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

[AMENDED AND RESTATED] VOTING AGREEMENT

THIS [AMENDED AND RESTATED] VOTING AGREEMENT (this "**Agreement**") is made and entered into as of [_____], 20[___], by and among [_____], a [Delaware] corporation (the "**Company**"), each holder of the Series A Preferred Stock, $[___] par value per share, of the Company ("**Series A Preferred Stock**"), [and Series B Preferred Stock, $[___] par value per share, of the Company ("**Series B Preferred Stock**"),] (referred to herein [collectively with the Series A Preferred Stock,] as the "**Preferred Stock**") listed on Schedule A (together with any subsequent investors, or transferees, who become parties hereto as "Investors" pursuant to Sections 7.1(a) or 7.2 below, the "**Investors**"), and those certain stockholders of the Company [and holders of options to acquire shares of the capital stock of the Company] listed on Schedule B (together with any subsequent stockholders [or option holders], or any transferees, who become parties hereto as "Key Holders" pursuant to Section[s 7.1(b) or] 7.2 below, the "**Key Holders**,"[1] and together collectively with the Investors, the "**Stockholders**").

RECITALS

[*Alternative 1*:[2] A. Concurrently with the execution of this Agreement, the Company and the Investors are entering into a Series A Preferred Stock Purchase Agreement (the "**Purchase Agreement**") providing for the sale of shares of the Series A Preferred Stock, and in connection with that agreement the parties desire to provide the Investors with the right, among other rights, to designate the election of certain members of the board of directors of the Company (the "**Board**") in accordance with the terms of this Agreement.[3]]

[*Alternative 2*:[4] A. Concurrently with the execution of this Agreement, the Company and certain of the Investors are entering into a Series B Preferred Stock Purchase Agreement (the "**Purchase Agreement**") providing for the sale of shares of the Series B Preferred Stock. Certain of the Investors (the "**Existing Investors**") and the Key Holders are parties to that certain Voting Agreement dated [_____] by and among the Company and the parties thereto (the "**Prior Agreement**"). The Company, the Key Holders and the Existing Investors party to the Prior Agreement desire to amend and restate that agreement to provide those Investors purchasing shares of the Series B Preferred Stock pursuant to the Purchase Agreement with the right, among other

---

1 In most cases investors will want the term "Key Holders" to include holders of significant quantities of common stock or options in addition to the individuals who actually founded the Company.

2 The first alternative for the recital paragraph A assumes that the agreement concerns the sale of the Company's first series of preferred stock.

3 Section 706(a) of the California General Corporation Law and Section 218(c) of the Delaware General Corporation Law (the "**DGCL**") specifically allow voting agreements between stockholders, provided such agreements are in writing and signed by the parties thereto. The powers created by these sections are not limited to board matters.

4 The second alternative for recital paragraph A assumes that a preexisting voting agreement is being superseded. It contemplates two (2) or more different series of preferred stock. In the remainder of this Agreement, brackets indicate places where the drafter will have to take account of the existence of multiple series.

rights, to elect certain members of the board of directors of the Company (the "**Board**") in accordance with the terms of this Agreement.]

B. The Amended and Restated Certificate of Incorporation of the Company (as the same may be amended and/or restated from time to time, the "**Restated Certificate**") provides that (a) the holders of record of the shares of the [Series A] Preferred Stock, exclusively and as a separate class, shall be entitled to elect [___] director[s] of the Company (the "[**Series A][Preferred] Director[s]**") [and the holders of record of the shares of Series B Preferred Stock, exclusively and as a separate class, shall be entitled to elect [___] director[s] of the Company (the "**Series B Director[s]**")]; [(b) the holders of record of the shares of common stock, $[___] par value per share, of the Company ("**Common Stock**"), exclusively and as a separate class, shall be entitled to elect [__] directors of the Company (the "**Common Director[s]**");] and (c) the holders of record of the shares of Common Stock and the Preferred Stock, voting together as a single class on an as converted basis, shall be entitled to elect the balance of the total number of directors of the Company.[5]

[C. The parties also desire to enter into this Agreement to set forth their agreements and understandings with respect to how shares of the capital stock of the Company held by them will be voted on, or tendered, in connection with, an acquisition of the Company and voted on in connection with an increase in the number of shares of Common Stock required to provide for the conversion of the Preferred Stock.]

NOW, THEREFORE, [the Existing Investors hereby agree that the Prior Agreement is hereby amended and restated in its entirety by this Agreement, and] the parties [further] agree as follows:

1. Voting Provisions Regarding the Board.[6]

1.1 Shares. For purposes of this Agreement, the term "**Shares**" shall mean and include any securities of the Company that the holders of which are entitled to vote for members of the Board, including, without limitation, all shares of Common Stock and [Series A] Preferred Stock, by whatever name called, now owned or subsequently acquired by a Stockholder, however acquired, whether through stock splits, stock dividends, reclassifications, recapitalizations, similar events or otherwise.

1.2 Board Composition.[7] Each Stockholder agrees to vote, or cause to be voted, all Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that at each annual or special meeting of stockholders at which an election of directors is held or pursuant to any

[5] Appropriate modifications to this form will be required to reflect the actual series of preferred stock outstanding and the relative rights of such series.

[6] Careful consideration should be given to ensure that the voting agreement does not contradict class or series votes created by the Certificate of Incorporation. In addition, especially for California corporations, consider the effects that cumulative voting may have on the class and series votes created by the Certificate of Incorporation.

[7] Drafters should be mindful that the total number of directors will generally be determined by the Company's bylaws (which typically allow the board to establish the size of the board), as well as any protective provisions set forth in the Certificate of Incorporation regarding increasing/decreasing the board size.

written consent of the stockholders, subject to Section 5, the following persons shall be elected to the Board: [8]

(a) [As the [first Preferred][Series A] Director, one] [One] person designated from time to time by [*Name of Investor*] (the "[***Name of Investor*****] Designee**"), for so long as such Stockholder and its Affiliates (as defined below) continue to own beneficially an aggregate of at least [_____] shares of Common Stock (including shares of Common Stock issued or issuable upon conversion of the Preferred Stock), which number is subject to appropriate adjustment for any stock splits, stock dividends, combinations, recapitalizations and the like, which individual shall initially be [_____];

(b) [[As the [second Preferred][Series B] Director, one] [One] person designated from time to time by [*Name of 2d Investor*] (the "[***Name of 2d Investor*****] Designee**"), for so long as such Stockholder and its Affiliates continue to own beneficially an aggregate of at least [_____] shares of Common Stock (including shares of Common Stock issued or issuable upon conversion of the Preferred Stock), which number is subject to appropriate adjustment for any stock splits, stock dividends, combinations, recapitalizations and the like, which individual shall initially be [_____];]

(c) [As one Common Director] [*Alternative 1***:** For so long as the Key Holders [who are then providing services to the Company as officers, employees or consultants] hold an aggregate of at least [____] shares of Common Stock (subject to appropriate adjustment for any stock splits, stock dividends, combinations, recapitalizations and the like), one individual designated from time to time by the holders of a majority of the shares of Common Stock [outstanding][held by the Key Holders] [who are then providing services to the Company as officers, employees or consultants], which individual shall initially be [_____];]

[*Alternative 2***:** [*name of Key Holder*], for so long as [*name of Key Holder*] [remains an [officer] [employee] of the Company] [holds at least [_____] shares of Common Stock (subject to appropriate adjustment for any stock splits, stock dividends, combinations, recapitalizations and the like)] [holds at least [_____]% of the outstanding capital stock of the Company on an as converted basis] [, except that if [*name of Key Holder*] declines or is unable to serve, his or her successor shall be designated by [*name of alternate Key Holder*] [the holders of a majority of the shares of Common Stock outstanding]]; [9]]

(d) [As [the other] [the] Common Director] [T]he Company's Chief Executive Officer, who as of the date of this Agreement is [_____] (the "**CEO Director**"), provided that if for any reason the CEO Director shall cease to serve as the Chief Executive Officer of the Company, each of the Stockholders shall promptly vote their respective Shares (i) to remove

---

[8] The number of permutations of board composition are almost limitless. Some of the more common requirements are set forth in Section 1.2.

[9] Careful consideration should be given whenever an individual is named to serve as a director who may have the ability to continue to serve at his or her pleasure. Alternative 1 provides that a founder director shall be elected by the majority of the Key Holders' shares or the shares of common stock, depending upon which alternative is selected, but in fact the designated founder may have sufficient shares of stock to control that vote. Alternative 2 has a variety of choices: the first ties the board seat to continued status as an officer or employee, which may be within the control of the majority of the board of directors; the other alternatives tie the right to designate a director only to continued minimum holdings of stock.

the former Chief Executive Officer of the Company from the Board if such person has not resigned as a member of the Board; and (ii) to elect such person's replacement as Chief Executive Officer of the Company as the new CEO Director; and

(e) [As the Mutual Director, one] [One] individual not otherwise an Affiliate of the Company or of any Investor who is [mutually acceptable to (i) the holders of a majority of the Shares held by the Key Holders who are then providing services to the Company as officers, employees or consultants; and (ii) the holders of a majority of the Shares held by the Investors] [mutually acceptable to the other members of the Board]; and

To the extent that any of clauses (a) through [(e)] above shall not be applicable, any member of the Board who would otherwise have been designated in accordance with the terms thereof shall instead be voted upon by all the Stockholders of the Company entitled to vote thereon in accordance with, and pursuant to, the Restated Certificate.

For purposes of this Agreement, an individual, firm, corporation, partnership, association, limited liability company, trust or any other entity (collectively, a "**Person**") shall be deemed an "**Affiliate**" of another Person who, directly or indirectly, controls, is controlled by or is under common control with such Person, including, without limitation, any general partner, managing member, officer, director or trustee of such Person, or any venture capital fund or registered investment company now or hereafter existing that is controlled by one (1) or more general partners, managing members or investment advisers of, or shares the same management company or investment adviser with, such Person.

1.3 Failure to Designate a Board Member. In the absence of any designation from the Persons or groups with the right to designate a director as specified above, the director previously designated by them and then serving shall be reelected if willing to serve unless such individual has been removed as provided herein, and otherwise such Board seat shall remain vacant until otherwise filled as provided above.

1.4 Removal of Board Members.[10] Each Stockholder also agrees to vote, or cause to be voted, all Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that:

(a) no director elected pursuant to Section 1.2 of this Agreement may be removed from office [other than for cause] unless (i) such removal is directed or approved by the affirmative vote of the Person(s), or of the holders of at least [*specify percentage*] of the shares of stock, entitled under Section 1.2 to designate that director;[11] or (ii) the Person(s) originally

[10] Note the importance of following the formalities for resignations and removals of directors to ensure the valid composition of the board of directors. For example, if a director who wishes to resign simply ceases to act as a director but does not tender his resignation to the Company or is not properly removed from the board of directors, he or she will continue to be a director. Accordingly, written consents that do not include his or her signature will likely not be considered unanimous and, therefore, be ineffective. Moreover, if the director does not properly resign, a vacancy may not exist that the remaining directors are able to fill.

[11] Alternatively, the agreement can enumerate the identity of each group whose consent is necessary to remove each director, but care should be given to ensure that the consent requirements conform to the exact subsets entitled to

entitled to designate or approve such director [or occupy such Board seat] pursuant to Section 1.2 is no longer so entitled to designate or approve such director [or occupy such Board seat];

(b) any vacancies created by the resignation, removal or death of a director elected pursuant to Section 1.2 shall be filled pursuant to the provisions of this Section 1;[12] and

(c) upon the request of any party entitled to designate a director as provided in Section 1.2 to remove such director, such director shall be removed.[13]

All Stockholders agree to execute any written consents required to perform the obligations of this Section 1, and the Company agrees at the request of any Person or group entitled to designate directors to call a special meeting of stockholders for the purpose of electing directors. [So long as the stockholders of the Company are entitled to cumulative voting, if less than the entire Board is to be removed, no director may be removed without cause if the votes cast against his or her removal would be sufficient to elect such director if then cumulatively voted at an election of the entire Board.]

1.5 No Liability for Election of Recommended Directors. No Stockholder, nor any Affiliate of any Stockholder, shall have any liability as a result of designating a person for election as a director for any act or omission by such designated person in his or her capacity as a director of the Company, nor shall any Stockholder have any liability as a result of voting for any such designee in accordance with the provisions of this Agreement.

2. Vote to Increase Authorized Common Stock. Each Stockholder agrees to vote or cause to be voted all Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to increase the number of authorized shares of Common Stock from time to time to ensure that there will be sufficient shares of Common Stock available for conversion of all of the shares of Preferred Stock outstanding at any given time.

3. [Drag-Along Right.[14]

3.1 Definitions. A "**Sale of the Company**" shall mean either: (a) a transaction or series of related transactions in which a Person, or a group of related Persons, acquires from

---

designate directors, *e.g.*, "the holders of a majority of the Shares held by the Key Holders who are then providing services to the Company as officers, employees or consultants."

[12] For flexibility reasons it may be useful to permit the Board to fill the vacancy in addition to the right of the stockholders to do so. If so, the drafter should provide that the person to fill the vacancy must be approved by the Person who has the right to nominate that director pursuant to this Voting Agreement, and should take care that the provision is in accord with the Certificate of Incorporation, the bylaws and the applicable corporations code. See Section 223 of the DGCL or Section 305 of the DGCL.

[13] Note that a director who is designated by agreement of multiple parties can be removed only by the consent of each of those parties, unless this form has been revised to provide otherwise.

[14] A drag-along right gives a defined group of stockholders the right to deliver all (or most) of the shares of a Company without the need of effecting a freeze-out merger. The drafter should be mindful of the interplay between this provision and minority protections against changes in control that may be in the Certificate of Incorporation or the Investor Rights Agreement. Drag-along rights are less common than voting agreements regarding the composition of the board of directors, which are near universal. While drag-along agreements are not universal, it is arguable that

stockholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company (a "**Stock Sale**"); or (b) a transaction that qualifies as a "**Deemed Liquidation Event**" as defined in the Restated Certificate.

3.2 Actions to be Taken. In the event that (i) the holders of at least [*specify percentage*] of the shares of [Common Stock then issued or issuable upon conversion of the shares of] Preferred Stock (the "**Selling Investors**"); [(ii) the Board;][15] and [(iii) the holders of a majority of the then outstanding shares of Common Stock [(other than those issued or issuable upon conversion of the shares of [Series A] Preferred Stock)]] held by Key Holders who are then providing services to the Company as officers, employees or consultants voting as a separate class [(collectively, (i)-(ii[i]) are the "**Electing Holders**")] approve a Sale of the Company (which approval of the Electing Holders must be in writing), specifying that this Section 3 shall apply to such transaction, then, subject to satisfaction of each of the conditions set forth in Section 3.3 below, each Stockholder and the Company hereby agree:[16]

(a) if such transaction requires stockholder approval, with respect to all Shares that such Stockholder owns or over which such Stockholder otherwise exercises voting power, to vote (in person, by proxy or by action by written consent, as applicable) all Shares in favor of, and adopt, such Sale of the Company [(together with any related amendment or restatement to the Restated Certificate required to implement such Sale of the Company)] and to vote in opposition to any and all other proposals that could [reasonably be expected to] delay or impair the ability of the Company to consummate such Sale of the Company;

(b) if such transaction is a Stock Sale, to sell the same proportion of shares of capital stock of the Company beneficially held by such Stockholder as is being sold by the Selling Investors to the Person to whom the Selling Investors propose to sell their Shares, and, except as permitted in Section 3.3 below, on the same terms and conditions as the other stockholders of the Company;

(c) to execute and deliver all related documentation and take such other action in support of the Sale of the Company as shall reasonably be requested by the Company or the Selling Investors in order to carry out the terms and provision of this Section 3, including, without limitation, executing and delivering instruments of conveyance and transfer, and any

---

a drag-along with a high voting percentage trigger is in the best interests of all parties. If so structured (and note that multiple voting constituencies can be defined as appropriate, such as all preferred together and/or each separate series, or all non-investor common and/or common held by existing management and employees), the objective of the drag-along is not to grant the investors the unilateral right to force a sale, but rather to ensure that all (or most) of the Company's stockholders will approve a transaction approved by holders of a specified percentage of the Company's stockholders. The voting rights of each group of constituents can be protected, while helping to prevent dissent by minority "cat and dog" stockholders. In this connection, it is important to note that many acquirers in M&A transactions will require the seller to deliver a certain percentage of the vote (or, stated differently, seek to reduce the risk of stockholders exercising appraisal rights). If such a "housekeeping" drag-along is included in the Voting Agreement, the Company should include similar provisions, and a waiver of dissenter's rights, in its form of employee option agreements.

[15] See footnote 55 (Addendum) for a discussion of why the drafters might elect not to include the board of directors as one of the parties necessary to trigger the drag-along, in light of the *Trados* decision.

[16] Careful attention should be paid to the drafting as to what comprises the votes necessary to trigger the drag, including ensuring they do not conflict with the protective provisions, etc.

purchase agreement, merger agreement, any associated indemnity agreement, or escrow agreement, any associated voting, support, or joinder agreement, consent, waiver, governmental filing, share certificates duly endorsed for transfer (free and clear of impermissible liens, claims and encumbrances), and any similar or related documents;

(d) not to deposit, and to cause their Affiliates not to deposit, except as provided in this Agreement, any Shares of the Company owned by such party or Affiliate in a voting trust or subject any Shares to any arrangement or agreement with respect to the voting of such Shares, unless specifically requested to do so by the acquirer in connection with the Sale of the Company;

(e) to refrain from (i) exercising any dissenters' rights or rights of appraisal under applicable law at any time with respect to such Sale of the Company[17], or [(ii); asserting any claim or commencing any suit [(x)] challenging the Sale of the Company or this Agreement, or [(y) alleging a breach of any fiduciary duty of the Selling Investors or any affiliate or associate thereof (including, without limitation, aiding and abetting breach of fiduciary duty) in connection with the evaluation, negotiation or entry into the Sale of the Company, or] the consummation of the transactions contemplated thereby;][18]

(f) if the consideration to be paid in exchange for the Shares pursuant to this Section 3 includes any securities and due receipt thereof by any Stockholder would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities; or (y) the provision to any Stockholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act of 1933, as amended (the "**Securities Act**"), the Company may cause to be paid to any such Stockholder in lieu thereof, against surrender of the Shares which would have otherwise been sold by such Stockholder, an amount in cash equal to the fair value (as determined in good

---

[17] An express waiver of appraisal rights is particularly important in light of the Delaware Chancery Court's ruling in *Riverstone National Inc. v. Caplan et. al, Case No. C.A. 9796-NVCG (Del Ch. Feb. 26, 2015)*. In *Riverstone*, a corporation's ninety-one percent (91%) controlling stockholder approved a merger of the corporation by written consent. When a group of minority stockholders sought statutory appraisal rights, the controlling stockholder purported to exercise drag-along rights contained in a stockholders agreement signed by the minority stockholders that contained an agreement to vote their shares in favor of the merger, but not an express waiver of appraisal rights. The Court ruled that because the drag-along in question was limited to a voting agreement (which if enforced would have resulted in a waiver of appraisal rights), the drag-along was only operative and enforceable prior to the merger's becoming effective. Once the merger was effective, the voting agreement had terminated; the minority stockholders who had not voted in favor of the merger were no longer obligated to vote and thus could exercise their appraisal rights. Importantly, the Court did not decide whether common stockholders can waive statutory appraisal rights in advance through a contractual drag-along provision, so the efficacy of this provision is not certain. Including it, however, provides an argument that appraisal rights have been extinguished even if the drag-along and related voting agreement are not implemented in connection with a merger.

[18] Even if appraisal rights are waived, common and subordinate preferred stockholders are increasingly filing breach of fiduciary duty claims seeking quasi-appraisal – *i.e.*, damages that mirror the recovery available in an appraisal suit – in transactions subject to drag-along provisions where the junior preferred or common shareholders are to receive no consideration for their shares. Because the directors are often representatives of the senior preferred holders, these suits are difficult to dismiss at an early stage. Accordingly, consideration should be given to expanding the agreement to include an agreement not to file appraisal actions to cover breach of fiduciary suits in transactions subject to the drag along.

faith by the Board) of the securities which such Stockholder would otherwise receive as of the date of the issuance of such securities in exchange for the Shares; and

(g) in the event that the Selling Investors, in connection with such Sale of the Company, appoint a stockholder representative (the "**Stockholder Representative**") with respect to matters affecting the Stockholders under the applicable definitive transaction agreements following consummation of such Sale of the Company, (x) to consent to (i) the appointment of such Stockholder Representative, (ii) the establishment of any applicable escrow, expense or similar fund in connection with any indemnification or similar obligations, and (iii) the payment of such Stockholder's pro rata portion (from the applicable escrow or expense fund or otherwise) of any and all reasonable fees and expenses to such Stockholder Representative in connection with such Stockholder Representative's services and duties in connection with such Sale of the Company and its related service as the representative of the Stockholders, and (y) not to assert any claim or commence any suit against the Stockholder Representative or any other Stockholder with respect to any action or inaction taken or failed to be taken by the Stockholder Representative, within the scope of the Stockholder Representative's authority, in connection with its service as the Stockholder Representative, absent fraud, bad faith, [gross negligence] or willful misconduct.

3.3 Conditions.[19] Notwithstanding anything to the contrary set forth herein, a Stockholder will not be required to comply with Section 3.2 above in connection with any proposed Sale of the Company (the "**Proposed Sale**"), unless:

(a) any representations and warranties to be made by such Stockholder in connection with the Proposed Sale are limited to representations and warranties related to authority, ownership and the ability to convey title to such Shares, including, but not limited to, representations and warranties that (i) the Stockholder holds all right, title and interest in and to the Shares such Stockholder purports to hold, free and clear of all liens and encumbrances, (ii) the obligations of the Stockholder in connection with the transaction have been duly authorized, if applicable, (iii) the documents to be entered into by the Stockholder have been duly executed by the Stockholder and delivered to the acquirer and are enforceable (subject to customary limitations) against the Stockholder in accordance with their respective terms; and (iv) neither the execution and delivery of documents to be entered into by the Stockholder in connection with the transaction, nor the performance of the Stockholder's obligations thereunder, will cause a breach or violation of the terms of any agreement to which the Stockholder is a party, or any law or judgment, order or decree of any court or governmental agency that applies to the Stockholder;

(b) such Stockholder is not required to agree (unless such Stockholder is a Company officer or employee) to any restrictive covenant in connection with the Proposed Sale (including, without limitation, any covenant not to compete or covenant not to solicit customers, employees or suppliers of any party to the Proposed Sale) or any release of claims other

[19] Drafter should assess and make determination as to whether any or all of the listed conditions are appropriate for the relevant transaction. Additional possible conditions that investors might consider include: the liquidity of the consideration payable to security holders in a Proposed Sale; the ability of the parties in the Proposed Sale to change the material terms, including the drag along conditions, after the security holders have approved the Proposed Sale Agreement; the scope of the Stockholder Representative's authority to bind the security holders to liabilities beyond the escrow; and the extent that security holders could be responsible for out of pocket expenses in the Proposed Sale.

than a release in customary form of claims arising solely in such Stockholder's capacity as a stockholder of the Company;

(c) such Stockholder and its Affiliates are not required to amend, extend or terminate any contractual or other relationship with the Company, the acquirer or their respective Affiliates, except that the Stockholder may be required to agree to terminate the investment-related documents between or among such Stockholder, the Company and/or other stockholders of the Company;

(d) the Stockholder is not liable for the breach of any representation, warranty or covenant made by any other Person in connection with the Proposed Sale, other than the Company [(except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any stockholder of any of identical representations, warranties and covenants provided by all stockholders)];

(e) liability shall be limited to such Stockholder's applicable share (determined based on the respective proceeds payable to each Stockholder in connection with such Proposed Sale in accordance with the provisions of the Restated Certificate) of a negotiated aggregate indemnification amount that applies equally to all Stockholders but that in no event exceeds the amount of consideration otherwise payable to such Stockholder in connection with such Proposed Sale, except with respect to claims related to fraud by such Stockholder, the liability for which need not be limited as to such Stockholder;

(f) upon the consummation of the Proposed Sale (i) each holder of each class or series of the capital stock of the Company will receive the same form of consideration for their shares of such class or series as is received by other holders in respect of their shares of such same class or series of stock, [and if any holders of any capital stock of the Company are given a choice as to the form of consideration to be received as a result of the Proposed Sale, all holders of such capital stock will be given the same option,][20] (ii) each holder of a series of Preferred Stock will receive the same amount of consideration per share of such series of Preferred Stock as is received by other holders in respect of their shares of such same series, (iii) each holder of Common Stock will receive the same amount of consideration per share of Common Stock as is received by other holders in respect of their shares of Common Stock, and (iv) unless waived pursuant to the terms of the Restated Certificate and as may be required by law, the aggregate consideration receivable by all holders of the Preferred Stock and Common Stock shall be allocated among the holders of Preferred Stock and Common Stock on the basis of the relative liquidation preferences to which the holders of each respective series of Preferred Stock and the holders of Common Stock are entitled in a Deemed Liquidation Event (assuming for this purpose that the Proposed Sale is a Deemed Liquidation Event) in accordance with the Company's Restated Certificate in effect immediately prior to the Proposed Sale; provided, however, that, notwithstanding the foregoing provisions of this Section 3.3(e), if the consideration to be paid in exchange for the Shares held by the Key Holder or Investor, as applicable, pursuant to this Section 3.3(e) includes any securities and due receipt thereof by any Key Holder or Investor would require under applicable law (x) the registration or qualification of such securities or of any person as a

[20] This bracketed material is an alternative to 3.3(g).

broker or dealer or agent with respect to such securities; or (y) the provision to any Key Holder or Investor of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the Company may cause to be paid to any such Key Holder or Investor in lieu thereof, against surrender of the Shares held by the Key Holder or Investor, as applicable, which would have otherwise been sold by such Key Holder or Investor, an amount in cash equal to the fair value (as determined in good faith by the Board) of the securities which such Key Holder or Investor would otherwise receive as of the date of the issuance of such securities in exchange for the Shares held by the Key Holder or Investor, as applicable;

(g) [subject to clause (f) above, requiring the same form of consideration to be available to the holders of any single class or series of capital stock, if any holders of any capital stock of the Company are given an option as to the form and amount of consideration to be received as a result of the Proposed Sale, all holders of such capital stock will be given the same option; provided, however, that nothing in this Section 3.3(g) shall entitle any holder to receive any form of consideration that such holder would be ineligible to receive as a result of such holder's failure to satisfy any condition, requirement or limitation that is generally applicable to the Company's stockholders.]

3.4 Restrictions on Sales of Control of the Company.[21] No Stockholder shall be a party to any Stock Sale unless (a) all holders of Preferred Stock are allowed to participate in such transaction(s) and (b) the consideration received pursuant to such transaction is allocated among the parties thereto in the manner specified in the Company's Restated Certificate in effect immediately prior to the Stock Sale (as if such transaction(s) were a Deemed Liquidation Event), unless the holders of at least the requisite percentage required to waive treatment of the transaction(s) as a Deemed Liquidation Event pursuant to the terms of the Restated Certificate, elect to allocate the consideration differently by written notice given to the Company at least [__] days prior to the effective date of any such transaction or series of related transactions.]

[See ADDENDUM at end of this document with alternative "Sale Rights" provisions.][22]

4. Remedies.

4.1 Covenants of the Company. The Company agrees to use its best efforts, within the requirements of applicable law, to ensure that the rights granted under this Agreement are effective and that the parties enjoy the benefits of this Agreement. Such actions include,

---

[21] The reason for this provision is that the Deemed Liquidation Event provisions of the Certificate of Incorporation cannot completely provide for the allocation of the purchase price paid in a sale of the Company if the sale is structured as a sale of stock by the Company's stockholders. This is because the Company may not be a party to the stock sale transaction and will not have the opportunity to ensure that the purchase price is allocated as dictated in the Certificate of Incorporation. This covenant is intended to prevent a group of controlling stockholders from circumventing the liquidation preference provision by structuring the sale as a stock sale if those stockholders do not otherwise have sufficient voting power to amend the definition of a Deemed Liquidation Event. Co-sale provisions do not provide adequate protection for such a scenario either because (a) the co-sale right does not apply to the holders of preferred stock; or (b) if co-sale rights do apply, the preferred stockholders exercising those rights might receive the same purchase price for their preferred stock as the selling common stockholders receive for this common stock, thereby losing the benefits of their liquidation preferences.

[22] See footnote 55 (Addendum).

without limitation, the use of the Company's best efforts to cause the nomination and election of the directors as provided in this Agreement.

4.2 [Irrevocable Proxy and Power of Attorney. Each party to this Agreement hereby constitutes and appoints as the proxies of the party and hereby grants a power of attorney to the [President of the Company], and a designee of the Selling Investors, and each of them, with full power of substitution, with respect to the matters set forth herein, including, without limitation, votes regarding the size and composition of the Board pursuant to Section 1, votes to increase authorized shares pursuant to Section 2 hereof and votes regarding any Sale of the Company pursuant to Section 3 hereof, and hereby authorizes each of them to represent and vote, if and only if the party (i) fails to vote, or (ii) attempts to vote (whether by proxy, in person or by written consent), in a manner which is inconsistent with the terms of this Agreement, all of such party's Shares in favor of the election of persons as members of the Board determined pursuant to and in accordance with the terms and provisions of this Agreement or the increase of authorized shares or approval of any Sale of the Company pursuant to and in accordance with the terms and provisions of this Agreement or to take any action reasonably necessary to effect this Agreement. The power of attorney granted hereunder shall authorize [the President of the Company] to execute and deliver the documentation referred to in Section 3.2(c) on behalf of any party failing to do so within five (5) business days of a request by the Company. Each of the proxy and power of attorney granted pursuant to this Section 4.2 is given in consideration of the agreements and covenants of the Company and the parties in connection with the transactions contemplated by this Agreement and, as such, each is coupled with an interest and shall be irrevocable unless and until this Agreement terminates or expires pursuant to Section 6 hereof. Each party hereto hereby revokes any and all previous proxies or powers of attorney with respect to the Shares and shall not hereafter, unless and until this Agreement terminates or expires pursuant to Section 6 hereof, purport to grant any other proxy or power of attorney with respect to any of the Shares, deposit any of the Shares into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of the Shares, in each case, with respect to any of the matters set forth herein.][23]

4.3 Specific Enforcement. Each party acknowledges and agrees that each party hereto will be irreparably damaged in the event any of the provisions of this Agreement are not performed by the parties in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that each of the Company and the Stockholders shall be entitled to an

[23] The proxy is intended to give the holder of voting rights a tool to force other stockholders to abide by the terms of this Agreement, even if the other stockholders do not agree or refuse to take the action the holder requires. The Delaware Chancery Court's ruling in *Riverstone* reinforces the importance of having a proxy to vote all shares of the corporation that are not voluntarily voted in favor of a merger so as to extinguish appraisal rights as a matter of law. To achieve that result, however, the proxy must actually be used to vote, at a stockholders meeting or by written consent, all shares in favor of the merger that are not voluntarily voted in favor. Attempts to do so after approval or consummation of a merger will likely be ineffective under *Riverstone*. Note, however, that many stockholders will not give up the right to determine if the actions sought to be taken by the holder of voting rights comport with the terms of this Agreement. There may be a difference of opinion, for example, as to whether a proposed sale of the Company meets all conditions sufficient to fall with the definition of that term. Some practitioners believe the proxy would be unlikely to be used in situations when there is a dispute as to which actions are required, and that any exercise of the proxy could be hazardous to the holder of the right at that time. Accordingly, the proxy may not be very useful in the very situations when it might be invoked.

injunction to prevent breaches of this Agreement, and to specific enforcement of this Agreement and its terms and provisions in any action instituted in any court of the United States or any state having subject matter jurisdiction.

4.4 Remedies Cumulative. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

5. "Bad Actor" Matters.[24]

5.1 Definitions. For purposes of this Agreement:

(a) "**Company Covered Person**" means, with respect to the Company as an "issuer" for purposes of Rule 506 promulgated under the Securities Act, any Person listed in the first paragraph of Rule 506(d)(1).

(b) "**Disqualified Designee**" means any director designee to whom any Disqualification Event is applicable, except for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable.

(c) "**Disqualification Event**" means a "bad actor" disqualifying event described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act.

(d) "**Rule 506(d) Related Party**" means, with respect to any Person, any other Person that is a beneficial owner of such first Person's securities for purposes of Rule 506(d) under the Securities Act.

5.2 Representations.

(a) Each Person with the right to designate or participate in the designation of a director pursuant to this Agreement hereby represents that (i) such Person has exercised reasonable care to determine whether any Disqualification Event is applicable to such Person, any director designee designated by such Person pursuant to this Agreement or any of such Person's Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable and (ii) no Disqualification Event is applicable to such Person, any Board member designated by such Person pursuant to this Agreement or any of such Person's Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable.[25] Notwithstanding anything to the contrary in this Agreement, each Investor makes no representation regarding any Person that may be deemed to be a beneficial owner of the Company's voting equity securities held by such Investor

[24] This provision is intended to permit issuers to conduct Rule 506 offerings based on the assumption that their stockholders are not "bad actors." The rule does not preclude selling securities to bad actors and, therefore, this representation is not strictly necessary for purposes of the transaction in which an investor becomes a party to this Agreement. However, by determining in advance whether an investor is a bad actor issuers can avoid being precluded from relying on Rule 506 for future offerings or future sales in the same offering if the investor is or becomes a twenty percent (20%) beneficial owner of the issuer's voting securities.

[25] Although Rule 506(d) does not disqualify issuers for "bad acts" occurring prior to September 23, 2013, this representation addresses "bad acts" both before and after that date. If disclosure of a "bad act" by an investor prior to September 23, 2013 is required, this representation can be modified accordingly.

solely by virtue of that Person being or becoming a party to (x) this Agreement, as may be subsequently amended, or (y) any other contract or written agreement to which the Company and such Investor are parties regarding (1) the voting power, which includes the power to vote or to direct the voting of, such security; and/or (2) the investment power, which includes the power to dispose, or to direct the disposition of, such security.

(b) The Company hereby represents and warrants to the Investors that no Disqualification Event is applicable to the Company or, to the Company's knowledge, any Company Covered Person, except for a Disqualification Event as to which Rule 506(d)(2)(ii)-(iv) or (d)(3) is applicable.

5.3 Covenants. Each Person with the right to designate or participate in the designation of a director pursuant to this Agreement covenants and agrees (i) not to designate or participate in the designation of any director designee who, to such Person's knowledge, is a Disqualified Designee, (ii) to exercise reasonable care to determine whether any director designee designated by such person is a Disqualified Designee, (iii) that in the event such Person becomes aware that any individual previously designated by any such Person is or has become a Disqualified Designee, such Person shall as promptly as practicable take such actions as are necessary to remove such Disqualified Designee from the Board and designate a replacement designee who is not a Disqualified Designee, and (iv) to notify the Company promptly in writing in the event a Disqualification Event becomes applicable to such Person or any of its Rule 506(d) Related Parties, or, to such Person's knowledge, to such Person's initial designee named in Section 1, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. [26]

6. Term. This Agreement shall be effective as of the date hereof and shall continue in effect until and shall terminate upon the earliest to occur of (a) the consummation of the Company's first underwritten public offering of its Common Stock[27] (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to its stock option, stock purchase or similar plan or an SEC Rule 145 transaction); (b) the consummation of a Sale of the Company and distribution of proceeds to or escrow for the benefit of the Stockholders in accordance with the Restated Certificate, provided that the provisions of Section 3 hereof will continue after the closing of any Sale of the Company to the extent necessary to enforce the

[26] The intent of this covenant is to reduce the burden on issuers in ascertaining the "bad actor" status of its stockholders for Rule 506 offerings. A Compliance and Disclosure Interpretation promulgated by the Securities and Exchange Commission (Question 260.14) states that, "[a]n issuer may reasonably rely on a covered person's agreement to provide notice of a potential or actual bad actor triggering event. . . ." It also notes, however, that if an offering is continuous, delayed or long-lived, the issuer must update its inquiry through bring-down representations, negative consent letters or other reasonable means.

[27] Some voting agreements require a "qualified public offering" for the termination of the agreement. The blocking rights contained in the Certificate of Incorporation, however, should provide sufficient protection to the investors. Retaining a "qualified public offering" requirement in the voting agreement creates possible blocking rights for individual investors not contemplated by the Certificate of Incorporation, and in any event gives rise to the need to obtain additional waivers and consents when one should be sufficient. The termination provision should conform to that in the Right of First Refusal and Co-sale Agreement and the Investors' Rights Agreement (other than the registration rights termination provision).

provisions of Section 3 with respect to such Sale of the Company; (c) termination of this Agreement in accordance with Section 7.8 below[; and (d) _____ __, 20__].

7. Miscellaneous.

7.1 Additional Parties.

(a) Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of Preferred Stock after the date hereof, as a condition to the issuance of such shares the Company shall require that any purchaser of such shares become a party to this Agreement by executing and delivering (i) the Adoption Agreement attached to this Agreement as Exhibit A, or (ii) a counterpart signature page hereto agreeing to be bound by and subject to the terms of this Agreement as an Investor and Stockholder hereunder. In either event, each such person shall thereafter be deemed an Investor and Stockholder for all purposes under this Agreement.

(b) [In the event that after the date of this Agreement, the Company enters into an agreement with any Person to issue shares of capital stock to such Person (other than to a purchaser of Preferred Stock described in Section 7.1(a) above), [following which such Person shall hold Shares constituting one percent (1%) or more of the then outstanding capital stock of the Company (treating for this purpose all shares of Common Stock issuable upon exercise of or conversion of outstanding options, warrants or convertible securities, as if exercised and/or converted or exchanged)], then, the Company shall cause such Person, as a condition precedent to entering into such agreement, to become a party to this Agreement by executing an Adoption Agreement in the form attached hereto as Exhibit A, agreeing to be bound by and subject to the terms of this Agreement as a [Key Holder and] Stockholder and thereafter such person shall be deemed a Stockholder for all purposes under this Agreement.] [28]

7.2 Transfers. Each transferee or assignee of any Shares subject to this Agreement shall continue to be subject to the terms hereof, and, as a condition precedent to the Company's recognition of such transfer, each transferee or assignee shall agree in writing to be subject to each of the terms of this Agreement by executing and delivering an Adoption Agreement substantially in the form attached hereto as Exhibit A. Upon the execution and delivery of an Adoption Agreement by any transferee, such transferee shall be deemed to be a party hereto as if such transferee were the transferor and such transferee's signature appeared on the signature pages of this Agreement and shall be deemed to be an Investor and Stockholder, or Key Holder and Stockholder, as applicable. The Company shall not permit the transfer of the Shares subject to this Agreement on its books or issue a new certificate representing any such Shares unless and until such transferee shall have complied with the terms of this Section 7.2. Each certificate instrument, or book entry representing the Shares subject to this Agreement if issued on or after the date of this Agreement shall be notated by the Company with the legend set forth in Section 7.12.

7.3 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the

[28] This requirement cannot apply to any shares issued to an employee to which California Department of Corporations rules 260.140.41(l) or 260.140.42(i) apply. Voting rights must be unrestricted.

parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

7.4 Governing Law.[29] This Agreement shall be governed by the internal law of the [State of Delaware],[30] without regard to conflict of law principles that would result in the application of any law other than the law of the [State of Delaware].

7.5 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

7.6 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

7.7 Notices.

(a) General. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on Schedule A or Schedule B hereto, or (as to the Company) to the principal office of the Company and to the attention of the Chief Executive Officer, or, in any case, to such e-mail address or address as subsequently modified by written notice given in accordance with this Section 7.7. If notice is given to the Company, a copy (which copy shall not constitute notice) shall also be sent to [*Company Counsel Name and Address*] and if notice is given to Stockholders, a copy (which copy shall not constitute notice) shall also be given to [*Investor Counsel Name and Address*].[31]

(b) Consent to Electronic Notice. Each Investor and Key Holder consents to the delivery of any stockholder notice pursuant to the Delaware General Corporation Law (the "**DGCL**"), as amended or superseded from time to time, by electronic transmission pursuant to Section 232 of the DGCL (or any successor thereto) at the electronic mail address set forth below such Investor's or Key Holder's name on the Schedules hereto, as updated from time

[29] After choosing the applicable law, the parties should determine whether such law imposes any particular requirements, such as special legends or other notices, in order to make restrictions on transfer of shares effective.

[30] Some practitioners may select Delaware law as it has historically been the richest source for corporation law precedent. Other practitioners will prefer to choose the (non-Delaware) jurisdiction in which they are admitted to practice, if for no other reason than not having to retain Delaware counsel in the event they are called upon to give an enforceability opinion.

[31] Consider moving the counsel cc address to the schedules for investors, since often more than one.

to time by notice to the Company, or as on the books of the Company. To the extent that any notice given by means of electronic transmission is returned or undeliverable for any reason, the foregoing consent shall be deemed to have been revoked until a new or corrected electronic mail address has been provided, and such attempted electronic notice shall be ineffective and deemed to not have been given. Each Investor and Key Holder agrees to promptly notify the Company of any change in its electronic mail address, and that failure to do so shall not affect the foregoing.

7.8 Consent Required to Amend, Modify, Terminate or Waive.[32] This Agreement may be amended, modified or terminated (other than pursuant to Section 6) and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by (a) the Company; (b) the Key Holders holding [*specify percentage*] of the Shares then held by the Key Holders [provided that such consent shall not be required if the Key Holders do not then own Shares representing at least [__]% of the outstanding capital stock of the Company] [who are then providing services to the Company as officers, employees or consultants]; and (c) the holders of [*specify percentage*] of the shares of Common Stock issued or issuable upon conversion of the shares of Preferred Stock held by the Investors (voting together as a single class). Notwithstanding the foregoing:

(a) this Agreement may not be amended, modified or terminated and the observance of any term of this Agreement may not be waived with respect to any Investor or Key Holder without the written consent of such Investor or Key Holder unless such amendment, modification, termination or waiver applies to all Investors or Key Holders, as the case may be, in the same fashion;

(b) the provisions of Section 1.2(a) and this Section 7.8(b) may not be amended, modified, terminated or waived without the written consent of [*Name of Investor 1*];

(c) the provisions of Section 1.2(b) and this Section 7.8(c) may not be amended, modified, terminated or waived without the written consent of [*Name of Investor 2*];

(d) the provisions of Section 1.2(c) and this Section 7.8(d) may not be amended, modified, terminated or waived without the written consent of [the Key Holders][the Key Holders who are at such time providing services to the Company as an officer, employee or consultant][the holders of [*specify percentage*] of shares of Common Stock];

(e) the consent of the Key Holders shall not be required for any amendment, modification, termination or waiver if such amendment, modification, termination, or waiver either (A) is not directly applicable to the rights of the Key Holders hereunder; or (B) does not adversely affect the rights of the Key Holders in a manner that is different than the effect on the rights of the other parties hereto;

(f) [Schedule A hereto may be amended by the Company from time to time in accordance with the Purchase Agreement to add information regarding additional

[32] To the extent there are rights of individual parties to designate directors, care should be taken to ensure that the amendment section requires the vote of such party to amend the relevant sections of the document.

Purchasers (as defined in the Purchase Agreement) without the consent of the other parties hereto]; and

(g) any provision hereof may be waived by the waiving party on such party's own behalf, without the consent of any other party.

The Company shall give prompt written notice of any amendment, modification, termination, or waiver hereunder to any party that did not consent in writing thereto. Any amendment, modification, termination, or waiver effected in accordance with this Section 7.8 shall be binding on each party and all of such party's successors and permitted assigns, whether or not any such party, successor or assignee entered into or approved such amendment, modification, termination or waiver. For purposes of this Section 7.8, the requirement of a written instrument may be satisfied in the form of an action by written consent of the Stockholders circulated by the Company and executed by the Stockholder parties specified, whether or not such action by written consent makes explicit reference to the terms of this Agreement.

7.9 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default previously or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

7.10 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

7.11 Entire Agreement. [Upon the effectiveness of this Agreement, the Prior Agreement shall be deemed amended and restated to read in its entirety as set forth in this Agreement.][33] This Agreement (including the Exhibits hereto), [and] the Restated Certificate [and the other Transaction Agreements (as defined in the Purchase Agreement)] constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

7.12 Share Certificate Legend. Each certificate, instrument, or book entry representing any Shares issued after the date hereof shall be notated by the Company with a legend reading substantially as follows:

"THE SHARES REPRESENTED HEREBY ARE SUBJECT TO A VOTING AGREEMENT, AS MAY BE AMENDED FROM TIME TO TIME (A COPY OF

[33] The drafter should ensure that the relevant signatories to the current agreement have authority to terminate the prior agreement under the terms of the latter.

WHICH MAY BE OBTAINED UPON WRITTEN REQUEST FROM THE COMPANY), AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON ACCEPTING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF THAT VOTING AGREEMENT, INCLUDING CERTAIN RESTRICTIONS ON TRANSFER AND OWNERSHIP SET FORTH THEREIN."

The Company, by its execution of this Agreement, agrees that it will cause the certificates, instruments, or book entry evidencing the Shares issued after the date hereof to be notated with the legend required by this Section 7.12 of this Agreement, and it shall supply, free of charge, a copy of this Agreement to any holder of such Shares upon written request from such holder to the Company at its principal office. The parties to this Agreement do hereby agree that the failure to cause the certificates, instruments, or book entry evidencing the Shares to be notated with the legend required by this Section 7.12 herein and/or the failure of the Company to supply, free of charge, a copy of this Agreement as provided hereunder shall not affect the validity or enforcement of this Agreement.

7.13 Stock Splits, Dividends and Recapitalizations. In the event of any issuance of Shares or the voting securities of the Company hereafter to any of the Stockholders (including, without limitation, in connection with any stock split, stock dividend, recapitalization, reorganization, or the like), such Shares shall become subject to this Agreement and shall be notated with the legend set forth in Section 7.12.

7.14 Manner of Voting. The voting of Shares pursuant to this Agreement may be effected in person, by proxy, by written consent or in any other manner permitted by applicable law. For the avoidance of doubt, voting of the Shares pursuant to the Agreement need not make explicit reference to the terms of this Agreement.

7.15 Further Assurances. At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as the other party may reasonably request in order to carry out the intent of the parties hereunder.

7.16 Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of [*state*] and to the jurisdiction of the United States District Court for the District of [*judicial district*] for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of [*state*] or the United States District Court for the District of [*judicial district*], and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

[WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS

AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.]

[*Alternative 1*[34]: Any unresolved controversy or claim arising out of or relating to this Agreement, except as (i) otherwise provided in this Agreement, or (ii) any such controversies or claims arising out of either party's intellectual property rights for which a provisional remedy or equitable relief is sought, shall be submitted to arbitration by one (1) arbitrator mutually agreed upon by the parties, and if no agreement can be reached within thirty (30) days after names of potential arbitrators have been proposed by the American Arbitration Association (the "**AAA**"), then by one (1) arbitrator having reasonable experience in corporate finance transactions of the type provided for in this Agreement and who is chosen by the AAA. The arbitration shall take place in [*location*], in accordance with the AAA rules then in effect, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof. There shall be limited discovery prior to the arbitration hearing as follows: (a) exchange of witness lists and copies of documentary evidence and documents relating to or arising out of the issues to be arbitrated, (b) depositions of all party witnesses and (c) such other depositions as may be allowed by the arbitrator upon a showing of good cause. Depositions shall be conducted in accordance with the [*state*] Code of Civil Procedure, the arbitrator shall be required to provide in writing to the parties the basis for the award or order of such arbitrator, and a court reporter shall record all hearings, with such record constituting the official transcript of such proceedings.

[Each party will bear its own costs in respect of any disputes arising under this Agreement.] [The prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.] Each of the parties to this Agreement consents to personal jurisdiction for any equitable action sought in the U.S. District Court for the District of [_____] or any court of the [State][Commonwealth] of [s*tate*] having subject matter jurisdiction.]

[*Alternative 2*:[35]

---

[34] Some lawyers prefer to include a binding arbitration provision as the sole means of dispute resolution on the theory that arbitration is confidential and may be less expensive and more efficient. Some investors, however, dislike arbitration because the result cannot be appealed and the arbitrator is not bound to follow case law and precedent.

[35] This arbitration provision is offered as an alternative to the AAA provision for parties that would prefer to resolve disputes under the Delaware Rapid Arbitration Act ("**DRAA**"). The DRAA implements a number of new approaches in arbitration that make the statute unique among national and international arbitration regimes. First, the DRAA provides for a truncated "summary" proceeding before the Delaware Court of Chancery to select an arbitrator where such selection was not made in the agreement to arbitrate. By statute, this proceeding must be concluded no more than

(a) The parties hereto agree that any dispute or controversy arising out of, relating to, or in connection with this Agreement or the transactions contemplated hereby (a "**Dispute**") shall be arbitrated pursuant to the Delaware Rapid Arbitration Act, 10 Del. C § 5801, et seq. (the "**DRAA**"). The parties agree to take all steps necessary or advisable to submit any Dispute that cannot be resolved by the parties for arbitration under the DRAA (the "**Arbitration**") in accordance with this Section 7.16, and each party represents and warrants that it is not a "consumer" as such term is defined in 6 Del. C. § 2731. By executing this Agreement, (i) each party waives, and acknowledges and agrees that it shall be deemed to have waived, any objection to the application of the procedures set forth in the DRAA, (ii) consents to the procedures set forth in the DRAA, and (iii) acknowledges and agrees that it has chosen freely to waive the matters set forth in Sections (b) and (c) of Section 5803 of the DRAA. In connection therewith, each party agrees that it will raise no objection to the submission of the Dispute to Arbitration in accordance with this Section 7.16 and understands that it waives any right to lay claim to jurisdiction in any venue and any and all rights to have the Dispute decided by a jury.

(b) The Arbitration shall be conducted in accordance with the Delaware Rapid Arbitration Rules (the "**Rules**"), as such Rules may be amended or changed from time to time; provided that the parties may agree to depart from the Rules by (i) adopting new or different rules to govern the Arbitration or (ii) modifying or rejecting the application of certain of the Rules.[36] To be effective, any departure from the Rules shall require the consent of the Arbitrator (as defined below) and shall be in writing and signed by an authorized representative of each such party.

(c) The Arbitration shall take place in Wilmington, Delaware, or such other location as the parties and the Arbitrator may agree.[37]

(d) The Arbitration shall be presided over by one (1) arbitrator (the "**Arbitrator**") who shall be [*insert name of person*]. In the event that [*named person*] fails to accept appointment as Arbitrator for any reason within five (5) days of being notified of such

---

thirty (30) days after its initial filing is served, and the jurisdiction of the Court is highly limited. Second, the DRAA divests the courts of jurisdiction to hear and decide any issue concerning arbitrability or the scope of issues to be arbitrated. Instead, the DRAA vests the arbitrator, and only the arbitrator, with the power and authority to decide such issues. Thus, the body of law relating to whether an issue presented at the outset is "substantive" or "procedural" does not apply to arbitrations under the DRAA, and neither party can seek to disrupt the commencement of a DRAA arbitration by running into court. Third, the DRAA vests the arbitrator with power to enjoin any conduct of a party to the arbitration and divests the courts of power in this regard after an arbitrator is appointed, thus avoiding the need for parallel proceedings to compel or enjoin arbitration. Finally, the DRAA provides that, absent an agreement otherwise, all matters must be finally determined within one hundred twenty (120) days of the arbitrator's acceptance of appointment (which deadline may be extended to one hundred eighty (180) days, but no longer, by unanimous consent of the parties). Furthermore, the DRAA imposes a financial penalty on an arbitrator who does not decide the matter within the allotted timeframe: the forfeiture of the arbitrator's fees. The DRAA makes challenges to the arbitrator's final award available directly to the Delaware Supreme Court in accordance with the limited standards set forth in the Federal Arbitration Act, eliminating any intermediate level of review. The DRAA also provides that the parties may waive any right to challenge or appeal the arbitrator's final award by agreement or, where the parties wish to maintain confidentiality or allow more searching review, they may proceed with an arbitral appeal.

[36] The parties may elect to use different rules. If different rules are desired, they should be set forth or incorporated by reference into this Section (b).

[37] The parties may elect to hold the arbitration in a different location. Note, however, that the "seat" of the arbitration is, by statute, in Delaware. This simply means that Delaware law governs the arbitration, wherever it occurs.

person's appointment or otherwise becomes unwilling or unable to serve as arbitrator, the parties shall promptly meet and confer to identify a mutually agreeable replacement arbitrator (the "**Replacement Arbitrator**"). The Replacement Arbitrator shall be [*describe qualifications of the Replacement Arbitrator*]. In the event that the parties are unable to agree upon the identity of the Replacement Arbitrator within forty-five (45) days of the commencement of the Arbitration, or the Replacement Arbitrator is unable or unwilling to serve, then either party may file a petition with the Court of Chancery pursuant to Section 5805 of the DRAA.[38]

(e) Each of the parties shall, subject to such limitations as the Arbitrator may prescribe, be entitled to collect documents and testimony from each other party, and the Arbitrator shall have the power to administer oaths and compel the production of witnesses and documents. The Arbitrator shall have the power to issue subpoenas and commissions for the taking of documents and testimony from third parties.[39]

(f) The Arbitrator shall conduct the hearing, administer oaths, and make such rulings as are appropriate to the conduct of the proceedings. The Arbitrator shall allow each of the parties an opportunity to present evidence and witnesses and to cross examine witnesses presented by the opposing party.[40]

(g) The arbitral award (the "**Award**") shall (i) be rendered within [one hundred twenty (120)] days after the Arbitrator's acceptance of his or her appointment;[41] (ii) be delivered in writing; (iii) state the reasons for the Award;[42] (iv) be the sole and exclusive final and binding remedy with respect to the Dispute between and among the parties without the possibility of challenge or appeal, which are hereby waived;[43] and (v) be accompanied by a form of judgment. The Award shall be deemed an award of the United States, the relationship between the parties shall be deemed commercial in nature, and any Dispute arbitrated pursuant to this Section 7.16 shall be deemed commercial. The Arbitrator shall have the authority to grant any equitable or legal remedies, including, without limitation, entering preliminary or permanent injunctive relief;

---

[38] The parties may wish to proceed before a panel of arbitrators. In such event, this provision should be changed to reflect the desired number of arbitrators and to state their names or provide the descriptive qualifications.

[39] The DRAA empowers the parties to include one, both or neither of the provisions set forth in Section (e). If the parties wish to proceed without discovery, neither of the sentences in Section (e) would be included. If they wish to proceed with only party discovery, then only the first sentence would be used. The second sentence would be used only where the parties wished to be able to take discovery from third parties. The DRAA would also permit the taking of only documentary discovery (as opposed to deposition or other testimony) or, alternatively, only oral testimony (as opposed to documents). The DRAA contemplates that the scope of discovery is customizable in this Agreement, so in all events, this issue should be addressed. The statutory default, which would come into play if this provision was not included in some form, would be for the Arbitrator to be empowered to summon party witnesses and evidence, but not third-party evidence or witnesses.

[40] The DRAA provides that the agreement may modify or eliminate the foregoing processes. Elimination may be appropriate in circumstances where the parties agree to present a pure issue of law for resolution, or in circumstances where a narrow, technical issue is the subject of the Arbitration.

[41] The parties may specify a longer period for the Arbitration. If they do not do so, the one hundred twenty (120)day period of the DRAA is the default, and such period may be extended by no more than an additional sixty (60) days, and then only upon consent of all parties to the Arbitration.

[42] A reasoned award is not required by the DRAA, but may be required by the parties' contract.

[43] The DRAA allows the parties to waive the right to appeal. This provision should only be included if the parties intend to waive appellate rights. Section (l) below is included in the event that the parties wish to preserve the right to appeal the Arbitrator's award, in which case clause (iv) of Section (g) should not be included.

provided, however, that the Arbitrator shall not have the authority to award (and the parties waive the right to seek an award of) punitive or exemplary damages.[44]

(h) The parties hereto agree that, subject to any non-waivable disclosure obligations under federal law, the Arbitration,[45] and all matters relating thereto or arising thereunder, including, without limitation, the existence of the Dispute, the Arbitration and all of its elements (including any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions, [any third-party discovery proceedings, including any discovery obtained pursuant thereto,][46] and any decision of the Arbitrator or Award), shall be kept strictly confidential, and each party hereby agrees that such information shall not be disclosed beyond: (i) the Arbitrator and necessary support personnel; (ii) the participants in the Arbitration; (iii) those assisting the parties in the preparation or presentation of the Arbitration; (iv) other employees or agents of the parties with a need to know such information; and (v) any third parties that are subpoenaed or otherwise provide discovery in the Arbitration proceedings, only to the extent necessary to obtain such discovery.[47] In all events, the parties [and any third parties] participating in the Arbitration proceedings shall treat information pertaining to the Arbitration with the same care that they treat their most valuable proprietary secrets. In the event that federal law imposes upon either party an obligation to disclose the fact of the Arbitration or the nature of the claims or counterclaims asserted, such party(-ies) shall disclose no more than the minimum information required by law after first consulting with and attempting in good faith to reach agreement with the opposing party(-ies) regarding the scope and content of any such required disclosure.

(i) Each party hereto shall bear its own legal fees and costs in connection with the Arbitration; provided, however, that each such party shall pay one-half (1/2) of any filing fees, fees and expenses of the Arbitrator or other similar costs incurred by the parties in connection with the prosecution of the Arbitration.[48]

(j) Notwithstanding any provisions of this Agreement, or any statute protecting the confidentiality of the Arbitration and proceedings taken in connection therewith, in the event that either party in the Arbitration (the "**Respondent**") is required to defend himself, herself or itself in response to later proceedings instituted by the other in any court, relating to matters decided in the Arbitration, such party shall be relieved of any obligation to hold confidential the Arbitration and its proceedings in order to submit, confidentially if and to the extent possible, sufficient information to such court to allow it to determine whether the doctrines

---

[44] Under the DRAA, the parties have the right to limit the power of the Arbitrator to award relief. Any such limitation should be specified here, in lieu of the last sentence of this provision.

[45] This phrase would be included only in the event that one or both parties were subject to federal disclosure obligations which could encompass the Arbitration.

[46] Eliminate reference to "third party discovery proceedings" in the event that such proceedings were not contracted for in Section (e) above.

[47] Clause (v) would be excluded in the event that third-party discovery was not provided for in Section (e) above.

[48] The DRAA permits the parties to direct how costs of the Arbitration are to be borne. Thus, in the event that the parties wish to vary this provision, they should do so here. Such variations could include a "loser pays" provision or an "arbitrator chooses" provision, which is not prohibited by the DRAA.

of res judicata, collateral estoppel, bar by judgment, or other, similar doctrines apply to such subsequent proceedings.

(k) Notwithstanding anything to the contrary set forth in this Section 7.16, if any amendment to the DRAA is enacted after the date of this Agreement, and such amendment would render any provision of this Section 7.16 unenforceable thereunder, such provision shall be excluded and the remaining provisions of this Section 7.16 shall be enforced to the fullest extent permitted by law.

(l) [Any challenge to the final award of the Arbitrator shall be brought before the Supreme Court of the State of Delaware within the time frame provided in the DRAA, and pursuant to the Rules of such Court.[49]] [*Alternative A:*[50] Any challenge to the final award of the Arbitrator shall be made before a panel of three (3) appellate arbitrators, who shall be [insert names or description of appellate arbitrators].[51] The appellate panel may only vacate, modify, or correct the final award in conformity with the Federal Arbitration Act.[52]] [*Alternative B:*[53] Any challenge to the final award of the Arbitrator shall be made before a panel of three (3) appellate arbitrators, who shall be [insert names or description of appellate arbitrators].[54] The scope of the appeal shall not be limited to the scope of a challenge under the Federal Arbitration Act, but instead shall be the same as any appeal from a judgment in a civil action filed in court.]]

7.17 [Costs of Enforcement. If any party to this Agreement seeks to enforce its rights under this Agreement by legal proceedings, the non-prevailing party shall pay all costs and expenses incurred by the prevailing party, including, without limitation, all reasonable attorneys' fees.]

7.18 Aggregation of Stock. All Shares held or acquired by a Stockholder and/or its Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement, and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

[Signature Page Follows]

---

[49] The DRAA permits the parties to waive appellate review, to proceed with a limited review in the Delaware Supreme Court, or to proceed with a private appellate arbitral review. This provision contemplates a review in the Delaware Supreme Court. In the event it is used, the parties should eliminate clause (iv) of Section (g).

[50] The following is an alternative appellate provision in the event that the parties do not to wish to proceed with an appeal before the Delaware Supreme Court and desire a limited scope of appeal in accordance with the Federal Arbitration Act (the "**FAA**").

[51] In the event that the parties wish to have a particular type of arbitrator appointed, they should so specify here. If not, the Court will appoint one (1) or more senior Delaware lawyers.

[52] This provision contemplates a scope of challenge to the Arbitrator's final judgment limited to the grounds for review of an arbitral award under the FAA. Parties who wish a broader scope of review may wish to consider the succeeding alternate provision set forth above.

[53] The following is an alternative appellate provision for use in the event that the parties do not to wish to proceed with an appeal before the Delaware Supreme Court and desire that the scope of their appeal be as broad as possible.

[54] See footnote 50 above.

IN WITNESS WHEREOF, the parties have executed this [Amended and Restated] Voting Agreement as of the date first written above.

COMPANY: [*Insert Company Name*]

By: _____
Name: _____
Title: _____

KEY HOLDERS: [*Insert Key Holder Name]*

Signature: _____

INVESTORS: [*Insert Investor Name]*

By: _____
Name: _____
Title: _____

SCHEDULE A

INVESTORS

Name and Address

Investor Name
Address
Phone Number
Email
[Counsel cc, if any]]

Investor Name
Address
Phone Number
Email
[Counsel cc, if any]]

Investor Name
Address
Phone Number
Email
[Counsel cc, if any]]

SCHEDULE B

KEY HOLDERS

Name and Address

[Key Holder Name
Address
Phone Number
Email]

[Key Holder Name
Address
Phone Number
Email]

[Key Holder Name
Address
Phone Number
Email]

EXHIBIT A

ADOPTION AGREEMENT

This Adoption Agreement ("**Adoption Agreement**") is executed on _____, 20__, by the undersigned (the "**Holder**") pursuant to the terms of that certain Voting Agreement dated as of [_____ __, 20___] (the "**Agreement**"), by and among the Company and certain of its Stockholders, as such Agreement may be amended or amended and restated hereafter. Capitalized terms used but not defined in this Adoption Agreement shall have the respective meanings ascribed to such terms in the Agreement. By the execution of this Adoption Agreement, the Holder agrees as follows:

1.1 Acknowledgement. Holder acknowledges that Holder is acquiring certain shares of the capital stock of the Company (the "**Stock**")[or options, warrants, or other rights to purchase such Stock (the "**Options**")], for one of the following reasons (Check the correct box):

☐ As a transferee of Shares from a party in such party's capacity as an "Investor" bound by the Agreement, and after such transfer, Holder shall be considered an "Investor" and a "Stockholder" for all purposes of the Agreement.

☐ As a transferee of Shares from a party in such party's capacity as a "Key Holder" bound by the Agreement, and after such transfer, Holder shall be considered a "Key Holder" and a "Stockholder" for all purposes of the Agreement.

☐ As a new "Investor" in accordance with Section 7.1(a) of the Agreement, in which case Holder will be an "Investor" and a "Stockholder" for all purposes of the Agreement.

☐ In accordance with Section 7.1(b) of the Agreement, as a new party who is not a new "Investor," in which case Holder will be a "Stockholder" for all purposes of the Agreement.

1.2 Agreement. Holder hereby (a) agrees that the Stock [Options], and any other shares of capital stock or securities required by the Agreement to be bound thereby, shall be bound by and subject to the terms of the Agreement and (b) adopts the Agreement with the same force and effect as if Holder were originally a party thereto.

1.3 Notice. Any notice required or permitted by the Agreement shall be given to Holder at the address or facsimile number listed below Holder's signature hereto.

HOLDER:

By: _____
Name: _____
Title: _____
Address: _____
_____
E-mail Address: _____

ACCEPTED AND AGREED:

[COMPANY]

By: _____
Name: _____
Title: _____

ADDENDUM TO VOTING AGREEMENT: SAMPLE SALE RIGHTS[55]

Section __. Sale Rights.

___. Initiation of Sale Process. Upon written notice to the Company from the Electing Holders, the Company shall initiate a process (the "**Sale Process**"), in accordance with this Section __, intended to result in a Sale of the Company. Such written notice shall include a designation of one (1) individual (the "**Holder Representative**") to act on behalf of the Electing Holders and to exercise the authority granted to the Holder Representative pursuant to Section ___ below. Each of the Stockholders and the Company agree to use his, her or its commercially reasonable efforts, in consultation with the Financial Advisor (as defined below) and Deal Counsel (as defined below), to facilitate a Sale of the Company. In furtherance of the foregoing, upon receipt of the notice described above the Company shall, and shall cause its officers, employees, consultants, counsel and advisors to take the actions set forth in Section ___below.

___.1. Specific Obligations.

__.1.1 Advisors. The Company shall engage an investment bank (the "**Financial Advisor**") and a law firm (the "**Deal Counsel**") reasonably satisfactory to the Holder

---

[55] The "Sale Rights" provisions in this Addendum are not typically included in venture capital financings; they are more common in later-stage private equity deals. They have been drafted in response to the Delaware Chancery Court's ruling in *In re Trados Inc. S'holder Litigation, Case No. C.A. 1512-CC (Del. Ch. Ct. Jul. 24, 2009)*. In that case, where a Company was sold for less than the preferred stock liquidation preferences (leaving nothing for the common stockholders upon the sale), the Court concluded that, in circumstances where the interests of the common stockholders may diverge from those of the preferred, a director can breach his or her duty by approving a sale which could be viewed as improperly favoring the interests of the preferred over those of the common stockholders. The plaintiffs in that case argued that the Company was on an upswing, and that if the Company had been sold at a later date, there may have been proceeds for common stockholders. This ruling may expose directors to potential liability where they vote in favor of a sale at a price below the liquidation preferences that results in no proceeds for common stockholders. Accordingly, the "Sale Rights" provisions are designed to insulate the Board from a *Trados*-type claim. In particular, since this section provides for redemption rights additional to any that may be included in the Certificate of Incorporation, selling the Company may be the only means by which the Board is able to honor this contractual "put" obligation.

Investors who are bridging a Company to a sale may want to consider amending the Voting Agreement to include provisions such as those found in this Addendum, particularly where (1) there are no disinterested directors to vote on the sale transaction, and (2) the transaction is anticipated to result in proceeds below the liquidation preferences.

The Company will need to consult with its accountants with respect to the accounting treatment of the "put right" provided for here; it is the drafters' hope that it is attenuated enough that the Company's accountants will not require it to be reflected as debt on the Company's balance sheet.

Note that this provision is intended to work in conjunction with the drag-along provisions, and is not in lieu of them. It is the "Electing Holders" who trigger the provisions of this "Sale Rights" section – the same group that triggers the drag-along provisions in Section 3. These "Sale Rights" are not intended to give the Electing Holders (however defined) additional substantive rights, but rather to assist them in effecting the transaction they have approved.

Finally, note that this provision is also intended to address the Delaware Chancery Court's rulings in *TCV VI, L.P. v. Trading Screen, Inc.*, Case No. C.A. 10164-VCN (Del Ch. Ct. Feb. 26, 2015, redacted Mar. 27, 2015) and *SV Investment Partners, LLC v. Thoughtworks, Inc.*, Case No. C.A. 2724 (Del. Ch. Ct. Nov. 10, 2010), which placed significant limits on a preferred stockholder's right to have a redemption obligation enforced. In Trading Screen, the Court suggested that a board's decision regarding how much of a corporation's capital can be applied to the redemption of stock from time to time is protected by the business judgment rule, even where the corporation has sufficient legal surplus to effect the redemption.

Representative (which may be the Company's existing investment bank and law firm) to assist with the Sale Process. The Financial Advisor and Deal Counsel, as well as any other advisors engaged pursuant to this Section __(i), shall represent the Company, and only the Company, in the sale process, and the costs, fees and expenses of such advisors shall be paid by the Company pursuant to the terms of engagement letters that are approved by the Holder Representative (such approval not to be unreasonably withheld, conditioned or delayed). None of the Financial Advisor, Deal Counsel or any other advisor selected in accordance with this Section __(i) shall be terminated by the Company without the written consent of the Holder Representative.

__.1.2 Cooperation With Sale Process. Without limiting the generality of the provisions of Section __.1, at the request of the Holder Representative, the Company shall, and shall cause its employees, officers, consultants, counsel and advisors to:

(i) assist the Financial Advisor in creating a list of potential acquirers;

(ii) set up and maintain a virtual or actual data room (as elected by the Holder Representative) containing due diligence materials customarily provided in connection with transactions of the nature of a Sale of the Company, along with any other due diligence materials requested by the Holder Representative or reasonably requested by any potential acquirer;

(iii) execute customary non-disclosure agreements with potential acquirers;

(iv) provide incentive compensation to members of the Company's management, and in an amount and form, all as determined by the Holder Representative to be necessary or helpful to the successful consummation of the Sale of the Company;

(v) prepare, or assist the Financial Advisor with the preparation of, any marketing, financial or other materials deemed by the Holder Representative or the Financial Advisor to be necessary or helpful in connection with a Sale of the Company;

(vi) attend and participate in any meetings, conference calls, or presentations regarding the Company and its business with potential acquirers;

(vii) execute a letter of intent or term sheet on terms reasonably acceptable to the Holder Representative with one (1) or more potential acquirers;

(viii) subject to Section __.3, execute and perform the Company's obligations contained in such definitive agreements relating to a Sale of the Company as are negotiated by the Holder Representative and the potential acquirer; and

(ix) communicate regularly and promptly with each of the Financial Advisor and Deal Counsel regarding the Sale Process.

__.1.3 Approval of the Terms and Conditions of a Proposed Sale of the Company; Failure to Approve a Sale of the Company.

(a) The Company shall cause its management, together with the Financial Advisor and Deal Counsel, to deliver regular updates to its Board regarding material developments in the Sale Process and summarizing the status of the negotiation of the terms and conditions of the Sale of the Company. The Company shall, upon request of the Holder Representative, either call a meeting of its Board or seek the written consent of the Board approving the Sale of the Company and the entering into of the definitive agreements relating thereto.

(b) In the event that the Board approval described in (a) above has not been obtained within the time period requested by the Holder Representative (such time period not to be less than three (3) business days), the Electing Holders shall have the right by written notice (the "**Redemption Notice**") to require the Company to redeem all of the then outstanding shares of capital stock held by the Electing Holders at a price equal to the amount of proceeds that would have been paid in respect of their shares of capital stock were the Sale of the Company consummated or, in the case of a Sale of the Company that is structured as a sale of all or substantially all of the Company's assets, the amount of proceeds that would have been paid in respect of their investment in the Company had all proceeds from the proposed Sale of the Company been distributed in a Deemed Liquidation Event (a "**Preferred Redemption**"). The Company and each Investor shall be obligated to effect the Preferred Redemption within ten (10) days of the delivery of the Redemption Notice.

__.1.4 Appointment and Authority of Holder Representative.

(a) The Stockholders have agreed that it is desirable to designate a representative to act on behalf of the Stockholders for the purposes described in this Section ___. The Holder Representative shall be selected by the Electing Holders and shall serve as the agent and representative of each Stockholder with respect to the matters set forth in this Agreement.

(b) The Holder Representative shall have full power and authority to take all actions under this Agreement that are to be taken by the Holder Representative. The Holder Representative shall take any and all actions which it believes are necessary or appropriate under this Agreement, including giving and receiving any notice or instruction permitted or required under this Agreement by the Holder Representative, interpreting all of the terms and provisions of this Agreement, consenting to any actions on behalf of the Stockholders in connection with a Sale of the Company (except with respect to any approvals of the final terms and conditions of such Sale of the Company by the Investors in their capacities as such), conducting negotiations with any potential acquirer and its agents regarding such Sale of the Company, dealing with the Company under this Agreement, taking any and all other actions specified in or contemplated by this Agreement, and engaging counsel, accountants or other representatives to represent the Electing Holders in connection with the foregoing matters. Without limiting the generality of the foregoing, the Holder Representative shall have the full power and authority to interpret all the terms and provisions of this Agreement and amendment(s) hereof or thereof in its capacity as Holder Representative.

(c) The Holder Representative shall be indemnified for and shall be held harmless by the Investors against any losses incurred by the Holder Representative or any of its Affiliates and any of their respective partners, directors, officers, employees, agents, stockholders, consultants, attorneys, accountants, advisors, brokers, representatives or controlling persons, in each case relating to the Holder Representative's conduct as Holder Representative, other than damages or losses resulting from the Holder Representative's gross negligence or willful misconduct in connection with its performance under this Agreement. This indemnification shall survive the termination of this Agreement. The Holder Representative may, in all questions arising under this Agreement, rely on the advice of counsel, and for anything done, omitted or suffered in good faith by the Holder Representative in accordance with such advice, the Holder Representative shall not be liable to the Stockholders. In no event shall the Holder Representative be liable hereunder or in connection herewith to the Stockholders for any indirect, punitive, special or consequential damages.

(d) Any action taken by the Holder Representative pursuant to the authority granted in this Section _ shall be effective and absolutely binding as the action of the Stockholders under this Agreement.

(e) The Company shall be entitled to rely on the actions and determinations of the Holder Representative, and shall have no liability whatsoever with respect to any action or omission of them taken in reliance on the actions or omissions of the Holder Representative.