2. engage an investment bank, consultant, or other advisor for the purpose of raising capital or refinancing securities or indebtedness;~~

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3. make a binding offer of employment for the position of Chief Executive Officer, Chief Operating Officer, Vice President of Sales, Vice President of Marketing, Chief Financial Officer, or Vice President of Engineering; or

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4. enter into any employment agreements with any executive officers of the Company.

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The contractual covenants shall terminate at such time as the outstanding shares of Series A Preferred Stock represent less than 10% of the fully diluted outstanding shares of Common Stock.

Compensation and audit committees of the board of directors will consist of three members; one representative of the Series A Preferred holders, one representative of management, and one outside board member. The compensation committee will determine matters related to management compensation.

#### **H. Sale of the Company**

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~~If, on the fifth anniversary of the closing of this proposed transaction, the Company has not completed an initial public offering; or otherwise completed or entered into an agreement with an underwriter to complete an initial public offering; or otherwise completed or entered into an agreement to sell or merge the Company, the Series A Preferred shareholders shall have the right to initiate the process of seeking an acquirer of the Company. If this right is exercised, the Board of Directors shall retain a competent investment banker to seek the maximum attainable value for the Company over the ensuing six month time period. If the Series A Preferred shareholders waive this right on the fifth anniversary of this proposed transaction, they shall have the same right, exercisable one time only, on the sixth anniversary. On the sixth anniversary, the Series A Preferred shareholders may elect to put their shares to the Company at fair market value in lieu of exercising their right to sell the Company.~~

#### **I.H. Incentive Option Pool**

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Up to 20% of the shares of the Company, on a post investment basis, will be reserved for incentive options for management, key employees, and other key persons. ~~The exercise price for the options will be no less than the price per share of this round of investment.~~ Oversight of the option pool will be by the compensation committee of the Board of Directors.

#### **J.I. Investor Right of Co-Sale:**

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Usual and customary investor right of co-sale.

## **II. Series A Preferred Stock Purchase Agreement**

### **A. Closing:**

The parties shall use their best efforts to close within 60 days of the signing of this term sheet.

### **B. Conditions of Closing**

1. Venture Analysis's satisfactory legal review of intellectual property agreements and contracts.
2. Venture Analysis's satisfactory review of the financial statements and accounting policies, and receipt of a satisfactory management letter from the Company, including representations and warranties.
3. Venture Analysis's verification and confirmation of information presented by Fast Track in either written or oral form.
4. Venture Analysis's completion of satisfactory due diligence.
5. Venture Analysis's satisfactory review of management employment contracts.
6. Any and all existing indebtedness will be converted to equity prior to the closing and be included as part of the pre-investment valuation.

### **C. Covenants:**

Usual and customary covenants for a preferred stock financing.

### **D. Expenses:**

Upon closing of an investment in the Company by the Venture Analysis Funds, the Company will pay all of the Venture Analysis Funds' reasonable legal expenses related to closing (not to exceed \$20,000).

### **E. Amendments and Waivers:**

Consent of Venture Analysis is required to amend or waive any provision of the Series A Preferred Purchase Agreement.

### **F. Registration Rights:**

Usual and customary for a stock offering – one demand registration and one unlimited piggyback rights.

### **G. Representations of Seller:**

Fast Track, Inc. will agree to standard financial and business representations and warranties, including a representation that all material facts relating to the business have been fully disclosed. Fast Track, Inc. will represent that there has been no material adverse change in the business, its assets, or its prospects prior to the closing. The Company represents that no dividend payments are due or will be paid prior to closing of the investment.

#### H. Opinion of Counsel:

The purchase agreement will provide for delivery of a legal opinion of the counsel of Fast Track, Inc. relating to the transaction contemplated by this term sheet.

#### I. Board of Directors:

**Immediately following the closing, the Board of Directors shall consist of 5 persons, two of whom shall be nominated by the holders of the Series A Preferred Stock.** ~~Directors: the Series A Preferred stockholders will nominate XX board members, the common stock holders will nominate XX board members and XX directors will be nominated by mutual agreement of the Series A Preferred stockholders and the common stockholders. Meetings will take place at least six times a year. Non local directors to be reimbursed for reasonable out of pocket expenses.~~

#### ~~J. Management Team:~~

~~The Series A Preferred stockholders will have approval rights for all key management positions and employment contracts.~~

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### III. Exclusive Dealings

#### A. No-Shop Provision:

Upon the execution of this term sheet, **and subject to the condition that Venture Analysis, concurrently with the execution of the term sheet, advances \$1.0 million of bridge financing in accordance with the terms of the outstanding bridge notes,** Fast Track, Inc. agrees to deal exclusively with Venture Analysis and will terminate any discussions with any potential funding source or acquirer, **unless approved by Venture Analysis,** until **60 days following the last date of the execution of this Summary of Proposed Terms as set forth below (the "Termination Date")** ~~March 31, 2004~~ with respect to any transaction relating to the financing or acquisition of the Company, unless Venture Analysis has withdrawn its offer due to its failure to perform on its closing conditions.

#### B. Break up Fee:

In the event that Venture Analysis provides the \$1.0 million of bridge financing as contemplated in paragraph III.A, above, if the Company agrees to enter into a transaction with respect to the financing of, or acquisition of, the Company before the Termination Date, with any person or entity other than Venture Analysis, Venture Analysis will be entitled to a break up fee of \$100,000, unless Venture Analysis withdrew its offer due to its failure to perform on closing conditions. Additionally, the Company agrees to pay all of the Venture Analysis Funds' reasonable legal expenses related to this transaction, (not to exceed \$20,000).

~~If Venture Analysis notifies the Company in writing that it is terminating negotiations with the Company before the Termination Date, this paragraph will be null and void. If the Company agrees to enter into a transaction with respect to the financing of, or acquisition of, the Company before March 31, 2004 with any person or entity other than Venture Analysis, Venture Analysis will be entitled to a break up fee consisting of five year warrants to purchase 20% of the common stock of the Company at a \$25 million valuation, unless Venture Analysis withdrew its offer due to its failure to perform on closing conditions. Additionally, the Company agrees to pay all of the Venture Analysis Funds' reasonable legal expenses related to this transaction (not to exceed \$20,000).~~

~~If Venture Analysis notifies the Company in writing that it is terminating negotiations with the Company before March 31, 2004, this paragraph is null and void.~~

**C. Confidentiality:**

The parties agree to keep the terms of this agreement confidential.

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Partner, Venture Analysis Group

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CEO, Fast Track, Inc.

