

**MEMORANDUM OF TERMS  
SERIES A PREFERRED STOCK OF  
XYZ, INC.**

\_\_\_\_\_, 200\_

Offering Terms

Issuer: XYZ, Inc. (the "Company"), a California corporation

Securities to be Issued: Minimum of \_\_\_\_\_ shares up to a maximum of \_\_\_\_\_ shares of Series A Preferred Stock ("Series A Preferred")

Aggregate Proceeds: Minimum \$ \_\_\_\_\_ up to a maximum of \$ \_\_\_\_\_

Capitalization \_\_\_\_\_ fully-diluted shares outstanding - pre-offering, including approximately \_\_\_\_\_ shares available (with \_\_\_\_\_ already granted) in the option pool

Price: \$ \_\_\_\_\_ per share

Expected Closing Date: \_\_\_\_\_ or sooner

Investors: \_\_\_\_\_

Terms of Series A Preferred

Dividends: For any dividends or distributions, Series A Preferred participates with Common Stock on an as-converted basis.

Liquidation Preference: 2X plus declared but unpaid dividends on each share of Series A Preferred. Thereafter, remaining proceeds paid to Common Stock and Series A Preferred on as-converted basis.

A merger, reorganization or other transaction in which control of the Company is transferred or a sale of all or substantially all of the Company's assets will be treated as a liquidation.

Redemption: Not redeemable.

Conversion: Convertible into one share of Common Stock (subject to antidilution adjustment) at any time at the option of the holder.

Automatically converts into Common Stock upon consummation of underwritten public offering with a price of at least 2X the Series A price per share and aggregate proceeds in excess of \$\_\_\_\_\_.

Antidilution Adjustments:

Conversion ratio adjusted on broad-based weighted average basis in the event of a dilutive issuance. "Dilutive issuance" shall not include the sale of Common Stock reserved for employees or consultants (up to available pool), or to leasing companies or other major lenders. Proportional adjustments for stock splits and stock dividends.

Voting Rights:

Votes on an as-converted basis, but also has series vote as provided by law and on (i) the creation of any senior or pari passu security, (ii) payment of dividends on Common Stock, (iii) repurchase or redemption of capital stock, (iv) any transaction in which control of the company is transferred or a sale of all or substantially all of the Company's assets, (v) an increase in the number of authorized shares of Series A Preferred, (vi) any adverse change to the rights, preferences and privileges of the Series A Preferred and (vii) an increase in the size of the Board of Directors.

Terms of Series A Preferred Purchase Agreement

Representations and Warranties:

Standard representations and warranties by the Company, including, \_\_\_\_\_.

Expenses:

The Company shall pay reasonable fees and expenses of one Investors' counsel not to exceed \$\_\_\_\_\_.

Terms of Investor Rights Agreement

Registration Rights:

(a) Beginning 6 months after initial registration, demand registrations upon initiation by holders of at least \_\_\_% of outstanding Series A Preferred (or Common Stock issued upon conversion of Series A Preferred) for aggregate proceeds in excess of \$\_\_\_\_\_. Expenses paid by Company.

(b) Unlimited piggyback registration rights subject to pro rata cutback at the underwriters' discretion. Full cutback upon IPO; \_\_\_% minimum inclusion thereafter. Expenses paid by Company.

(c) Unlimited S-3 registrations of at least \$\_\_\_\_\_ each upon initiation by holders of \_\_\_% of then outstanding

Series A Preferred (or Common Stock issued upon conversion of Series A Preferred). Expenses paid by Company.

Registration rights terminate \_\_\_ years after initial public offering.

No future registration rights may be granted without consent of a majority of Series A Preferred.

Market Standoff:

Holders of Series A Preferred, Common Stock, and options must, at the request of the Company or an underwriter involved in the Company's initial public offering, agree not to sell or otherwise transfer any securities of the Company during a period of up to 180 days following the effective date of the registration of an initial public offering and up to 90 days following the first subsequent public offering.

Right of First Refusal:

Holders of Series A Preferred shall have a pro rata right, based on their percentage equity ownership of Common Stock, on a fully diluted basis, to participate in subsequent equity financings of the Company.

Financial Information:

Major Investors (as defined in the Company's Investor Rights Agreement) shall receive standard information rights including audited financial reports and, subject to minimum holdings requirement, monthly unaudited financial reports and annual budget and business plan, as well as standard inspection rights.

Board of Directors:

\_\_\_ members, including (a) \_\_\_ directors elected by a majority of Common, one of whom to be the Company's CEO, (b) \_\_\_ director elected by the Series A Preferred, designated by or reasonably satisfactory to \_\_\_\_\_, and (c) \_\_\_ outside directors to be acceptable to both Common and Series A Preferred. \_\_\_\_\_ has right to observer at all Board meetings.

#### Other Matters

Common Stock Vesting:

Common Stock options granted to employees hired after the closing of the Series A financing shall vest as follows: After twelve months of employment, 25% will vest; the remainder will vest monthly over the following 36 months.

Restrictions on Common Stock Transfers:

(a) Transfer limited by other rights of Holders of Series A Preferred.

(b) Company to have right of first refusal on sales of vested Common shares until initial public offering with Major Investors having a right of second refusal.

Co-Sale Right:

Major Investors shall have the right to participate on a pro rata basis in transfers of stock for value by Founders subject to a carve-out of \_\_% of Founders' shares; and a right of second refusal on such transfers, subordinate to the Company's right of first refusal.

Closing Conditions:

Closing subject to completion of definitive legal documents and satisfactory completion of legal, business and financial due diligence by Investors.

Proprietary Information and Inventions Agreements:

Each officer, consultant and employee of the Company shall have entered into a non-competition, proprietary information and inventions agreement in a form reasonably acceptable to the Investors.

Binding Effect

Expenses:

Each party shall bear its own expenses in the event the transactions contemplated in this Memorandum are not completed.

No-Shop:

The Investors have agreed not to require a no-shop provision based on the Company's agreement to negotiate in good faith definitive agreements in accordance with the terms set forth above.

Except for the provisions as set forth under the heading "Binding Effect" above, which constitute the binding obligations of the parties, this Memorandum constitutes a non-binding statement of intent only.

**ACCEPTED BY:**

\_\_\_\_\_:

\_\_\_\_\_:

By: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_