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COMPANY NAME HERE, INC.

**CONVERTIBLE NOTE AND WARRANT
PURCHASE AGREEMENT**

This Convertible Note and Warrant Purchase Agreement (the “Agreement”) is made as of the ___th day of _____, 2000 by and between COMPANY NAME HERE, Inc., a YOUR STATE corporation (the “Company”) and each of the investors listed on Exhibit A attached to this Agreement (each a “Purchaser” and together the “Purchasers”).

RECITALS

The Company desires to issue and sell and the Purchasers desire to purchase convertible promissory notes in substantially the form attached to this Agreement as Exhibit B (the “Notes”) which shall be convertible on the terms stated therein into equity securities of the Company, and warrants to purchase Common Stock of the Company in substantially the form attached to this Agreement as Exhibit C (the “Warrants”). The Notes, the Warrants and the equity securities issuable upon conversion or exercise thereof (and the securities issuable upon conversion of such equity securities) are collectively referred to herein as the “Securities.”

AGREEMENT

In consideration of the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties to this Agreement agree as follows:

1. **Purchase and Sale of Notes and Warrants.**

(a) **Sale and Issuance of Notes and Warrants.** Subject to the terms and conditions of this Agreement, each Purchaser agrees to purchase at the Closing and the Company agrees to sell and issue to each Purchaser a Note in the principal amount specified with respect to such Purchaser on Exhibit A to this Agreement. Coincident with the signing of this Agreement, the Company will issue to each Purchaser a Warrant to purchase the number of shares of Common Stock initially equal to twenty percent (20.0%) of the number of shares into which the Note is converted (the “Warrant Coverage Amount”). The purchase price of each Note shall be equal to 100% of the principal amount of such Note. The exercise price of each Warrant shall be \$0.01 per share of Common Stock issuable thereunder. The Company’s agreements with each of the Purchasers are separate agreements, and the sales of the Notes and Warrants to each of the Purchasers are separate sales.

(b) **Closing; Delivery.**

(i) The purchase and sale of the Notes and Warrants shall take place at the offices of COMPANY NAME HERE, Inc., _____, Seattle, YOUR STATE, 98122 at such time and place as the Company and each Purchaser mutually agree upon,

orally or in writing (which time and place are designated as the “Closing”). At the Closing, the Company shall deliver to each Purchaser the Note and Warrant to be purchased by such Purchaser against payment of the purchase price therefor by check or by wire transfer to the Company’s bank account.

(ii) Until the earlier of (A) such time as the aggregate amount of principal indebtedness subject to the terms of this Agreement equals a total of \$1,000,000, or (B) October 31, 2000, unless extend by up to 90 days, the Company may sell additional Notes and Warrants to such persons or entities as may be approved by the Board of Directors of the Company. All such sales shall be made on the terms and conditions set forth in this Agreement. Effective upon delivery of an executed copy of this Agreement by such persons or entities, any notes and warrants sold pursuant to this Section 1(b)(ii) shall be deemed to be “Notes” and “Warrants,” respectively, for all purposes under this Agreement, and any purchasers thereof shall be deemed to be “Purchasers” for all purposes under this Agreement.

2. **Stock Purchase Agreement.** Each Purchaser understands and agrees that the conversion of the Notes into equity securities of the Company may require such Purchaser’s execution of certain agreements (in form reasonably agreeable to the Purchasers) relating to the purchase and sale of such securities as well as registration, co-sale and voting rights, if any, relating to such equity securities.

3. **Representations and Warranties of the Company.** The Company hereby represents and warrants to each Purchaser that:

(a) **Organization, Good Standing and Qualification.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of YOUR STATE and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted.

(b) **Authorization.** All corporate action on the part of the Company and its officers and directors necessary for the authorization, execution and delivery of this Agreement and the authorization, sale, issuance and delivery of the Notes and the Warrants, the shares of the Company’s capital stock issuable on conversion or exercise thereof, and the performance of all obligations of the Company hereunder and thereunder has been taken or will be taken prior to the Closing. The Agreement, the Notes, and the Warrants, when executed and delivered by the Company, shall constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors’ rights generally, as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

4. **Representations and Warranties of the Purchasers.** Each Purchaser hereby represents and warrants to the Company that:

(a) **Purchase Entirely for Own Account.** The Securities to be acquired by the Purchaser will be acquired for investment for the Purchaser’s own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and the Purchaser

has no present intention of selling, granting any participation in, or otherwise distributing the same. The Purchaser has not been formed for the specific purpose of acquiring any of the Securities.

(b) **Knowledge.** The Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the securities.

(c) **Restricted Securities.** The Purchaser understands that the Securities have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations as expressed herein. The Purchaser understands that the Securities are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Purchaser must hold the Securities indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Purchaser acknowledges that the Company has no obligation to register or qualify the Securities for resale. The Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Securities, and on requirements relating to the Company which are outside of the Purchaser's control, and which the Company is under no obligation and may not be able to satisfy.

(d) **No Public Market.** The Purchaser understands that no public market now exists for any of the securities issued by the Company, that the Company has made no assurances that a public market will ever exist for the Securities.

(e) **Legends.** The Purchaser understands that the Securities, and any securities issued in respect thereof or exchange therefor, may bear one or all of the following legends:

(i) "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933."

(ii) Any legend required by the Blue Sky laws of any state to the extent such laws are applicable to the shares represented by the certificate so legended.

(f) **Accredited Investor.** The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Act.

(g) **Foreign Investors.** If a Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), such Purchaser hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Securities or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Securities, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Securities. Such Purchaser's subscription and payment for, and his or her continued beneficial ownership of the Securities, will not violate any applicable securities or other laws of Purchaser's jurisdiction.

Sample Preview