

## Summary of Terms for Proposed Private

### Placement of Convertible Preferred Stock

<b>Issuer:</b>	[ XYZ Co, Inc. ] (“Company”).
<b>Investors:</b>	[ vc1 ], [ vc2 ], existing Note holders and their warrants, and others to be named (“Investors”).
<b>Current Outstanding Securities:</b>	[ x ] shares of Common Stock (“Common”) and options to purchase [ y ] shares of Common.
<b>Amount of Investment:</b>	\$5,000,000
<b>Type of Security:</b>	Series A Convertible Preferred Stock (“Preferred”)
<b>Number of Shares:</b>	6,666,666
<b>Price per Share:</b>	\$0.75 (“Original Purchase Price”).
<b>Rights, Preferences, Privileges and Restrictions of Preferred:</b>	<p>(1) <u>Dividend Provisions</u>: A cumulative dividend on the Preferred will accrue at the rate of 8% per share per annum (“Accruing Dividends”). Accruing Dividends will be payable only (a) if, as and when determined by the Board of Directors (“Board”) or (b) upon the liquidation or winding up of the Company.</p> <p>No dividend will be paid on the Common, and no shares of Common will be repurchased by the Company except for unvested shares repurchased from former employees at their original purchase price.</p> <p>(2) <u>Liquidation Preference</u>: In the event of the liquidation or winding up of the Company, the holders of Preferred will be entitled to receive in preference to the holders of Common an amount equal to the greater of (a) the Original Purchase Price plus any dividends accrued on the Preferred but not paid or (b) the amount they would have received had they converted the Preferred to Common immediately prior to such liquidation or winding up.</p>

(3) Redemption: On each of September 30, [five years from now], [six years from now], and [seven years from now], the Company will redeem one-third of the Preferred originally issued by paying in cash the Original Purchase Price plus any dividends (excluding Accruing Dividends) accrued on the Preferred but not paid. If the Company fails to redeem the Preferred when due, the conversion price of the Preferred thereafter will decrease at the rate of 5% per quarter.

(4) Conversion: A holder of Preferred will have the right to convert the Preferred, at the option of the holder, at any time, into shares of Common. The total number of shares of Common into which the Preferred may be converted initially will be determined by dividing the Original Purchase Price by the conversion price. The initial conversion price will be the Original Purchase Price. The conversion price will be subject to adjustment as provided in paragraph (3) above and paragraph (6) below.

(5) Automatic Conversion: The Preferred will be automatically converted into Common, at the then applicable conversion price, in the event of an underwritten public offering of shares of the Common at a public offering price per share that is not less than \$2.50 in an offering of not less than \$15,000,000.

(6) Antidilution Provisions: If the Company issues additional shares (other than the Reserved Shares described under "Reserved Shares" below) at a purchase price less than the applicable conversion price, the conversion price of the Preferred will be reduced on a weighted average formula basis to diminish the effect of such dilutive issuance on the Preferred.

(7) Voting Rights: Except with respect to election of directors and certain protective provisions, the holders of Preferred will have the right to that number of votes equal to the number of shares of Common issuable upon conversion of the Preferred. Election of directors and the protective provisions will be as described under "Board

Representation and Meetings” and “Protective Provisions”, respectively, below.

(8) Protective Provisions: Consent of the holders of at least two-thirds of the Preferred will be required for (i) any sale by the Company of substantially all of its assets, (ii) any merger of the Company with another entity, (iii) any liquidation or winding up of the Company, (iv) any amendment of the Company’s charter or by-laws that is adverse to the Preferred, or (v) certain other actions materially affecting the Preferred.

**Information Rights:**

So long as any of the Preferred is outstanding, the Company will deliver to each Investor annual, quarterly and monthly financial statements, annual budgets and other information reasonably requested by an Investor.

**Registration Rights:**

(1) Demand Rights: If, at any time after the earlier of the Company’s initial public offering and the date three years from the purchase of the Preferred (but not within 6 months of the effective date of a registration), Investors holding at least 40% of the Common issued or issuable upon conversion of the Preferred request that the Company file a Registration Statement covering at least 20% of the Common issued or issuable upon conversion of the Preferred (or any lesser percentage if the anticipated aggregate offering price would exceed \$5,000,000), the Company will use its best efforts to cause such shares to be registered.

The Company will not be obligated to effect more than two registrations (other than on Form S-3) under these demand right provisions.

(2) Registrations on Form S-3: Holders of Common issued or issuable upon conversion of the Preferred will have the right to require the Company to file a maximum of two Registration Statements on Form S-3 (or any equivalent successor form) per calendar year, provided the anticipated aggregate offering price in each registration on Form S-3 will exceed \$1,000,000. This provision will remain in effect until such time as the Investors become eligible to sell common shares subject to Rule 144.

(3) Piggy-Back Registration: The Investors will be entitled to “piggy-back” registration rights on registrations of the Company, subject to the right of the Company and its underwriters to reduce in view of market conditions the number of shares of the Investors proposed to be registered.

(4) Registration Expenses: The registration expenses (exclusive of underwriting discounts and commissions) of all of the registrations under paragraphs (1), (2) and (3) above will be borne by the Company.

(5) Transfer of Registration Rights: The registration rights may be transferred to a transferee who acquires at least 20% of an Investor’s shares. Transfer of registration rights to a partner or shareholder of any Investor will be without restriction as to minimum shareholding.

(6) Other Registration Provisions: Other provisions will be contained in the Purchase Agreement with respect to registration rights as are reasonable, including cross-indemnification, the Company’s ability to delay the filing of a demand registration for a period of not more than 90 days in certain circumstances, the agreement by the Investors (if requested by the underwriters in a public offering) not to sell any unregistered Common they hold for a period of 120 days following the effective date of the Registration Statement of such offering, the period of time in which the Registration Statement will be kept effective, underwriting arrangements and the like.

(7) No Registration of Preferred: The registration rights set forth herein apply only to the Common and the Company will never be obligated to register any of the Preferred.

**Use of Proceeds:**

The proceeds from the sale of the Preferred will be used for:

- 1) Repaying loans made to the Company by [ founder 1 ] totalling \$ [ x ]
- 2) The balance will be used for working capital.

**Board Representation**

The charter will provide that the authorized number of

**and Meetings:**

directors is five. The Preferred (voting as a class) will elect two directors, the Common (voting as a class) will elect two directors, and the remaining director will be such person, mutually agreed upon by both the Preferred and the Common shareholders (voting as separate classes). The Board will meet at least quarterly. The bylaws will provide, in addition to any provisions required by law, that any two directors or holders of at least 25% of the Preferred may call a meeting of the Board. Effective upon the purchase of the Preferred, [Partner x] of [vc1] Venture Partners and [Partner y] of [vc2] Equity Partners will be the Preferred Directors, and [founder1] and [founder 2] will be the Common Directors.

If [founder 1] or [founder 2] are voted off of the Board at a future date, they will be granted observation rights to attend future Board meetings.

[vc1] Venture Partners will be entitled to reimbursement of reasonable expenses related to Board-related travel as well as travel requested by the Company for non-board related issues.

**Key Person Insurance:**

Commercially reasonable efforts will be used to obtain \$1,000,000 of key person life insurance on each of [founder1], [founder2], [VP 1], and [VP 2], with the proceeds payable to the Company, and directors and officers liability insurance.

**Right of First Offer for  
Purchase of New Securities:**

So long as any of the Preferred is outstanding, if the Company proposes to offer any shares for the purpose of financing its business (other than Reserved Shares, shares issued in the acquisition of another company, shares offered to the public pursuant to an underwritten public offering, or shares issued to banks, leasing companies or similar companies), the Company will first offer a portion of such shares to the Investors so as to enable them to maintain their percentage interest in the Company.

**Stock Restriction Agreements:**

All Company Founders will execute a Stock Restriction Agreement with the Investors and the Company pursuant

to which the Investors will have a right of first refusal with respect to any shares proposed to be sold by such persons. The Stock Restriction Agreement will also contain a right of co-sale providing that before any such person may sell any of his shares, he will first give the Investors an opportunity to participate in such sale on a basis proportionate to the amount of securities held by the seller and those held by the Investors. In addition, the Stock Restriction Agreement will restrict such person, while still an employee of the Company, from selling more than 50% of their shares for two years from the time of this Series A financing without Board of Director approval. The Stock Restriction Agreement will also give the Company the right to repurchase such person's unvested shares at a price equal to his original purchase price, in the event his employment with the Company terminates. On March 1, [year] 25% of shares vested, an additional 25% will vest on March 1, [year+1], and the balance of shares will vest at a rate of 2.0833% per month thereafter. The vesting schedule will accelerate by 50% in the event of an IPO, merger, change of control, or sale of the Company. The Stock Restriction Agreement will terminate after ten years or, if earlier, an underwritten public offering of the Common in an amount of at least \$15,000,000, or in the case of a merger or sale of the Company, where there is a change in the control of the Company.

**Reserved Shares:**

The Company currently has [x] shares of Common reserved for issuance to directors, officers, employees and consultants upon the exercise of outstanding options. The Company may reserve up to [y] additional shares of Common for issuance to such persons. (Such [x] shares already reserved, and the additional [y] shares, are referred to as the "Reserved Shares".)

The Reserved Shares will be issued from time to time to directors, officers, employees and consultants of the Company under such arrangements, contracts or plans as are recommended by management and approved by the Board, provided that without the unanimous consent of the directors elected solely by the Preferred, the vesting of any such shares (or options therefor) issued to any such person shall not be at a rate in excess of 25% per annum from the

date of issuance. Unless subsequently agreed to the contrary by the Investors, any issuance of shares in excess of the Reserved Shares will be a dilutive event requiring adjustment of the conversion price as provided above and will be subject to the Investors' first offer right as described above. Holders of Reserved Shares who are officers or employees of the Company will be required to execute Stock Restriction Agreements generally as described above.

**Invention, Confidentiality, and Noncompete Agreements:**

Each founder and key employee of the Company will enter into an Invention, Confidentiality and Noncompete Agreement, a copy of which is attached to this Agreement.

**The Purchase Agreement:**

The purchase of the Preferred will be made pursuant to a Series A Convertible Preferred Stock Purchase Agreement drafted by counsel to the Investors. Such agreement shall contain, among other things, appropriate representations and warranties of the Company, covenants of the Company reflecting the provisions set forth herein and other typical covenants, and appropriate conditions of closing, including, among other things, qualification of the shares under applicable Blue Sky laws, the filing of a certificate of amendment to the Company's charter to authorize the Preferred, and an opinion of counsel.

Until the Purchase Agreement is signed by both the Company and the Investors, there will not exist any binding obligation on the part of either party to consummate the transaction. This Summary of Terms does not constitute a contractual commitment of the Company or the Investors or an obligation of either party to negotiate with the other.

**Exclusivity:**

The Company agrees to negotiate exclusively with [vc1] Venture Partners on all investment-related matters whereby the Company contemplates the issuance of any form of equity, for a period of 30 days of this Agreement.

Further, the Company agrees not to disclose this Agreement, verbally or otherwise without the express written approval of [vc1].

**Expenses:** The Company and the Investors will each bear their own legal and other expenses with respect to the transaction (except that, assuming a successful completion of the transaction, the Company will pay the legal fees and expenses of [ law firm ] LLP, counsel to the Investors, up to a maximum of \$30,000).

**Finders:** The Company and the Investors will each indemnify the other for any finder's fees for which either is responsible.

**Targeted Close Date:** [ date ]

Agreed to this [ date ] :

[ vc1 ] Venture Partners, L.P.

By: [ vc1 ] Ventures Management, L.P., General Partner

By: [ vc1 ] Ventures Management Company, Inc., its General Partner

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[ vc2 ] Equity Partners

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By:

[ xyc company ] Inc.

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By: \_\_\_\_\_, President