

This sample document is the work product of a national coalition of attorneys who specialize in venture capital financings, working under the auspices of the NVCA. This document is intended to serve as a starting point only, and should be tailored to meet your specific requirements. This document should not be construed as legal advice for any particular facts or circumstances. Note that this sample document presents an array of (often mutually exclusive) options with respect to particular deal provisions.

Given the large number of changes in the October 2023 revision where some footnotes were merely moved, for convenience of review, we've flagged new footnotes and footnotes that were substantively revised (excluding cleanup changes) in the October 2023 revision and thereafter (with an attempt to further label the subsequent changes by month and year).

Preliminary Note

The Stock Purchase Agreement sets forth the basic terms of the purchase and sale of the preferred stock to the investors (such as the purchase price, closing date, conditions to closing) and identifies the other financing documents. Generally this agreement does not set forth either (1) the characteristics of the stock being sold (which are defined in the Certificate of Incorporation) or (2) the relationship among the parties after the closing, such as registration rights, rights of first refusal and co-sale and voting arrangements (these matters often implicate persons other than just the Company and the investors in this round of financing and are usually embodied in separate agreements to which those other persons are parties, or in some cases in the Certificate of Incorporation). The main items of negotiation in the Stock Purchase Agreement are therefore the price and number of shares being sold, the representations and warranties that the Company must make to the investors and the closing conditions for the transaction.

SERIES A PREFERRED STOCK PURCHASE AGREEMENT

THIS SERIES A PREFERRED STOCK PURCHASE AGREEMENT (this “**Agreement**”), is made as of [____], 20[___], by and among [____], a Delaware corporation (the “**Company**”), and the investors listed on Exhibit A attached to this Agreement (each a “**Purchaser**” and together the “**Purchasers**”).

The parties hereby agree as follows:

1. Purchase and Sale of Preferred Stock.

1.1 Sale and Issuance of Preferred Stock.

(a) The Company shall have adopted and filed with the Secretary of State of the State of Delaware [on or before the Initial Closing¹ (as defined below)] the Amended and Restated Certificate of Incorporation in the form of Exhibit B attached to this Agreement (the “**Restated Certificate**”).

(b) Subject to the terms and conditions of this Agreement, each Purchaser agrees to purchase, and the Company agrees to sell and issue to each Purchaser, at the [applicable] Closing (as defined below) that number of shares of Series A Preferred Stock, \$[___] par value per share (the “**Series A Preferred Stock**”), set forth opposite each Purchaser’s name on Exhibit A [with respect to such Closing], at a purchase price of \$[___] per share [or, if/as applicable, a purchase price of \$[___] per share with respect to any shares of Series [A] Preferred Stock being issued pursuant to any cancellation or conversion of Convertible Securities (as defined below) as set forth in Section 1.3 below]. The shares of Series A Preferred Stock issued to the Purchasers pursuant to this Agreement shall be referred to in this Agreement as the “**Shares**.”

¹ If only one closing is contemplated, references to “Initial Closing,” “each Closing,” “such Closing,” etc. should be modified. If the transaction has a so-called “simultaneous sign and close” you can update the tense accordingly (“has adopted and filed”).

1.2 Closing; Delivery.

(a) The initial purchase and sale of the Shares shall take place remotely via the exchange of documents and signatures, on the date of this Agreement at such time as is mutually agreed upon, orally or in writing, by the Company and the Purchasers (which time and place are designated as the “**Initial Closing**”).² In the event there is more than one closing, the term “**Closing**” shall apply to each such closing unless otherwise specified.

(b) At each Closing, the Company shall deliver to each Purchaser a certificate³ representing the Shares being purchased by such Purchaser at such Closing against payment of the purchase price therefor by check payable to the Company, by wire transfer to a bank account designated by the Company, by cancellation or conversion of indebtedness or other convertible securities of the Company to Purchaser[, including interest⁴], or by any combination of such methods.

1.3 Conversion and Termination of Convertible Securities.

(a) By executing and delivering this Agreement, each Purchaser holding one or more [simple agreements for future equity/convertible notes] issued by the Company prior to the date of this Agreement (each, regardless of whether held by a Purchaser or not, a “**Convertible Security**” and, collectively, regardless of whether held by a Purchaser or not, the “**Convertible Securities**”) hereby irrevocably agrees that:

(i) The aggregate face amount of all such Convertible Securities held by such Purchaser is set forth on Exhibit A under the column heading “Convertible Securities”;

(ii) Such Purchaser is the sole owner of all right, title and interest in and to the Convertible Securities corresponding to the amounts shown opposite such Purchaser’s name on Exhibit A;

(iii) At the Initial Closing, all of such Purchaser’s Convertible Securities will automatically and without any action on the part of such Purchaser convert into the number of shares of Series [A] Preferred Stock set forth opposite such Purchaser’s name under the column heading “Convertible Security Shares” on Exhibit A (as to any Purchaser, such shares being such Purchaser’s “**Convertible Security Shares**”), regardless of whether any such Convertible Securities or an affidavit of loss therefor is actually delivered in original or other form to the Company, and any original Convertible Securities held by (or delivered (electronically or otherwise) to) the Company may be cancelled (and marked cancelled) by the Company upon or following the Initial Closing; [and]

(iv) As to such Purchaser, such Purchaser’s Convertible Security Shares are issued in full and complete discharge and satisfaction of all obligations of the Company (including outstanding principal, interest or any other amounts) under such Purchaser’s Convertible Securities, and

² If the Agreement is signed prior to the Closing, this provision gives the parties flexibility to change the closing date as contingencies arise. As a practical matter, however, the Agreement is usually signed on the date of the Closing. This means that, until the Closing, everyone has an opportunity to back out of the deal.

³ ***Revised Footnote*** If the Company has uncertificated shares, consider revising “a certificate representing” to “a notice of issuance of uncertificated shares (and may, upon written request by such Purchaser, issue and deliver a certificate)”.

⁴ If some or all of the Purchasers will be converting previously issued notes to Shares, consider paying the interest in cash, if the terms of the notes permit this, to avoid last-minute re-computations if the closing is delayed. Note that cancellation of interest in return for stock may be a taxable event in the amount of the interest cancelled. Accordingly, some of the Purchasers may require payment of interest in cash to avoid imputation of income without the corresponding payment of cash to pay the tax.

such Convertible Securities will be terminated and of no further force or effect automatically immediately upon the Initial Closing[.]; and]

(v) [The Company and its Affiliates and agents shall be entitled to deduct and withhold from the amounts deliverable pursuant to Purchaser's Convertible Securities (including any Convertible Security Shares otherwise issuable with respect thereto) such amounts, if any, as are required to be deducted and withheld under the Code or any other applicable tax law. To the extent that amounts are so deducted and withheld and duly paid over to the appropriate tax authority, such withheld amounts shall be treated for all purposes of the Transaction Agreements as having been delivered to the person in respect of whom such deduction and withholding was made. Each person holding Convertible Securities shall, upon request, use its commercially reasonable efforts to provide the applicable withholding agent with all necessary tax forms, including a duly executed IRS Form W-9 or appropriate version of IRS Form W-8, as applicable. Prior to withholding any amounts pursuant to this Section 1.3(a)(v), the Company (and its Affiliates and agents) shall use commercially reasonable efforts to notify Purchaser, and the Company and Purchaser shall cooperate in good faith to reduce or eliminate any such withholding.]⁵

(b) The Company and each Purchaser holding a Convertible Security hereby agree[, on behalf of themselves and all holders of Convertible Securities,] that [such Purchaser's] [all] Convertible Securities hereby are and will be deemed for all purposes to have been amended and modified by virtue hereof to the full extent necessary to permit and facilitate their conversion as provided in this Agreement into Convertible Security Shares, to fix the conversion price⁶ (as defined therein) at \$[] per share, and, immediately upon the Initial Closing, such Convertible Securities shall be deemed terminated in full and null, void and of no further force or effect; provided that the foregoing will not impair the right of the holder of a Convertible Security to receive the applicable number of Convertible Security Shares shown opposite such Purchaser's name on Exhibit A as provided above.⁷

1.4 Sale of Additional Shares of Preferred Stock. After the Initial Closing, the Company may sell, on the same terms and conditions as those contained in this Agreement⁸, any unsold shares [up to [] additional shares (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or similar recapitalization affecting such shares)] of Series A Preferred Stock (the "**Additional Shares**"), to one or more purchasers (the "**Additional Purchasers**") [reasonably acceptable to Purchasers holding a [*specify percentage*] of the then outstanding Shares⁹], provided that (i) such subsequent

⁵ ***New Footnote*** The Company may have tax reporting and/or withholding obligations in connection with the conversion of Convertible Securities into Company stock. Bracketed language provides a generic mechanism for Company to obtain relevant tax documentation to facilitate the tax analysis and comply with its withholding obligations. Section 1.2(b) and this Section 1.3(a)(v) to be tailored to particular specifics of the Convertible Securities being converted, after input from parties' tax advisors.

⁶ ***New Footnote*** Conform to the convertible securities outstanding.

⁷ ***New Footnote*** Including this provision where there are Safes/notes or similar instruments converting helps ensure that any minor deviations from the formulas (based on rounding, applications of assumptions, etc.) cannot later become an issue. It is recommended that all Safe/note holders sign the financing documents, but this provision (1) speaks only on behalf of the signing holders, and (2) provides for amendment of all convertible securities converting at closing to comply herewith if and to the extent such convertible securities may be amended by some majority and that majority signs. If the instruments require individual consent, it is still beneficial to include this provision, but any safe/note holder that does not sign would not be bound hereby.

⁸ This Section 1.4 is intended to allow the Company to hold an Initial Closing once it has reached the minimum required to close, and then continue to raise capital over some agreed upon period on the same terms. This should not be confused with a "tranching" financing, where the amount committed to the financing round is not invested all at once up front but rather is invested in pre-specified "tranches," usually dependent on the achievement of agreed upon milestone(s).

⁹ The Company may want to limit this approval right to the larger Purchasers. As an alternative, the Agreement may

sale is consummated prior to [90] days after the Initial Closing and (ii) each Additional Purchaser becomes a party to the Investors' Rights Agreement, the Voting Agreement, and the Right of First Refusal and Co-Sale Agreement, each as defined below, by executing and delivering a counterpart signature page to each of such Transaction Agreements. Exhibit A to this Agreement shall be updated to reflect the number of Additional Shares purchased at each such Closing and the parties purchasing such Additional Shares.

1.5 Defined Terms Used in this Agreement. In addition to the terms defined above, the following terms used in this Agreement shall be construed to have the meanings set forth or referenced below.

(a) **"Affiliate"** means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer, director or trustee of such Person, or any venture capital fund or investment fund now or hereafter existing that is controlled by one or more general partners, managing members or investment advisers of, or shares the same management company or investment adviser with, such Person.

(b) **"Code"** means the Internal Revenue Code of 1986, as amended.

(c) **"Company Intellectual Property"** means all Intellectual Property Rights that are owned, purported to be owned by, or in-licensed to the Company, or used by the Company in the conduct of the Company's business as now conducted.

(d) **"Company-Controlled Intellectual Property"** means (i) Intellectual Property Rights owned or purported to be owned by the Company and (ii) Intellectual Property Rights exclusively in-licensed to the Company.

(e) **"Company-Registered Intellectual Property"** means Company-Controlled Intellectual Property registered by the Company with any governmental authority, and applications for such registration.

(f) **"Indemnification Agreement"** means the agreement between the Company and [*list the individual director names*]¹⁰, in the form of Exhibit D attached to this Agreement.

(g) **"Intellectual Property Rights"** means all intellectual property rights, whether registered or unregistered, that are recognized in any jurisdiction of the world, including such rights in patents, utility models, trademarks and tradenames, copyrights, trade secrets, and domain names (and any registrations of or applications to register any of the foregoing).

(h) **"Investors' Rights Agreement"** means the agreement among the Company and the Purchasers [and certain other stockholders of the Company] dated as of the date of the Initial Closing, in the form of Exhibit E attached to this Agreement.

(i) **"Knowledge"** including the phrase **"to the Company's knowledge"** means the Knowledge Parties' actual knowledge after reasonable investigation and assuming such knowledge as the

specify that Additional Purchasers must be approved by the Board of Directors, including the directors elected by the Series A Preferred stockholders.

¹⁰ See model Indemnification Agreement for discussion of the issue of expanding coverage to include not just VC designee director, but also the fund(s) making the investment. When the fund is also an indemnified party under the indemnification agreement, it may be appropriate for the D&O policy to include an endorsement extending coverage to the fund.