

Private Placement Procedures for Securities Offerings

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In almost every instance, the sale of common stock, preferred stock, debentures, or limited partnership interests involves the sale of securities. The significance of an interest being deemed a security is that comprehensive federal and state regulatory provisions become applicable to the offer and sale of the security unless exemptions from the registration requirements of applicable laws are available.

Registration of the sale of a security with the Securities and Exchange Commission (the “SEC”) is an expensive and time-consuming process. Therefore, an exemption from registration is often critical, especially for start-up and emerging companies. Two of the most important exemptions from the registration requirements of the federal securities laws are the *private placement exemption* contained in Section 4(2) of the Securities Act of 1933, as amended (the “Act”) and the safe harbor thereunder provided by Rule 506 of Regulation D. This article discusses the Rule 506 exemption and the procedural steps advisable in attempting to perfect the exemption.

Background

Section 4(2) of the Act exempts from the registration requirements of Section 5 of the Act “transactions by an issuer not involving any public offering.” This section usually is referred to as the private placement exemption, but the statute

does not define what constitutes a non-public offering. The SEC and the courts have interpreted the exemption to be available for offerings involving sophisticated offerees and purchasers who have access to or are provided the same kind of information that a registered offering would provide, who are able to “fend for themselves” as knowledgeable investors, and where the offerings are conducted in a non-public manner. Section 4(2) also provides that the sophistication level of *both* the offerees and the purchasers are important in determining the availability of the exemption.

Because of the great uncertainty in determining when the private placement exemption was available under Section 4(2), the SEC adopted Rule 506, which provides a “safe harbor” under Section 4(2). Section 4(2) is sometimes used when an offering is made to a small number of sophisticated investors. However, most issuers attempt to employ the Rule 506 exemption, and use the Section 4(2) exemption as a back-up in the event one of the conditions of the rule is not met.

The issuer attempting to invoke the exemption has the burden of proving its applicability. The failure to satisfy even one element could destroy the availability of the exemption for the entire offering and could result in rescission of the offering at the election of the investors, even one unaffected by the rule violation. In 1989, the SEC adopted Rule 508 which allows for the availability of the exemption despite failure to comply with a requirement of Regulation D if the requirement is not designed to protect specifically the complaining person, the failure to comply is insignificant to the offering as a whole and there has been a good faith and reasonable attempt to comply with all the requirements. The failure to comply, however, would still be actionable by the SEC under the Act. Further, it is important to note that an exemption from registration does not exempt the offer or sale of the securities from the anti-fraud provisions of the securities laws, which require the disclosure of material information so that an investor may make an informed investment decision.

The key elements of Rule 506 are discussed below, but are qualified in their entirety by reference to the complete Rule attached hereto.

What Limitations Exist on the Manner of the Offering?

Neither the issuer of the securities nor any person acting on its behalf can offer or sell the securities by any form of *general solicitation or advertising*. Such exclusion includes, but is not limited to, any advertisement, article, press release, mass mailing, notice or other communication published in a newspaper, magazine, or similar media or broadcast over television or radio. Realistically, this provision requires that the issuer control the number and kind of offerees so as to show that no general solicitation occurred. Practical steps include a determination that (a) the prospective investor is an “accredited investor,” or otherwise meets the standards established by the issuer and (b) investment in the securities would be suitable investment for the prospective investor.

Ideally, each prospective investor should have a pre-existing relationship with the issuer, its officers, directors, or affiliates of sufficient contact to determine suitability.

Any questions concerning what might constitute general advertising or general solicitation should be discussed with me.

How Many Offerees and Purchasers May There Be?

Rule 506 places no limitation on the number of persons to which the issuer may *offer* the securities. However, offers to significant number of persons may be deemed a prohibited general solicitation. Rule 506 does restrict the number of purchasers. The issuer must reasonably believe that no more than 35 “sophisticated” investors (as discussed in more detail below), plus a *theoretically* unlimited number of “accredited investors,” become purchasers. However, some transactions are structured for sale only to *accredited investors* as certain additional protections from potential liability are obtained thereby.

Who Is An “Accredited Investor”?

Specifically, “accredited investor” means any person who comes within any of the following categories or who the issuer reasonably believes comes within any of the following categories at the time of the sale of the securities to that person:

[i]-501(a)(1)-Certain Institutional Investors.

- (a) Any bank, savings and loan institution, or other institution as defined in Section 3(a)(5)(A) of the Act, whether acting in its individual or fiduciary capacity;
- (b) Any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934;
- (c) Any insurance company as defined in Section 2(13) of the Act;
- (d) Any investment company registered under the Investment Company Act of 1940, or a business development company as defined in Section 2(a)(48) of that Act;
- (e) Any Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;
- (f) Any plan established and maintained by a state, its political subdivisions, or any instrumentality of a state or its political subdivisions, for the benefit of its employees, if the plan has total assets in excess of \$5,000,000; and
- (g) Employee benefit plans within the meaning of Title I of ERISA, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, insurance company, or registered investment advisor, or if the employee benefit plan has total assets in excess of \$5,000,000, or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors.

[ii]-501(a)(2)-Private Business Development Companies. Any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940.

[iii]-501(a)(3)-Entity with Total Assets in Excess of \$5,000,000. Any organization described in Section 501(c)(3) of the Internal Revenue Code (dealing with tax-exempt organizations), any corporation, Massachusetts or similar business trust, or partnership not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000. Any

corporation, whether public or privately held, will be accredited under this section if it has total assets (not net worth) in excess of \$5,000,000.

[iv]-501(a)(4)-*Directors, Executive Officers, and General Partners.* Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer.

[v]-501(a)(5)-*\$1,000,000 Net Worth Individuals.* Any natural person whose individual net worth or joint net worth with that person's spouse, at the time of purchase exceeds \$1,000,000. Net worth of a spouse may be included even when the property is held solely by that spouse. Partnerships, corporations or other entities may not take advantage of this category. Note that there are no exclusions from this net worth test so that the estimated fair market value of a person's home can be counted towards the \$1,000,000 net worth.

[vi]-501(a)(6)-*Income Test.* Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and who reasonably expects at least the same income level in the year of purchase.

[viii]-501(a)(7)-*Certain Trusts.* Any trust with total assets in excess of \$5,000,000 not formed for the specific purpose of acquiring the securities offered whose purchase is directed by a sophisticated person.

[ix]-501(a)(8)-*Entities Made Up of Accredited Investors.* Any entity in which all of the equity owners are accredited investors.

The SEC staff, in Release No. 33-6455 (Mar. 10, 1983), has issued a number of interpretations as to whether a person may fall into one of the accredited investor categories discussed above. This release is available upon request.

Who Is Excluded From the 35-Person Limitation?

Certain purchasers are excluded from the 35-purchaser limitation contained in Rule 506, as follows:

- (1) Accredited investors;
- (2) Non-United States citizens and residents;
- (3) Any relative, spouse, or relative of the spouse of a purchaser who has the same principal residence as the purchaser;
- (4) Any trust or estate in which a purchaser and any of the persons related to him as specified in (3) above or (5) below collectively have more than 50% of the beneficial interest (excluding contingent interests); and
- (5) Any corporation or entity of which a purchaser and any of the persons related to him under (3) or (4) above are beneficial owners of more than 50% of the equity interests.

For the purposes of counting purchasers, each corporation, partnership, or other entity is generally counted as one purchaser (unless such entity was organized for the specific purpose of acquiring the securities and is not an accredited investor under 501(a)(8) above, and then each beneficial owner of an equity interest in the entity is counted as a separate purchaser).

What Information Must Be Disclosed?

If securities are sold to any nonaccredited investors, certain information must be delivered to all purchasers. Although the specifics of such disclosure are outside the scope of this article, the issuer should often attempt to prepare a Private Placement Memorandum containing substantially the same information as would be required in a registration statement filed with the SEC. The Private Placement Memorandum is intended to inform prospective investors of all material facts and rules associated with the investment.

State and federal securities laws require the issuer to provide the purchasers with full, fair and complete disclosure of all “material” facts about the offering and the issuer, its management, business, operations, finances, and most importantly, the risks associated with the same. Information is deemed

“material” if a reasonable investor would consider the information important in making an investment decision. Omissions, even inadvertent, of material facts can lead to liability.

Lastly, all purchasers must be given the opportunity to ask questions and receive answers about the offering and to obtain information reasonably obtainable by the issuer to verify the information furnished. Private Placement Memorandums frequently contain legends covering the latter point.

Offers generally should be made *only* by a Private Placement Memorandum and only after the procedures set forth in this article have been satisfied. Generally, the issuer or its agents should not furnish in connection with the offering (whether for review in the office, review by the offeree’s advisors, or otherwise): (a) any written information (such as additional projections, analyses, or other reports or documents) relating to the issuer or its operations other than what is contained in the Private Placement Memorandum or (b) any information contrary to that contained in the Private Placement Memorandum. If it is discovered that the Private Placement Memorandum contains inaccurate information or there is a new material information that should be disclosed, the issuer should immediately amend the Private Placement Memorandum to reflect these changes and provide the amendment to prospective investors.

What Sophistication Must the Purchasers Possess?

The issuer must reasonably believe immediately prior to making any sale that each purchaser (except for accredited investors) either alone or with a purchaser representative has such knowledge and experience in financial and business matters that the investor is capable of evaluating the merits and risks of the prospective investment. Note, however, that if all of the requirements of Rule 506 are not met and Section 4(2) is to be relied upon, the fact that offers were made only to sophisticated offerees may be important.

How does the issuer determine that a prospective purchaser is capable of evaluating the merits and risks of the investment? A commonly used approach is to require that the prospective investor complete a questionnaire that elicits responses concerning education, investment background, net worth, investment experience, and other matters. Only after review of the completed questionnaire and a determination that the person qualifies is the person accepted as a purchaser. As a precautionary measure, the questionnaire is sometimes included as part of the Subscription Agreement and the answers from the prospective investor are stipulated to be representations and warranties of said person. The Subscription Agreement can also contain an appropriate indemnification agreement.

Since the burden of proof is on the issuer to show that the exemption was available, detailed records should be kept of the manner of solicitation, the process of accepting purchasers, and the disclosure of information to offerees. See “What Back-Up Documents Should be Prepared?” below.

When Should a Purchaser Representative Be Employed?

As noted above, Rule 506 requires the issuer to reasonably believe that each purchaser who is not an accredited investor either alone or with his purchaser representative has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment. In instances where it is uncertain whether the prospective investor meets this sophistication level, it will be advisable that a purchaser

representative be used who meets the requirements of Rule 506. Certain special rules and requirements are imposed when purchaser representatives are used.

What Are the Limitations on Resale of the Securities?

Securities acquired in a transaction under Rule 506 must be acquired for investment purposes and may not be resold for an indefinite period, which for persons not closely associated with the issuer is generally not less than two years. These securities will be deemed restricted, and cannot be resold without registration under the Act or an exemption therefrom. The issuer must exercise reasonable care to assure that the purchasers of the securities do not intend to immediately redistribute the securities acquired. Such reasonable care includes, but is not limited to, an inquiry as to whether the purchaser is acquiring the securities for his or her own account; written disclosure to each purchaser prior to the sale that the securities have not been registered under the Act and therefore cannot be resold unless they are registered under the Act or unless an exemption is available; and the placement of a legend on any certificate or document that evidences the security stating that the security has not been registered under the Act and setting forth the restriction on transferability and sale of the securities.

In order to comply with such standards, the issuer will typically discuss such matters in the Private Placement Memorandum and may include a legend to the effect that the securities were acquired pursuant to an exemption from registration under the Act. Furthermore, a covenant from the purchaser that the securities will not be sold in violation of the Act's registration requirements, and an acknowledgment of the transferability limitations, is usually contained in the Subscription Agreement.

What SEC Filings Are Necessary?

The issuer should file with the SEC five copies of a notice on Form D no later than 15 days after the first sale of securities in a Regulation D offering, although the failure to file the Form D on time may not affect the availability of the exemption. A notice is deemed filed with the SEC as of the date on which it is received by the SEC, or as of the date on which the notice is mailed by means of United States registered or certified mail to the SEC at its Office of

Small Business Policy. One copy of every notice must be manually signed by an authorized person of the issuer.

The SEC staff has noted that the receipt of the first Subscription Agreement and the acceptance of subscription funds into an escrow account pending receipt of minimum subscriptions would trigger the filing requirements. In such instances, the issuer should file its first Form D no later than 15 days after the receipt of the first Subscription Agreement.

What Are the State Securities Laws Considerations?

An exemption from federal registration pursuant to Rule 506 does not generally exempt offerings from the qualification requirements of state securities laws (often referred to as “blue sky laws”). The blue sky laws of every state where the securities are being offered must be reviewed to determine the effect and applicability of such laws on the transaction. State blue sky laws may have a different focus from the requirements of the Act, which is primarily disclosure oriented.

Many blue sky statutes provide a statutory transactional exemption modeled in some manner on Section 4(2) or portions of Regulation D. Variations in the state statutes include: (1) limitations on the number of offerees within the state and/or total offerees; (2) similar limitations on the number of purchasers within a 12-month period; (3) affirmative filing requirements with the state securities administrator before and/or after the offering; (4) possible limitations on commissions paid; (5) merit review of the offering to determine if the offering is fair, just or equitable, which may entail compliance with the regulations governing the substantive terms of the offering; (6) limitations on the manner of the offering and prohibitions on general solicitation and advertising; (7) requirements concerning minimum amount of investment; and (8) use of state registered broker-dealers in connection with the offering.

As an example, California securities law imposes substantive requirements separate from federal law. Section 25110 of the California Corporate Securities Laws makes it unlawful for any person to offer or sell a security for the direct or indirect benefit of an issuer in California, unless the offer and sale is qualified or is exempt from qualification. However, California law provides a

type of private offering exemption codified in Section 25102(f) of the Corporations Code, and the California Administrative Code provides regulations and interpretations of the exemption. Although similar to Rule 506, Section 25102(f) does contain some differences that should be reviewed in connection with a particular offering.

A notice of a transaction relying on the Section 25102(f) exemption must be filed. The notice must be filed with the California Commissioner of Corporations within 15 calendar days after the completion of the transaction, or if the issuer has failed to file the notice, within 15 business days after demand by the Commissioner. For the purposes of the California law, a transaction is completed when the issuer has obtained the contractual commitments to purchase the securities or when it terminates the offering, whichever first occurs. The federal Form D can be filed to satisfy this filing requirement.

Broker-Dealer Issues

Persons or entities selling the issuer's securities, and particularly where commissions or compensation is received in connection therewith, may be required to register as "brokers," "dealers" or "agents" under federal or state securities laws.

However, if the issuer is going to sell the stock without a broker-dealer then the issuer and related individuals may fall within a federal exemption and avoid having to register as "brokers," "dealers" or "agents." Directors and officers of the issuer may qualify for an exemption from broker-dealer registration if they: (1) have not relied on the issuer exemption in the preceding twelve months; (2) are not subject to a "statutory disqualification;" (3) are not compensated (directly or indirectly) by paying commissions or other compensation based on sales of the securities; and (4) are not at the time of the sales of the securities, an "associated person of a broker or dealer," nor were they "a broker or dealer, or an associated person of the broker or dealer" within the prior twelve months, all as defined under applicable SEC rules.

What Back-Up Documents Should Be Prepared?

An issuer claiming an exemption from the securities laws has the burden of proof in showing that the exemption was in fact available. It is therefore important that a compliance program be established so as to document the availability of the exemption, which will be referred to herein as the “Burden of Proof” file. The purpose of the Burden of Proof file is to have available supporting documentation in the event of any litigation or regulatory enforcement inquiry. Issuers and promoters have been subjected to liability for violation of the securities laws because they were unable to sustain their burden of proof in court that the offering was in fact conducted in a manner warranting an exemption. The properly maintained Burden of Proof file (when the mandates of the exemption have been met) will help insulate the promoters from violation of the registration requirements of the securities laws.

The Burden of Proof file will typically contain many documents in connection with the offering. Of primary importance is a Control Sheet for Private Placement Memorandums (sample attached). This form is designed to provide recordation of the distribution of Private Placement Memorandums, and to show that offerings were only made to a limited number of individuals who met the suitability standards established by the issuer. This form should typically contain a numbered listing of all Private Placement Memorandums issued, the names of the recipients and their addresses, and the dates of transmittal to the recipients. Prior to delivery of a Memorandum to a prospective investor, the prospective investor’s name should be inserted in the upper right-hand corner of the cover of the numbered Memorandum. That copy must be delivered only to the named person. If the Memorandum is being furnished to non-prospective investors (such as to counsel or the issuer’s accountants), the right hand corner should be marked “Information Only.”

Subscription documents should not be sent to an investor unless accompanied by a Private Placement Memorandum or unless a Private Placement Memorandum has previously been sent to the investor. A procedure for determining qualification of offerees and whether they merit inclusion in the offering is advisable to establish. The procedure should identify that a prospective offeree has sufficient experience, business knowledge, and

investment sophistication to allow the offeree to make a reasonable informed investment decision before any offer is made to such person. Although offeree qualification is not per se present under Rule 506, it is still nevertheless important in the event that the issuer needs to rely on the Section 4(2) private placement exemption and to show that the offering was conducted in a limited manner without general solicitation. Such a procedure will obtain basic information about the proposed investor, such as financial sophistication, net worth, investment experience, and other relevant information. If it is determined that the prospective offeree should be included in the offering, then a numbered Private Placement Memorandum is provided to the offeree or the registered representative.

All broker-dealers, registered representatives, or other persons connected with the offering should be instructed as to the limitations on the manner of the offering. All selling agreements with participating broker-dealers should obligate the broker-dealer to comply with the requirements of Rule 506 of Regulation D applicable to its activities.

In the event a purchaser representative represents the prospective investor, a number of additional documents will be required. An acknowledgment that the purchaser representative is acting as such for the offeree will be necessary, as well as a disclosure of any material relationships between the purchaser representative and the issuer. The issuer should have supporting documentation showing the purchaser representative satisfied the conditions required by Regulation D.

To determine that subscribers are in fact suitable investors, a confidential questionnaire soliciting financial, investment, and educational information about the subscriber should generally be required to be completed by each prospective investor. These should be reviewed to determine if all questions have adequately been answered, and whether the investor meets both the financial standards and investment sophistication levels established by the issuer and required under Rule 506.

In the event that the offeree or a purchaser representative has requested additional information, written records should be kept of the information provided. If there have been any meetings with the offeree or a purchaser

representative, a record of such meeting should also be kept detailing who was present, the meeting agenda, and the matters discussed.

All compliance with and filings under blue sky laws should be carefully documented.

What Additional Steps May Be Required?

Other steps or documents may be necessary or advisable in a given transaction so as to qualify for an exemption from the registration and qualification requirements of federal and state securities laws. This article is intended for general reference purposes only, as a particular future transaction may mandate additional and/or different procedures. As the state of the law in this area is constantly changing, this memorandum speaks only as of its date, and no obligation is undertaken to update or supplement this article.

Exhibit A

**CONTROL SHEET FOR
PRIVATE PLACEMENT MEMORANDUMS**

N o.	Name & Address of Recipient	Person Sending the Memorandum	Dat e	Was Recipient Determined Suitable? Why?

Exhibit B

CURRENT VERSION OF REGULATION D

<http://www.law.uc.edu/CCL/33ActRls/regD.htm>¹

Document hosted at JDSUPRA™

<http://www.jdsupra.com/post/documentViewer.aspx?fid=86801b89-7bff-43ae-8215-4cef16ca1ad>

Exhibit C

THE MATERIALS CONTAINED HEREIN ARE NOT AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY ANY SECURITIES. OFFERS FOR SALE OF SECURITIES OF THE COMPANY MAY BE MADE ONLY THROUGH THE PRIVATE PLACEMENT MEMORANDUM TO QUALIFIED PERSONS.

SUBSCRIPTION PACKAGE

CONVERTIBLE NOTES OF HI –TECH COMPANY

INSTRUCTIONS FOR SUBSCRIPTION

This is a Subscription Package for Convertible Notes issued by HI-TECH COMPANY, Inc. ("Company") which (1) can convert into shares of Common Stock (the "Shares") of the Company or (2) the Investor shall receive repayment as set forth in the Business Plan. This Package contains the following documents:

1. SUBSCRIPTION AGREEMENT
 2. CONFIDENTIAL STATEMENT OF INVESTOR SUITABILITY
 3. SIGNATURE PAGE
 4. BUSINESS PLAN
1. All investors must review the Subscription Agreement.
 2. All investors must complete the Confidential Statement of Investor Suitability.
 3. The Signature Page, representing the signature page for the Subscription Agreement and the Confidential Statement of Investor Suitability, must be completed and executed by each person purchasing Shares.
 4. All investors must execute ALL DOCUMENTS.
 5. Any persons employing a purchaser representative must have him or her complete a Purchaser Representative Questionnaire (separately available from the Company), and the investor must execute the Acknowledgement at the end of that form.
 6. Payment. All subscriptions must be accompanied by a check. The check must be payable to _____. Your check will be held in escrow until the satisfaction by the

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Company of all closing conditions and the delivery to you of a final Private Placement Memorandum.

WHERE TO SEND DOCUMENTS:

All of the appropriate documents should be delivered to be held in Escrow by _____.
Please keep one copy for your files. Any questions concerning the completion or delivery of the documents contained in this Subscription Package may be directed to Joe the Entrepreneur.

Failure to comply with the above will constitute an invalid subscription and, if not correct, may result in the rejection of your subscription request. Time is of the essence.

ALL INFORMATION REQUESTED MUST BE
COMPLETED AND RETURNED TO THE COMPANY NO
LATER THAT DECEMBER 1, 2008

SUBSCRIPTION AGREEMENT

By execution of this Subscription Agreement, the undersigned hereby acknowledges that the undersigned understands that the Company is relying upon the accuracy and completeness hereof in complying with its obligations under applicable federal and state securities laws. The undersigned further acknowledges and certifies that the undersigned received and read the Business Plan of HI-TECH Company dated October 2007 and any supplements thereto (the "Private Placement Memorandum"), and the undersigned is familiar with the terms and provisions thereof.

The undersigned agrees and represents as follows:

1. **Representations, Warranties and Agreements.**

The undersigned hereby represents and warrants to, and agrees with, the Company, as follows:

(a) That the undersigned is aware of the following:

(1) The Notes are speculative investments which involve a substantial degree of risk of loss by the undersigned of the undersigned's entire investment in the Company and that the undersigned understands and takes full cognizance of the risk factors related to the purchase of the Notes, ("Certain Risk Factors");

(2) The Company has been operating at a loss and may do so for the foreseeable future.

(3) There will be significant restrictions on the transferability of the Shares upon conversion # ____ of 35

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of the Notes; the Notes will not be, and the investors will have no rights to require that the Notes nor the underlying Shares be registered under the Securities Act of 1933 (the "Act") or any state securities laws; there is no public market for the Notes and none is expected to develop; and, accordingly, it may not be possible for the undersigned to liquidate the undersigned's investment in the Company;

(4) No federal or state agency has made any findings as to the fairness of the terms of the offering; and

(5) Any projections or predictions that may have been made available to investors are based on estimates, assumptions and forecasts which may prove to be incorrect; and no assurance is given that actual results will correspond with the results contemplated by the various projections;

(b) That at no time has it been explicitly or implicitly represented, guaranteed or warranted to the undersigned by the Company, the agents and employees of the Company, or any other person:

(1) That the undersigned will or will not have to remain as owner of the Notes an exact or approximate length of time;

(2) That a percentage of profit and/or amount or type of consideration will be realized or guaranteed as a result of this investment;

(3) That any cash dividends from Company operations or otherwise will be made to shareholders by any specific date or will be made at all; or

(4) That any specific tax benefits will accrue as a result of an investment in the Company;

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(c) That the address set forth below is the undersigned's true and correct residence or place of business;

(d) That the undersigned is financially responsible, able to meet all obligations hereunder, and acknowledges that this investment will be long-term and is by nature speculative;

(e) That the undersigned has received and carefully read and is familiar with the Private Placement Memorandum, this Subscription Agreement, and all other documents in connection therewith, and the undersigned confirms that all documents, records and books pertaining to the investment in the Company have been made available to the undersigned and/or to the undersigned's personal investment, tax and legal advisers, if such advisers were utilized by the undersigned;

(f) That the undersigned has relied only on the information contained in the Private Placement Memorandum and that no written or oral representation or information that is in any way inconsistent with the Private Placement Memorandum and has been made or furnished to the undersigned or to the undersigned's purchaser representative in connection with the offering of the Shares, and if so made, has not been relied upon;

(g) That the undersigned is capable of bearing the high degree of economic risks and burdens of this venture including, but not limited to, the possibility of complete loss of investment and the lack of a public market which may make it impossible to readily liquidate the investment whenever desired;

(h) That the undersigned is an "accredited investor" as that term is defined in Regulation D under the Act or is otherwise a sophisticated, knowledgeable investor (either alone or with the aid of a purchaser representative) with adequate net worth and income for this investment, and has

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completed truthfully the appropriate item(s) in the Confidential Statement of Investor Suitability;

(i) That the undersigned has knowledge and experience in financial and business matters (either alone or with the aid of a purchaser representative), is capable of evaluating the merits and risks of an investment in the Company and its proposed activities and has carefully considered the suitability of an investment in the Company for the undersigned's particular financial situation, and has determined that the Notes are a suitable investment;

(j) That the offer to sell Notes was communicated to the undersigned by the Company in such a manner that the undersigned was able to ask questions of and receive answers from the Company concerning the terms and conditions of this transaction and that at no time was the undersigned presented with or solicited by any leaflet, public promotional meeting, newspaper or magazine article, radio or television advertisement or any other form of advertising or general solicitation;

(k) That the Notes for which the undersigned hereby subscribes are being acquired solely for the undersigned's own account, for investment, and are not being purchased with a view to or for the resale, distribution, subdivision or fractionalization thereof; and the undersigned agrees that such Notes will not be sold without registration under the Act or an exemption therefrom. In furtherance thereof, the undersigned will not sell, hypothecate or otherwise transfer the undersigned's Notes unless the Notes are registered under the Act and qualified under applicable state securities laws or unless, in the opinion of the Company, an exemption from the registration requirements of the Act and such laws is available;

(l) That the undersigned has had prior personal or business relationships with the Company or its

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affiliates, or by reason of the undersigned's business or financial experience (either alone or with the aid of a purchaser representative), the undersigned has the capacity to protect the undersigned's own interest in connection with this transaction;

(m) That the undersigned has been advised to consult with the undersigned's own attorney regarding legal matters concerning an investment in the Company and has done so to the extent the undersigned considers necessary;

(n) That the undersigned will immediately notify the Company in writing of any change in any statement made herein or in the Confidential Statement of Investor Suitability, occurring prior to the undersigned's receipt of the Company's acceptance of this subscription;

(o) That the information which the undersigned has furnished herein and in the Confidential Statement of Investor Suitability is correct and complete as of the date of this Agreement and will be correct and complete upon the acceptance of the Notes subscribed for. The representations and warranties and agreements herein shall survive the acceptance of this subscription and may be relied upon by the Company and its officers, directors and affiliates;

(p) That the undersigned certifies, under penalty of perjury, (i) that the social security or Tax Identification Number shown on the Signature Page is true, correct and complete, and (ii) that the undersigned is not subject to backup withholding either because the undersigned has not been notified that the undersigned is subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified the undersigned that the undersigned is no longer subject to backup withholding; and

(q) That the undersigned acknowledges that the Private Placement Memorandum reflects the Company's

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current intentions and estimates at the current time, and as with any developing company, the precise elements of the Company's plans can be expected to change from time to time.

2. Indemnification. The undersigned shall indemnify, defend and hold harmless the Company, and any officers, employees, shareholders, partners, agents, directors or controlling persons of the Company (collectively the "Indemnified Parties" and individually an "Indemnified Party") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, against losses, liabilities and expenses of each Indemnified Party (including attorneys' fees, judgments, fines and amounts paid in settlement, payable as incurred) incurred by such person or entity in connection with such action, arbitration, suit or proceeding, by reason of or arising from (i) any misrepresentation or misstatement of facts or omission to represent or state facts made by the undersigned, including, without limitation, the information in this Subscription Agreement or in the Confidential Statement of Investor Suitability, or (ii) litigation or other proceeding brought by the undersigned against one or more Indemnified Party wherein the Indemnified Party is the prevailing party.

3. Entity Investors. If the undersigned is an entity, trust, pension fund or IRA account (an "Entity"), the Entity and the person signing on its behalf represent and warrant that: (i) such Entity is an existing entity, and has not been organized or reorganized for the purpose of making this investment (or if not true, such fact shall be disclosed to the Company in writing along with information concerning the beneficial owners of the Entity), (ii) the undersigned has the authority to execute this Subscription Agreement, the Confidential Statement of Investor Suitability, the Right of First Refusal Agreement and any other documents in connection with an investment in the Shares, on the Entity's behalf, (iii) the Entity has the power, right and authority to invest in the Notes and enter into the transactions

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contemplated thereby, and that the investment is suitable and appropriate for the Entity and its beneficiaries (given the risks and illiquid nature of the investment) and (iv) all documents executed by the entity in connection with the Company are valid and binding documents or agreements of the Entity enforceable in accordance with their terms.

4. Revocation. The undersigned agrees that the undersigned may not cancel, terminate or revoke the offer to subscribe for Notes for a period of 120 days or any agreement hereunder at any time and that this Agreement shall survive the death or disability of the undersigned and shall be binding upon the undersigned's heirs, executors, administrators, beneficiaries, successors and assigns.

5. Certain Securities Law Matters.

(a) The Notes shall not be sold, assigned, transferred or pledged except upon satisfaction of the conditions specified in this Section 5, which conditions are intended to ensure compliance with the provisions of the Act. The undersigned will cause any proposed purchaser, assignee, transferee or pledge of the Notes held by the undersigned to agree to take and hold such securities subject to the provisions and conditions of this Section 5. There are further restrictions on transferability contained in the Right of First Refusal Agreement.

(b) Each certificate representing (i) the Notes and (ii) any other securities issued in respect of the Notes upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall (unless otherwise permitted by the provisions of Section 5(c) below) be stamped or otherwise imprinted with a legend substantially in the following form (in addition to any legend required under applicable state securities laws):

THE NOTES HAVE BEEN
ACQUIRED FOR INVESTMENT
AND HAVE NOT BEEN
REGISTERED UNDER THE
SECURITIES ACT OF 1933.
SUCH NOTES MAY NOT BE
SOLD OR TRANSFERRED IN
THE ABSENCE OF SUCH
REGISTRATION OR UNLESS
THE COMPANY RECEIVES AN
OPINION OF COUNSEL OR
OTHER EVIDENCE
REASONABLY ACCEPTABLE
TO IT STATING THAT SUCH
SALE OR TRANSFER IS
EXEMPT FROM THE
REGISTRATION AND
PROSPECTUS DELIVERY
REQUIREMENTS OF SAID
ACT. COPIES OF THE
AGREEMENT COVERING THE
PURCHASE OF THESE NOTES
AND RESTRICTING THEIR
TRANSFER MAY BE
OBTAINED AT NO COST BY
WRITTEN REQUEST MADE
BY THE HOLDER OF RECORD
OF THIS CERTIFICATE TO
THE SECRETARY OF THE
CORPORATION AT THE
PRINCIPAL EXECUTIVE
OFFICES OF THE
CORPORATION.

The undersigned consents to the Company
making a notation on its records and giving instructions to any
transfer agent of the Notes in order to implement the restrictions
on transfer established in this Section 5.

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(c) The undersigned agrees to comply in all respects with the provisions of this Section 5. Prior to any proposed sale, assignment, transfer or pledge of any Shares, unless there is in effect a registration statement under the Act covering the proposed transfer, the undersigned thereof shall give written notice to the Company of the undersigned's intention to effect such transfer, sale, assignment or pledge. Each such notice shall describe the manner and circumstances of the proposed transfer, sale, assignment or pledge in sufficient detail, and shall be accompanied, at the undersigned's expense by evidence satisfactory to the Company to the effect that the proposed transfer of the Notes may be effected without registration under the Act or applicable state securities law.

6. Miscellaneous.

(a) All notices or other communications given or made hereunder shall be in writing and shall be delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, to the Company at the address set forth on the instructions page hereof and to the undersigned at the address set forth on the signature page hereof.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to conflict of law principles.

(c) This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes any prior or contemporaneous understandings, representations, warranties or agreements (whether oral or written) and may be amended only by a writing executed by all parties.

(d) The undersigned acknowledges that the Company may, in its sole and absolute discretion, accept or reject this subscription offer in whole or in part.

7. Signature Page.

The signature page for this Subscription Agreement is located after the Confidential Statement of Investor Suitability.

Accepted by Company,
HI-TECH Company, INC.

By: _____

Name: _____

Title: _____

Dated: _____

[TO BE COM
ALL I

CONFIDENTIAL STATEMENT OF INVESTOR SUITABILITY

In order to comply with the requirements of federal and state securities laws, Notes of the Company may be sold only to persons or entities meeting the suitability standards established by the Company.

The purpose of this Statement is to obtain information from each prospective investor relating to the investor's knowledge and experience in financial and business matters and to the investor's ability to bear the economic risks of the proposed investment. Such information is required in order to determine whether or not the suitability standards have been met by the prospective investor. Please answer questions concerning prior business and financial experience and investment decision-making in detail.

By signing this Statement you agree that it may be shown to such authorized persons as the Company may deem appropriate to establish that the offer and/or sale of this investment in the Company will not result in any violation of any laws or regulations of any jurisdiction.

A separate Statement must be completed for each co-owner of Shares, except that spouses may complete a joint Statement.

You make the following representations with the intent that they may be relied upon by the Company and other persons designated by the Company.

(Please Print or Type)

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I. BIOGRAPHICAL INFORMATION (If Joint Subscriber, provide information for both.)

A. Name(s): _____ Birthdate

(Print)

_____ Birthdate

(Print)

B. State of Residency: _____

C. Employer or business association and position: __

D. Business address and telephone no.: _____

E. Business and/or professional education and degrees:

<u>Degree</u>	<u>School</u>	<u>Year Rec'd</u>	<u>Location</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

F. Employment during the past five years:

<u>Employer or other Association</u>	<u>From</u>	<u>To</u>	<u>Position, nature of responsibility</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(Attach additional sheets if necessary to fully answer any question.)

II. ACCREDITED INVESTOR STATUS

Please check or initial all that apply:

- The investor is a natural person whose net worth, or joint net worth with spouse, at the time

of purchase, exceeds \$1,000,000 (including the value of home, home furnishings and automobiles).

- The investor is a natural person whose individual gross income (excluding that of spouse) exceeded \$200,000 in the last two calendar years, and who reasonably expects individual gross income exceeding \$200,000 in the current calendar year; or for such periods, the combined income of the investor with spouse exceeded and is expected to exceed \$300,000.
- The investor is a trust, and the grantor
 - (i) has the power to revoke the trust at any time and regain title to the trust assets; and
 - (ii) has an individual (or, together with his spouse a joint) net worth in excess of \$1,000,000, or had and expects to have a gross income (not including spouse's income) for the last two years and the current year in excess of \$200,000, or for such periods, had and expects to have all gross income including that of a spouse in excess of \$300,000.
- The investor (or beneficiary if IRA or pension money is invested) is an executive officer of the Company.
- The investor is a corporation or partnership with more than \$5 million in assets.
- The investor is otherwise an accredited investor as follows (please complete):

III. PRIOR INVESTMENT EXPERIENCE OF INVESTOR (OR TRUSTEE OR AUTHORIZED REPRESENTATIVE)

A. Indicate by check mark which of the following categories best describes the extent of your prior experience in the areas of investment listed below:

year	No	More than 5 years	2 to 5 years	1
	<u>Experience</u>	<u>Experience</u>	<u>Experience</u>	<u>Experience</u>
Corporate Stocks	_____	_____	_____	_____
Corporate Bonds	_____	_____	_____	_____
Real Estate	_____	_____	_____	_____
Limited Partnerships	_____	_____	_____	_____
Stock in Privately Held Companies	_____	_____	_____	_____

B. Do you make your own investment decisions with respect to the investments listed above?

Yes ___ No___

C. What are the principal sources of investment knowledge or advice? (check all that apply)

publication First hand experience Financial
 Adviser(s) Broker(s) Investment
 Attorney(s) Accountant(s)

- D. Please briefly describe any additional investment experience in business ventures, experience with the Company or any other investment experience which would indicate your ability to evaluate an investment in this business venture.

IV. FINANCIAL AND INVESTMENT STATUS INFORMATION

- A. Please indicate:

1. Your estimated net worth exclusive of principal residence, furnishings of principal residence and personal automobiles (computation of net worth may be accomplished with reference to fair market value of assets).

- More than \$5 million
 \$1,000,001 - \$4,999,999
 \$500,000 - \$999,000
 \$250,000 - \$499,000
 Under \$250,000

2. Your estimated net worth, including principal residence, furnishings of principal residence and personal automobiles (computation of the value of the subscriber's principal residence may be accomplished with reference to fair market value of residence).

- More than \$5 million
- \$1,000,001 - \$4,999,999
- \$500,000 - \$1,000,000
- \$250,000 - \$499,999
- Under \$250,000

B. Gross Income¹

Please provide your actual or projected individual annual adjusted gross income for the past two years, the current year and the next year.

¹ Gross income for these purposes means adjusted gross income (as reported for federal income tax purposes) increased by the following amounts: (i) the amount of any tax exempt interest income received, (ii) the amount of losses claimed for depletion and (iii) any amount by which income from long term capital gains has been reduced in arriving at adjusted gross income pursuant to the provisions of Section 1202 of the Internal Revenue Code.

More than	More than	More than	More than
<u>\$50,000</u>	<u>\$200,000</u>	<u>\$150,000</u>	<u>\$100,000</u>

2006
2008
2008²

C. Other Matters

Is an investment in the Company suitable and appropriate for you?

Yes _____ No _____

VI. SIGNATURE PAGE

The signature pages for this document is located on the following pages.

² Reasonably anticipated.

**[TO BE
COMPLETED
AND SIGNED
BY**

ALL INDIVIDUAL IN

**SIGNATURE PAGE
(For Individuals)**

This page constitutes the signature page for INDIVIDUALS for the following documents: (a) the Subscription Agreement and (b) the Confidential Statement of Investor Suitability. Execution of this Signature Page constitutes execution of such documents.

IN WITNESS WHEREOF, the undersigned has executed the Subscription Agreement and the Confidential Statement of Investor Suitability this ___ day of _____, 2008.

Signature of Investor
Spouse

any)

Signature of

(or Joint Investor, if

Print Name of Investor
Spouse

any)

Print Name of

(or Joint Investor, if

Social Security Number
Number of Spouse

Social Security

(or Joint Investor, if

any)

Address: _____

Address: _____

Dollar Amount of Notes Subscribed For: \$ _____
(\$ _____ per Share)

**[TO BE
COMPLETED
AND SIGNED
BY ALL
QUALIFIED
INVESTORS
WHICH ARE
NOT
INDIVIDUAL
S]**

**SIGNATURE PAGE
(For Non-Individuals)**

This page constitutes the signature page for the following documents: (a) the Subscription Agreement and (b) the Confidential Statement of Investor Suitability. Execution of this Signature Page constitutes execution of such documents.

IN WITNESS WHEREOF, the undersigned has executed the Subscription Agreement and the Confidential Statement of Investor Suitability this ____ day of _____, 2008.

Print Name of Entity

Address _____

By: _____ Address: _____

Name: _____ State
Organization
Title: _____

Tax Identification Number

Dollar Amount of Notes Subscribed For:

\$ _____

(\$ _____ per Share)

