**Form:** Letter of Intent for Joint Venture

**Description:** The form is a sample letter of intent for a 50-50 joint venture between two companies. The structure is a cover letter with an attached Term Sheet. The footnotes are guides for the drafter, and should be deleted when finalizing the form.

**The Joint Venture:** The joint venture contemplated is a corporation, but tax considerations may result in consideration of an LLC.

**Matters Requiring Consent:** A long list of matters requiring consent of both parties is included, but should be modified as circumstances warrant. The parties should be concerned about deadlocking events.

**Modification:** This form may require significant modification as the deal is negotiated.
Re: Letter of Intent

Dear __________:

This letter is intended to set forth a letter of intent by CAL Corporation ("CAL"), a California corporation, and DEL Corporation ("DEL"), a Delaware corporation.

1. Overall Structure. Our goal is to establish a joint venture through formation of a new entity ("Newco") to be jointly owned by CAL and DEL. Our initial belief as to the overall structure and purpose of the venture is set forth in the attached Term Sheet, which would need to be properly documented in definitive agreements.

2. Negotiations. We agree to negotiate to determine if the joint venture will be appropriate for the parties[, provided, however, that either party may terminate negotiations at any time for any reason].1 [You agree to not negotiate or enter into or continue discussions with any other person or company or solicit or encourage, directly or indirectly, or furnish information to any other person or company, with respect to a similar business arrangement, during the ninety (90) days following the date this letter is accepted by you.]2

3. Confidentiality of Negotiations. The parties shall use best efforts to maintain at all times as confidential information the fact that you or we have executed this letter, the terms of this letter and the existence and content of any negotiations between us except that both parties may (i) inform advisors, counsel, and employees with a need to know as each party deems necessary, and (ii) make appropriate disclosures if required by applicable securities laws.3

1 The parties may want to provide for a more affirmative obligation such as “The parties will use their best efforts to consummate the transaction with definitive agreements by __________, [Date] ______.”

2 One party may one want to be limited in its ability to negotiate with other parties.

3 If the parties will be exchanging confidential information of their businesses, a separate Mutual Non-Disclosure Agreement may be appropriate.
4. **Governing Law.** This letter shall be governed by the substantive laws of the State of [California].

5. **Entirety.** This letter constitutes the entire understanding and agreement between the parties hereto and their affiliates with respect to its subject matter and supersedes all prior or contemporaneous agreements, representations, warranties and understandings of such parties (whether oral or written). No promise, inducement, representation or agreement, other than as expressly set forth herein, has been made to or by the parties hereto. This letter and its exhibit hereto may be amended only by written agreement, signed by the parties to be bound by the amendment. Parol evidence and extrinsic evidence shall be inadmissible to show agreement by and between such parties to any term or condition contrary to or in addition to the terms and conditions contained in this letter and its exhibit.

6. **Construction.** This letter shall be construed according to its fair meaning and not strictly for or against either party. This letter does not, and is not intended to, impose any binding obligations on the parties, except as provided in Section 2 and 3 above.¹

If the terms and conditions of this letter are acceptable, please sign and return to us a copy of this letter so that we can move forward with our discussions.

Very truly yours,

CAL Corporation

By: ___________________________
Title: __________________________

Accepted and Agreed:
DEL Corporation

By: ___________________________
Title: __________________________

¹ Parties may also condition the binding nature of the letter of intent and term sheet on approvals of one or both of their Board of Directors. The following language is illustrative. “The parties shall not be bound by the terms of this letter unless and until the Boards of Directors of CAL and DEL have approved the transaction contemplated by this letter, on or before [approved date]. Each such Board of Directors shall have complete discretion to approve, disapprove or propose modifications.
CONFIDENTIAL
TERM SHEET

This term sheet summarizes the principal terms with respect to the potential formation of a joint venture corporation (“Newco”), whose shareholders will be Cal Corporation (“CAL”) and Delaware Corporation (“DEL”). This term sheet is intended solely as a basis for further discussion and is not intended to be and does not constitute a legally binding obligation of the parties.¹ No legally binding obligations on the parties will be created, implied, or inferred until appropriate documents in final form are executed regarding the subject matter of this term sheet and containing all other essential terms of an agreed upon transaction and delivered by all parties. Without limiting the generality of the foregoing, it is the parties’ intent that, until that event, no agreement binding on the parties shall exist and there shall be no obligations whatsoever based on such things as parol evidence, extended negotiations, “handshakes,” oral understandings, or courses of conduct (including reliance and changes of position). Efforts by either party to complete due diligence, negotiate, obtain financing or prepare a contract shall not be considered as evidence of intent by either party to be bound by this term sheet or otherwise. The performance by either party prior to execution of a formal contract of any of the obligations which may be included in a contract between the parties when negotiations are completed shall not be considered as evidence of intent by either party to be bound by this term sheet.

The parties are discussing a transaction on the following terms:

General: Newco will be a corporation incorporated under the laws of the State of __________.²

Purposes: Newco will be organized for the purpose of ________________________________ (the “Joint Venture Purpose”), and for the purpose of engaging in all activities and transactions that are necessary in furtherance of that purpose.³ Newco shall not engage in any other activity except as set forth above.

Location of Newco will be located at ____________________.

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¹ This will need to be revised accordingly with the cover letter of intent if that letter includes any binding obligations.

² This assumes the joint venture will be a corporation although other alternatives include a limited liability company, a general partnership, a limited partnership, or a contractual joint venture. Tax, liability, management, regulatory, and anti-trust considerations will impact the decision.

³ This will require careful draftsmanship and strategic review, as each party may be concerned as to how the venture will impact or restrict its core business.
Principal Office:

Management: The Board of Directors of Newco shall consist of _________ directors (to be named by CAL) and _________ directors (to be named by DEL). The parties will execute a Shareholders Agreement setting forth the rights to elect directors and other management matters.

Business Plan: The parties will agree prior to the formation of the joint venture on a Business Plan for the first [three (3)] years of operation of the venture.

Matters Requiring Consent: Action on the following matters shall only be taken pursuant to resolutions duly adopted by a vote or consent of [all] [a majority] the directors of Newco:

(a) approval of any agreements, documents or other arrangements between or involving Newco and any shareholder or affiliate thereof, as well as any amendment, consent or waiver with respect to such arrangements;

(b) removal of directors other than by the party which designated the director to be removed;

(c) approval of the appointment of the members of any committee established by the Board of Directors;

(d) terms of any employment agreements with officers of Newco;

(e) approval of, and amendment to, any budgets, assessments or financial plans;

(f) approval of agreements providing for the payment or receipt in excess of [$ _________________];

(g) all transactions regarding buildings and land, including the lease, purchase, sale and mortgage thereof;

If the parties are to have the right to elect an equal number of directors, the parties may want to consider having an additional independent director to avoid deadlocks.

This list should be coordinated with the powers and latitude given to the officers of Newco.
(h) individual plans and projects which are capital in nature and for which the anticipated expenditure will exceed $______.

(i) providing loans, guarantees, or other extensions of credit other than in the ordinary course of business;

(j) amendment of the Articles or the Bylaws of Newco;

(k) merger into or with or acquisition of all or part of the business of another person or entity;

(l) sale, lease, transfer, or other disposition of the assets of Newco having a fair market value, sale price, or book value at time of disposition greater than $__________;

(m) liquidation, dissolution, winding up or voluntary bankruptcy of Newco;

(n) fixing compensation of officers, including bonuses;

(o) change in the Business Plan;

(p) declaration of dividends [except for ___% annual priority dividends to CAL];

(q) appointment, removal or change of any officer;

(r) any material change in the business of Newco;

(s) issuance, purchase or redemption by Newco of any securities of Newco and any change, increase or reduction in the capitalization of Newco;

(t) the borrowing of funds by Newco in excess of [$ _______].

Officers: The President of Newco shall be selected [by ________ ] [by majority vote of the directors] and the other officers shall be selected as follows: _______________.

Initial Capital Contributions and Ownership: At the Closing of the Agreement, CAL shall make a cash contribution of $__________ to Newco for its shares of stock and DEL shall make a capital contribution of $__________ to Newco and all of DEL’s right, title, and interest in the assets described in
A single class of $0.001 par value [common stock] shall be authorized consisting of _____ shares. Shares will be issued in the following proportions:

CAL _____%
DEL _____%

[Additional Contributions:] [CAL] [DEL] will be obligated to make additional capital contributions to Newco in the following instances:

________________________. 7

[Loans to Newco:] CAL will loan [$__________] to Newco on the following conditions and for the following purposes:

______________________________. The key terms for such loans are as follows:

(a) Interest Rate: __________%
(b) Maturity Date: __________
(c) Payment Schedule: __________
(d) Loan Origination Fee: $__________
(e) Secured by: ____________________

Failure to Make Additional Contributions: If [CAL] [DEL] fails to make the additional required contributions, the other party will have the option to exercise one or more of the following rights to the extent not inconsistent:

________________________. 8

Restrictions on Each party and its Affiliates will be prohibited from directly or

6 Capital contribution issues can become extremely complicated, especially when assets or technology are to be contributed to the venture. In that instance, the other party will expect extensive representations and warranties similar to those found in asset purchase agreements. Contributions of assets to the venture may also have significant tax issues, such as whether the contribution can be made tax-free to the venture, the depreciation and amortization of assets in the hands of the venture, and any special allocations that may need to be implemented. Another key issue to address is whether either of the parties will be entitled to a preferred return or a priority on distributions from the venture.

7 Both parties usually will insist on (i) approval rights on any additional contributions, (ii) specifically identified milestones or events prior to mandatory contributions, or (iii) a cap on any required additional contributions.

8 The basic issue here is the scope of default and exit mechanisms that will be triggered.
Competition: indirectly competing with Newco in the following areas: ______

Transfer of Interests: Except as provided for below, without the prior written consent of the other party, no party, nor any assignee or successor in interest of any party, shall sell, assign or otherwise transfer any interest in Newco. CAL and DEL will have a right of first refusal on [(i)] issuances or transfers of securities, [and (ii) license, joint venture or other business arrangements proposed by Newco].

Confidentiality: All employees of Newco will execute Confidentiality and Invention Assignment Agreements. Each party shall, at all times during the term of the venture and thereafter, use its reasonable efforts to safeguard the secrecy of any of Newco’s confidential information, including marketing plans, customer information, specialized information, or financial information.

Defaults and Remedies: If a default event occurs, the non-breaching party shall have the option to exercise the following rights to the extent not inconsistent: ____________________.

Deadlock Events: If a majority of the Board of Newco can not agree on any material business or management issue arising out of the venture, a Deadlock will be deemed to exist. Upon the occurrence of a Deadlock, either party may:

(a) Submit the matter to [binding] arbitration.

(b) Exercise the Buy-Sell Option set forth below.

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9 Anti-trust laws will impact on the scope and enforceability of such provisions. The parties will also be concerned about the impact of this non-competition clause on their core business.

10 There are numerous approaches to the transferability issue, including (1) prohibition of all transfers, (2) permissive transfers to affiliates of the parties, (3) transfers if approved by the other party, (4) all transfers permitted subject to a right of first refusal to the other party, and (5) all transfers permitted subject to a right of first offer to the other party.

11 These agreements require the employee to keep confidential the proprietary information of Newco and require the employee to assign certain inventions developed by him or her to Newco that relate to the business of Newco.

12 Various remedies could be granted to the non-binding party (perhaps after some cure period), including: (1) right to receive damages, (2) termination of the venture, and/or (3) forced buy-out of the breaching party at favorable price or terms.

Form 10.2
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(c) Require that the Chief Executive Officer of each party meet to attempt to resolve the deadlock.

(d) [Other Options.]

Buy-Sell Option: Under a Deadlock Event and certain other instances to be detailed in the definitive documents, a party shall have the right to exercise a buy-sell option (the “Buy-Sell Option”), whereby the electing party would be required to designate a price at which it would be willing to sell its interest or to purchase the other party’s interest in Newco, and the non-electing party would have the option to buy or sell such interest at that price.

Preferential Treatment Agreement: Newco and CAL will execute a Preferential Treatment Agreement, providing for, among other things, (i) preferential pricing and priority of production to CAL and its affiliates for purchase of Newco’s products, (ii) a non-exclusive, irrevocable, royalty-free license to Newco for developed technology for CAL and its affiliates to make and use any products for their internal purposes, (iii) Newco’s technical assistance to CAL to allow it to manufacture products using the licensed technology, and (iv) a “most-favored nation” provision for CAL with respect to all price reductions, rebates, allowances, etc., offered to any other customer of Newco.

Representations and Warranties: The parties will make a number of representations and warranties, including (i) due incorporation, qualification, and authorization to enter into the joint venture, (ii) exclusive ownership of the assets being contributed to Newco free of any lien, security interest, infringement, or adverse claim, [(iii) accuracy and adequacy of the statements made in the __________ patent.] (iv) other representations and warranties concerning the business, liabilities, and good standing of the parties, and (v) other representations and warranties typically obtained in transactions of this type. The parties will agree to indemnify and hold harmless Newco and the other party for any losses or liabilities arising from any breach of a representation or warranty.

Employment Agreement and with Key Employee: Newco will enter into an Employment Agreement and Confidentiality and Invention Assignment Agreement with __________________ (“Key Employee”) containing substantially the following terms:

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13 The Preferential Treatment Agreement could encompass many issues, depending on the venture and the goal of the parties, and the language here is for illustrative purposes only.
(a) __________-year term.

(b) Base salary of $__________ yearly.

(c) Bonus (if any) as determined by the Board of Newco.

(d) Other customary benefits that may be available to other employees of Newco, such as medical, dental, etc., all as determined by the Board.

(e) Confidentiality and invention assignment protection for the benefit of Newco.

(f) [Other benefits.]

**CAL Reimbursement Agreement:**
Newco will enter into a Reimbursement Agreement with CAL, providing reimbursement to CAL and its affiliates for agreed upon services and goods provided to Newco at [“cost” plus allocable overhead] for goods and at an agreed upon rate for services. CAL will be compensated for the use of its facilities by Newco.

**DEL Reimbursement Agreement:**
Newco will enter into a Reimbursement Agreement with DEL, providing reimbursement to DEL for agreed upon services provided to Newco at an agreed upon rate.

**Conditions to Closing:**

(a) Truth and accuracy of representations and warranties and performance of all obligations by the parties.

(b) Satisfactory conclusion of due diligence investigation.

(c) Receipt of satisfactory opinions of counsel.

(d) Agreement on Business Plan.

(e) Finalization and execution of all documents set forth below under “Anticipated Documentation” in form and substance satisfactory to the parties.

(f) Key man life insurance having been obtained by Newco for the benefit of CAL on Key Employee for the amount of CAL’s anticipated aggregate capital contributions.
(g) No litigation or governmental proceeding pending or threatened.

(h) Approval of the Boards of Directors of CAL and DEL [and any required shareholder approval].

(i) Receipt of any needed regulatory approval.


(k) Other customary conditions.

Anticipated Documentation:  

(a) Master Agreement (setting forth the overall venture formation agreement among the parties, with accompanying exhibits such as Articles, Bylaws, licenses, etc.).

(b) Articles of Incorporation\(^\text{15}\) of Newco (setting forth the Articles to be filed with the Secretary of State).

(c) Bylaws (setting forth the Bylaws of Newco).

(d) Shareholders Agreement (setting forth the agreement of the parties with receipt to the management and operations of Newco).

(e) Organizational Resolutions of the Board of Directors of Newco (setting forth the organizational Board resolutions).

(f) DEL Contribution Agreement (providing for DEL’s contribution of assets to Newco with appropriate representations and warranties).

(g) Business Plan (setting forth the Business Plan for Newco).

(h) CAL Reimbursement Agreement (setting forth the services to be performed, personnel provided, use of CAL’s facilities and other matters to be provided to Newco by

\(^{14}\) This list is illustrative, as additional, less, or different documents may be necessary in a particular venture.

\(^{15}\) This is the designation under the California Corporations Code for California corporations. Delaware refers to this as the “Certificate of Incorporation.”
CAL, and the amounts to reimburse or compensate CAL therefor).

(i) **DEL Reimbursement Agreement** (setting forth the services to be performed, personnel provided, and other matters to be provided to Newco by DEL, and the amounts to reimburse or compensate DEL therefor).

(j) **Preferential Treatment Agreement** (setting forth the terms of certain preferential treatment and the license to be granted by Newco to CAL and its affiliates).

(k) **Employment and Invention Assignment Agreement with Key Employee** (providing for the terms of employment of Key Employee with Newco).

(l) **Technology License Agreement** (setting forth the terms of technology licensing from DEL to Newco).

(m) **Trademark License Agreement** (setting forth the terms of any trademarks or service marks to be licensed to Newco).

(n) **Distribution Agreement** (setting forth the terms of any distribution or supply arrangement between Newco and one or more of the parties).

(o) **Confidentiality and Invention Assignment Agreement** (setting forth confidentiality and invention assignment obligations, to be signed by all employees of Newco).

(p) **Opinion of DEL’s Patent Counsel** (setting forth the intellectual property opinions to be rendered in respect of the patents and technology to be contributed by DEL to Newco).

(q) **Opinion of DEL’s Counsel** (setting forth the various legal opinions to be rendered to CAL).

(r) **Opinion of CAL’s Counsel** (setting forth the various legal opinions to be rendered to DEL).

**Expenses:** Each party to bear its own legal fees and expenses in connection with this transaction.

**Schedule:** The expected time schedule is as follows:
<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Draft of Definitive Agreements</td>
<td></td>
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<tr>
<td>Approval by Board of Directors</td>
<td></td>
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<tr>
<td>Regulatory Filings</td>
<td></td>
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<tr>
<td>Signing Definitive Agreements</td>
<td></td>
</tr>
<tr>
<td>Closing Date</td>
<td></td>
</tr>
</tbody>
</table>

Distribution List: A distribution list is attached as Exhibit 2.

* * * * *
ASSETS TO BE CONTRIBUTED TO THE VENTURE

[To be added.]
### DISTRIBUTION LIST

<table>
<thead>
<tr>
<th>CAL Corporation</th>
<th>DEL Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>_________________________</td>
<td>_________________________</td>
</tr>
<tr>
<td>Phone: __________________</td>
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<tr>
<td>Fax: __________________</td>
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<tr>
<td>Attn: __________________</td>
<td>Attn: __________________</td>
</tr>
<tr>
<td>[Counsel to CAL Corporation]</td>
<td>[Counsel to DEL Corporation]</td>
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