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TERM SHEET
“SERIES SEED PREFERRED” ROUND OF FINANCING
MEMORANDUM OF TERMS

ABC, INC.

[POST CONVERSION TO USA-BASED C-CORPORATION]

This Memorandum of Terms represents only the current thinking of the parties with respect to certain of the major issues relating to the proposed private offering and does not constitute a legally binding agreement. This Memorandum of Terms does not constitute an offer to sell or a solicitation of an offer to buy securities in any state where the offer or sale is not permitted.

THE OFFERING

Issuer: ABC, Inc., a Delaware corporation (the “*Company*”)

Securities: Series Seed Preferred Stock (the “*Series Seed Preferred*”)

Valuation of the Company: \$4,000,000 pre-money

Amount of the offering: \$1,000,000 plus conversion of \$XXX of existing convertible notes, if any

Consideration: Cash and cancellation of indebtedness

Number of securities: XXX shares

Price per share: \$XXX

Investors: Early-Stage Ventures LLC or affiliated entities, and other investors acceptable to the Company.

Capitalization: The pre-financing capitalization of the Company is as set forth in the due diligence documents and the *pro forma* capitalization following the proposed offering is as follows:

Capital Structure Post Series Seed Preferred

- Existing Shareholders 65%
- Holders of Series Seed Preferred 20%
- Current Employees/ Option Pool 15%
(To be approved by holders of

Series Seed Preferred)

Total

100%

- Anticipated closing date:*** Initial closing on or before September **XX**, 2015 of at least \$750,000, plus the conversion of the outstanding Convertible Notes, if any, with one or more additional closings within 60 days thereafter.
- Conversion to a C-Corp:*** The Company must be a registered Delaware C-Corporation that owns all the assets of the Company, prior to the closing of the Series Seed Preferred investment.
- Use of Proceeds:*** The Company shall use the proceeds from this Series Seed Preferred round for working capital purposes only.
- Dividends:*** The Series Seed Preferred will carry an annual 8% cumulative, compounded annually, dividend payable upon a liquidation or redemption. For any other dividends or distributions, participation with Common Stock on an as-converted basis.

TERMS OF THE PREFERRED

- Existing Debt/Deferred Comp*** The outstanding debt and deferred compensation, if any, in the amount of approximately \$**XXX** will be converted to common shares of the new company prior to the closing of this Series Seed Preferred investment.
- Liquidation preference:***
- Amount:* Original purchase price plus accrued dividends.
- Priority:* Senior to common.
- Participation:* After payment of preferential liquidation proceeds, the Series Seed Preferred participates with the common stock pro rata on an as-converted basis in further liquidation proceeds.
- Deemed liquidation:* A merger or consolidation (other than one in which stockholders of the Company own a majority by voting power of the outstanding shares of the surviving or acquiring corporation) and a sale, lease, transfer, exclusive license or other disposition of all or substantially all of the assets of the Company will be treated as a liquidation event (a “Deemed Liquidation Event”), thereby triggering payment of the liquidation preferences described above unless the holders of 51% of the Series Seed Preferred elect otherwise.
- Conversion:*** The Series Seed Preferred may be converted at any time, at the option of the holder, into shares of common stock. The conversion rate will initially be 1:1, subject to anti-dilution and other customary adjustments.

Automatic conversion:

Each share of Series Seed Preferred Stock shall be convertible, at any time, at the option of the holder, into shares of Common Stock, at an initial conversion ratio of one share of Common Stock for each share of Series Seed Preferred Stock. Mandatory conversion of the Series Seed Preferred Stock upon the effectiveness of a registration statement covering a firmly and fully underwritten public offering of common stock of the Company by a reputable underwriter acceptable to the majority of holders of Series Seed Preferred shares at a price which equals or exceeds five times the purchase price per share of the Series Seed Preferred stock and where the aggregate gross proceeds received by the Company exceeds \$25 million (a “Qualified Public Offering”).

Anti-dilution:

Adjustments. The terms of the Series Seed Preferred Stock will contain standard “weighted average” anti-dilution protection with respect to the issuance by the Company of equity securities at a price per share less than the applicable conversion price then in effect, subject to standard and customary exceptions. The conversion rate of the Series Seed Preferred Stock into common stock will be adjusted appropriately to account for any stock splits, re-capitalizations, mergers, combinations and asset sales, stock dividends, and similar events.

Exceptions. There will be no adjustment to the conversion price for:

- shares issued upon conversion of the Series Seed Preferred;
- up to XXX shares or options, warrants or other rights issued to employees, consultants or directors in accordance with the Company’s Stock Option Plan;
- shares issued as a dividend or distribution on the preferred stock or for which adjustment is otherwise made pursuant to the certificate of incorporation (*e.g.*, stock splits);
- shares issued in connection with a Qualified Public Offering;
- shares issued or issuable in connection with any settlement approved by the board;
- shares issued or issuable in connection with bona fide business acquisitions, mergers or joint ventures approved by the board;
- shares issued or issuable to banks, savings and loan associations, equipment lessors or other similar financial institutions or lessors in connections with such entities providing commercial credit arrangements, equipment

financings, commercial property lease transactions, or similar transactions to the company approved by the board;

- shares issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar arrangements or strategic partnerships approved by the board;

and

- shares that are otherwise excluded by consent of holders of a majority of the Series Seed Preferred.

General voting rights:

On all matters submitted for stockholder approval, each share of Series Seed Preferred Stock shall be entitled to such number of votes as is equal to the number of shares of Common Stock into which such shares are convertible.

Board of Directors:

The Board of Directors of the Company shall be composed of five members. Of these five members, the holders of the Series Seed Preferred Stock shall have the right to designate three directors (“Series Seed Directors”). The remaining two directors will be designated by the majority holders of the Company common stock, with one director as the CEO of the Company. An affirmative vote of the Series Seed Directors will be required to incur or guarantee debt in excess of \$150,000 or make capital expenditures of more than \$10,000 in a single expenditure or an aggregate of \$50,000 in any twelve-month period.

Options and Vesting:

All new stock options held by founders, management, and employees shall vest over a four-year period with 25% of the shares vesting upon the one-year anniversary of grant, with monthly vesting thereafter at the rate of 1/48th of the total grant each month.

Protective provisions:

So long as 30% shares of Series Seed Preferred are outstanding, in addition to any other vote or approval required under the Company’s Charter or Bylaws, the Company will not, without the written consent of the holders of at least 51% of the Company’s outstanding Series Seed Preferred, either directly or by amendment, merger, consolidation, or otherwise:

- i.* approve any transaction or series of transactions deemed to be a liquidation of the company or effect any merger or consolidation or any other Deemed Liquidation Event;
- ii.* approve the voluntary liquidation or dissolution of the Company;

- iii.* effect any exchange or reclassification of any stock affecting the Series Seed Preferred Stock or a re-capitalization involving the Company and its subsidiaries taken as a whole.
- iv.* amend, alter, or repeal any provision of the Certificate of Incorporation or Bylaws;
- v.* create or authorize the creation of or issue any other security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to or on parity with the Series Seed Preferred, or increase the authorized number of shares of Series Seed Preferred;
- vi.* purchase or redeem or pay any dividend on any capital stock prior to the Series Seed Preferred, other than repurchases or redemptions from employees of the Company upon termination of their employment pursuant to prior existing agreements approved by the Board of Directors, or as otherwise approved by the Board of Directors including the approval of a majority of the Series Seed Director(s);
- vii.* create or hold capital stock in any subsidiary that is not a wholly-owned subsidiary or dispose of any subsidiary stock or all or substantially all of any subsidiary assets;
- viii.* increase or decrease the size of the Board of Directors; or
- ix.* enter into any transaction with management or any member of the Board of Directors, except for employment contracts approved by the Board of Directors and transactions entered at arms-length terms which are no less favorable to the Company than could be obtained from unrelated third parties and are approved by a majority of the disinterested directors.

INVESTOR RIGHTS

Director liability:

The directors will be entitled to customary indemnification from the Company and reimbursement of reasonable costs of attendance at board meetings.

Redemption:

Commencing with the date that is four years from the date of closing and on the first one-year anniversary of such date thereafter, holders of at least a majority of the then issued and outstanding shares of Series Seed Preferred Stock may request the Company to redeem their shares at a price equal to the original purchase price for such shares plus any declared but unpaid dividends, with 1/2 of the shares to be redeemed shall be redeemed on such redemption date, an

additional 1/2 on the date that is the one-year anniversary of such date.

Right of First Refusal:

Holders of Series Seed Preferred Stock shall have a pro rata right, based on their percentage of fully diluted equity interest in the company, with an under subscription right up to the total number of shares being offered, to participate in subsequent stock issuances.

Right of First Refusal and Co-Sale: In the event that any of the shareholders propose to sell their stock to third parties at the time of the proposed sale, the Company shall have the first right to purchase the securities on substantially the same terms as the proposed sale; the Series Seed Preferred Stockholders shall next have said right according to respective percentage ownership of Series Seed Preferred Stock or to sell proportionate percentage pursuant to co-sale rights. Such rights shall terminate upon a Qualified Public Offering.

Expenses:

The Company will reimburse the holders of Series Seed Preferred Stock for reasonable legal, out-of-pocket fees and expenses in connection with the transaction, such as travel expenses, such expenses not to exceed \$25,000.

Information rights:

The Company will deliver to each holder of at least **XXX** shares of Series Seed Preferred:

- all information and materials, including, without limitation, all internal management documents, reports of operations, reports of adverse developments, copies of any management letters, communications with shareholders or directors, and press releases and registration statements, as well as access to all senior managers as requested by holders of Series Seed Preferred Stock;
- unaudited annual financial statements within 45 days following year-end; and
- unaudited quarterly financial statements within 30 days following quarter-end.

Holders of at least **XXX** shares will be entitled to inspection rights. The information rights will terminate upon an initial public offering.

REGISTRATION RIGHTS

Registrable Securities:

All shares of Common Stock issuable upon conversion of the Series Seed Preferred and any other Common Stock held by the Investors will be

deemed “Registrable Securities.”

Demand Registration:

Upon earliest of (i) five years after the Closing; or (ii) six months following an initial public offering (“IPO”), persons holding 10% of the Registrable Securities may request one (consummated) registrations by the Company of their shares. The aggregate offering price for such registration may not be less than \$10 million. A registration will count for this purpose only if (i) all Registrable Securities requested to be registered are registered, and (ii) it is closed, or withdrawn at the request of the Investors (other than as a result of a material adverse change to the Company).

Registration on Form S-3:

The holders of 10% of the Registrable Securities will have the right to require the Company to register on Form S-3, if available for use by the Company, Registrable Securities for an aggregate offering price of at least \$5 million. There will be no limit on the aggregate number of such Form S-3 registrations, provided that there are no more than two per year.

Piggyback Registration:

The holders of Registrable Securities will be entitled to “piggyback” registration rights on all registration statements of the Company, subject to the right, however, of the Company and its underwriters to reduce the number of shares proposed to be registered to a minimum of 20% on a pro rata basis and to complete reduction on an IPO at the underwriter’s discretion. In all events, the shares to be registered by holders of Registrable Securities will be reduced only after all other stockholders’ shares are reduced.

Affirmative Covenants:

While any Series Seed Preferred Stock is outstanding, the company will:

- a) Maintain adequate property and business insurance.
- b) Maintain adequate D&O insurance.
- c) Comply with all laws, rules, and regulations.
- c) Preserve, protect, and maintain its corporate existence; its rights, franchises, and privileges; and all properties necessary or useful to the proper conduct of its business.
- d) Submit all reports required under the Internal Revenue Code and the regulations promulgated thereunder.

- e) Not enter into related party transactions without the consent of a majority of disinterested directors.
- f) Reimburse all reasonable out-of-pocket travel-related expenses of the Series Seed Directors.

EMPLOYEE MATTERS

Proprietary information agreements:

The Company will cause all employees and key consultants to execute and deliver non-competition, non-solicitation, non-hire, non-disclosure, and assignment of inventions agreements for a term of their employment with the Company plus one year in a form reasonably acceptable to the Board of Directors

OTHER MATTERS

Purchase agreement:

The investment will be made pursuant to a stock purchase agreement which will contain, among other things, appropriate representations and warranties of the Company and the investors and appropriate conditions of closing. Definitive agreements will be drafted by counsel to the Investors. This term sheet is intended by the parties to be non-binding.

Finders:

The Company and the investors will each indemnify the other for any finder's fees for which they are respectively responsible.

Conditions to Closing:

The investment closing will be subject to customary conditions, including but not limited to:

- completion of due diligence to the satisfaction of the investors;
- negotiation and execution of definitive agreements customary in transactions of this nature;
- receipt of all required authorizations, approvals and consents;
- receipt of shareholder approvals and releases eliminating any obligations to the shareholders prior to the investment;
- the delivery to the investors of a legal opinion of counsel to the Company, regarding standard and customary matters and satisfactory to the Investors and their legal counsel;

- delivery of customary closing certificates; and
- the absence of material adverse changes with respect to the Company.

Early-Stage Ventures, LLC

ABC, Inc.



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