

EX-10.1 2 d302610dex101.htm FORM OF PURCHASE AGREEMENT

Exhibit 10.1

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (“Agreement”) is made as of the day of February 2012, by and between Acacia Research Corporation (the “Company”), a corporation organized under the laws of the State of Delaware, with its principal offices at 500 Newport Center Drive, 7th Floor, Newport Beach, CA 92660, and the purchaser whose name and address is set forth on the signature page hereof (the “Purchaser”).

IN CONSIDERATION of the mutual covenants contained in this Agreement, the Company and the Purchaser agree as follows:

1. Authorization of Sale of the Shares. Subject to the terms and conditions of the Agreements (as defined below), the Company has authorized the issuance and sale of up to 6,122,449 shares (the “Shares”) of common stock, par value \$0.001 per share (the “Common Stock”) of the Company.

2. Agreement to Sell and Purchase the Shares. At the Closing (as defined in Section 3), the Company will, subject to the terms of this Agreement, issue and sell to the Purchaser and the Purchaser will buy from the Company, upon the terms and conditions hereinafter set forth, the number of Shares (at the purchase price) shown on the signature page hereof.

The Company is simultaneously entering into this same form of purchase agreement with certain other investors (the “Other Purchasers”) and expects to complete sales of the Shares to them. The Purchaser and the Other Purchasers are hereinafter sometimes collectively referred to as the “Purchasers,” and this Agreement and the purchase agreements executed by the Other Purchasers are hereinafter sometimes collectively referred to as the “Agreements.” The term “Placement Agent” shall mean Barclays Capital Inc., as placement agent.

3. Delivery of the Shares at the Closing; Termination.

3.1 Closing. The completion of the purchase and sale of the Shares (the “Closing”) shall occur at the offices of Stradling Yocca Carlson & Rauth, 660 Newport Center Drive, Suite 1600, Newport Beach, CA 92660, as soon as practicable and as agreed to by the parties hereto, within three business days following the execution of the Agreements, or on such later date or at such different location as the parties shall agree in writing, but not prior to the date that the conditions for Closing set forth below have been satisfied or waived by the appropriate party (the “Closing Date”).

3.2 Closing Deliveries. At the Closing, the Purchaser shall deliver, in immediately available funds, the full amount of the purchase price for the Shares being purchased hereunder by wire transfer to an account designated by the Company and the Company shall deliver to the Purchaser one or more stock certificates, or if the Shares are to be held in book-entry, to instruct the registrar to register such Shares in the book entry registry, in each case registered in the name of the Purchaser, or in such nominee name(s) as designated by the Purchaser in writing, representing the number of Shares set forth in Section 2 above and, with respect to certificated shares, bearing an appropriate legend referring to the fact that the Shares were sold in reliance upon the exemption from registration under the Securities Act of 1933, as amended (the “Securities Act”), provided by Section 4(2) thereof and Rule 506 thereunder. The name(s) in which the stock certificates are to be registered or in which the Shares are to be registered in the book entry registry, if uncertificated, are set forth in the Stock Certificate or Registry Questionnaire attached hereto as part of Appendix I.

3.3 Conditions to the Company's Obligations. The Company's obligation to complete the purchase and sale of the Shares and deliver such stock certificate(s) to the Purchaser at the Closing shall be subject to the following conditions, any one or more of which may be waived by the Company:

- (a) receipt by the Company of same-day funds in the full amount of the purchase price for the Shares being purchased hereunder;
- (b) the closing of purchases of Common Stock by the Other Purchasers equal to at least the Minimum Purchase Amount; for purposes of this Agreement, the "Minimum Purchase Amount" means such number of shares of Common Stock to be purchased by the Other Purchasers under the Agreements that, when combined with the number of Shares to be purchased by the Purchaser pursuant to this Agreement and multiplied by the price at which those shares and the Shares are to be purchased, is equal to \$100,000,000;
- (c) the accuracy of the representations and warranties made by the Purchasers and the fulfillment of those undertakings of the Purchasers to be fulfilled prior to the Closing; and
- (d) receipt by the Company from the Purchaser of the fully completed questionnaires attached hereto as Appendix I.

3.4 Conditions to the Purchaser's Obligations. The Purchaser's obligation to accept delivery of such stock certificate(s) and to pay for the Shares evidenced thereby shall be subject to the following conditions, any one or more of which may be waived by the Purchaser:

- (a) the closing of purchases of Common Stock by the Other Purchasers equal to at least the Minimum Purchase Amount;
- (b) each of the representations and warranties of the Company made herein shall be accurate as of the Closing Date;
- (c) the delivery to the Purchaser by counsel to the Company of legal opinions substantially similar in substance to the forms of opinion attached as Exhibit B hereto;
- (d) receipt by the Placement Agent, on each of the date hereof and the Closing Date, a letter dated the date hereof or the Closing Date, as the case may be, in form and substance satisfactory to the Placement Agent, from Grant Thornton LLP (i) confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Rules and Regulations and (ii) containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters in registered public offering with respect to the financial statements and certain financial information contained in the Private Placement Memorandum, excluding any financial statements and financial information contained in the Private Placement Memorandum, to the extent relating to Adaptix, Inc.

(e) receipt by the Purchaser of a certificate executed by the chief executive officer and the chief financial or accounting officer of the Company, dated as of the Closing Date, to the effect that the representations and warranties of the Company set forth herein are true and correct as of the date of this Agreement and as of such Closing Date and that the Company has complied with all the agreements and satisfied all the conditions herein on its part to be performed or satisfied on or prior to such Closing Date;

(f) receipt by the Purchaser of a certificate of the Secretary of the Company, dated as of the Closing Date:

(i) certifying the resolutions adopted by the Board of Directors of the Company approving the transactions contemplated by this Agreement and the issuance of the Shares;

(ii) certifying the current versions of the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws of the Company; and

(iii) certifying as to the signatures and authority of the persons signing this Agreement and related documents on behalf of the Company;

(g) receipt by the Purchaser of a certificate of good standing for the Company for its jurisdiction of incorporation and a certificate of qualification as a foreign corporation for the Company for any jurisdictions in which it is qualified to transact business as a foreign corporation;

(h) receipt by the Purchaser of a certificate from the Company's transfer agent certifying the number of shares of Common Stock outstanding as of the Closing Date;

(i) there shall have been no suspensions in the trading of the Common Stock as of the Closing Date;

(j) the Common Stock shall continue to be listed on The Nasdaq Global Select Market as of the Closing Date and the Shares shall be approved for listing on The Nasdaq Global Select Market as of the Closing Date, subject to official notice of issuance; and

(k) the fulfillment in all material respects of those undertakings of the Company to be fulfilled prior to the Closing.

3.5 Termination. This Agreement shall automatically terminate if the Closing has not occurred prior to February 24, 2012. Without limiting the generality of the foregoing, in event of such termination, neither party shall have any obligation to sell or purchase the Shares.

4. Representations, Warranties and Covenants of the Company. The Company hereby represents and warrants to, and covenants with, the Purchaser as follows:

4.1 Organization and Qualification. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and the Company is qualified to transact business as a foreign corporation in each jurisdiction in which qualification is required, except where the failure to so qualify would neither have nor reasonably be expected to have a Material Adverse Effect (as defined in Section 4.6). Each subsidiary (as defined

under Rule 405 promulgated under the Securities Act) of the Company (each, a “Subsidiary” and collectively, the “Subsidiaries”) is listed on Exhibit A to this Agreement. Except as otherwise set forth on Exhibit A, each Subsidiary is a direct or indirect wholly owned subsidiary of the Company. Each Subsidiary is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is qualified to transact business as a foreign corporation in each jurisdiction in which qualification is required, except where failure to so qualify would neither have nor reasonably be expected to have a Material Adverse Effect.

4.2 Reporting Company; Form S-3. The Company is not an “ineligible issuer” (as defined in Rule 405 promulgated under the Securities Act) and is eligible to register the resale of the Shares by the Purchaser on a registration statement on Form S-3 under the Securities Act. The Company is subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and has filed all reports required thereby during the past 12 calendar months. Provided that none of the Purchasers is deemed to be an underwriter with respect to any shares, and except for the filing of any Acquisition 8-K (as defined herein) or any other matters referenced in Section 7.1(a), to the Company’s knowledge, there exist no facts or circumstances (including without limitation any required approvals or waivers or any circumstances that may delay or prevent the obtaining of accountant’s consents) that reasonably could be expected to prohibit the preparation and filing of a registration statement on Form S-3 that will be available for the resale of the Shares by the Purchaser.

4.3 Authorized Capital Stock. The Company had duly authorized and validly issued outstanding capitalization as set forth in the SEC Documents (as defined in Section 4.19) as of the date set forth therein; the issued and outstanding shares of Common Stock (a) have been duly authorized and validly issued, (b) are fully paid and nonassessable, (c) have been issued in compliance with all federal and state securities laws and, (d) except for those granted therein by the holders thereof (other than the Company), are free and clear of all security interests, liens, pledges, mortgages or other encumbrances, whether arising voluntarily, involuntarily or by operation of law (“Liens”), (e) were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities, and (f) conform in all material respects to the description thereof contained in the SEC Documents. Except as set forth in SEC Documents and except for the stock options or other equity incentives that have been issued since September 30, 2011, the Company does not have outstanding any options to purchase, or any preemptive rights or other rights to subscribe for or to purchase, any securities or obligations convertible into, or any contracts or commitments to issue or sell, shares of its capital stock or any such options, rights, convertible securities or obligations. The issuance and sale of the Shares will not, immediately or with the passage of time, obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under such securities. With respect to each of the Subsidiaries, (i) all of the issued and outstanding shares of such Subsidiary’s capital stock (or equity interests in the case of non-corporate entities) have been duly authorized and validly issued, are fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities, and (ii) there are no outstanding options to purchase, or any preemptive rights or other rights to subscribe for or to purchase, any securities or obligations convertible into, or any contracts or commitments to issue or sell, shares of such Subsidiary’s capital stock or any such options, rights, convertible securities or obligations.

4.4 Issuance, Sale and Delivery of the Shares. The issuance and sale of the Shares have been duly authorized by the Company and the Shares, when issued, delivered and paid for in the manner set forth in this Agreement, will be validly issued, fully paid and nonassessable, and will conform in all material respects to the description thereof set forth in the SEC Documents. No preemptive rights or other rights to subscribe for or purchase any shares of Common Stock of the Company exist with respect to the issuance and sale of the Shares by the Company pursuant to this Agreement that have not been waived or complied with. No stockholder of the Company has any right (which has not been waived or has not expired by reason of lapse of time following notification of the Company's intention to file the Registration Statement (as hereinafter defined)) to require the Company to register the sale of any capital stock owned by such stockholder under the Registration Statement. No further approval or authority of the Company's stockholders or the Board of Directors of the Company will be required for the issuance and sale of the Shares to be sold by the Company as contemplated herein.

4.5 Due Execution, Delivery and Performance of the Agreements. The Company has full legal right, corporate power and authority to enter into this Agreement and perform the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Company. This Agreement constitutes a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws and judicial decisions of general application relating to or affecting the enforcement of creditors' rights generally and the application of general equitable principles relating to the availability of remedies, and except as rights to indemnity or contribution, including but not limited to, indemnification provisions set forth in Section 7.3 of this Agreement, may be limited by federal or state securities law or the public policy underlying such laws. The execution and performance of this Agreement by the Company and the consummation of the transactions herein contemplated will not violate any provision of the Amended and Restated Certificate of Incorporation or Amended and Restated Bylaws of the Company or the organizational documents of any Subsidiary and will not result in the creation of any Liens upon any assets of the Company or any Subsidiary pursuant to the terms or provisions of, or will not conflict with, result in the breach or violation of, or constitute, either by itself or upon notice or the passage of time or both, a default under any agreement, mortgage, deed of trust, lease, franchise, license, indenture, permit or other instrument to which any of the Company or any Subsidiary is a party or by which any of the Company or any Subsidiary or their respective properties may be bound or affected and in each case that would have or reasonably be expected to have a Material Adverse Effect, any statute or any authorization, judgment, decree, order, rule or regulation of any court or any regulatory body, administrative agency or other governmental agency or body applicable to the Company or any Subsidiary or any of their respective properties. No consent, approval, authorization or other order of any court, regulatory body, administrative agency or other governmental agency or body is required for the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated by this Agreement, except for compliance with the Blue Sky laws and federal securities laws applicable to the offering of the Shares and such as may be required by the bylaws and rules of the Financial Industry Regulatory Authority, Inc. or The Nasdaq Global Select Market. For the purposes of this Agreement, the term "Material Adverse Effect" shall mean any material adverse effect on the business, properties, assets, operations, results of operations, condition (financial or otherwise) or prospects of the Company and its Subsidiaries, taken as a whole, or on the transactions contemplated hereby or by the agreements and instruments to be entered into in connection herewith or therewith, or on the authority or ability of the Company to perform its obligations hereunder.

4.6 Accountants. Grant Thornton LLP, who has reported on the consolidated financial statements and schedules contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2010 (which are incorporated by reference into the confidential private placement memorandum dated February 9, 2012 (together with any exhibits, amendments and supplements thereto and all information incorporated by reference therein, the "Private Placement Memorandum")), are registered independent public accountants as required by the Securities Act and the rules and regulations promulgated thereunder (the "1933 Act Rules and Regulations") and by the rules of the Public Accounting Oversight Board.

4.7 No Defaults or Consents. Neither the execution, delivery and performance of this Agreement by the Company nor the consummation of any of the transactions contemplated hereby (including, without limitation, the issuance and sale by the Company of the Shares) will give rise to a right to terminate or accelerate the due date of any payment due under, or conflict with or result in the breach of any term or provision of, or constitute a default (or an event that with notice or lapse of time or both would constitute a default) under, except such defaults that individually or in the aggregate would neither cause nor reasonably be expected to cause a Material Adverse Effect, or require any consent or waiver under, or result in the execution or imposition of any Liens upon any properties or assets of the Company or its Subsidiaries pursuant to the terms of, any indenture, mortgage, deed of trust or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which either the Company or its Subsidiaries or any of its or their properties or businesses is bound, or any franchise, license, permit, judgment, decree, order, statute, rule or regulation applicable to the Company or any of its Subsidiaries or violate any provision of the charter or by-laws of the Company or any of its Subsidiaries, except for such consents or waivers that have already been obtained and are in full force and effect.

4.8 Contracts. The material contracts to which the Company is a party that have been filed as exhibits to the SEC Documents (as defined in Section 4.19), have been duly and validly authorized, executed and delivered by the Company and constitute the legal, valid and binding agreements of the Company, enforceable by and against it in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws and judicial decisions of general application relating to enforcement of creditors' rights generally, and the application of general equitable principles relating to or affecting the availability of remedies, and except as rights to indemnity or contribution may be limited by federal or state securities laws or the public policy underlying such laws.

4.9 No Actions. There are no legal or governmental actions, suits or proceedings pending or, to the Company's knowledge, threatened against the Company or any Subsidiary before or by any court, regulatory body or administrative agency or any other governmental agency or body, domestic or foreign, which actions, suits or proceedings, individually or in the aggregate, would have or reasonably be expected to have a Material Adverse Effect; and no labor disturbance by the employees of the Company exists or, to the Company's knowledge, is imminent, that would have or reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary is a party to or subject to the provisions of any injunction, judgment, decree or order of any court, regulatory body, administrative agency or other governmental agency or body that would have or reasonably be expected to have a Material Adverse Effect.

4.10 Properties. The Company and each Subsidiary has good and valid title to all items of tangible personal property described as owned by it in the consolidated financial statements included in the Private Placement Memorandum that are material to the businesses of the Company

and its Subsidiaries taken as a whole, in each case free and clear of all Liens except for those disclosed in the SEC Documents, or those, individually or in the aggregate, that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and its Subsidiaries or (ii) would neither have nor reasonably be expected to have a Material Adverse Effect. Any real property described in the Private Placement Memorandum as being leased by the Company or any Subsidiary that is material to the business of the Company and its Subsidiaries, taken as a whole, is held by them under valid, existing and enforceable leases, except those that, individually or in the aggregate, (A) do not materially interfere with the use made or proposed to be made of such property by the Company and its Subsidiaries or (B) would neither have nor reasonably be expected to have a Material Adverse Effect.

4.11 No Material Adverse Change. Except as disclosed in the SEC Documents, since December 31, 2010 (i) the Company and its Subsidiaries have not incurred any material liabilities or obligations, indirect or contingent, or entered into any material agreement or other transaction that is not in the ordinary course of business or that could reasonably be expected to result in a material reduction in the future earnings of the Company; (ii) the Company and its Subsidiaries have not sustained any material loss or material interference with their businesses or properties from fire, flood, windstorm, accident or other calamity not covered by insurance; (iii) the Company and its Subsidiaries have not paid or declared any dividends or other distributions with respect to their capital stock and none of the Company or any Subsidiary is in material default in the payment of principal or interest on any outstanding long-term debt obligations; (iv) there has not been any change in the capital stock of the Company or its Subsidiaries other than the sale of the Shares hereunder and shares or options issued pursuant to employee equity incentive plans or purchase plans approved by the Company's Board of Directors, or indebtedness material to the Company or its Subsidiaries (other than in the ordinary course of business and any required scheduled payments); and (v) there has not occurred any event that has caused or would reasonably be expected to cause a Material Adverse Effect.

4.12 Intellectual Property. Except as disclosed in the Private Placement Memorandum or the SEC Documents, (i) the Company and each Subsidiary owns or has obtained valid and enforceable licenses or options for the inventions, patent applications, patents, trademarks (both registered and unregistered), trade names, copyrights and trade secrets necessary for the conduct of its respective business as currently conducted (collectively, the "Intellectual Property"); and (ii) (a) there are no third parties who have any ownership rights or other ownership claims to any Intellectual Property that is owned by, or has been licensed to, the Company or any Subsidiary for the products and services of the Company and its Subsidiaries described in the Private Placement Memorandum or the SEC Documents that would preclude the Company or any Subsidiary from conducting its business as currently conducted and have or reasonably be expected to have a Material Adverse Effect, except for the ownership rights of the owners of the Intellectual Property licensed or optioned by the Company or any Subsidiary; (b) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the rights of the Company or any Subsidiary in or to any Intellectual Property owned, licensed or optioned by the Company or any Subsidiary, other than claims that would neither have nor reasonably be expected to have a Material Adverse Effect; (c) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity or scope of any Intellectual Property owned, licensed or optioned by the Company or any Subsidiary, other than actions, suits, proceedings and claims that would neither have nor reasonably be expected to have a Material Adverse Effect; and (d) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or any Subsidiaries infringes or otherwise violates

any patent, trademark, copyright, trade secret or other proprietary right of others, other than actions, suits, proceedings and claims that would neither have nor reasonably be expected to have a Material Adverse Effect.

4.13 Compliance. Neither the Company nor any of its Subsidiaries have been advised, nor do any of them have any reason to believe, that it is not conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting business, including, without limitation, all applicable local, state and federal environmental laws and regulations, except where failure to be so in compliance would neither have nor reasonably be expected to have a Material Adverse Effect.

4.14 Taxes. The Company and each Subsidiary has filed all required tax returns, and all such tax returns are true, correct and complete in all material respects. The Company and each Subsidiary has fully paid all taxes shown as due thereon. None of the Company or any Subsidiary has knowledge of any deficiency or assessment with respect to liabilities for any material taxes that has been or might be asserted or threatened against it, which has not been fully paid or finally settled, unless being contested in good faith through appropriate proceedings and for which adequate reserves are reflected in the Company's consolidated financial statements. All tax liabilities accrued through the date hereof have been adequately reserved for in the Company's consolidated financial statements.

4.15 Transfer Taxes. On the Closing Date, all stock transfer or other taxes (other than income taxes) that are required to be paid in connection with the transactions contemplated by this Agreement will be, or will have been, fully paid by the Company and all laws imposing such taxes will be or will have been fully complied with.

4.16 Investment Company. The Company is not an "investment company" or "promoter" or "principal underwriter" for an investment company, within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Securities and Exchange Commission (the "Commission") promulgated thereunder.

4.17 Offering Materials. None of the Company, its directors and officers has distributed or will distribute prior to the Closing Date any offering material, including, without limitation, any "free writing prospectus" (as defined in Rule 405 promulgated under the Securities Act), in connection with the offering and sale of the Shares other than the Private Placement Memorandum or any amendment or supplement hereto. The Company has not in the past nor will it hereafter take any action independent of the Placement Agent to sell, offer for sale or solicit offers to buy any securities of the Company that could result in the initial sale of the Shares not being exempt from the registration requirements of Section 5 of the Securities Act.

4.18 Insurance. The Company maintains insurance underwritten by insurers of recognized financial responsibility, of the types and in the amounts that the Company reasonably believes is adequate for its business, including, but not limited to, insurance covering all real and personal property owned or leased by the Company against theft, damage, destruction, acts of vandalism and all other risks customarily insured against, with such deductibles as are customary for companies in the same or similar business, all of which insurance is in full force and effect.

4.19 Additional Information. The information contained in the following documents (the "SEC Documents"), which the Placement Agent has furnished to the Purchaser (or

will furnish prior to the Closing) or which are otherwise available through the Commission's EDGAR system, as of the dates thereof, did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading:

- (a) the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2010;
- (b) the Company's Amended Annual Report on Form 10-K/A for the fiscal year ended December 31, 2010, filed March 24, 2011;
- (c) the Company's Definitive Proxy Statement for the Annual Meeting of Stockholders held on May 17, 2011, filed April 8, 2011;
- (d) the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2011, filed April 29, 2011;
- (e) the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2011, filed August 1, 2011;
- (f) the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2011, filed October 28, 2011;
- (g) the description of the Company's common stock contained in its Registration Statement on Form 8-A filed on May 11, 1995, as amended by Amendment No. 1 to Registration Statement on Form 8-A filed on June 5, 1995, Amendment No. 2 to Registration Statement on Form 8-A filed on December 30, 1999, and its Registration Statement on Form 8-A filed on December 19, 2002, as amended by Amendment No. 1 to Registration Statement on Form 8-A filed on August 14, 2008; and
- (h) all other documents, if any, filed by the Company (excluding the Current Reports on Form 8-K or the portions thereof furnished under Item 2.02 or Item 7.01 of Form 8-K) with the Commission since December 31, 2010 pursuant to the reporting requirements of the Exchange Act.

The SEC Documents incorporated by reference in the Private Placement Memorandum or attached as exhibits thereto, at the time they became effective or were filed with the Commission, as the case may be, complied in all material respects with the requirements of the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder (the "1934 Act Rules and Regulations" and, together with the 1933 Act Rules and Regulations, the "Rules and Regulations"). In the past 12 calendar months, the Company has filed all documents required to be filed by it prior to the date hereof with the Commission pursuant to the reporting requirements of the Exchange Act and the 1934 Act Rules and Regulations.

4.20 Price of Common Stock. The Company has not taken, and will not take, directly or indirectly, any action designed to cause or result in, or that has constituted or that might reasonably be expected to constitute, the stabilization or manipulation of the price of the shares of the Common Stock to facilitate the sale or resale of the Shares.

4.21 Use of Proceeds. The Company shall use the proceeds from the sale of the Shares as described under “Use of Proceeds” in the Private Placement Memorandum.

4.22 Use of Purchaser Name. Except as otherwise required by applicable law or regulation, neither the Company nor any of its subsidiaries, shall use the Purchaser’s name or the name of any of its Affiliates (as defined below) in any advertisement, announcement, press release or other similar public communication or in any communications with third parties unless it has received the prior written consent of the Purchaser for the specific use contemplated. For purposes of this Agreement, “Affiliate” means, with respect to any natural person, firm, partnership, association, corporation, limited liability company, company, trust, entity, public body or government (a “Person”), any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) as used in this definition means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. With respect to any natural person, the term “Affiliate” means (i) the spouse or children (including those by adoption) and siblings of such Person; and any trust whose primary beneficiary is such Person, such Person’s spouse, such Person’s siblings and/or one or more of such Person’s lineal descendants, (ii) the legal representative or guardian of such Person or of any such immediate family member in the event such Person or any such immediate family member becomes mentally incompetent and (iii) any Person controlled by or under common control with any one or more of such Person and the Persons described in clauses (i) or (ii) preceding.

4.23 Related-Party Transactions. No transaction has occurred between or among the Company, on the one hand, and its Affiliates, officers or directors on the other hand, that is required to have been described under applicable securities laws and the rules and regulations promulgated thereunder in its Exchange Act filings and is not so described in such filings.

4.24 Non Public Information. Except as disclosed in the Private Placement Memorandum, the Company has not disclosed to the Purchaser information that would constitute material non-public information as of the Closing Date other than the existence of the transactions contemplated hereby.

4.25 Off-Balance Sheet Arrangements. There is no transaction, arrangement or other relationship between the Company and an unconsolidated or other off-balance sheet entity that is required to be disclosed by the Company in its Exchange Act filings and is not so disclosed or that otherwise would have or would reasonably be expected to have a Material Adverse Effect. There are no such transactions, arrangements or other relationships with the Company that may create any material contingencies or liabilities that are not otherwise disclosed by the Company in its Exchange Act filings.

4.26 Governmental Permits, Etc. The Company and each Subsidiary has all franchises, licenses, certificates and other authorizations from federal, state or local governments or governmental agencies, departments or bodies that are currently necessary for the operation of the business of the Company and its Subsidiaries as currently conducted, except where the failure to possess currently such franchises, licenses, certificates and other authorizations would neither have nor reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such permit that, if the subject of an unfavorable decision, ruling or finding, would have or would reasonably be expected to have a Material Adverse Effect.

4.27 Financial Statements. The consolidated financial statements of the Company and the related notes and schedules thereto included in its Exchange Act filings present fairly, in all material respects, the financial condition of the Company and its consolidated Subsidiaries as of the dates thereof and the results of operations, stockholders' equity and cash flows of the Company and its consolidated Subsidiaries at the dates and for the periods covered thereby. Such financial statements and the related notes and schedules thereto have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved (except as otherwise noted therein) and all adjustments necessary for a fair presentation of results for such periods have been made; provided, however, that the unaudited financial statements are subject to normal year-end audit adjustments (which are not expected to be material) and do not contain all footnotes required under generally accepted accounting principles.

4.28 Listing Compliance. The Company is in compliance with the requirements of The Nasdaq Global Select Market for continued listing of the Common Stock thereon. The Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or the listing of the Common Stock on The Nasdaq Global Select Market, nor has the Company received any notification that the Commission or The Nasdaq Global Select Market is currently contemplating terminating such registration or listing. The transactions contemplated by this Agreement will not contravene the rules and regulations of The Nasdaq Global Select Market. The Company will comply with all requirements of The Nasdaq Global Select Market with respect to the issuance of the Shares and shall cause the Shares to be listed on The Nasdaq Global Select Market and listed on any other exchange on which the Common Stock is listed on or before (subject to official notice of issuance) the Closing Date.

4.29 Internal Accounting Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company maintains disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Exchange Act) that are designed to ensure that material information relating to the Company is made known to the Company's principal executive officer and the Company's principal financial officer or persons performing similar functions. There is and has been no failure on the part of the Company, or to its knowledge after due inquiry, any of the Company's directors or officers, in their capacities as such, to comply with any applicable provisions of the Sarbanes Oxley Act of 2002 and the rules and regulations promulgated therewith (the "Sarbanes Oxley Act"). Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it with the Commission. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act. The Company has taken all reasonable actions necessary to ensure that it is in compliance with all provisions of the Sarbanes-Oxley Act that are in effect and with which the Company is required to comply.

4.30 Foreign Corrupt Practices. Neither the Company nor any Subsidiary has, nor, to the knowledge of the Company, has any director, officer, agent or employee, in the course of its actions for, or on behalf of, the Company (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

4.31 Employee Relations. Neither the Company nor any Subsidiary is a party to any collective bargaining agreement or employs any member of a union (other than with regards to statutory unions required under foreign laws and regulations). The Company and each Subsidiary believe that their relations with their employees are good. No executive officer of the Company (as defined in Rule 501(f) promulgated under the Securities Act) has notified the Company that such officer intends to leave the Company or otherwise terminate such officer's employment with the Company. No executive officer of the Company is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement or any other agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company or any Subsidiary to any liability with respect to any of the foregoing matters.

4.32 ERISA. Each material employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is maintained, administered or contributed to by the Company or any of its Affiliates for employees or former employees of the Company and its Subsidiaries, or to which the Company or any of its Subsidiaries has any liability thereunder (a "Company Benefit Plan"), has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the "Code"); no action, dispute, claim, suit or proceeding is pending or, to the knowledge of the Company, threatened with respect to any Company Benefit Plan (other than claims for benefits in the ordinary course) that could reasonably be expected to result in a material liability to the Company; no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred that could reasonably be expected to result in a material liability to the Company with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no "accumulated funding deficiency" as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions.

4.33 Environmental Matters. There has been no storage, disposal, generation, manufacture, transportation, handling or treatment of toxic wastes, hazardous wastes or hazardous substances by the Company or to its knowledge, any Subsidiary (or, to the knowledge of the Company, any of their predecessors in interest) at, upon or from any of the property now or previously owned or leased by the Company or any Subsidiary in material violation of any applicable law, ordinance, rule, regulation, order, judgment, decree or permit or that would require remedial

action under any applicable law, ordinance, rule, regulation, order, judgment, decree or permit; there has been no material spill, discharge, leak, emission, injection, escape, dumping or release of any kind into such property or into the environment surrounding such property of any toxic wastes, medical wastes, solid wastes, hazardous wastes or hazardous substances due to or caused by the Company or any Subsidiary or with respect to which the Company or any Subsidiary have knowledge; the terms “hazardous wastes”, “toxic wastes”, “hazardous substances”, and “medical wastes” shall have the meanings specified in any applicable local, state, federal and foreign laws or regulations with respect to environmental protection.

4.34 Integration; Other Issuances of Shares. The Company has not issued any shares of Common Stock or shares of any series of preferred stock or other securities or instruments convertible into, exchangeable for or otherwise entitling the holder thereof to acquire shares of Common Stock that would be integrated with the sale of the Shares to the Purchaser for purposes of the Securities Act or of any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated. Assuming the accuracy of the representations and warranties of the Purchasers to the Company as set forth herein, the offer and sale of the Shares to the Purchasers pursuant to the Agreements will be exempt from the registration requirements of the Securities Act.

4.35 Disclosure. All disclosure provided to the Purchaser, including, without limitation, the Private Placement Memorandum, regarding the Company, its business and the transactions contemplated hereby, furnished by or on behalf of the Company, were, as of the date made, true and correct and did not contain any untrue statement of material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

4.36 No New Issuances and Registrations. The Company agrees that until the 90th day after the Closing Date, or if the Registration Statement (as defined herein) is not declared effective within 60 days of the Closing Date, then for an additional period of 30 days from the date the Registration Statement is declared effective, it will not, and it will cause its directors, officers and Affiliates not to (except in the case of the directors and officers of the Company, pursuant to exceptions set forth in lock-up letter agreements entered into between the Placement Agent and such directors and officers), directly or indirectly, grant, issue, sell, pledge or otherwise dispose of any shares of Common Stock, or securities convertible into or exchangeable for Common Stock, or file a registration statement with respect to the registration of any such newly issued shares of Common Stock or other securities, or amend or modify the rights, preferences, privileges or other terms of any securities of the Company outstanding on the date hereof. Notwithstanding the above, the restrictions set forth in this Section 4.36 shall not apply to issuances by the Company of (i) securities required to be issued pursuant to contractual obligations of the Company in effect as of the date hereof; (ii) securities issued on a pro rata basis to all holders of a class of outstanding equity securities of the Company; (iii) securities issued in connection with any bona fide merger, acquisition or other business combination, joint venture, equipment leasing arrangement or other strategic or commercial relationship, so long as the aggregate amount of such issuances pursuant to this clause (iii) does not exceed 15% of the Company’s outstanding capital stock measured as of the closing of the sale of the Shares, including the Shares; and (iv) equity securities issued pursuant to employee compensation, incentive, benefit or purchase plans in effect as of the date hereof or subsequently adopted by the Company’s Board of Directors. Notwithstanding the foregoing, the Company shall not, and shall cause its directors, officers and Affiliates not to, sell, offer for sale or solicit offers to

buy any shares of Common Stock or shares of any series of preferred stock or other securities or instruments convertible into, exchangeable for or otherwise entitling the holder thereof to acquire shares of Common Stock that would be integrated with the sale of the Shares to the Purchaser for purposes of the Securities Act.

4.37 No Undisclosed Events, Liabilities, Developments or Circumstances. Except for the transactions contemplated hereby, which will be disclosed in the Press Release (as defined in Section 7.1(i) below), and except as otherwise disclosed to the Purchaser, which will be publicly disclosed prior to the filing of the Registration Statement, no event, liability, development or circumstance has occurred or exists, or is contemplated to occur, with respect to the Company or its Subsidiaries or their respective business, properties, prospects, operations or financial condition, that would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced.

4.38 Shell Company Status. The Company is not, and has never been, an issuer identified in Rule 144(i)(1) of the Securities Act.

4.39 No General Solicitation; Valid Private Placement. Neither the Company, nor any of its Subsidiaries or Affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act) in connection with the offer or sale of the Shares. The offer and issuance by the Company of the Shares is exempt from registration under the Securities Act.

4.40 Most Favored Nations.

(a) For so long as the Purchaser is bound by the terms of this Agreement, any provision of any purchase agreement with any Other Purchaser or other agreement or side letter, or any amendment, modification or addition thereto, entered into by and among any Other Purchaser and the Company, presently or at any time in the future (collectively, "Company Agreements"), that has the effect of establishing rights or otherwise benefiting any such Other Purchaser in a manner more favorable in any material respect (any such material rights or benefits, "Preferred Terms") that the rights and benefits established in favor of the Purchaser by this Agreement, shall become part of this Agreement, for the benefit of the Purchaser.

(b) The Company confirms and represents that: (1) all Company Agreements shall be in writing, (2) it has provided the Purchaser with copies of all Company Agreements (which contain Preferred Terms) existing as of the date of this Agreement, and (3) it shall provide the Purchaser with copies of all Company Agreements (which contain Preferred Terms) which may be entered into on or after the date hereof within five (5) calendar days after execution thereof; provided, that the Company may redact the names of the parties to such Company Agreements.

5. Representations, Warranties and Covenants of the Purchaser. The Purchaser represents and warrants to, and covenants with, the Company that:

5.1 Experience. (i) The Purchaser is knowledgeable, sophisticated and experienced in financial and business matters, in making, and is qualified to make, decisions with respect to investments in shares representing an investment decision like that involved in the

purchase of the Shares, including, without limitation, investments in securities issued by the Company and comparable entities, and the Purchaser has undertaken an independent analysis of the merits and the risks of an investment in the Shares and has reviewed carefully the Private Placement Memorandum, based on the Purchaser's own financial circumstances; (ii) the Purchaser has had the opportunity to request, receive, review and consider all information it deems relevant in making an informed decision to purchase the Shares and to ask questions of, and receive answers from, the Company concerning such information; (iii) the Purchaser is acquiring the number of Shares set forth on the signature page hereto in the ordinary course of its business and for its own account and with no present intention of distributing any of such Shares or any arrangement or understanding with any other Persons regarding the distribution of such Shares (this representation and warranty not limiting the Purchaser's right to resell the Shares pursuant to the Registration Statement or in compliance with the Securities Act and the Rules and Regulations, or, other than with respect to any claims arising out of a breach of this representation and warranty, the Purchaser's right to indemnification under Section 7.3); (iv) the Purchaser will not, directly or indirectly, offer, sell, pledge (other than pledges in connection with bona fide margin accounts), transfer or otherwise dispose of (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of (other than pledges in connection with bona fide margin accounts)) any of the Shares, nor will the Purchaser engage in any short sale that results in a disposition of any of the Shares by the Purchaser, except in compliance with the Securities Act and the Rules and Regulations and any applicable state securities laws as currently interpreted on the date hereof; (v) the Purchaser will comply with the prospectus delivery requirements of the Securities Act as applicable to it in connection with resales of the Shares pursuant to the Registration Statement or with the applicable requirements of any exemption from the Securities Act; (vi) the Purchaser has completed or caused to be completed the Registration Statement Questionnaire attached hereto as part of Appendix I, for use in preparation of the Registration Statement, and the answers thereto are true and correct as of the date hereof and will be true and correct as of the effective date of the Registration Statement (the "Effective Date"), unless the Purchaser notifies the Company otherwise, and the Purchaser agrees to update the information set forth in the Registration Statement Questionnaire upon the reasonable request of the Company and to notify the Company immediately of any material change in the information provided in the Registration Statement Questionnaire, other than a material change in the number of Shares held by the Purchaser, until such time as the Purchaser has sold all of its Shares or until the Company is no longer required to keep the Registration Statement effective; (vii) the Purchaser has, in connection with its decision to purchase the number of Shares set forth in Section 2 above, relied solely upon the SEC Documents, the Private Placement Memorandum and the representations and warranties of the Company contained herein, and the Purchaser has not relied on the Placement Agent in negotiating the terms of its investment in the Shares and, in making a decision to purchase the Shares, the Purchaser has not received or relied on any communication, investment advice or recommendation from the Placement Agent; (viii) the Purchaser has had an opportunity to discuss this investment with representatives of the Company and ask questions of them but has not relied on any communication (other than the Private Placement Memorandum) or recommendation from any representative of the Company and (ix) the Purchaser is an institutional investor that is an "institutional accredited investor" (an "Accredited Investor") within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act, as modified by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173).

5.2 Reliance on Exemptions. The Purchaser understands that the Shares are being offered and sold to it in reliance upon specific exemptions from the registration requirements of the Securities Act, the Rules and Regulations and state securities laws and that the Company is relying upon the truth and accuracy of, and the Purchaser's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of the Purchaser to acquire the Shares.

5.3 Confidentiality. For the benefit of the Company, the Purchaser previously agreed with the Placement Agent to keep confidential all information concerning this private placement. The Purchaser is prohibited from reproducing or distributing this Agreement, the Private Placement Memorandum or any other offering materials or other information provided by the Company in connection with the Purchaser's consideration of its investment in the Company, in whole or in part, or divulging or discussing any of their contents, except to its financial, investment or legal advisors in connection with its proposed investment in the Shares. Further, the Purchaser understands that the existence and nature of all conversations and presentations, if any, regarding the Company and this offering must be kept strictly confidential. The Purchaser understands that the federal securities laws impose restrictions on trading based on information regarding this offering. In addition, the Purchaser hereby acknowledges that unauthorized disclosure of information regarding this offering may result in a violation of Regulation FD. This obligation will terminate upon the filing by the Company of the Press Release (as defined below), which shall include any material, non-public information provided to the Purchaser prior to the date hereof. The foregoing agreements shall not apply to any information that is or becomes publicly available through no fault of the Purchaser, or that the Purchaser is legally required to disclose; provided, however, that if the Purchaser is requested or ordered to disclose any such information pursuant to any court or other government order or any other applicable legal procedure, it shall provide the Company with prompt notice of any such request or order in time sufficient to enable the Company to seek an appropriate protective order.

5.4 Investment Decision. The Purchaser understands that nothing in the Agreement or any other materials presented to the Purchaser in connection with the purchase and sale of the Shares constitutes legal, tax or investment advice. The Purchaser has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Shares.

5.5 Risk of Loss. The Purchaser understands that its investment in the Shares involves a significant degree of risk, including a risk of total loss of the Purchaser's investment, and the Purchaser has full cognizance of and understands all of the risk factors related to the Purchaser's purchase of the Shares, including, but not limited to, those set forth and incorporated by reference under the caption "Risk Factors" in the Private Placement Memorandum. The Purchaser understands that the market price of the Common Stock has been volatile and that no representation is being made as to the future value of the Common Stock.

5.6 Legend; Legend Removal. The Purchaser understands that, until such time as the Registration Statement has been declared effective, or the Shares are sold pursuant to Rule 144 under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Shares, to the extent certificated, will bear a restrictive legend in substantially the following form:

"THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THE SHARES MAY NOT BE OFFERED, SOLD,

PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF OTHER JURISDICTIONS, AND IN THE CASE OF A TRANSACTION EXEMPT FROM REGISTRATION, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT OR THE COMPANY HAS RECEIVED FROM THE HOLDER REASONABLE ASSURANCE THAT THE SHARES CAN BE SOLD, ASSIGNED OR TRANSFERRED PURSUANT TO RULE 144 UNDER THE SECURITIES ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.”

The legend set forth above shall be removed and the Company shall issue a certificate without such legend, within three (3) Trading Days (as defined below) after the occurrence of any of (i) through (iii) below, to the holder of the Shares upon which it is stamped or issue such Shares to such holder by electronic delivery at the applicable balance account at The Depository Trust Company (“DTC”), if, unless otherwise required by state securities laws, (i) the Registration Statement covering registered resales of such Shares has been declared effective under the Securities Act and such Registration Statement remains effective under such Act, or (ii) in connection with any sale, assignment or other transfer of Shares that is not to be effected pursuant to such Registration Statement, such holder first provides the Company with an opinion of counsel reasonably satisfactory to the Company, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Shares may be made without registration under the applicable requirements of the Securities Act and that such legend is no longer required, or (iii) such holder first provides the Company with reasonable assurance that the Shares can be sold, assigned or transferred pursuant to Rule 144. The Company shall be responsible for the fees of its transfer agent and all DTC fees associated with such issuance. If the Company shall fail for any reason or for no reason to issue to the holder of the Shares within five (5) Trading Days after the occurrence of any of (i) through (iii) above and following the delivery by such holder to the Company in accordance with Section 10 hereof or to the Company’s transfer agent (with a copy delivered to the Company in accordance with Section 10 hereof) of a certificate representing Shares issued with a restrictive legend, a certificate without such legend to such holder or to issue such Shares to such holder by electronic delivery at the applicable balance account at DTC, and if on or after such Trading Day such holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such holder of such Shares that the holder anticipated receiving without legend from the Company (a “Buy-In”), then the Company shall, within five (5) Trading Days after such holder’s request and in such holder’s discretion, either (i) pay cash to such holder in an amount equal to such holder’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock actually purchased by such holder (the “Buy-In Price”), at which point the Company’s obligation to deliver such unlegended Shares shall terminate and such holder shall transfer to the Company title to such Shares and hereby agrees to execute and deliver to the Company such documentation as the

Company may reasonably request to reflect such transfer, or (ii) promptly honor its obligation to deliver to the holder such unlegended Shares as provided above and pay cash to the holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the closing bid price of the Common Stock on the date such legend-free Shares were required to have been delivered. For purposes of the Agreement, "Trading Day" means a day on which the Common Stock is traded on The Nasdaq Global Select Market or, if the Common Stock is not then traded on The Nasdaq Global Select Market, the principal market or exchange on which the Common Stock is then listed or quoted for trading.

Notwithstanding the foregoing, in the event that the Shares are in an uncertificated form and registered directly on the Company's share registry, the Company's transfer agent will not permit transfers of such shares except in compliance with the restrictions contained in this Section 5.6.

The Company acknowledges and agrees that, so long as Shares owned by the Purchaser remain "restricted securities" within the meaning of Rule 144 and have not been sold pursuant to the Registration Statement, the Purchaser may from time to time pledge some or all of such Shares pursuant to a bona fide margin agreement with a registered broker-dealer that is a qualified institutional buyer as defined in Rule 144A under the Securities Act (a "QIB") or an Accredited Investor or grant a security interest in some or all of such Shares to a financial institution that is a QIB or an Accredited Investor (each such pledgee or transferee, a "Qualifying Institution"), provided in each case that the terms of the applicable pledge or security interest shall require as a condition to any transfer of Shares to a Qualifying Institution pursuant to such pledge or security interest that such Qualifying Institution agree to be bound by the provisions of this Agreement (including without limitation complying with the restrictions on transfer set forth herein and agreeing not to make any sale of the Shares under the Registration Statement without complying with the provisions of this Agreement and without effectively causing the prospectus delivery requirement under the Securities Act to be satisfied). The Purchaser shall not be required to give notice to the Company of such pledge or granting of a security interest, but, in accordance with Section 7.2 hereof, shall promptly furnish to the Company upon request a copy of such instrument or instrument of transfer evidencing the assignee's or transferee's agreement to be bound by the provisions of this Agreement (including Section 11 hereof). If required under the terms of the Purchaser's arrangement with such Qualifying Institution, the Purchaser may transfer any such pledged or secured Shares to such Qualifying Institution, provided such transfer is made in compliance with the Securities Act and the 1933 Act Rules and Regulations and any applicable state securities laws. Such transfer would not be subject to approval by the Company, and no legal opinion of legal counsel of the Qualifying Institution would be required in connection therewith. At the Purchaser's expense, the Company will execute and deliver such reasonable documentation as such Qualifying Institution may reasonably request in connection with a transfer of such Shares, including, if appropriate, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder to include such Qualifying Institution as a selling stockholder therein.

5.7 Stop Transfer. The Shares will be subject to a stop transfer order with the Company's transfer agent prior to the time that the resale Registration Statement on Form S-3 is effective, which order restricts the transfer of such shares, except in circumstances in which the Company is permitted to suspend the effectiveness of the Registration Statement as permitted herein and with notice provided to the Purchaser of such stop transfer order in accordance with Section 10.

5.8 Residency. The Purchaser's principal executive offices are in the jurisdiction set forth immediately below the Purchaser's name on the signature pages hereto.

5.9 Public Sale or Distribution. The Purchaser hereby covenants with the Company not to make any sale of the Shares under the Registration Statement without complying with the provisions of this Agreement and without effectively causing the prospectus delivery requirement under the Securities Act to be satisfied (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule). The Purchaser acknowledges that there may occasionally be times when the Company must suspend the use of the prospectus (the "Prospectus") forming a part of the Registration Statement (a "Suspension") until such time as an amendment to the Registration Statement has been filed by the Company and declared effective by the Commission, or until such time as the Company has filed an appropriate report with the Commission pursuant to the Exchange Act. Without the Company's prior written consent, which consent shall not unreasonably be withheld or delayed, the Purchaser shall not use any written materials to offer the Shares for resale other than the Prospectus, including any "free writing prospectus" as defined in Rule 405 under the Securities Act. The Purchaser covenants that it will not sell any Shares pursuant to said Prospectus during the period commencing at the time when the Company gives the Purchaser written notice of Suspension of the use of said Prospectus and ending at the time when the Company gives the Purchaser written notice that the Purchaser may thereafter effect sales pursuant to said Prospectus. In each such notice, the Company shall not disclose the content of any material, non-public information to the Purchaser. The Purchaser shall maintain in confidence the receipt of any notice of Suspension. Notwithstanding the foregoing, the Company agrees that no Suspension shall be for a period in excess of fifteen (15) consecutive days, and during any three hundred sixty-five (365) day period, the aggregate of all of the Suspensions shall not exceed an aggregate of thirty (30) days, and the first day of any Suspension shall be at least five (5) trading days after the last day of any prior Suspension (each, an "Allowable Suspension Period").

5.10 Organization; Validity; Enforcements. The Purchaser further represents and warrants to, and covenants with, the Company that (i) the Purchaser has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, (ii) the making and performance of this Agreement by the Purchaser and the consummation of the transactions herein contemplated will not violate any provision of the organizational documents of the Purchaser or conflict with, result in the breach or violation of, or constitute, either by itself or upon notice or the passage of time or both, a default under any material agreement, mortgage, deed of trust, lease, franchise, license, indenture, permit or other instrument to which the Purchaser is a party or, any statute or any authorization, judgment, decree, order, rule or regulation of any court or any regulatory body, administrative agency or other governmental agency or body applicable to the Purchaser, (iii) no consent, approval, authorization or other order of any court, regulatory body, administrative agency or other governmental agency or body is required on the part of the Purchaser for the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement, (iv) upon the execution and delivery of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions of general application relating to or affecting the enforcement of creditors' rights generally and the application of equitable principles relating to the availability of remedies, and except as rights to indemnity or contribution, including, but not limited to, the indemnification provisions set forth in Section 7.3 of this Agreement, may be limited by federal or state securities laws or the public policy underlying such laws and (v) there is not in effect any order enjoining or restraining the Purchaser from entering into or engaging in any of the transactions contemplated by this Agreement.

5.11 Short Sales. Since the time the Purchaser was first contacted about the offering of the Shares and the transactions contemplated hereby, the Purchaser has not taken, and prior to the public announcement of the transaction the Purchaser shall not take, any action that has caused or will cause the Purchaser to have, directly or indirectly, sold or agreed to sell any shares of Common Stock, effected any short sale, whether or not against the box, established any “put equivalent position” (as defined in Rule 16a-1(h) under the Exchange Act) with respect to the Common Stock, granted any other right (including, without limitation, any put or call option) with respect to the Common Stock or with respect to any security that includes, relates to or derived any significant part of its value from the Common Stock.

6. Survival of Agreements; Non-Survival of Company Representations and Warranties. Notwithstanding any investigation made by any party to this Agreement or by the Placement Agent, all representations, warranties, covenants and agreements made by the Company and the Purchaser herein and in the certificates for the Shares delivered pursuant hereto shall survive the execution of this Agreement, the delivery to the Purchaser of the Shares being purchased and the payment therefor.

7. Registration of the Shares; Compliance with the Securities Act.

7.1 Registration Procedures and Expenses. The Company shall:

(a) as soon as reasonably practicable, but in no event later than five business days following the later of (a) the date the Company files each Current Report on Form 8-K, or an amendment thereto on Form 8-K/A, containing the financial statements and information required by Item 9.01 of Form 8-K (each, an “Acquisition 8-K”) with respect to any acquisition that has been completed as of the date hereof, and, to the extent applicable, any pending acquisition which is contemplated pursuant to a written letter of intent entered into by the Company and the proposed acquisition target as of the date hereof (a “Pending Acquisition”), (b) the date the Company files its Annual Report on Form 10-K for the fiscal year ended December 31, 2011 and (c) the date the Company terminates all negotiations with respect to any Pending Acquisition that would require it to file an Acquisition 8-K (the “Filing Deadline”), prepare and file with the Commission the Registration Statement on Form S-3 relating to the resale of the Shares by the Purchaser and the Other Purchasers from time to time on The Nasdaq Global Select Market, or the facilities of any national securities exchange on which the Common Stock is then traded or in privately-negotiated transactions;

(b) use its reasonable best efforts, subject to receipt of necessary information from the Purchasers, to cause the Commission to declare the Registration Statement effective by the earlier of (i) 3 days after the Commission has advised the Company that the Registration Statement has not been selected for review by the Commission, (ii) 3 days after the Commission has advised the Company the Commission has no more comments with respect to the Registration Statement or (iii) 90 days after the Closing Date (each of (i), (ii) and (iii), the “Effectiveness Deadline”);

(c) by 9:30 a.m., New York City time, on the second business day following the date the Registration Statement is declared effective by the Commission, the Company shall file with the Commission in accordance with Rule 424 under the Securities Act the final prospectus to be used in connection with sales pursuant to such Registration Statement;

(d) promptly prepare and file with the Commission such amendments and supplements to the Registration Statement and the prospectus used in connection therewith as may be necessary to keep the Registration Statement effective until the earlier of (i) the date as of which the Investors may sell all of the Shares covered by such Registration Statement without restriction pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (or any successor thereto) promulgated under the Securities Act or (ii) the date on which the Investors shall have sold all of the Shares covered by the Registration Statement. For the purpose of this Agreement, “Investor” means a Purchaser or any transferee or assignee thereof to whom a Purchaser assigns its rights as a holder of Shares under this Agreement and who agrees to become bound by the provisions of this Agreement and any transferee or assignee thereof to whom a transferee or assignee assigns its rights as a holder of Shares under this Agreement and who agrees to become bound by the provisions of this Agreement;

(e) furnish to the Purchaser with respect to the Shares registered under the Registration Statement (and to each underwriter, if any, of such Shares) such number of copies of prospectuses and such other documents as the Purchaser may reasonably request, in order to facilitate the public sale or other disposition of all or any of the Shares by the Purchaser;

(f) file documents required of the Company for normal Blue Sky clearance in states specified in writing by the Purchaser; provided, however, that the Company shall not be required to qualify to do business or consent to service of process in any jurisdiction in which it is not now so qualified or has not so consented;

(g) bear all expenses in connection with the procedures in paragraphs (a) through (e) of this Section 7.1 and the registration of the Shares pursuant to the Registration Statement, other than fees and expenses, if any, of counsel or other advisers to the Purchaser or the Other Purchasers or underwriting discounts, brokerage fees and commissions incurred by the Purchaser or the Other Purchasers, if any, in connection with the offering of the Shares pursuant to the Registration Statement;

(h) file a Form D with the Commission with respect to the Shares as required under Regulation D promulgated under the Securities Act and to provide a copy thereof to the Purchaser promptly after filing;

(i) issue a press release describing the transactions contemplated by this Agreement and any other material non-public information that was disclosed to the Purchaser (the “Press Release”) on or before 8:30 a.m., New York City time, on the first business day following the date hereof; and

(j) except as otherwise contemplated hereunder, the Company shall not, and shall cause each of its Subsidiaries and each of their respective officers, directors, employees and agents not to, provide any Purchaser with any material, non-public information regarding the Company or any of its Subsidiaries from and after the filing of the Press Release without the express written consent of such Purchaser;

(k) in order to enable the Purchasers to sell the Shares under Rule 144 under the Securities Act, for a period of one year from Closing, use its reasonable best efforts to comply with the requirements of Rule 144, including without limitation, use its reasonable best efforts to comply with the requirements of Rule 144(c) with respect to public information about the Company and to timely file all reports required to be filed by the Company under the Exchange Act; and

(l) permit the Purchaser and its legal counsel to review and comment upon (i) an initial draft of a Registration Statement at least two (2) business days prior to its filing with the Commission and (ii) any numbered pre-effective amendment to such Registration Statement (for purposes of clarification, excluding any Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing incorporated by reference into such Registration Statement) at least one (1) business day prior to its filing with the Commission. The Company shall furnish to the Purchaser or its legal counsel, without charge, copies of any correspondence from the Commission to the Company or its representatives relating to the Registration Statement.

The Company understands that the Purchaser disclaims being an underwriter, but the Purchaser being deemed an underwriter shall not relieve the Company of any obligations it has hereunder. Neither the Company nor any Subsidiary or Affiliate thereof shall identify the Purchaser as an underwriter in any public disclosure or filing with the Commission or any stock exchange or market without the prior written consent of Purchaser. The forms of the questionnaires related to the Registration Statement to be completed by the Purchaser are attached hereto as Appendix I.

For purposes of this Section 7.1 and for purposes of Sections 7.3(d), 7.6 and 18 hereof, the definition of “Shares” shall include any capital stock of the Company issued or issuable with respect to the Shares as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise.

7.2 Transfer of Shares After Registration. The Purchaser agrees that it will not effect any disposition of the Shares or its right to purchase the Shares that would constitute a sale within the meaning of the Securities Act or pursuant to any applicable state securities laws, except pursuant to the Registration Statement referred to in Section 7.1, in accordance with Rule 144 under the Securities Act or as otherwise permitted by law, and that it will promptly notify the Company of any changes in the information set forth in the Registration Statement regarding the Purchaser or its plan of distribution.

7.3 Indemnification. For the purpose of this Section 7.3:

(i) the term “Purchaser Indemnified Persons” shall mean each Investor, director, officer, member, partner, employee, agent and representative of the Investor and each Person, if any, who controls any Investor within the meaning of the Securities Act or the Exchange Act; and

(ii) the term “Registration Statement” shall include any preliminary prospectus, final prospectus, free writing prospectus, exhibit, supplement or amendment included in or relating to, and any document incorporated by reference in, the Registration Statement referred to in Section 7.1.

(a) The Company agrees to indemnify and hold harmless the Purchaser Indemnified Persons, against any losses, claims, damages, liabilities or expenses, joint or several, to which the Purchaser Indemnified Persons may become subject, under the Securities Act, the Exchange Act, or any other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Company), insofar as such losses, claims, damages, liabilities or expenses (or actions in respect thereof as contemplated below) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, including, without limitation, the Prospectus, financial statements and schedules, and all other documents filed as a part thereof, as amended at the time of effectiveness of the Registration Statement, including, without limitation, any information deemed to be a part thereof as of the time of effectiveness pursuant to paragraph (b) of Rule 430A, or pursuant to Rules 430B, 430C or 434, of the 1933 Act Rules and Regulations, or the Prospectus, in the form first filed with the Commission pursuant to Rule 424(b) of the 1933 Act Rules and Regulations, or filed as part of the Registration Statement at the time of effectiveness if no Rule 424(b) filing is required or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state in any of them a material fact required to be stated therein or necessary to make the statements in the Registration Statement or any amendment or supplement thereto not misleading or in the Prospectus or any amendment or supplement thereto not misleading in light of the circumstances under which they were made; provided, however, that the Company will not be liable for amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld or delayed, and the Company will not be liable in any such case to the extent that any such loss, claim, damage, liability or expense arises out of or is based upon (A) an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, the Prospectus or any amendment or supplement thereto in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Purchaser expressly for use therein, (B) the failure of the Purchaser to comply with the covenants and agreements contained herein or (C) the inaccuracy of any representation or warranty made by the Purchaser herein, (ii) any misrepresentation or breach of any representation or warranty made by the Company in the Agreement or any other certificate, instrument or document contemplated hereby or thereby, (iii) any breach of any covenant, agreement or obligation of the Company contained in the Agreement or any other certificate, instrument or document contemplated hereby or thereby or (iv) any cause of action, suit or claim brought or made against such Purchaser Indemnified Person by a third party (including for these purposes a derivative action brought on behalf of the Company) and arising out of or resulting (A) from the execution, delivery, performance or enforcement of the Agreement or any other certificate, instrument or document contemplated hereby or thereby, (B) from any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Shares or (C) solely from the status of such Purchaser or holder of the Shares as an investor in the Company, and the Company will promptly reimburse the Purchaser Indemnified Persons for reasonable legal and other expenses as such expenses are reasonably incurred by the Purchaser Indemnified Persons in connection with investigating, defending or preparing to defend, settling, compromising or paying any such loss, claim, damage, liability, expense or action.

(b) The Purchaser and Other Purchasers will severally, but not jointly, indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (a "Control Person"), against any losses, claims, damages, liabilities or expenses to which the Company, each of its directors, each of

its officers who signed the Registration Statement or Control Person may become subject, under the Securities Act, the Exchange Act, or any other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, but only if such settlement is effected with the written consent of the Purchaser) insofar as such losses, claims, damages, liabilities or expenses (or actions in respect thereof as contemplated below) arise out of or are based upon any untrue or alleged untrue statement of any material fact contained in the Registration Statement, the Prospectus, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements in the Registration Statement or any amendment or supplement thereto not misleading or in the Prospectus or any amendment or supplement thereto not misleading in the light of the circumstances under which they were made, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Prospectus, or any amendment or supplement thereto, in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Purchaser expressly for use therein; and will reimburse the Company, each of its directors, each of its officers who signed the Registration Statement and each such Control Person for any legal and other expense reasonably incurred by the Company, each of its directors, each of its officers who signed the Registration Statement or Control Person, as the case may be, in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the Purchaser's aggregate liability under this Section 7 shall not exceed the amount of net proceeds received by the Purchaser on the sale of the Shares pursuant to the Registration Statement.

(c) Promptly after receipt by an indemnified party under this Section 7.3 of notice of the threat or commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 7.3, promptly notify the indemnifying party in writing thereof, but the omission to notify the indemnifying party will not relieve it from any liability that it may have to any indemnified party for contribution or otherwise under the indemnity agreement contained in this Section 7.3 to the extent it is not prejudiced as a result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it may wish, jointly with all other indemnifying parties similarly notified, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party, and the indemnified party shall have reasonably concluded, based on an opinion of counsel reasonably satisfactory to the indemnifying party, that there may be a conflict of interest between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 7.3 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed such counsel in connection with the assumption of legal defenses in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel, reasonably satisfactory to such indemnifying

party, representing all of the indemnified parties who are parties to such action) or (ii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of action, in each of which cases the reasonable fees and expenses of counsel shall be at the expense of the indemnifying party. In no event shall any indemnifying party be liable in respect of any amounts paid in settlement of any action unless the indemnifying party shall have approved in writing the terms of such settlement; provided that such consent shall not be unreasonably withheld or delayed. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnification could have been sought hereunder by such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) If the indemnification provided for in this Section 7.3 is required by its terms but is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party under paragraphs (a), (b) or (c) of this Section 7.3 in respect to any losses, claims, damages, liabilities or expenses referred to herein, then each applicable indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of any losses, claims, damages, liabilities or expenses referred to herein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Purchaser from the private placement of Common Stock hereunder or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but the relative fault of the Company and the Purchaser in connection with the statements or omissions or inaccuracies in the representations and warranties in this Agreement and/or the Registration Statement that resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Purchaser on the other shall be deemed to be in the same proportion as the amount paid by the Purchaser to the Company pursuant to this Agreement for the Shares purchased by the Purchaser that were sold pursuant to the Registration Statement bears to the difference (the “Difference”) between the amount the Purchaser paid for the Shares that were sold pursuant to the Registration Statement and the amount received by the Purchaser from such sale. The relative fault of the Company on the one hand and the Purchaser on the other shall be determined by reference to, among other things, whether the untrue or alleged statement of a material fact or the omission or alleged omission to state a material fact or the inaccurate or the alleged inaccurate representation and/or warranty relates to information supplied by the Company or by the Purchaser and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in paragraph (c) of this Section 7.3, any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in paragraph (c) of this Section 7.3 with respect to the notice of the threat or commencement of any threat or action shall apply if a claim for contribution is to be made under this paragraph (d); provided, however, that no additional notice shall be required with respect to any threat or action for which notice has been given under paragraph (c) for purposes of indemnification. The Company and the Purchaser agree that it would not be just and equitable if contribution pursuant to this Section 7.3 were determined solely by pro rata allocation (if the Purchaser were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this paragraph. Notwithstanding the provisions of this Section 7.3, the Purchaser shall not be required to contribute any amount in excess of the amount by which the Difference exceeds the amount of any damages that the Purchaser has otherwise been

required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. Notwithstanding the provisions of this Section 7.3, the Purchaser shall not be required to contribute any amount in excess of the amount of net proceeds received by such Purchaser from the sale of its Shares pursuant to the Registration Statement, less any other payments made by such Purchaser pursuant to this Section 7.3. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The Purchasers' obligations to contribute pursuant to this Section 7.3 are several and not joint.

7.4 Termination of Conditions and Obligations.

(a) The restrictions imposed by Section 5.9 or Section 7.2 upon the transferability of the Shares shall (1) cease and terminate as to any particular number of the Shares upon the earlier of (A) the passage of one year from the Effective Date of the Registration Statement covering such Shares and (B) at such time as an opinion of counsel satisfactory in form and substance to the Company shall have been rendered to the effect that such conditions are not necessary in order to comply with the Securities Act, and (2) not apply in connection with any transfer to an Affiliate of the Purchaser so long as such Affiliate transferee shall agree in writing to be bound by the terms of this Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, in connection with any transfer of Shares to an Affiliate of the Purchaser, the Purchaser shall not be required to provide the Company an opinion of counsel.

7.5 Information Available. The Company, upon the reasonable request of the Purchaser, shall make available for inspection by each Purchaser, any underwriter participating in any disposition pursuant to the Registration Statement and any attorney, accountant or other agent retained by the Purchaser or any such underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, employees and independent accountants to supply all information reasonably requested by the Purchaser or any such underwriter, attorney, accountant or agent in connection with the Registration Statement, and all such information provided by the Company pursuant to this Section 7.5 shall be subject to the confidentiality obligations imposed by Section 5.3.

7.6 Delay in Filing or Effectiveness of Registration Statement; Public Information.

(a) If (i) a Registration Statement covering all of the Shares required to be covered thereby and required to be filed by the Company pursuant to this Agreement is (A) not filed with the SEC on or before the respective Filing Deadline (a "Filing Failure") or (B) not declared effective by the SEC on or before the Effectiveness Deadline (an "Effectiveness Failure") or (ii) on any day after the Effective Date sales of all of the Shares required to be included on such Registration Statement cannot be made (other than during an Allowable Suspension Period (as defined in Section 5.9)) pursuant to such Registration Statement or otherwise (including, without limitation, because of a failure to keep such Registration Statement effective, to disclose such information as is necessary for sales to be made pursuant to such Registration Statement or to register a sufficient number of shares of Common Stock or to maintain the listing of the shares of Common Stock) (a "Maintenance Failure") then, as partial relief for the damages to any Investor by reason of any such delay in or reduction of its ability to sell the underlying shares of Common Stock (which

remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to each Investor relating to such Registration Statement an amount in cash equal to (A) one percent (1.0%) of the aggregate Purchase Price of such Investor's Shares included in such Registration Statement on each of the following dates: (i) the day of a Filing Failure and on every thirtieth day (pro rated for periods totaling less than thirty (30) days) thereafter until the date such Filing Failure is cured; (ii) the day of an Effectiveness Failure and on every thirtieth day (pro rated for periods totaling less than thirty (30) days) thereafter until the date such Effectiveness Failure is cured; and (iii) the initial day of a Maintenance Failure and on every thirtieth day (pro rated for periods totaling less than thirty (30) days) thereafter until the date such Maintenance Failure is cured. The payments to which an Investor shall be entitled to pursuant to this Section 7.6 are referred to herein "Registration Delay Payments." Registration Delay Payments shall be paid on the earlier of (I) the last day of the calendar month during which such Registration Delay Payments are incurred and (II) the third Business Day after the event or failure giving rise to the Registration Delay Payments is cured. In the event the Company fails to make Registration Delay Payments in a timely manner, such Registration Delay Payments shall bear interest at the rate of one percent (1.0%) per month (prorated for partial months) until paid in full. The parties agree that the maximum aggregate Registration Delay Payments payable to an Investor under this Agreement, when aggregated with any Public Information Failure Payments payable pursuant to Section 7.6(b), shall be 10% of the aggregate Purchase Price paid by such Investor pursuant to this Agreement. Furthermore, in no event shall the Registration Statement Delay Payments payable during any thirty (30) day period, which when aggregated with any Public Information Failure Payments payable pursuant to Section 7.6(b) during such thirty (30) day period exceed one percent (1.0%) of the aggregate Purchase Price of such Investor's Shares. In addition, and notwithstanding anything to the contrary contained herein, if the Company has received a comment by the SEC requiring an Investor to be named as an underwriter in the Registration Statement (which notwithstanding the reasonable best efforts of the Company is not withdrawn by the SEC) and such Investor elects in writing not to be named as a selling stockholder in the Registration Statement, the Investor shall not be entitled to any Registration Delay Payments with respect to such Registration Statement.

(b) At any time during the period commencing on the six (6) month anniversary of the Closing Date and, with respect to those Investors who are not "affiliates" of the Company (as such term is defined in Rule 144(a)(1)) and who did not acquire Shares from an "affiliate" of the Company during the immediately preceding ninety (90) day period, at such time that all of the Shares can be sold without the requirement to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144(c), including, if applicable, Rule 144(i), if a registration statement is not available for the resale of all of the Shares and the Company shall fail for any reason to satisfy the current public information requirement under Rule 144 (a "Public Information Failure") then, as partial relief for the damages to any Investor by reason of any such delay in or reduction of its ability to sell the Shares of such Investor (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to each Investor an amount in cash equal to one percent (1.0%) of the aggregate Purchase Price of such Investor's Shares on every thirtieth day (pro rated for periods totaling less than thirty days) after a Public Information Failure until the earlier of (i) the date such Public Information Failure is cured and (ii) such time that such public information is no longer required pursuant to Rule 144 with respect to those Investors who are not "affiliates" of the Company (as such term is defined in Rule 144(a)(1)) and who did not acquire Shares from an "affiliate" of the Company during the immediately preceding ninety (90) day period. The payments to which a holder shall be entitled pursuant to this Section 7.6(b) are referred to herein as "Public Information Failure Payments." Public Information Failure Payments shall be paid on the earlier of (I) the last day of the calendar

month during which such Public Information Failure Payments are incurred and (II) the third Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of one percent (1.0%) per month (prorated for partial months) until paid in full. The parties agree that the maximum aggregate Public Information Failure Payments payable to an Investor under this Agreement, when aggregated with any Registration Delay Payments payable pursuant to Section 7.6(a), shall be 10% of the aggregate purchase price paid by such Investor pursuant to this Agreement. Furthermore, in no event shall the Public Information Failure Payments payable during any thirty (30) day period, which when aggregated with any Registration Delay Payments payable pursuant to Section 7.6(a) payable during such thirty (30) day period exceed one percent (1.0%) of the aggregate Purchase Price of such Investor's Shares.

7.7 Questionnaires. The Purchaser agrees to furnish to the Company completed questionnaires in the form attached hereto as Appendix I at the Closing for use in preparation of the Registration Statement contemplated in Section 7.1. The Company shall not be required to include the Shares of the Purchaser in the Registration Statement and shall not be required to pay a cash payment to such Purchaser pursuant to Section 7.6 so long as the Purchaser fails to furnish fully completed questionnaires at the Closing or does not respond to subsequent written requests for information by the Company within two business days of such requests; provided that the Company shall be required to provide only two (2) such subsequent written request for information.

8. Broker's Fee. The Purchaser acknowledges that the Company intends to pay to the Placement Agent a fee in respect of the sale of the Shares to the Purchaser. The Purchaser and the Company agree that the Purchaser shall not be responsible for such fee and that the Company will indemnify and hold harmless the Purchaser Indemnified Persons against any losses, claims, damages, liabilities or expenses, joint or several, to which such Purchaser Indemnified Person may become subject with respect to such fee. Each of the parties hereto represents that, on the basis of any actions and agreements by it, there are no other brokers or finders entitled to compensation in connection with the sale of the Shares to the Purchaser.

9. Independent Nature of Purchasers' Obligations and Rights. The obligations of the Purchaser under this Agreement are several and not joint with the obligations of any Other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any Other Purchaser under the Agreements. The decision of each Purchaser to purchase the Shares pursuant to the Agreements has been made by such Purchaser independently of any other Purchaser. Nothing contained in the Agreements, and no action taken by any Purchaser pursuant thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Agreements. Each Purchaser acknowledges that no other Purchaser has acted as agent for such Purchaser in connection with making its investment hereunder and that no Purchaser will be acting as agent of such Purchaser in connection with monitoring its investment in the Shares or enforcing its rights under this Agreement. Each Purchaser shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

10. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be mailed by first-class registered or certified airmail, e-mail, confirmed facsimile or nationally recognized overnight express courier postage prepaid, and shall be deemed given when so mailed and shall be delivered as addressed as follows:

if to the Company, to:

Acacia Research Corporation
500 Newport Center Drive, 7th Floor
Newport Beach, CA 92660
Attention:

with a copy to:

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Attention: Mark L. Skaist, Esq.

or to such other person at such other place as the Company shall designate to the Purchaser in writing; and

if to the Purchaser, at its address as set forth at the end of this Agreement,

with a copy to:

or at such other address or addresses as may have been furnished to the Company in writing.

11. Changes. This Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company and the Purchaser. Any amendment or waiver effected in accordance with this Section 11 shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding, each future holder of all such securities, and the Company.

12. Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

13. Severability. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

14. Governing Law; Venue. This Agreement is to be construed in accordance with and governed by the federal law of the United States of America and the internal laws of the State of Delaware without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Delaware to the rights and duties of the parties.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument, and shall become effective when one or more counterparts have been signed by each party hereto and delivered to the other parties. Facsimile signatures shall be deemed original signatures.

16. Entire Agreement. This Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor the Purchaser makes any representation, warranty, covenant or undertaking with respect to such matters. Each party expressly represents and warrants that it is not relying on any oral or written representations, warranties, covenants or agreements outside of this Agreement.

17. Fees and Expenses. Except as set forth herein, each of the Company and the Purchaser shall pay its respective fees and expenses related to the transactions contemplated by this Agreement.

18. Parties. This Agreement is made solely for the benefit of and is binding upon the Purchaser and the Company and to the extent provided in Section 7.3, any Person controlling the Company or the Purchaser, the officers and directors of the Company, and their respective executors, administrators, successors and assigns and subject to the provisions of Section 7.3, no other Person shall acquire or have any right under or by virtue of this Agreement. The term “successor and assigns” shall not include any subsequent purchaser, as such purchaser, of the Shares sold to the Purchaser pursuant to this Agreement; provided, however, it shall include purchasers of Shares if (i) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with a duly executed Stock Certificate Questionnaire from such transferee or assignee and written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such rights are being transferred or assigned; (iii) immediately following such transfer or assignment, the further disposition of such securities by the transferee or assignee is restricted under the Securities Act and applicable state securities laws; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the obligations of Investor under this Agreement; (v) such transfer shall have been made in accordance with the applicable requirements of this Agreement; and (vi) such transfer shall have been conducted in accordance with all applicable federal and state securities laws.

19. Further Assurances. Each party agrees to cooperate fully with the other parties and to execute such further instruments, documents and agreements and to give such further written assurance as may be reasonably requested by any other party to evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intents and purposes of this Agreement.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

Acacia Research Corporation

By: _____

Name: _____

Title: _____

Print or Type:

Name of Purchaser

(Individual or Institution)

Jurisdiction of Purchaser's Executive Offices

Name of Individual representing Purchaser (if an Institution)

Title of Individual representing Purchaser (if an Institution)

Number of Shares to Be Purchased

\$ _____

Price Per Share in Dollars

\$ _____

Aggregate Price

Signature by:

Individual Purchaser or Individual representing Purchaser:

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

EXHIBIT B

For purposes of the forms of opinions set out below, the following terms shall have the following meanings:

“Basic Documents” means the Purchase Agreement.

“Company” means Acacia Research Corporation.

All other capitalized but undefined terms shall have the meanings ascribed to them in the Purchase Agreement.

-
- The Company has an authorized capitalization as set forth in the SEC Documents, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and non-assessable, conform in all material respects to the description thereof contained in the SEC Documents and were issued in compliance with federal and state securities laws and not in violation of any preemptive right, resale right, right of first refusal or similar right. All of the Company’s options have been duly authorized and validly issued, conform in all material respects to the description thereof contained in the SEC Documents and were issued in compliance with federal and state securities laws.
 - The issuance and sale of the Shares have been duly authorized on behalf of the Company. When delivered to and paid for by the Purchaser in accordance with the terms of the Purchase Agreement, the Shares will be validly issued, fully paid and nonassessable; and the issuance of the Shares will not be subject to any preemptive or similar rights under the Delaware General Corporation Law or the Company’s Amended and Restated Certificate of Incorporation or Amended and Restated By-laws.
 - Each of the Basic Documents to which the Company is a party has been duly authorized and validly executed and delivered on behalf of the Company, and is enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by (A) applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar laws from time to time in effect affecting creditors’ rights and remedies generally and by general principles of equity (regardless of whether such principles are considered in a proceeding in equity or at law) and (B) public policy, applicable law relating to fiduciary duties and indemnification and contribution and an implied covenant of good faith and fair dealing.
 - Except for the approvals required by the Commission in connection with the Company’s obligations under the Purchase Agreement (including the Registration Statement referenced therein) or otherwise obtained under the state securities laws (“blue sky” laws), or approvals required by applicable foreign securities laws or the Financial Industry Regulatory Authority, no consent, approval, authorization or order of, or filing or registration with, any court or governmental agency or body having jurisdiction over the Company or any of its properties or assets is required in connection with the execution, delivery or performance by the Company of any of the Basic Documents to which it is a party.

EXHIBIT B-1

- the Company is not an “investment company” within the meaning of the Investment Company Act of 1940, as amended.
- Assuming the accuracy of the representations and warranties of each Purchaser contained in the Purchase Agreement, the issuance and sale of the Shares pursuant to the Purchase Agreement are exempt from registration requirements of the Securities Act of 1933, as amended.
- Such counsel has participated in conferences with officers and other representatives of the Company, representatives of the Company’s independent public accountants, representatives of the Placement Agent and representatives of the Purchaser at which the contents of the Private Placement Memorandum and the documents incorporated therein and related matters were discussed and, although such counsel need not pass upon and need not assume responsibility for the accuracy, completeness or fairness of the statements contained in the Private Placement Memorandum, on the basis of the foregoing, nothing has come to the attention of such counsel that causes such counsel to believe that (i) the Private Placement Memorandum, at the Closing Date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (it being understood that such counsel need not express any opinion in this paragraph with respect to the financial statements and schedules, notes thereto and other financial data derived therefrom, included in the Private Placement Memorandum).

Form of Opinion of Stradling Yocca Carlson and Rauth

(i) The Company has been duly organized, is validly existing and in good standing as a corporation under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect. The Company has all power and authority necessary to own or hold its properties and conduct the businesses in which it is engaged.

(ii) The Company has an authorized capitalization as set forth in the SEC Documents, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and non-assessable, conform in all material respects to the description thereof contained in the SEC Documents and were issued in compliance with federal and state securities laws and not in violation of any preemptive right, resale right, right of first refusal or similar right. All of the Company’s options have been duly authorized and validly issued, conform in all material respects to the description thereof contained in the SEC Documents and were issued in compliance with federal and state securities laws.

(iii) The Shares to be issued and sold by the Company pursuant to the Purchase Agreements have been duly authorized and, upon payment and delivery in accordance with the Purchase Agreements, will be validly issued, fully paid and non-assessable and will conform in all material respects to the description thereof contained in the SEC Documents in respect of the Company’s Common Stock.

EXHIBIT B-2

(iv) There are no preemptive rights under federal law or under the Delaware General Corporation Law to subscribe for or purchase the Shares. There are no preemptive or other rights to subscribe for or to purchase, nor any restriction upon the voting or transfer of, any of the Shares pursuant to the Company's charter or by-laws (or similar organizational documents) or any agreement or other instrument known to us.

(v) The Purchase Agreements and the Letter Agreement (collectively, the "Transaction Agreements") have been duly and validly authorized, executed and delivered by the Company.

(vi) The execution, delivery and performance of the Transaction Agreements by the Company, the consummation of the transactions contemplated by the Transaction Agreements and the application of the proceeds from the sale of the Shares as described under "Use of Proceeds" in each of the Preliminary Private Placement Memorandum and the Final Private Placement Memorandum do not and will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument known to us to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject; (ii) result in any violation of the provisions of the charter or by-laws (or similar organizational documents) of the Company; or (iii) result in any violation of any statute or any rule or regulation, or any order known to us issued by any court or governmental agency or body having jurisdiction over the Company or any of its properties or assets.

(vii) Except for the registration of the Shares under the Securities Act in accordance with the registration rights under the Purchase Agreements, and such consents, approvals, authorizations, registrations or qualifications as may be required under the Exchange Act, applicable state or foreign securities laws and the Financial Industry Regulatory Authority in connection with the sale of the Shares by the Company pursuant to the Purchase Agreements, no consent, approval, authorization or order of, or filing or registration with, any court or governmental agency or body having jurisdiction over the Company or any of its properties or assets is required for the execution, delivery and performance of the Transaction Agreements by the Company and the consummation of the transactions contemplated thereby.

(viii) To our knowledge, except for the Purchase Agreements and as described in the SEC Documents, there are no contracts, agreements or understandings between the Company and any person granting such person the right (other than rights which have been waived in writing or otherwise satisfied) to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act.

(ix) To our knowledge, except as described in the SEC Documents, there are no legal or governmental proceedings pending to which the Company is a party or of which any property or assets of the Company is the subject that could reasonably be expected to have a Material

EXHIBIT B-3

Adverse Effect or could reasonably be expected to have a material adverse effect on the performance of the Transaction Agreements or the consummation of the transactions contemplated thereby; and, to our knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

(x) It is not necessary in connection with the offer, sale and delivery of the Shares under the Purchase Agreements in accordance therewith to register the Shares under the Securities Act of 1933, as amended, it being understood that no opinion is expressed as to any subsequent offer or resale of any of the Shares.

(xi) The Company is not, and after giving effect to the offer and sale of the Shares to be issued and sold by the Company pursuant to the Purchase Agreements and application of proceeds as described in "Use of Proceeds" in each of the Preliminary Private Placement Memorandum and the Final Private Placement Memorandum, will not be an "investment company" within the meaning of and subject to regulation under the Investment Company Act of 1940, as amended.

EXHIBIT B-4

SUMMARY INSTRUCTION SHEET FOR PURCHASER

(to be read in conjunction with the entire
Purchase Agreement which follows)

A. Complete the following items on BOTH Purchase Agreements (Sign two originals):

1. Signature Page:

- (i) Name of Purchaser (Individual or Institution)
- (ii) Name of Individual representing Purchaser (if an Institution)
- (iii) Title of Individual representing Purchaser (if an Institution)
- (iv) Signature of Individual Purchaser or Individual representing Purchaser

2. Appendix I - Stock Certificate or Registry Questionnaire/Registration Statement Questionnaire:

Provide the information requested by the Stock Certificate Questionnaire and the Registration Statement Questionnaire.

3. Return BOTH properly completed and signed Purchase Agreements including the properly completed Appendix I (initially by facsimile with original by overnight delivery) to:

Barclays Capital Inc.
745 Seventh Avenue, 5th Floor
New York, NY 10019
Attn: Keith Canton
Facsimile: 212-520-9328
Email: keith.canton@barclayscapital.com

B. Instructions regarding the transfer of funds for the purchase of Shares will be sent by facsimile to the Purchaser by the Placement Agent at a later date.

C. Upon the resale of the Shares by the Purchaser after the Registration Statement covering the Shares is effective, as described in the Purchase Agreement, the Purchaser must deliver a current prospectus of the Company to the buyer (prospectuses must be obtained from the Company at the Purchaser's request).

STOCK CERTIFICATE OR REGISTRY QUESTIONNAIRE

Pursuant to Section 3 of the Agreement, please provide us with the following information:

1. The exact name that your Shares are to be registered in (this is the name that will appear on your stock certificate(s), if your Shares are to be certificated, or the name in which the Shares are to be registered in the book entry registry, if your Shares are to be uncertificated). You may use a nominee name if appropriate:
2. The relationship between the Purchaser of the Shares and the Registered Holder listed in response to item 1 above:
3. The mailing address of the Registered Holder listed in response to item 1 above:
4. The Social Security Number or Tax Identification Number of the Registered Holder listed in response to item 1 above:

REGISTRATION STATEMENT QUESTIONNAIRE

In connection with the preparation of the Registration Statement, please provide us with the following information:

1. Pursuant to the "Selling Stockholder" section of the Registration Statement, please state your or your organization's name exactly as it should appear in the Registration Statement:

2. Please provide the number of shares that you or your organization will beneficially own immediately after Closing, including those Shares purchased by you or your organization pursuant to this Purchase Agreement and those shares purchased by you or your organization through other transactions and provide the number of shares that you have or your organization has the right to acquire within 60 days of Closing:

3. Have you or your organization had any position, office or other material relationship within the past three years with the Company or its affiliates?

_____ Yes _____ No

If yes, please indicate the nature of any such relationships below:

4. Are you (i) an FINRA Member (see definition), (ii) a Controlling (see definition) shareholder of an FINRA Member, (iii) a Person Associated with a Member of FINRA (see definition), or (iv) an Underwriter or a Related Person (see definition) with respect to the proposed offering; or (b) do you own any shares or other securities of any FINRA Member not purchased in the open market; or (c) have you made any outstanding subordinated loans to any FINRA Member?

Answer: ☐ Yes ☐ No If “yes,” please describe below

5. Are you a broker or a dealer or an affiliate of a broker or a dealer? See the appropriate SEC definitions of “broker,” “dealer,” and “affiliate” below.

_____ Yes _____ No

If yes, please indicate the nature of any such relationship below:

If you are an affiliate of a broker-dealer, please confirm that BOTH of the following are true:

- You purchased the shares which are covered by the Registration Statement in the ordinary course of business as an affiliate of a broker-dealer; and
- At the time you acquired the shares or other securities which are covered by the Registration Statement, you had no agreement or understanding, directly or indirectly, with any person to distribute such securities.

_____ Both are TRUE _____ Either of the above are NOT TRUE

6. Please identify the natural person or persons who have voting and/or investment control over the Company’s securities that you own, and state whether such person(s) disclaim(s) beneficial ownership of the securities. For example, if you are a general partnership, please identify the general partners in the partnership.

Affiliate. A person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under control with a broker or dealer.

Broker. Any person engaged in the business of effecting transactions in securities for the account of others.

Dealer. Any person engaged in the business of buying or selling securities for such person's own account through a broker or otherwise.

FINRA Member. The term "FINRA member" means any individual, partnership, corporation or other legal entity that is a broker or dealer admitted to membership in the Financial Industry Regulatory Authority, Inc. (FINRA Manual, By-laws Article I, Definitions)

Control. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power, either individually or with others, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. (Rule 405 under the Securities Act of 1933, as amended)

Person Associated with a Member of FINRA. The term "person associated with a member of FINRA" means every sole proprietor, partner, officer, director, branch manager or executive representative of any FINRA Member, or any natural person occupying a similar status or performing similar functions, or any natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a FINRA Member, whether or not such person is registered or exempt from registration with the Financial Industry Regulatory Authority, Inc. pursuant to its bylaws. (FINRA Manual, By-laws Article I, Definitions)

Underwriter or a Related Person. The term "underwriter or a related person" means, with respect to a proposed offering, underwriters, underwriters' counsel, financial consultants and advisors, finders, members of the selling or distribution group, and any and all other persons associated with or related to any of such persons. (FINRA Interpretation)