

ABC, INC.
INVESTMENT AND BUSINESS BUILDING PROGRAM
MAJOR TERMS SUMMARY
_____, 200_

This Major Terms Summary is intended to be a summary evidencing the current intentions of the parties with respect to an investment in ABC, Inc., an Ohio corporation (the “Company”) by an investor group led by [name of leader] (the “Investors”). This Major Terms Summary is not meant to include all terms and conditions of the proposed transaction. The final and complete terms and conditions would be contained in the definitive documents to be negotiated, executed and delivered by all parties.

This Major Terms Summary is intended for the use of the Company, its directors and counsel only. Except as otherwise permitted herein, disclosure to other parties shall not be made without the express prior written consent of the Investors.

1. **Purposes** – To provide the growth capital and business building assistance necessary to allow the Company to meet its goals of _____, _____, and _____.
2. **Issuer** – ABC, Inc., an Ohio corporation (“ABC” or the “Company”).
3. **Investment** – A total investment of \$_____ to \$_____ from an investor group led by [name of leader] (the “Investors”).
4. **Security** – The funding will be in the form of Series A Convertible Participating Preferred Stock (“Preferred Equity”). The exact terms, rights, preferences and designations of the Preferred Equity will be determined upon completion of business, financial and legal due diligence by the Investors and their advisors, however, the terms, rights, preferences and designations of the Preferred Equity shall include, at a minimum, those terms, rights, preferences and designations contained herein. The Investors will purchase the Preferred Equity at a purchase price based on a \$___ million pre-money value of the Company (on a fully diluted basis and assuming 15% of the Company’s fully diluted common shares outstanding immediately prior to the sale of the Preferred Equity are reserved for issuance under the Company’s stock option plans). As a result, on a post-money basis the Preferred Equity purchased by the Investors shall represent ____ - _____% of the fully diluted common share equivalents (assuming conversion of the Preferred Equity into common stock of the initial common rate described herein).

In addition to the Preferred Equity the Company shall issue to the Investors warrants to purchase an equal amount in Preferred Equity at \$0.01 per share as contemplated herein which shall be exercisable on or after _____, 200_ unless, prior to such date, the Company shall have: (i) [goal to be met to cancel warrants] (ii) [goal to be met to cancel warrants]. If either of the items set forth in (i) or (ii) above shall occur on or before _____, 200_, the warrants shall expire effective [same date] (prior to first becoming exercisable).

5. **Closing** – As soon as practicable after signing this Major Terms Summary and satisfactory completion of the Investors’ business, financial and legal analysis and due diligence and execution of the Definitive Agreements (as defined below), provided, however, that the closing shall not take place until all of the conditions to closing set forth herein and in the Definitive Agreements have been satisfied.
6. **Preferred Equity Terms:**
- a) **Dividend** – The Preferred Equity would accrue dividends at the rate of 8% per annum. Such dividends shall accumulate and shall be paid when and as declared by the Board of Directors of the Company, provided, however, that all such dividends shall be paid in full in the event that: (i) the Company consummates a firm commitment, underwritten public offering of its common shares (an “IPO”); or (ii) the acquisition of any portion of the Company by another entity by means of any transaction or series of related transactions other than a transaction or series of transactions in which the holders of the voting securities of the Company immediately prior to such transaction(s) continue to retain at least 51% of the total voting securities of the Company or such surviving entity outstanding immediately after such transaction(s), (iii) the sale, lease or other conveyance of a significant amount of the assets of the Company or (iv) the liquidation or winding up of the Company (each, a “Liquidity Event”). The Investors may elect to receive all or some of any accumulated dividends in the form of shares of common stock of the Company.
- b) **Redemption (Put) Right** – The holders of a majority of the Preferred Equity would have the right to require the Company to redeem the Preferred Equity after the fourth (4th) anniversary of the Closing for an amount equal to the greater of: (i) fair market value of the Preferred Equity, without discount for liquidity or minority position, as determined by a qualified third party; or (ii) two times (2X) the cost of the Preferred Equity, plus accumulated dividends.
- Payment for such redemption may, at the Company’s option, be made as follows: (i) in full in cash at the closing of such redemption; or (ii) one-third (1/3) of the amount in cash at the closing of such redemption and the remaining two-thirds (2/3) of the amount in the form of a promissory note secured by a pledge of the redeemed Preferred Equity and providing for twelve equal quarterly payments of principal along with interest at the rate of 8% per annum, such promissory note to be in a form reasonably acceptable to the Investors. [\[other repayment terms could be proposed\]](#)
- c) **Voting** – In addition to the voting and approval rights for certain events as set forth herein, the Preferred Equity shall be entitled to vote on all matters submitted to a vote of the holders of common stock on an “as converted” basis. In addition to the voting rights set forth above, the consent of the holders of a majority of the outstanding Preferred Equity will be required for any action which: (i) alters or changes the rights, preferences or privileges of the Preferred Equity by

amendment to the Articles of Incorporation, by merger, or otherwise; (ii) increases or decreases the authorized number of Preferred Equity or any class of shares senior thereto; (iii) causes the issuance of additional Preferred Equity; (iv) creates, by reclassification, merger or otherwise, any new class or series of shares having rights, preferences or privileges on par with or senior to the Preferred Equity in any respect; (v) results in the redemption of any shares of the Company's capital stock; (vi) increases the number of shares reserved for issuance under the Company's current or future option plan; (vi) results in any merger, other corporate reorganization, sale of control, or any transaction in which a significant amount of the assets of the Company are sold; (vii) results in the payment or declaration of any dividend on any shares of capital stock of the Company; or (viii) any material change to the Company's business plan delivered to the Investors in accordance with the terms hereof.

- d) **Liquidation Preference** – The Preferred Equity will rank ahead of all other classes of capital stock and the proceeds resulting from any Liquidity Event shall be distributed in the following order of priority:
- (1) first, to the holders of the Preferred Equity pro rata based on the original purchase price, until such holders shall receive an amount equal to the greater of: (i) fair market value of the Preferred Equity, without discount for liquidity or minority position, as determined by a qualified third party; or (ii) two times (2X) the cost of the Preferred Equity, plus accumulated dividends; and
 - (2) second, the balance of the proceeds shall be distributed to the holders of the common stock, pro rata, based on their respective fully diluted ownership of the common stock (provided, however, that the holders of Preferred Equity will participate with the holders of common stock in such distribution on an “as converted” basis).
- e) **Conversion** – Each share of Preferred Equity shall be convertible into shares of common stock at any time at the election of the holder thereof. The Preferred Equity shall be automatically converted to shares of common stock in the event of a firm commitment, underwritten public offering of the Company's common stock at an equivalent price per share of at least ten times (10x) the cost of the Preferred Equity with gross proceeds of at least \$25mm (a “Qualified IPO”). The Preferred Equity shall convert into shares of common stock at a ratio determined by dividing the cost of Preferred Equity plus accrued dividends by a conversion price, initially equal to the per share cost of Preferred Equity, subject to antidilution adjustments as set forth herein.
- (f) **Anti-Dilution Protection** – If, at any time after the date of issuance of the Preferred Equity, the Company shall issue any common shares, including, without limitation, deemed issuances by way of options and/or convertible securities (or

similar rights or securities), without consideration or for a consideration per share less than the then conversion price of the Preferred Equity, the conversion price for the Preferred Equity in effect immediately prior to such issuance shall forthwith be reduced concurrently with such issuance to a price determined by multiplying the then conversion price of the Preferred Equity by a fraction: (A) the numerator of which shall be the number of shares of common stock outstanding immediately prior to such issuance (assuming full conversion of all convertible securities) plus the number of shares of common stock which the aggregate consideration received by the Company for the total number of additional shares of common stock so issued (and/or deemed issued) would purchase at the conversion price of the Preferred Equity in effect immediately prior to such issuance; and (B) the denominator of which shall be the number of shares of common stock outstanding immediately prior to such issuance (assuming full conversion of all convertible securities) plus the number of additional shares of common stock so issued (and/or deemed issued). [This is “weighted average” anti-dilution--“full-ratchet” could also be proposed.]

7. **Use of Proceeds** – The use of proceeds will be restricted to the purposes set forth in the Company’s business plan, a current copy of which will be delivered to the Investors prior to Closing. No proceeds shall be used to pay: (a) interest or principal due on any outstanding indebtedness, whether to a bank or any current holder of capital stock in the Company; or (b) any deferred compensation due any officer, director employee or consultant of the Company. [Other restrictions can be inserted here.]
8. **Incentive Stock Option Plan** – Immediately prior to the consummation of this transaction, the Company shall have reserved under a Stock Option Plan 15% of the Company’s fully diluted common shares outstanding, the purpose of which is to reward management, other key employees, advisors, and directors for their work in growing the revenue and profit of the Company. Option grants shall be recommended by the CEO and approved by the Board of Directors. Any increase in the shares available for grant under the Plan (or other stock plan) above such initial 15% shall be dilutive to the holders of both Preferred Equity and common stock, *provided, however*, that a majority of the Investors must agree to such additional issuances.
9. **Board of Directors** – The Board of Directors shall consist of five members including:
 - Two (2) individuals designated by the holders of a majority of the outstanding common stock
 - Two (2) individuals designated by the holders of a majority of the Preferred Equity held by the Investors; and
 - One (1) outside director agreed upon by holders of a majority of the outstanding common stock and holders of a majority of the Preferred Equity held by the Investors.

The Company shall maintain directors and officers liability insurance in such amounts and with such companies as are approved by the Board of Directors (but no less than \$1 million of coverage.)

At a minimum, the committees of the Board will include the Compensation Committee and the Audit Committee. Each committee will be comprised of three members, at least two of whom will be directors designated by Preferred Equity holders and/or the outside director.

10. **Definitive Agreements** – Prior to the closing and subject to the terms and conditions of this Major Terms Summary, the company and the Investors shall negotiate in good faith definitive agreements, including, without limitation, those described below (the “Definitive Agreements”). The Company recognizes that the Investors are proposing the terms of investment set forth herein without having the benefit of full disclosure and without having conducted a due diligence investigation. For that reason, this Major Terms Summary is not and cannot be a full and complete agreement and is intended to set forth certain principles and to be a guide to the preparation of the Definitive Agreements. Nothing herein is to be construed to preclude other provisions in the Definitive Agreements as may occur to the Investors consistent with the intent of the parties, the financial terms of this transaction and any information that may be divulged by a complete due diligence investigation. The Definitive Agreements shall include, without limitation, the following agreements:

- a) Purchase Agreement. The investment shall be made pursuant to a stock purchase agreement acceptable to the Company and the Investors, which agreement shall contain, among other things: (i) appropriate representations and warranties and covenants of the Company (ii) affirmative and negative covenants on the part of the Company; (iii) customary events of defaults and remedies; (iv) indemnification by the Company for breaches of representations, warranties or covenants and third party claims; (v) appropriate conditions of closing, including, without limitation, an opinion of counsel for the Company; and (vi) other provisions customary to transactions of this nature. The purchase agreement and related documents shall be drafted by counsel for the Investors.

- b) Shareholders Agreement. The purchasers of the Preferred Equity, the Company and the holders of the Company’s common stock will enter into a shareholders agreement that provides for: (i) transfer restrictions on the Company’s common stock; (ii) rights of first refusal and co-sale rights for the holders of Preferred Equity; (iii) corporate governance provisions, including, without limitation, the size and composition of the Board of Directors of the Company; (iv) preemptive rights for the Investors providing that, subject to customary exclusions, upon the issuance of additional equity securities prior to an IPO, the holders of Preferred Equity will have the right to purchase an amount of such future offering as would maintain the holder’s proportionate ownership in the Company; and (v) other provisions customary to transactions of this nature.

- c) Registration Rights Agreement. Holders of Preferred Equity shall be entitled to one demand registration, exercisable at any time after 180 days after an IPO. Furthermore, for a period of five (5) years after an IPO, holders of the Preferred Equity will also have the right to participate in: (i) an unlimited number of piggyback registrations; and (ii) unlimited registrations on Form S-3 or similar forms of registration statements. The Company will bear all of the registration expenses (exclusive of underwriting discounts and commissions) of all such demand and piggyback registrations. The registration rights may be transferred with an Investor's shares provided that the Company is given notice thereof.

11. **Contingencies** – The consummation of the investment contemplated by this Major Terms Summary shall be subject to such conditions as the Investors determine to be appropriate, including, without limitation, the following conditions and such other conditions as the Investors or their counsel determine to be appropriate after conducting their due diligence investigation of the Company:

- a) [List things here such as conversion of existing loans to equity, forgiveness of indebtedness, other changes in balance sheet items, settlement of disputes or lawsuits, intellectual property issues, consulting agreements, or any other issue which needs to be resolved prior to closing.]
- b) No material adverse change in the business or prospects of the Company shall have occurred;
- c) Each Investor's application for the Ohio Technology Investment Tax Credit (O.R.C. 122.15 et seq.) shall have been approved;
- d) Execution of the Definitive Agreements containing representations, warranties, covenants and other terms and conditions satisfactory to the Investors;
- e) Satisfactory completion of business, financial and legal due diligence by the Investors;
- f) The Company's receipt of all consents, permits and waivers (governmental or otherwise) required or desirable in connection with the sale of the Preferred Equity to the Investors;
- g) The Company establishing, to the satisfaction of the Investors, that all prior issuances of the Company's securities were in compliance with federal and state securities laws;
- h) The founders, senior management and other key employees and consultants of the Company, as identified by the Investors, shall enter into agreements with the Company containing confidentiality, invention-ownership and assignment and non-competition provisions satisfactory to the investors; and

- i) Such other conditions as the Investors or their counsel may require upon completion of their due diligence investigation.

Expenses - The legal, accounting, due diligence and out-of-pocket expenses incurred by the Investors in connection with this investment shall be paid by the Company at the closing. If the proposed investment transaction is not consummated due to a decision by the Company to terminate discussions with the Investors, the Company and the Investors will split equally the Investors' legal, accounting, due diligence and out-of-pocket expenses, with a maximum of \$15,000 to be paid by Company for such expenses.

- 13. **Confidentiality** - This Major Terms Summary is delivered to the Company with the understanding that neither it nor its substance shall be disclosed by the Company to any third party except those in a confidential relationship with the Company such as directors, senior executive officers, legal counsel, and investment bankers.

- 14. **Binding Effect** – This Major Terms Summary is intended to be a summary evidencing the current intentions of the parties with respect to an investment in the Company by the Investors and supersedes all prior communications between us with respect to the subject matter hereof. It is expressly understood that: (a) this Major Terms Summary is not intended to, and does not, constitute an agreement to consummate the transactions described herein; (b) the parties hereto will have no rights or obligations of any kind whatsoever relating to the transactions described herein by virtue of this Major Terms Summary unless and until the Definitive Agreements relating to the transactions described herein are executed and delivered; and (c) the complete terms and conditions of the transactions contemplated herein shall be those set forth in the Definitive Agreements.

- 15. **Expiration** – This Major Terms Summary will expire on [set a date 1-2 weeks away] if not executed prior to that date.

Major Terms Summary accepted and agreed upon this ____ day of ____ 200__.

ABC, INC.

By: _____
Name: _____
Title: _____

[lead investor's name] for the Investors