

ABC, INC.

STOCK PURCHASE AGREEMENT

**PURCHASE OF SERIES A CONVERTIBLE PREFERRED STOCK,
SERIES B CONVERTIBLE PREFERRED STOCK, AND
A WARRANT TO PURCHASE COMMON STOCK**

DATED AS OF MARCH ____, 20__

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (the “Agreement”) is made and entered into as of this ____ day of March, 20__ by and between ABC, Inc., a Delaware corporation (the “Company”), and the purchasers listed on Exhibit A attached hereto and made a part hereof (each of whom is severally, not jointly and severally, referred to herein individually as a “Buyer” and collectively as the “Buyers”).

RECITALS

A. The Company owns a business which _____ (the “Business”). All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Article XI hereof.

B. The Company desires capital to meet working capital needs and expand and for other purposes set forth herein, and the Buyer desires to provide part of that capital, on the terms and subject to the conditions set forth herein.

The parties therefore agree as follows:

**I. AUTHORIZATION AND FORM OF STOCK;
CLOSING; PURCHASE OF SHARES**

1.1. Authorization of Stock and Form of Series A Preferred. Effective as of the execution hereof, the Company shall amend and restate its Certificate of Incorporation by adopting an amendment and restatement thereof (the “Charter Amendment”) in the form of Exhibit 1.1(a) attached hereto and made a part hereof. Effective as of the date hereof, the Company shall designate, authorize and create (a) a series of its preferred stock, designated the Series A Convertible Preferred Stock, having no par value per share (“Series A Preferred”), consisting of [_____] shares of common stock of the Company on an as-if-converted basis and having the designation, powers, preferences and rights and the qualifications, limitations or restrictions thereof set forth in the certificate of designation in the Charter Amendment attached hereto and made a part hereof, (b) a series of its preferred stock, designated the Series B Convertible Preferred Stock, having no par value per share (“Series B Preferred”), consisting of [_____] shares of common stock of the Company on an as-if-converted basis and having the designation, powers, preferences and rights and the qualifications, limitations or restrictions thereof set forth in the certificate of designation in the Charter Amendment attached hereto and made a part hereof and (c) a right to issue a warrant (the “Warrant”) to purchase 125,000 shares of the Company’s shares of common stock (“Common Stock”) in the form of Exhibit 1.1(b).

1.2. Purchase and Payment; Closing. Subject to the terms and conditions of this Agreement, including, without limitation, the valid adoption by the Company of the Charter Amendment and the filing thereof with the Secretary of State of Delaware, the valid adoption by the Company of an amendment to and restatement of its By-laws (the “By-laws Amendment”), in the form of Exhibit 1.2-1 attached hereto and made a part hereof, and upon the basis of the representations and warranties herein contained, the following transactions shall occur on the following dates (or at such earlier or later date as the parties shall agree in writing):

A. On the date hereof (the “Closing” or “Closing Date”), the Company shall sell, assign, transfer, set over and deliver the Warrant to the Buyer, free and clear of all Liens. The purchase price for the Warrant shall be one dollar (\$1.00) and shall be paid in cash by Buyer to the Company.

B. On the date hereof, the Company hereby agrees to sell to Buyer and issue to Buyer or its respective nominees, and Buyer hereby agrees to purchase from the Company, (i) 250,000 shares of Series A Preferred for a price of \$1.00 per share of Series A Preferred and (ii) 162,500 shares of Series B Preferred for a price of \$1.54 per share of Series B Preferred, in all cases free and clear of all Liens. The Purchase Price for the Series A Preferred and Series B Preferred shall be paid by certified or official bank check or by wire transfer of funds against delivery of stock certificates evidencing the Series A Preferred registered in such Buyer’s or its nominee’s name, as Buyer may direct.

C. The Closing shall take place on the date hereof, at 10:00 A.M. Central Time at the offices of _____, or at such other time and place as shall be agreed upon by the parties.

1.3. Use of Proceeds. The Company shall use the proceeds of the issuance and sale of the Series A Preferred and Series B Preferred solely for working capital, capital expenditures and general corporate purposes, all in accordance with the terms of the Company’s Projections and the Plan, as previously received and reviewed by the Buyers.

II. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Buyer that as of the date hereof and as of the Closing:

2.1. Organization and Qualification of the Company: Subsidiaries. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own its Property and to carry on the Business as now conducted, and to carry out the transactions contemplated by this Agreement. The Company is qualified to do business as a foreign corporation in each jurisdiction where the character of its Property or the nature of its activities makes such qualification necessary except where the failure to so qualify would not reasonably likely have a material adverse effect on the Business, Property (taken as a whole), financial condition or prospects of the Company (a “Material Effect”). The Company has no Subsidiaries and does not own of record or beneficially any securities of any corporation or any instrument or investment in any partnership, association, corporation, limited liability company, fund or other business entity. The Company was incorporated on _____, 20____. Prior to that date, the Business was conducted as a limited liability company (the “LLC”). The LLC was duly merged into the Company on _____, 20____ and true and correct copies of the merger documentation has been provided to the

Buyer.

2.2. Capital Stock. Subject to the valid filing of the Charter Amendment with the Secretary of State of Illinois, the authorized capital stock of the Company on the Closing Date will consist of 2,837,500 shares of Common, 412,500 shares of Series A Preferred and shares of Series B Preferred. Immediately following the completion of the Second Closing there will be:

A. 2,447,500 fully paid and non-assessable shares of Common duly issued and outstanding and held by those Persons set forth on Schedule 2.2;

B. 537,500 shares of Common duly authorized for issuance upon the conversion of the Series A Preferred, Series B Preferred and Warrant;

C. 250,000 fully paid and non-assessable shares of Series A Preferred duly issued and outstanding in the name of the Buyer which will equate to 7.69% of the Common on a fully-diluted and as-if converted basis;

D. 162,500 fully paid and non-assessable shares of Series B Preferred duly issued and outstanding in the name of the Buyer which will equate to 5.00% of the Common on a fully-diluted and as-if converted basis; and

E. 390,000 shares of Common duly authorized and reserved for issuance upon exercise of the options representing up to 12% of the fully-diluted Common set aside for the recruitment and retention of key executive employees, as such options are described on Schedule 2.2D.

Except as set forth above, no other Securities are or will be outstanding or authorized for issuance. Except as disclosed in this Section 2.2, and as otherwise provided for in, or contemplated by this Agreement, the Stockholders Agreement or the Registration Rights Agreement on the Closing Date (i) no Holder of any Security of the Company (a) is or will be entitled to any preemptive rights or registration rights or (b) has or will have any right of first refusal to purchase any shares of Series A Preferred to be issued and sold or otherwise transferred to Buyer pursuant to this Agreement, which has not been waived with respect to the transactions contemplated by this Agreement, (ii) neither the Company nor, to the best of the Company's knowledge, any Stockholder thereof, has granted any options, warrants or rights to purchase any of its Common or authorized any of its Common for issuance, and (iii) no instrument or security is or will be outstanding which is convertible into or exchangeable for, or which entitles the Holder thereof to purchase any Security. All options, rights of first refusal, pre-emptive rights and other rights to subscribe to any shares of capital stock of the Company, except as contemplated in this Agreement, is set forth in Schedule 2.2.

2.3. Title to Properties. The Company has good and marketable title to its Property free and clear of all Liens. All of the Property is in good working order and repaid, ordinary wear and tear excepted. The Property constitutes all of the assets necessary or required to enable the Company to conduct the Business.

2.4. Intellectual Property; Proprietary Information of Third Parties; Year 2000.

(a) The Company owns or has the right to use all licenses, patents, patent applications and patent rights, trademarks, trademark rights, trade names, trade name rights,

copyrights, trade secrets, know-how, inventions, designs, proprietary rights and processes, works of authorship, computer programs and technical data and information utilized in or necessary for the conduct of its business as now conducted or as it presently contemplates conducting (the “Intellectual Property”) without infringing upon or otherwise acting adversely to the right or claimed right of any person, Company or other entity under or with respect to any of the foregoing. The Company has not received any communication(s), or otherwise received any information, asserting a claim by any person to the ownership of or right to use said Intellectual Property, or alleging that the Company has violated, or by conducting its business would violate, any of the licenses, patents, patent applications and patent rights, trademarks, trademark rights, trade names, trade name rights, copyrights, trade secrets, know-how, inventions, designs, proprietary rights and processes, works of authorship, computer programs and technical data and information of any other person or entity, and the Company does not know of any basis for any such claim.

(b) The Company is not obligated or under any liability whatsoever to make any payments by way of royalties, fees or otherwise to any owner or licensee of, or other claimant to, any licenses, patents, patent applications, patent rights, trademarks, trademark rights, trade names, trade name rights, copyrights, trade secrets, know-how, inventions, designs, proprietary rights and processes, works of authorship, computer programs and technical data and information with respect to the use thereof or in connection with the conduct of its business or otherwise. The Company is not a party to any agreement concerning the Intellectual Property or any other intellectual property used or to be used by the Company in its business as conducted. No founder, stockholder, director, officer or employee of the Company has any interest in the Company’s Intellectual Property.

(c) The Company has the exclusive ownership of all rights arising from or associated with the research and development efforts of the Company and its founders, employees and independent contractors relating to the Intellectual Property, and any licenses, patents, patent rights, trademarks, trademark rights, trade names, trade name rights, copyrights, trade secrets, know-how, inventions, designs, proprietary rights and processes, works of authorship, computer programs and technical data and information conceived as a result of such efforts to manufacture, use, market and sell any product or process based thereon without infringing or violating the rights of any third parties and without impediment, restriction or the payment of royalties. No claim is being asserted by any person to the ownership of or right to use any of the Intellectual Property or challenging or questioning the validity or effectiveness of any basis for any such claim. The Company is not using, and does not have any plan to manufacture, use or sell, anything which would violate or infringe on any licenses, patents, patent applications, patent rights, trademarks, trademark rights, trade names, trade name rights, copyrights, trade secrets, know-how, inventions, designs proprietary rights and processes, works of authorship, computer programs and technical data and information conceived as a result of such efforts of any other person, firm or corporation or which would require a license under any such patent, patent right, copyright, trade secret, trademark, trademark right or proprietary right.

(i) No third party has claimed in writing or, to the knowledge of the Company, has reason to claim that any person employed by or affiliated with the Company has (i) violated or may be violating any of the terms or conditions of such person’s employment, non-competition or nondisclosure agreement with such third party, (ii) disclosed or may be disclosing or utilized or may be utilizing any trade secret or proprietary information or documentation of such third party or (iii) interfered or may be interfering in the employment relationship between such third party and any of its present or former employees. No person employed by or affiliated

with the Company has employed or, to the knowledge of the Company, proposes to employ, any trade secret or any information or documentation in violation of the proprietary rights of any former employer, and, to the knowledge of the Company, no person employed by or affiliated with the Company has violated any confidential relationship which such person may have had with any third party, in connection with the development, manufacture or sale of any product or proposed product or the development or sale of any service or proposed service of the Company and there is no reason to believe there will be any such employment or violation.

2.5. Licenses, Permits and Applications. Except as listed on Schedule 2.5, to the best of the Company's Knowledge, it is not necessary for the lawful conduct of the Company's business without any infringement or conflict with the rights of others, as such business is now conducted, that the Company possess a license from any party for the use of any Intellectual Property or any other property, and the Company does not know of any license from any party for the use of any Intellectual Property or any other property that will be necessary for the lawful conduct of its business without any infringement or conflict with the rights of others, as such business is proposed to be conducted except for licenses which it believes it will be able to obtain on reasonable terms; provided, however that such representation, to the extent it relates to the status of a license which underlies a sublicense to the Company, is made only to the Company's knowledge. The Company possesses franchises, certificates, consents and permits, free from restrictions which materially and adversely affect the usefulness thereof, which are necessary for the conduct of the Business as now conducted, all of which are valid and subsisting, and the Company does not know of any franchises, certificates, consents or permits which are necessary to prevent a material adverse effect on the Company or on the conduct of its business which will not be obtainable on reasonable terms. The Company has no reason to believe that it will be unable to obtain the renewal of any such franchise, certificate, consent or permit.

2.6. Financial Statements. The Company has furnished the Buyers with its (a) Balance Sheet as of December 31, 20__ and December 31, 20__ and (b) income statement and cash flow statement for the years ended December 31, 20__ and 20__, the months ended January 31, 20__ and February 29, 20__ (the "Financial Statements"). The Financial Statements are unaudited, have been prepared in accordance with generally accepted accounting principles and present fairly in all material respects the financial position of the Company as of the respective dates of such statements, and present fairly in all material respects the results of operations of the Company for the respective periods covered thereby (subject, in the case of interim statements, to normal year end adjustments).

2.7. Subsequent Events. Since December 31, 20__, except as set forth in Schedule 2.7, there has been:

A. no event, condition or occurrence which has had a Material Effect of the Company;

B. no dividend has been declared or paid or other distribution made by the Company to Holders of the Company's Stock;

C. no issuance of any Stock of the Company or any split, subdivision or reclassification of any such Stock;

D. except for the shares of Series A Preferred and Series B Preferred to be issued hereunder and the shares of Common reserved for issuance upon conversion of the and Series A