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**CHAPTER 17**

**PREFERRED STOCK PURCHASE AGREEMENT**

The Preferred Stock Purchase Agreement is really the “Master Agreement” of a venture capital financing. It contains the representations and warranties of the parties, specifies the closing conditions for each party, and identifies all other financing documents.

v\_field\_end

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[Future extensions: switch for representations as to subsidiaries.]

v\_field\_end

**v\_field\_custom\_purchase\_agreement\_name\_applicability V\_FIELD\_CUSTOM\_PURCHASE\_AGREEMENT\_NAME\_UPCASE v\_field\_else V\_FIELD\_FINANCING\_SECURITY\_NAME\_UPCASE PURCHASE AGREEMENT v\_field\_end**

v\_capture\_parties

This v\_field\_custom\_purchase\_agreement\_name\_applicability V\_FIELD\_CUSTOM\_PURCHASE\_AGREEMENT\_NAME\_UPCASE v\_field\_else V\_FIELD\_FINANCING\_SECURITY\_NAME\_UPCASE PURCHASE AGREEMENT v\_field\_end (the “Agreement”) is made as of the v\_field\_use\_brackets\_for\_agreement\_date\_applicability [] v\_field\_else v\_field\_agreement\_date v\_field\_end, by and among v\_field\_company\_name, a v\_field\_org\_state v\_field\_entity\_type (the “Company”), and the investors listed on Schedule A hereto, each of which is herein referred to as an “Investor.”

v\_capture\_end

THE PARTIES HEREBY AGREE AS FOLLOWS:

v\_capture\_purchase\_and\_sale\_obligations

# Purchase and Sale of Stock.

v\_capture\_initial\_closing\_provisions

## Sale and Issuance of v\_field\_financing\_security\_name.

## The Company shall adopt and file with the Secretary of State of Delaware on or before the Closing (as defined below) the v\_field\_charter\_name in the form attached hereto as Exhibit A (the “Restated Certificate”).

## On or prior to the Closing (as defined below), the Company shall have authorized (i) the sale and issuance to the Investors of shares of its v\_field\_financing\_security\_name (the “Shares”) and (ii) the issuance of the shares of Common Stock to be issued upon conversion of the Shares (the “Conversion Shares”). The Shares and the Conversion Shares shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate.

## Subject to the terms and conditions of this Agreement, each Investor agrees v\_field\_purchase\_obligation\_is\_several\_and\_not\_joint\_applicability, severally and not jointly, v\_field\_end to purchase at the Closing v\_field\_subsequent\_closing\_applicability or pursuant to Section 1.3 v\_field\_end and the Company agrees to sell and issue to each Investor at the Closing v\_field\_subsequent\_closing\_applicability or pursuant to Section 1.3 v\_field\_end, that number of Shares set forth opposite such Investor’s name on Schedule A hereto for v\_field\_purchase\_price\_per\_share per share.

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*[Comment: Section 1.1 serves to identify the securities being offered and sold under the agreement, as well as the price to be paid for such securities. Also, Section 1.1 has optional bracketed language stating that the obligations of the investors are several, not joint, as is often required by the investors.*

*For California corporations, references throughout the agreement to the Certificate of Incorporation and stockholders should be changed to Articles of Incorporation and shareholders, respectively. Likewise, care should be taken to specify the correct Secretary of State. Local law should be reviewed for similar revisions for other states of incorporation.]*

v\_field\_end

## Closing. The purchase and sale of the Shares shall take place v\_field\_remote\_closing\_applicability remotely via the exchange of documents and signatures v\_field\_else at the offices of v\_field\_company\_counsel\_name, v\_field\_company\_counsel\_address v\_field\_end at 10:00 A.M. (local time), on v\_field\_specify\_nonsimultaneous\_closing\_date\_applicability v\_field\_use\_brackets\_for\_closing\_date\_applicability [] v\_field\_else v\_field\_closing\_date v\_field\_end v\_field\_else on the date hereof v\_field\_end, or at such other time and place as the Company and Investors acquiring in the aggregate a majority of the Shares sold pursuant to this Agreement agree upon orally or in writing (which time and place are designated as the “Closing”). At the Closing, the Company shall deliver to each Investor a certificate representing the Shares that such Investor is purchasing against payment of the purchase price therefor by check, wire transfer, cancellation of indebtedness, or any combination thereof. v\_field\_debt\_cancellation\_applicability In the event that payment by an Investor is made, in whole or in part, by cancellation of indebtedness, then such Investor shall surrender to the Company for cancellation at the Closing any evidence of such indebtedness or shall execute an instrument of cancellation in form and substance acceptable to the Company. v\_field\_company\_to\_repay\_interest\_in\_cash\_for\_debt\_cancellation\_applicability In addition, at the Closing the Company shall deliver to any Investor choosing to pay any part of the purchase price of the v\_field\_financing\_security\_name by cancellation of indebtedness, a check in the amount of any interest accrued on such indebtedness through the Closing. v\_field\_end v\_field\_end

v\_capture\_end

v\_field\_annotated\_copy

*[Comment: Section 1.2 outlines the details of the closing of the transaction, including time, date, location and payment methods. Section 1.2 provides for payment by check, wire transfer or cancellation of indebtedness. While wire transfers present the potential advantage of immediately available funds, closings can be delayed due to errors in the wire transfer process. Cancellation of indebtedness is often used when investors have provided the Company with a “bridge” loan to hold the Company over until the completion of this sale. See Chapter 15 regarding the specific form of bridge loan to be used. Also, note that signings and closings of venture financings are usually simultaneous.]*

v\_field\_end

v\_field\_subsequent\_closing\_applicability

v\_capture\_subsquent\_closing\_provision

## Subsequent Sale of v\_field\_financing\_security\_name. At any time on or before v\_field\_use\_brackets\_for\_subsequent\_closing\_long\_stop\_date\_applicability [] v\_field\_else v\_field\_subsequent\_closing\_long\_stop\_date v\_field\_end, the Company may sell up to v\_field\_specify\_number\_of\_subsequent\_closing\_shares\_applicability an additional v\_field\_subsequent\_closing\_specified\_number\_shares Shares (as equitably adjusted for stock splits, combinations, dividends, recapitalizations and the like) v\_field\_else the number of Shares then authorized in the Restated Certificate v\_field\_end not sold at the Closing to such persons as may be approved by the v\_field\_board\_to\_approve\_subsequent\_closings\_applicability Board of Directors of the Company v\_field\_end v\_field\_initial\_purchasers\_to\_approve\_subsequent\_closings\_applicability v\_field\_board\_to\_approve\_subsequent\_closings\_applicability and v\_field\_end the holders of a majority of the Shares initially sold pursuant to this Agreement v\_field\_end. All such purchases of Shares shall be made on the terms and conditions set forth in this Agreement, including, without limitation, satisfaction of the representations and warranties by the Investors as set forth in Section 3. Such purchases of Shares shall be made by each subsequent purchaser by executing counterpart signature pages to this Agreement and the Ancillary Agreements (as defined below), making such purchaser a party and bound by the terms and conditions of this Agreement and the Ancillary Agreements. Any Shares sold pursuant to this Section 1.3 shall be deemed to be “Shares” for all purposes under this Agreement and any purchasers thereof shall be deemed to be “Investors” under this Agreement and each of the Ancillary Agreements. Each sale of additional Shares pursuant to this Section 1.3 shall be deemed a “Subsequent Closing.” Schedule A to this Agreement shall be updated to reflect the number of Shares purchased at each Subsequent Closing and the parties purchasing such Shares.

## v\_capture\_end

## v\_field\_end

v\_capture\_end

v\_field\_annotated\_copy

*[Comment: In several instances, a subsequent closing may be necessary to enable other investors to participate in the financing. This section may provide the Company with the flexibility to sell to any purchaser in a subsequent closing, or it may limit the Company to sell only to Investors. A subsequent closing will be documented by a new investor executing counterpart signature pages to the financing documents.]*

v\_field\_end

v\_field\_specify\_use\_of\_proceeds\_applicability

v\_capture\_use\_of\_proceeds\_obligation

## Use of Proceeds. The Company covenants and agrees that it shall use the proceeds of the sale of Shares hereunder for v\_field\_custom\_use\_of\_proceeds\_applicability v\_field\_custom\_use\_of\_proceeds\_detail v\_field\_else capital expenditures, working capital and general corporate purposes v\_field\_end. The Company shall not use such proceeds to reduce any outstanding indebtedness or to make any other payments to stockholders, employees or affiliates of the Company, except for the payment of compensation to employees and reimbursement of business expenses incurred in the course of rendering services to the Company.

v\_capture\_end

v\_field\_end

v\_capture\_company\_representations

# Representations and Warranties of the Company. The Company hereby represents and warrants to each Investor that, except as set forth on a Schedule of Exceptions (the “Schedule of Exceptions”) furnished each Investor v\_field\_require\_section\_specificity\_in\_exceptions\_to\_company\_representations\_applicability, specifically identifying the relevant Section hereof v\_field\_end, which exceptions shall be deemed to be representations and warranties as if made hereunder:

v\_field\_annotated\_copy

*[Comment: The following represents a complete and fairly exhaustive set of representations and warranties to be given by the Company. Such representations and warranties would typically be pared down in stock purchase agreements for early-stage companies.*

*The Company’s representations and warranties (including the Schedule of Exceptions) are arguably the most crucial sections of the stock purchase agreement. While on its face this section appears to be solely for risk allocation between the Company and investors, it also serves a primary function of flushing out the disclosure of key facts to investors.*

*A Schedule of Exceptions should also be drafted in connection with this Agreement. The Schedule of Exceptions lists any inconsistencies with (or exceptions to) the representations and warranties. Special care should be paid to the Schedule of Exceptions during the due diligence review.]*

v\_field\_end

## Organization, Good Standing and Qualification. The Company is a v\_field\_entity\_type duly organized, validly existing and in good standing under the laws of the State of v\_field\_org\_state and has all requisite corporate power and authority to carry on its business as now conducted v\_field\_include\_proposed\_business\_in\_company\_representation\_as\_to\_due\_organization\_applicability and as proposed to be conducted v\_field\_end. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.

v\_field\_include\_proposed\_business\_in\_company\_representation\_as\_to\_due\_organization\_applicability\_annotation

*[Comment: Investors will typically seek to have the Company make several representations and warranties concerning its proposed business or prospects. Because of the fast rate of change in the technology marketplace, early-stage companies may resist making such statements. Inclusion of the forward-looking bracketed language “and as proposed to be conducted” throughout the representations and warranties will broaden the scope of the Company’s disclosure.]*

v\_field\_end

## Capitalization and Voting Rights. The authorized capital of the Company consists v\_field\_use\_future\_language\_in\_company\_representation\_as\_to\_capitalization\_applicability, or will consist immediately prior to the Closing, v\_field\_end of:

## Preferred Stock. v\_field\_preferred\_stock\_authorized\_number\_shares shares of Preferred Stock, par value v\_field\_preferred\_stock\_par\_value\_per\_share (the “Preferred Stock”), of which v\_field\_preferred\_stock\_series\_hashes\_each v\_field\_preferred\_stock\_series\_hashed\_authorized\_number\_shares shares have been designated v\_field\_preferred\_stock\_series\_hashed\_name (the “v\_field\_preferred\_stock\_series\_hashed\_name”), v\_field\_preferred\_stock\_series\_hashed\_any\_outstanding\_shares\_applicability v\_field\_else none v\_field\_end of which v\_field\_preferred\_stock\_series\_hashed\_any\_outstanding\_shares\_applicability v\_field\_preferred\_stock\_series\_hashed\_outstanding\_number\_shares shares v\_field\_end are issued and outstanding v\_field\_comma\_serial\_conjunctive v\_field\_end. Up to v\_field\_financing\_security\_total\_closing\_number\_shares shares of the v\_field\_financing\_security\_name will be sold pursuant to this Agreement. The rights, privileges and preferences of the v\_field\_financing\_security\_name will be as stated in the Restated Certificate.

## Common Stock. v\_field\_common\_stock\_authorized\_number\_shares shares of common stock, par value v\_field\_common\_stock\_par\_value\_per\_share (the “Common Stock”), of which v\_field\_common\_stock\_outstanding\_number\_shares shares are issued and outstanding.

v\_field\_include\_detailed\_representation\_as\_to\_shareholders\_in\_company\_representation\_as\_to\_capitalization\_applicability

## The outstanding shares of Common Stock v\_field\_include\_preferred\_stock\_in\_detailed\_representation\_as\_to\_shareholders\_in\_company\_representation\_as\_to\_capitalization\_applicability and Preferred Stock v\_field\_end are owned by the stockholders and in the numbers specified in Schedule B hereto.

v\_field\_end

## The outstanding shares of Common Stock v\_field\_include\_preferred\_stock\_in\_company\_capitalization\_representation\_as\_to\_due\_authorization\_applicability and, subject in part to the truth and accuracy of representations and warranties made by purchasers of such shares, Preferred Stock v\_field\_end are all duly and validly authorized and issued, fully paid and nonassessable, and were issued in accordance with the registration or qualification provisions of the Securities Act of 1933, as amended (the “Act”), and any relevant state securities laws, or pursuant to valid exemptions therefrom.

## Except for (i) the conversion privileges of the Preferred Stock, v\_field\_any\_outstanding\_options\_applicability v\_field\_else and v\_field\_end (ii) the rights provided in v\_field\_investor\_rights\_agreement\_name in the form attached hereto as Exhibit B (the “Investors’ Rights Agreement”), v\_field\_any\_outstanding\_options\_applicability and (iii) currently outstanding options to purchase v\_field\_outstanding\_number\_options shares of Common Stock granted to employees and other service providers pursuant to the Company’s v\_field\_option\_plan\_hashes\_each v\_field\_option\_plan\_hashed\_name v\_field\_comma\_conjunctive v\_field\_end v\_field\_option\_plan\_hashes\_plurality\_applicability (the “Option Plans”) v\_field\_else (the “Option Plan”) v\_field\_end, v\_field\_end there are not outstanding any options, warrants, rights (including conversion or preemptive rights) or agreements for the purchase or acquisition from the Company of any shares of its capital stock. v\_field\_any\_outstanding\_options\_applicability In addition to the aforementioned options, the v\_field\_else The v\_field\_end Company has reserved v\_field\_any\_outstanding\_options\_applicability an additional v\_field\_end v\_field\_option\_plan\_available\_number\_shares shares of Common Stock for purchase upon exercise of options to be granted in the future under v\_field\_any\_outstanding\_options\_applicability the v\_field\_option\_plan\_hashes\_plurality\_applicability Option Plans v\_field\_else Option Plan v\_field\_end v\_field\_else the Company’s v\_field\_option\_plan\_hashes\_each v\_field\_option\_plan\_hashed\_name v\_field\_comma\_conjunctive v\_field\_end v\_field\_option\_plan\_hashes\_plurality\_applicability (the “Option Plans”) v\_field\_else (the “Option Plan”) v\_field\_end v\_field\_end. v\_field\_voting\_agreement\_applicability Other than that certain v\_field\_voting\_agreement\_name in the form attached hereto as Exhibit C (the “Voting Agreement”), the v\_field\_else The v\_field\_end Company is not a party or subject to any agreement or understanding, and, to the Company’s knowledge, there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company.

## All outstanding securities of the Company, including, without limitation, all outstanding shares of the capital stock of the Company, all shares of the capital stock of the Company issuable upon the conversion or exercise of all convertible or exercisable securities and all other securities that the Company is obligated to issue, are subject to a one hundred eighty (180) day “market stand-off” restriction (subject to increase as requested by the Company for compliance with NASD Rule 2711) upon an initial public offering of the Company’s securities pursuant to a registration statement filed with the Securities and Exchange Commission (“SEC”) pursuant to the Act in a form substantially identical to Section v\_field\_custom\_section\_number\_in\_investor\_rights\_agreement\_for\_market\_standoff\_applicability v\_field\_custom\_section\_number\_in\_investor\_rights\_agreement\_for\_market\_standoff v\_field\_else 1.13 v\_field\_end of the Investors’ Rights Agreement.

v\_field\_include\_representation\_as\_to\_shareholding\_and\_vesting\_of\_key\_people\_in\_company\_representation\_as\_to\_capitalization\_applicability

## The Schedule of Exceptions sets forth a complete list of each security of the Company owned by any officer, director or, in the Company’s reasonable belief, key employee of the Company, or by any affiliate or any member of the immediate family of any such individual, together with a description of the material terms of the vesting provisions and, to the Company’s knowledge, the rights of first refusal and rights of repurchase applicable to each such security. v\_field\_include\_representation\_as\_to\_no\_vesting\_acceleration\_in\_company\_capitalization\_representation\_applicability No stock plan, stock purchase, stock option or other agreement or understanding between the Company and any holder of any securities or rights exercisable or convertible for securities provides for acceleration or other changes in the vesting provisions or other terms of such agreement or understanding as the result of the occurrence of any event. v\_field\_end

v\_field\_end

v\_field\_annotated\_copy

*[Comment: Section 2.2 describes the Company’s capital structure and can be stated either immediately prior to or upon the closing of the financing. This description details any outstanding rights or privileges with respect to the Company’s securities. This information is a key factor for investors in their valuation of the Company and thus special care should be paid to subsection (e), which should include any and all rights relating to securities, including co-sale rights and rights of first refusal granted to investors in prior financing rounds.*

*Additionally, Section 2.2 represents that all outstanding Common Stock of the Company is “validly authorized and issued, fully paid and nonassessable, and issued in compliance with all state and federal securities laws.” This representation provides comfort to the investors that no potential rescission rights exist or that, if there are exceptions regarding this representation, the investors will be made aware of the circumstances. In subsequent financing rounds, consideration should be given as to whether the representations and warranties should be extended to prior issuances of Preferred Stock.*

*Subsection (f) provides disclosure concerning whether all issued or issuable securities of the Company are subject to a 180 day “market stand-off”, otherwise known as a “lock-up”, restriction on an initial public offering. Subsection (g) provides disclosure concerning the vesting arrangements applicable to shares held by the officers, directors and key employees of the Company, including their immediate family. Furthermore, because Investors are concerned about the ability to sell the Company with as few impediments to sale as possible, investors will be very interested in any acceleration of vesting provisions tied to a change of control or other event as is set forth in the bracketed language of subsection (g).]*

v\_field\_end

## Subsidiaries. The Company does not presently own or control, directly or indirectly, any interest in any other corporation, association, or other business entity. The Company is not a participant in any joint venture, partnership, or similar arrangement.

v\_field\_annotated\_copy

*[Comment: Section 2.3 discloses the existence of any subsidiaries, as well as joint ventures, corporate partnering, controlled corporations or similar arrangements. As written, this section represents that no such arrangements exist, unless disclosed on the Schedule of Exceptions. In the event that the Company does own or control another entity, consider requiring the same representations with respect to each such entity as are made in Section 2.1 with respect to the Company.*

*If the subsidiary is material to the Company, consider requiring additional representations with respect to such subsidiary or revising the representations to provide disclosure on a consolidated basis.]*

v\_field\_end

## Authorization. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of v\_field\_voting\_agreement\_applicability the Voting Agreement, v\_field\_end v\_field\_rofr\_and\_cosale\_agreement\_applicability that certain v\_field\_rofr\_and\_cosale\_agreement\_name in the form attached hereto as Exhibit v\_field\_voting\_agreement\_applicability D v\_field\_else C v\_field\_end (the “v\_field\_rofr\_and\_cosale\_agreement\_name”), v\_field\_end the Investors’ Rights Agreement and this Agreement v\_field\_ancillary\_agreements\_applicability (such agreement(s) excluding this Agreement, collectively, the “Ancillary Agreements”) v\_field\_end, the performance of all obligations of the Company hereunder and thereunder, and the authorization, issuance (or reservation for issuance), sale and delivery of the Shares being sold hereunder and the Conversion Shares has been taken or will be taken prior to the Closing, and this Agreement v\_field\_ancillary\_agreements\_applicability and the Ancillary Agreements v\_field\_end constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors’ rights generally, (b) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (c) to the extent the indemnification provisions contained in the Investors’ Rights Agreement may be limited by applicable federal or state securities laws.

v\_field\_annotated\_copy

*[Comment: Section 2.4 states that all necessary corporate action has been taken for the execution of the agreements in connection with this transaction. Additionally, it gives the investors assurances that all agreements executed in connection with the transaction are enforceable against the Company (and any subsidiaries, if applicable). In certain jurisdictions, ancillary agreements executed in connection with the financing may be subject to some questions regarding their enforceability (e.g., non-competition clauses and voting agreements), and, thus, exceptions may be advisable.]*

v\_field\_end

## Valid Issuance of Preferred and Common Stock. The Shares being purchased by the Investors hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under this Agreement v\_field\_ancillary\_agreements\_applicability and the Ancillary Agreements v\_field\_end and under applicable state and federal securities laws. The Conversion Shares have been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Restated Certificate, will be duly and validly issued, fully paid and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under this Agreement v\_field\_ancillary\_agreements\_applicability and the Ancillary Agreements v\_field\_end and under applicable state and federal securities laws.

v\_field\_annotated\_copy

*[Comment: This section serves to assure investors that the stock purchased under the agreement is being sold pursuant to the applicable securities laws. Additionally, this section identifies any restrictions that may apply to the stock, including co-sale or rights of first refusal. Counsel should confirm that the appropriate legends have been placed on the stock certificates.]*

v\_field\_end

## Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except (a) the filing of the Restated Certificate with the Secretary of State of the State of Delaware; (b) v\_field\_file\_form\_d\_applicability the filing pursuant to Regulation D promulgated by the Securities and Exchange Commission under the Act, which will be effected within fifteen (15) days of the sale of the Shares hereunder; (c) v\_field\_end the filings required by applicable state “blue sky” securities laws, rules and regulations; or v\_field\_file\_form\_d\_applicability (d) v\_field\_else (c) v\_field\_end such other post-closing filings as may be required.

## Offering. Subject in part to the truth and accuracy of each Investor’s representations set forth in Section 3 of this Agreement, the offer, sale and issuance of the Shares as contemplated by this Agreement are exempt from the registration requirements of any applicable state and federal securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

## Litigation. There is no action, suit, proceeding or investigation pending or, to the Company’s knowledge, currently threatened v\_field\_limit\_representation\_as\_to\_threatened\_litigation\_to\_written\_threats\_in\_company\_litigation\_representation\_applicability in writing v\_field\_end against the Company that questions the validity of this Agreement v\_field\_ancillary\_agreements\_applicability or any Ancillary Agreement v\_field\_end, or the right of the Company to enter into such agreement(s), or to consummate the transactions contemplated hereby v\_field\_ancillary\_agreements\_applicability or thereby v\_field\_end, or that might result, either individually or in the aggregate, in any material adverse changes in the assets, condition v\_field\_include\_company\_prospects\_in\_company\_litigation\_representation\_applicability, prospects v\_field\_end or affairs of the Company, financially or otherwise, or any change in the current equity ownership of the Company v\_field\_include\_representation\_as\_to\_awareness\_of\_any\_basis\_in\_company\_litigation\_representation\_applicability, nor is the Company aware that there is any basis for the foregoing v\_field\_end. The foregoing includes, without limitation, actions, suits, proceedings or investigations pending or threatened v\_field\_include\_representation\_as\_to\_awareness\_of\_any\_basis\_in\_company\_litigation\_representation\_applicability (or any basis therefor known to the Company) v\_field\_end involving the prior employment of any of the Company’s employees, their use in connection with the Company’s business of any information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or that the Company intends to initiate.

v\_field\_annotated\_copy

*[Comment: Section 2.8 alerts investors regarding litigation (actual or threatened) relating to the Company. Additional coverage for investors may be achieved with requests for information relating to possible trouble areas which could pose future problems for the Company although no litigation has been even threatened. This representation is key for investors who may want assurances that their funding will not be used to simply settle outstanding claims, but rather that it will be applied towards the operation of the business.]*

v\_field\_end

## Proprietary Information Agreements. Each v\_field\_include\_former\_service\_providers\_in\_company\_representation\_as\_to\_proprietary\_information\_agreements\_applicability present and former v\_field\_end employee and officer of the Company has executed a Proprietary Information and Inventions Agreement, and each consultant to the Company has executed a Consulting Agreement, in substantially the forms provided to special counsel for the Investors. v\_field\_include\_representation\_as\_to\_no\_excluded\_works\_in\_piias\_in\_company\_representation\_as\_to\_proprietary\_information\_agreements\_applicability No current or former employee has expressly excluded works or inventions or other subject matter from his or her Proprietary Information and Inventions Agreement. v\_field\_end The Company is not aware that any of its v\_field\_include\_former\_service\_providers\_in\_company\_representation\_as\_to\_proprietary\_information\_agreements\_applicability present and former v\_field\_end employees, officers or consultants are in violation thereof, and the Company will use its v\_field\_use\_diligent\_efforts\_rather\_than\_commercially\_reasonable\_efforts\_to\_prevent\_proprietary\_information\_violations\_applicability diligent v\_field\_else commercially reasonable v\_field\_end efforts to prevent any such violation.

v\_field\_annotated\_copy

*[Comment: This section is particularly important to venture capitalists focused on the protection of the intellectual property of the Company, as most are. Some investors may wish for the representation to apply to both present and former employees, officers and consultants of the Company to receive assurances on the Company’s historical actions.]*

v\_field\_end

## Patents and Trademarks. v\_field\_include\_knowledge\_qualifier\_in\_company\_ip\_representation\_applicability To its knowledge v\_field\_limit\_knowledge\_qualifier\_to\_registrable\_ip\_in\_company\_ip\_representation\_applicability with respect to patents, trademarks, service marks and trade names only v\_field\_end (but without having conducted any special investigation or patent or trademark search), the v\_field\_else The v\_field\_end Company has sufficient title and ownership of v\_field\_include\_license\_as\_sufficient\_ownership\_in\_company\_ip\_representation\_applicability or v\_field\_require\_exclusivity\_in\_license\_for\_sufficient\_ownership\_in\_company\_ip\_representation\_applicability exclusive v\_field\_end licenses to v\_field\_end all patents, trademarks, service marks, trade names, domain names, copyrights, trade secrets, information, proprietary rights and processes necessary for its business as now conducted v\_field\_include\_proposed\_business\_in\_company\_ip\_representation\_applicability and as proposed to be conducted v\_field\_end without any violation or infringement of v\_field\_include\_representation\_as\_to\_no\_conflict\_with\_others\_rights\_in\_company\_ip\_representation\_applicability, or other conflict with, v\_field\_end the rights of others v\_field\_include\_exception\_for\_undeveloped\_or\_licenseable\_items\_in\_company\_ip\_representation\_applicability, except for such items as have yet to be conceived or developed or that are expected to be available for licensing on reasonable terms from third parties v\_field\_end. v\_field\_include\_itemized\_disclosure\_in\_company\_ip\_representation\_applicability The Schedule of Exceptions contains a complete list of patents and pending patent applications v\_field\_include\_trademarks\_copyrights\_or\_domain\_names\_in\_itemized\_disclosure\_in\_company\_ip\_representation\_applicability and registrations and applications for trademarks v\_field\_include\_copyrights\_and\_domain\_names\_in\_itemized\_disclosure\_in\_company\_ip\_representation\_applicability, copyrights and domain names v\_field\_end v\_field\_end of v\_field\_include\_exclusive\_licenses\_in\_itemized\_disclosure\_in\_company\_ip\_representation\_applicability, or exclusively licensed to, v\_field\_end the Company. v\_field\_end There are no outstanding options, licenses, agreements, claims, encumbrances or shared ownership of interests of any kind relating to anything referred to above in this Section 2.10 that is to any extent owned by or exclusively licensed to the Company, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, domain names, copyrights, trade secrets, licenses, information, proprietary rights and/or processes of any other person or entity, except, in either case, for standard end-user, object code, internal-use software license and support/maintenance agreements v\_field\_limit\_standard\_software\_exception\_to\_software\_not\_incorporated\_in\_or\_used\_to\_develop\_company\_property\_in\_representation\_as\_to\_no\_ip\_obligations\_in\_company\_ip\_representation\_applicability for software that is not and will not be incorporated into, or used to provide or develop, the Company’s software, products or services v\_field\_end. The Company has not received any communications alleging that the Company has violated v\_field\_include\_proposed\_business\_in\_company\_ip\_representation\_applicability or, by conducting its business as proposed, would violate v\_field\_end any of the patents, trademarks, service marks, domain names, trade names, copyrights or trade secrets or other proprietary rights of any other person or entity v\_field\_include\_awareness\_of\_any\_potential\_basis\_of\_forthcoming\_allegations\_in\_company\_representation\_as\_to\_no\_ip\_violations\_in\_company\_ip\_representation\_applicability and the Company is not aware of any potential basis for such an allegation or of any v\_field\_limit\_reasons\_to\_specific\_reasons\_in\_company\_representation\_as\_to\_awareness\_of\_any\_potential\_basis\_of\_forthcoming\_allegations\_in\_company\_representation\_as\_to\_no\_ip\_violations\_in\_company\_ip\_representation\_applicability specific v\_field\_end reason to believe that such an allegation may be forthcoming v\_field\_end. The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Company’s business as presently conducted v\_field\_include\_proposed\_business\_in\_company\_ip\_representation\_applicability or as proposed to be conducted v\_field\_end. Neither the execution nor delivery of this Agreement v\_field\_ancillary\_agreements\_applicability or the Ancillary Agreements v\_field\_end, nor the carrying on of the Company’s business by the employees of the Company, v\_field\_include\_proposed\_business\_in\_company\_ip\_representation\_applicability nor the conduct of the Company’s business as proposed, v\_field\_end will, to the Company’s knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees v\_field\_include\_intended\_hires\_in\_representation\_as\_to\_no\_employee\_inventions\_in\_company\_ip\_representation\_applicability (or people it currently intends to hire) v\_field\_end made prior to or outside the scope of their employment by the Company. v\_field\_include\_open\_source\_compliance\_representation\_in\_company\_ip\_representation\_applicability To the extent the Company uses any “open source” or “copyleft” software or is a party to “open” or “public source” or similar licenses, the Company is in compliance with the terms of any such licenses, any such software and licenses are listed on the Schedule of Exceptions, and the Company is not required v\_field\_include\_statement\_as\_to\_even\_if\_distributed\_in\_representation\_as\_to\_open\_source\_compliance\_in\_company\_ip\_representation\_applicability (and, even if it distributed its software, would not be required) v\_field\_end under any such license to (a) make or permit any disclosure or to make available any source code for its (or any of its licensors’) proprietary software or (b) distribute or make available any of the Company’s proprietary software or intellectual property (or to permit any such distribution or availability). v\_field\_end

v\_field\_annotated\_copy

*[Comment: Section 2.10 gives investors assurances that the Company has the intellectual property rights necessary to conduct its business (or has disclosed its need to acquire further rights). The bracketed language may be retained or removed depending on the level of comfort required by investors and/or the ability of the Company to make those representations without qualification. Counsel should recognize that the Company cannot predict future technology and can never absolutely know or guarantee that it will not infringe a third party’s patents, trademarks, service marks or trade names. Thus, the drafting of Section 2.10 will require the balancing of risk allocation and information disclosure perspectives. Counsel should also be aware of consultants used by the Company and whether it is necessary to include them in this representation.]*

v\_field\_end

## Compliance with Other Instruments. The Company is not in violation, default, conflict or breach v\_field\_include\_materiality\_limitation\_in\_company\_company\_compliance\_representation\_applicability in any material respect v\_field\_end of any provision of its Restated Certificate or Bylaws, or v\_field\_include\_materiality\_limitation\_in\_company\_company\_compliance\_representation\_applicability in any material respect v\_field\_end of any instrument, judgment, order, writ, decree, v\_field\_include\_past\_privacy\_policies\_in\_company\_compliance\_representation\_applicability past or current v\_field\_end privacy policy v\_field\_include\_representation\_that\_privacy\_policies\_provided\_in\_diligence\_in\_company\_compliance\_representation\_applicability (each of which has been provided to special counsel to the Investors) v\_field\_end or contract to which it is a party or by which it is bound, or, to its knowledge, of any provision of any federal or state statute, rule or regulation applicable to the Company (including, without limitation, those related to privacy, personally identifiable information or export control). The execution, delivery and performance of this Agreement v\_field\_ancillary\_agreements\_applicability and the Ancillary Agreements v\_field\_end, and the consummation of the transactions contemplated hereby v\_field\_ancillary\_agreements\_applicability and thereby v\_field\_end will not result in any such violation, default, conflict or breach, nor will such consummation constitute, with or without the passage of time and giving of notice, an event that results in (a) the creation of any lien, charge or encumbrance upon any assets of the Company or (b) the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization, or approval applicable to the Company, its business or operations or any of its assets or properties.

## Agreements; Action.

## Except for agreements explicitly contemplated hereby v\_field\_ancillary\_agreements\_applicability and by the Ancillary Agreements v\_field\_end, there are no agreements, understandings or proposed transactions between the Company and any of its officers, directors, affiliates, or any affiliate thereof.

## There are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party or by which it is bound that may involve (i) obligations (contingent or otherwise) of, or payments to, the Company in excess of v\_field\_company\_contracts\_representation\_obligations\_dollar\_threshold, or (ii) v\_field\_include\_no\_ip\_license\_representation\_in\_company\_contracts\_representation\_applicability any v\_field\_include\_materiality\_limitation\_in\_no\_ip\_license\_representation\_in\_company\_contracts\_representation\_applicability material v\_field\_end license of any patent, copyright, trade secret or other proprietary right to or from the Company (other than (A) the nonexclusive license of the Company’s software and products in object code form in the ordinary course of business pursuant to standard end-user agreements the form of which has been provided to special counsel for the Investors or (B) the nonexclusive license to the Company of standard, generally commercially available, “off-the-shelf” third party products that are not and will not to any extent be part of v\_field\_exclude\_software\_and\_products\_licensed\_to\_company\_if\_influence\_development\_or\_require\_payment\_from\_off\_the\_shelf\_software\_exception\_to\_no\_ip\_license\_representation\_in\_company\_contracts\_representation\_applicability, or influence development of, or require payment with respect to, v\_field\_end any product, service or intellectual property offering of the Company), or (iii) v\_field\_end provisions materially restricting v\_field\_extend\_representation\_as\_to\_restrictions\_on\_product\_creation\_to\_restrictions\_affecting\_product\_creation\_in\_company\_contracts\_representation\_applicability or affecting v\_field\_end the development, manufacture or distribution of the Company’s products or services, or v\_field\_include\_no\_ip\_license\_representation\_in\_company\_contracts\_representation\_applicability (iv) v\_field\_else (iii) v\_field\_end indemnification by the Company with respect to infringements of proprietary rights v\_field\_include\_broad\_indemnification\_coverage\_in\_indemnification\_representation\_in\_company\_contracts\_representation\_applicability or otherwise v\_field\_end.

## The Company has not (i) declared or paid any dividends or authorized or made any distribution upon or with respect to any class or series of its capital stock, (ii) incurred any indebtedness for money borrowed or any other liabilities individually in excess of v\_field\_company\_contracts\_representation\_debt\_dollar\_threshold or, in the case of indebtedness and/or liabilities individually less than v\_field\_company\_contracts\_representation\_debt\_dollar\_threshold, in excess of v\_field\_company\_contracts\_representation\_debt\_aggregation\_dollar\_threshold in the aggregate, (iii) made any loans or advances to any person, other than ordinary advances for travel expenses, or (iv) sold, exchanged or otherwise disposed of any of its assets or rights, other than the sale of its inventory in the ordinary course of business.

## For the purposes of subsections (b) and (c) above, all indebtedness, liabilities, agreements, understandings, instruments, contracts and proposed transactions involving the same person or entity (including persons or entities the Company has reason to believe are affiliated therewith) shall be aggregated for the purpose of meeting the individual minimum dollar amounts of such subsections.

v\_field\_include\_representation\_as\_to\_no\_strategic\_discussions\_in\_company\_contracts\_representation\_applicability

## The Company has not engaged in the past three (3) months in any discussion (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations, (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company is disposed of, or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

v\_field\_end

v\_field\_include\_representation\_as\_to\_enforceability\_of\_scheduled\_contracts\_in\_company\_contracts\_representation\_applicability

## All of the contracts and agreements set forth in Section 2.12 of the Schedule of Exceptions are in writing and are valid and binding and enforceable against the Company and, to the Company’s knowledge, against the other parties thereto in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights generally, and to general principles of equity.

v\_field\_end

v\_field\_include\_representation\_as\_to\_rights\_triggered\_by\_the\_financing\_in\_company\_contracts\_representation\_applicability

## There are no agreements, understandings or proposed transactions to which the Company is a party that will terminate or provide a right of the Company or another party thereto to terminate (either with or without the passage of time or the giving of notice, or both) as a result of the transactions hereby contemplated. All agreements, understandings or proposed transactions to which the Company is a party will continue to be valid, binding, in full force and effect and enforceable against the Company (and to the Company’s knowledge, to each other party thereto) in accordance with their respective terms immediately following the consummation of the transactions contemplated hereby.

v\_field\_end

v\_field\_company\_contracts\_representation\_obligations\_dollar\_threshold\_annotation

*[Comment: The $5,000 disclosure threshold amounts specified in this Section 2.12 will obviously need to be adjusted based on the size of the Company. These disclosure threshold amounts include both monies owed by the Company and to the Company; therefore, special care should be taken to ensure complete disclosure on the Schedule of Exceptions (including items such as loans to officers of the Company, agreements for options granted to employees or consultants by the Company, employment agreements or consulting agreements).]*

v\_field\_end

## Related-Party Transactions. No employee, officer, or director of the Company (a “Related Party”) or member of such Related Party’s immediate family, or any corporation, partnership or other entity in which such Related Party is an officer, director or partner, or in which such Related Party has significant ownership interests or otherwise controls, is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them. v\_field\_include\_knowledge\_qualifier\_in\_representation\_as\_to\_related\_party\_interests\_in\_company\_related\_party\_representation\_applicability To the Company’s knowledge none v\_field\_else None v\_field\_end of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except that employees, officers, or directors of the Company and members of such Related Party’s immediate families may own stock in publicly traded companies that may compete with the Company. No Related Party or member of their immediate family is directly or indirectly interested in any material contract with the Company.

## Permits. The Company has all franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, the lack of which could materially and adversely affect the business, properties v\_field\_include\_company\_prospects\_in\_company\_permits\_representation\_applicability, prospects v\_field\_end or financial condition of the v\_field\_include\_representation\_that\_can\_obtain\_permits\_for\_planned\_business\_in\_company\_permits\_representation\_applicability Company, and the Company believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. v\_field\_else Company. v\_field\_end The Company is not in default in any material respect under any of such franchises, permits, licenses, or other similar authority.

v\_field\_annotated\_copy

*[Comment: Note that for certain industries (e.g., life sciences) it may be necessary or appropriate to make reference to specific requirements for permits or regulatory approval.]*

v\_field\_end

v\_field\_include\_company\_environmental\_representation\_applicability

## Environmental and Safety Laws. v\_field\_include\_knowledge\_qualifier\_in\_company\_environmental\_representation\_applicability To its knowledge, the v\_field\_else The v\_field\_end Company is not in violation of any applicable statute, law or regulation relating to the environment or occupational health and safety v\_field\_include\_representation\_as\_to\_no\_material\_expenditures\_required\_in\_company\_environmental\_representation\_applicability, and v\_field\_include\_knowledge\_qualifier\_in\_company\_environmental\_representation\_applicability to its knowledge, v\_field\_end no material expenditures are or will be required in order to comply with any such existing statute, law or regulation v\_field\_end.

v\_field\_include\_detailed\_environmental\_representations\_in\_company\_environmental\_representation\_applicability

## The Company has complied with and is in compliance with all applicable Environmental Laws (as defined below). The Company is not subject to any existing, pending or, to the knowledge of the Company, threatened proceedings under any Environmental Laws, and no expenditures are required by the Company in order to comply with any existing Environmental Laws.

## The Company has never sent, arranged for disposal or treatment, arranged with a transporter for transport for disposal or treatment, transported, disposed or accepted for transport any Hazardous Substance (as defined below), to a facility, site or location that (i) is on a priorities list or similar list established pursuant to any Environmental Law for environmental cleanup or other remedial action, or (ii) could reasonably be expected to give rise to liability under any Environmental Law.

## The Company does not store, generate or produce any Hazardous Substance in quantities or in a manner which could reasonably be expected to violate any Environmental Law or which could reasonably be expected to give rise to any liability thereunder.

## The Company has provided the Investors with copies of any environmental reports, investigations or audits within the Company’s possession or control (whether conducted by or on behalf of the Company or a third party, and whether or not done at the initiative of the Company) relating to premises currently or previously owned, leased or operated by the Company.

## There has never been any contamination of any ground or surface water or soil with any Hazardous Substance as a result of the Company’s activities.

## For purposes of this Section 2.15:

## “Environmental Laws” means the Comprehensive Environmental Response, Compensation and Liability Act, as amended through the date hereof, and all other international, provincial, federal, national, state and local laws, statutes, common law, regulations, rules and ordinances relating to pollution or protection of the environment or human health and safety, including those relating to (A) releases or threatened releases of Hazardous Substances into the indoor or outdoor environment (including ambient air, surface water, groundwater, land, surface or subsurfaces) or otherwise relating to the manufacture, processing, labeling, packaging, distribution, use, treatment, disposal, storage or handling of Hazardous Substances (or the disclosure of any of the foregoing to any governmental authority) or (B) endangerment of one or more animal or plant species or natural resources.

## “Hazardous Substances” means any substance, material, product or object containing, in whole or in part and in any amount of concentration, (A) radioactive material, (B) asbestos, (C) petroleum or its byproducts, (D) formaldehyde, (E) pesticides, (F) mold, (G) diesel fuel, (H) crude oil or (I) other chemicals, materials, compounds or substances or wastes which now or in the future become defined as or included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “solid wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “contaminants,” “pollutants,” “toxic pollutants,” “regulated substances,” or words of similar import under any Environmental Law.

v\_field\_end

v\_field\_end

v\_field\_include\_detailed\_environmental\_representations\_in\_company\_environmental\_representation\_applicability\_annotation

*[Comment: With companies involved in manufacturing or use of hazardous chemicals, the subject of this representation may be an issue of great concern for investors. The qualification of actual knowledge of the Company in the above representation may be removed to provide an additional level of comfort to the investors that the Company has performed the appropriate amount of investigation. Depending on the specifics of the Company’s operations, investors may require more detailed representations, additional disclosure or even investigation by the Company with respect to its environmental compliance. An example of a more detailed representation is set forth below.]*

v\_field\_end

## Manufacturing, Marketing and Development Rights. The Company has not granted rights to manufacture, produce, assemble, license, market, or sell its products to any other person and is not bound by any agreement that affects the Company’s exclusive right to develop, manufacture, assemble, distribute, market or sell its products.

v\_field\_annotated\_copy

*[Comment: Section 2.16 represents that the Company has not granted any manufacturing or marketing rights to its products. Any such arrangements should be disclosed in the Schedule of Exceptions with the appropriate level of description to allow investors to evaluate the effect of these arrangements upon the operation of the Company.]*

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_customer\_returns\_and\_complaints\_applicability

## Returns and Complaints. The Company has received no customer complaints concerning its products and/or services, other than minor, nonrecurring warranty problems, nor has it had any of its products returned by a purchaser thereof.

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_customer\_returns\_and\_complaints\_applicability\_annotation

*[Comment: Section 2.17 serves a more important purpose for more developed companies and thus may be omitted in early stage financing transactions for companies not yet selling products.]*

v\_field\_end

## Disclosure. The Company has fully provided each Investor with all the information that such Investor has requested for deciding whether to purchase the Shares. v\_field\_include\_section\_10b5\_type\_representation\_in\_company\_disclosure\_representation\_applicability v\_field\_include\_knowledge\_qualifer\_in\_section\_10b5\_type\_representation\_in\_company\_disclosure\_representation\_applicability To the Company’s knowledge, no v\_field\_else No v\_field\_end certificates made or delivered in connection with this Agreement v\_field\_ancillary\_agreements\_applicability or the Ancillary Agreements v\_field\_end contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements herein or therein not misleading. v\_field\_end

v\_field\_include\_section\_10b5\_type\_representation\_in\_company\_disclosure\_representation\_applicability\_annotation

*[Comment: Section 2.18 embodies the federal securities antifraud standard for disclosure to investors within the Agreement and related documents. This standard of liability is limited to statements made in certificates delivered by the Company in connection with the financing documents (which encompasses the representations and warranties). Company counsel will resist any effort to expand this standard.]*

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_business\_plan\_applicability

## Business Plan. The Business Plan dated v\_field\_use\_brackets\_for\_business\_plan\_date\_applicability [] v\_field\_else v\_field\_business\_plan\_date v\_field\_end (the “Business Plan”), previously delivered to each Investor has been prepared in good faith by the Company and does not contain any untrue statement of a material fact nor does it omit to state a material fact necessary to make the statements made therein not misleading, except that with respect to projections contained in the Business Plan, the Company represents only that such projections were prepared in good faith and that the Company reasonably believes there is a reasonable basis for such projections.

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_business\_plan\_applicability\_annotation

*[Comment: Since most emerging company business plans are written by the Company without the assistance of counsel, most business plans will not meet the liability standards described in Section 2.19. As a result, counsel should seriously consider whether the Company should make the representations and warranties in Section 2.19.]*

v\_field\_end

## Registration Rights. Except as provided in the Investors’ Rights Agreement, the Company has not granted or agreed to grant any registration rights, including piggyback rights, to any person or entity.

v\_field\_annotated\_copy

*[Comment: Section 2.20 assures investors that there are no conflicts with respect to the registration rights granted by the Company. Counsel should pay special attention to prior registration rights granted by the Company. In particular, counsel should carefully review amendments in order to identify the group of investors with rights pursuant to such agreements. In some cases, loan or warrant agreements with commercial banks or equipment lenders will contain registration rights.]*

v\_field\_end

## Corporate Documents. Except for amendments necessary to satisfy the representations, warranties or conditions contained in this Agreement (the form of which amendments has been approved by the Investors), the Restated Certificate and Bylaws of the Company are in the form previously provided to the Investors or special counsel to the Investors.

v\_field\_annotated\_copy

*[Comment: Section 2.21 is intended to assure investors that the corporate records of the Company are in their previously reviewed form and no changes affecting the rights of the investors or the Company have been implemented.]*

v\_field\_end

## Title to Property and Assets. The Company owns its property and assets free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens that arise in the ordinary course of business and do not materially impair the Company’s ownership or use of such property or assets. With respect to the property and assets it leases, the Company is in compliance with such leases and v\_field\_include\_knowledge\_qualifer\_in\_representation\_as\_to\_valid\_clear\_leaseholds\_in\_company\_representation\_as\_to\_property\_title\_applicability, to its knowledge, v\_field\_end holds a valid leasehold interest free of any liens, claims or encumbrances.

v\_field\_annotated\_copy

*[Comment: Section 2.22 represents to investors that the Company holds free and clear title to its assets. The Company should note clearly on the Schedule of Exceptions any assets that are encumbered or in a situation where a lease held by the Company is of particular significance. Such lease should be listed on the Schedule of Exceptions.]*

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_small\_business\_concern\_applicability

## Small Business Concern. The Company is a “Small Business Concern” as that term is defined in the Small Business Investment Act of 1958, as amended, and in the regulations of the Small Business Administration promulgated thereunder.

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_small\_business\_concern\_applicability\_annotation

*[Comment: Section 2.23 should be used only in a situation where an investor is a small business investment company as given under Section 121.802(a) of the Code of Federal Regulations.]*

v\_field\_end

v\_field\_use\_general\_material\_liabilities\_representation\_instead\_of\_financial\_statements\_representation\_applicability

## Material Liabilities. The Company has no liability or obligation, absolute or contingent (individually or in the aggregate), except (i) obligations and liabilities incurred after the date of incorporation in the ordinary course of business that are not material, individually or in the aggregate, and (ii) obligations under contracts made in the ordinary course of business that would not be required to be reflected in financial statements prepared in accordance with generally accepted accounting principles.

v\_field\_else

## Financial Statements. The Company has delivered to each Investor v\_field\_include\_annual\_statements\_in\_company\_financial\_statements\_representation\_applicability its v\_field\_include\_audited\_financial\_statements\_in\_company\_financial\_statements\_representation\_applicability audited v\_field\_else unaudited v\_field\_end financial statements (balance sheet and income and cash flow statements, including notes thereto) at v\_field\_use\_brackets\_for\_company\_financial\_statements\_representation\_annual\_statements\_date\_applicability [] v\_field\_else v\_field\_company\_financial\_statements\_representation\_annual\_statements\_date v\_field\_end and for the fiscal year then ended v\_field\_include\_partial\_year\_statements\_in\_company\_financial\_statements\_representation\_applicability, and v\_field\_end v\_field\_end v\_field\_include\_partial\_year\_statements\_in\_company\_financial\_statements\_representation\_applicability its unaudited financial statements (balance sheet and income statement) as at and for the v\_field\_company\_financial\_statements\_representation\_partial\_year\_statements\_number\_months-month period ended v\_field\_use\_brackets\_for\_company\_financial\_statements\_representation\_partial\_year\_statements\_date\_applicability [] v\_field\_else v\_field\_company\_financial\_statements\_representation\_partial\_year\_statements\_date v\_field\_end v\_field\_end (the “Financial Statements”). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other, except that the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting principles. The Financial Statements fairly present the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of the unaudited Financial Statements to normal year-end audit adjustments. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (a) liabilities incurred in the ordinary course of business subsequent to v\_field\_use\_brackets\_for\_company\_financial\_statements\_representation\_bring\_down\_date\_applicability [] v\_field\_else v\_field\_company\_financial\_statements\_representation\_bring\_down\_date v\_field\_end (the “Financial Statement Date”) and (b) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

v\_field\_end

v\_field\_use\_general\_material\_liabilities\_representation\_instead\_of\_financial\_statements\_representation\_applicability\_annotation

*[Comment: The Company represents in Section 2.24 that the financial statements of the Company have been prepared in accordance with generally accepted accounting principles. In situations where the Company has used outside auditors to review its financial statements, Section 2.24 is adequate. In situations with young or start-up companies who have not prepared audited financial statements, the following alternative section may be more appropriate:*

*“Material Liabilities. The Company has no liability or obligation, absolute or contingent (individually or in the aggregate), except (i) obligations and liabilities incurred after the date of incorporation in the ordinary course of business that are not material, individually or in the aggregate, and (ii) obligations under contracts made in the ordinary course of business that would not be required to be reflected in financial statements prepared in accordance with generally accepted accounting principles.”]*

v\_field\_end

v\_field\_company\_financial\_statements\_representation\_bring\_down\_date\_annotation

*[Comment: In addition, a drafter should consider whether the defined term “Financial Statement Date” should refer to the date of a company’s last audited or last unaudited financial statements. Later stage investors may prefer to rely on the thoroughness of the audited financial statements for purposes of the bring-down statements in this Agreement related to this definition.]*

v\_field\_end

## Changes. Since v\_field\_use\_brackets\_for\_company\_financial\_statements\_representation\_bring\_down\_date\_applicability [] v\_field\_else v\_field\_company\_financial\_statements\_representation\_bring\_down\_date v\_field\_end (the “Financial Bring Down Date”) there has not been:

## any change in the assets, liabilities, financial condition or operating results of the Company v\_field\_use\_general\_material\_liabilities\_representation\_instead\_of\_financial\_statements\_representation\_applicability v\_field\_else from that reflected in the Financial Statements v\_field\_end, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;

## any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

## any waiver by the Company of a valuable right or of a material debt owed to it;

## any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted);

## any material change or amendment to a material contract or arrangement by which the Company or any of its assets or properties is bound or subject;

## any material change in any compensation arrangement or agreement with any employee, officer, director or stockholder;

## any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;

## any resignation or termination of employment of any key officer of the Company; and the Company, to its knowledge, does not know of the impending resignation or termination of employment of any such officer or key employee;

## receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

## any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable and liens that arise in the ordinary course of business and do not materially impair the Company’s ownership or use of such property or assets;

## any loans or guarantees made by the Company to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

## any declaration, setting aside or payment or other distribution in respect of any of the Company’s capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;

## to the Company’s knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is proposed to be conducted); or

## any agreement or commitment by the Company to do any of the things described in this Section.

v\_field\_company\_financial\_statements\_representation\_bring\_down\_date\_annotation

*[Comment: If no financial statements are being delivered to the Investors because of the early-stage nature of the Company, counsel should consider providing the representation set forth in Section 2.25 covering the period since the date of incorporation or another relevant date or to remove the representation entirely.]*

v\_field\_end

v\_field\_use\_detailed\_company\_representation\_as\_to\_benefit\_plans\_applicability

## Employee Benefit Plans.

## The Schedule of Exceptions contains a list of all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)) to which the Company or any person that is, together with the Company, treated as a single employer under Section 414 of the Code (as defined below), or Section 4001(b) of ERISA (each, an “ERISA Affiliate”), is a party, with respect to which the Company or any ERISA Affiliate has any obligation or which are maintained, contributed to or sponsored by the Company or any ERISA Affiliate for the benefit of any current or former employee, officer, director or consultant of the Company or any ERISA Affiliate (each, a “Benefit Plan”).

## The Company has furnished the Investors with a true and complete copy of each Benefit Plan (or a written summary of any Benefit Plan that is not in writing) and a true and complete copy of each material document, if any, prepared in connection with each Benefit Plan, including, without limitation, (i) a copy of each trust or other funding arrangement, (ii) each summary plan description and summary of material modifications, (iii) the three most recent annual reports (Form 5500 series and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Benefit Plan, (iv) the most recently received Internal Revenue Service determination or opinion letter for each Benefit Plan intended to qualify under Section 401(a) of the Code and (v) the most recently prepared actuarial report and financial statement in connection with each Benefit Plan (if not included in such annual report).

## None of the Benefit Plans is subject to Title IV of ERISA or Section 412 of the Code, and neither the Company nor any ERISA Affiliate has ever maintained or contributed to a plan that is subject to Title IV of ERISA or Section 412 of the Code.

## Each Benefit Plan is now and always has been operated in all material respects in accordance with its terms and the requirements of all applicable Laws, including, without limitation, ERISA, the Code and the Consolidated Omnibus Budget Reconciliation Act, as amended. No action, claim or proceeding is pending or, to the knowledge of the Company, threatened with respect to any Benefit Plan (other than claims for benefits in the ordinary course) and no fact or event exists that could give rise to any such action, claim or proceeding. Each Benefit Plan may be amended, terminated or otherwise discontinued at any time without material liability to the participants, the Investors, the Company or any ERISA Affiliate, other than ordinary administration expenses.

## Each Benefit Plan intended to qualify under Section 401(a) of the Code has received a favorable determination or opinion letter from the Internal Revenue Service with respect to its qualified status under the Code, including all amendments to the Code effected by the Tax Reform Act of 1986 and subsequent legislation, the application for such letter was accurate and complete, and nothing has occurred since the date of such letter that would adversely affect the qualified status of such Benefit Plan.

v\_field\_else

## Employee Benefit Plans. The Company does not have any Employee Benefit Plan as defined in the Employee Retirement Income Security Act of 1974.

v\_field\_end

v\_field\_use\_detailed\_company\_representation\_as\_to\_benefit\_plans\_applicability\_annotation

*[Comment: This representation will need to be expanded significantly using the language below to the extent the Company may have Employee Benefit Plans governed by ERISA, such as 401(k) plans and health plans.]*

v\_field\_end

## Tax Returns, Payments and Elections. The Company has filed all tax returns and reports (including information returns and reports) as required by law. These returns and reports are true and correct in all material respects v\_field\_include\_exception\_for\_reserves\_in\_company\_tax\_representation\_applicability except to the extent that a reserve has been reflected on the Financial Statements in accordance with generally accepted accounting principles v\_field\_end. The Company has paid all taxes and other assessments due, except those contested by it in good faith that are listed in the Schedule of Exceptions v\_field\_include\_exception\_for\_reserves\_in\_company\_tax\_representation\_applicability and except to the extent that a reserve has been reflected on the Financial Statements in accordance with generally accepted accounting principles v\_field\_end. The provision for taxes of the Company as shown in the Financial Statements is adequate for taxes due or accrued as of the date thereof. The Company has not elected pursuant to the Internal Revenue Code of 1986, as amended (the “Code”), to be treated as a Subchapter S corporation or a collapsible corporation pursuant to Section 1362(a) or Section 341(f) of the Code, nor has it made any other elections pursuant to the Code (other than elections that relate solely to methods of accounting, depreciation or amortization) that would have a material effect on the Company, its financial condition, its business as presently conducted v\_field\_include\_proposed\_business\_in\_representation\_as\_to\_tax\_elections\_with\_material\_effect\_in\_company\_tax\_representation\_applicability or proposed to be conducted v\_field\_end or any of its properties or material assets. The Company has never had any tax deficiency proposed or assessed against it and has not executed any waiver of any statute of limitations on the assessment or collection of any tax or governmental charge. None of the Company’s federal income tax returns and none of its state income or franchise tax or sales or use tax returns has ever been audited by governmental authorities. Since the Financial Bring Down Date, the Company has not incurred any taxes, assessments or governmental charges other than in the ordinary course of business and the Company has made adequate provisions on its books of account for all taxes, assessments and governmental charges with respect to its business, properties and operations for such period. The Company has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositories. The Company is not a party to any contract and/or has not granted any compensation, equity or award that could be deemed deferred compensation subject to the additional twenty percent (20%) tax under Section 409A of the Code, and neither the Company nor any person that is a member of the same controlled group as the Company or under common control with the Company within the meaning of Section 414 of the Code has any liability or obligation to make any payments or to issue any equity award or bonus that could be deemed deferred compensation subject to the additional twenty percent (20%) tax under Section 409A of the Code.

v\_field\_annotated\_copy

*[Comment: Section 2.27 represents to investors that the Company has paid all tax liabilities and filed all required tax returns. Any outstanding tax liabilities for which a reserve has not been established on the Financial Statements should be disclosed on the Schedule of Exceptions. Counsel should also be aware of any situations where elections by the Company to pay individuals as “independent consultants” may be reviewed and deemed employees, thus requiring back taxes to be paid.]*

v\_field\_end

## Insurance. The Company has in full force and effect fire and casualty insurance policies, with extended coverage, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties that might be damaged or destroyed. v\_field\_include\_key\_person\_insurance\_representation\_in\_company\_insurance\_representation\_applicability The Company has in full force and effect term life insurance, payable to the Company, on the lives of the individuals and in the amounts set forth on the Schedule of Exceptions. v\_field\_end v\_field\_include\_errors\_and\_omissions\_insurance\_representation\_in\_company\_insurance\_representation\_applicability The Company has in full force and effect products liability and errors and omissions insurance in amounts customary for companies similarly situated. v\_field\_end

## Minute Books. The minute books of the Company provided to the Investors contain a complete summary of all meetings of directors and stockholders since the time of incorporation and reflect all transactions referred to in such minutes accurately in all material respects.

## Labor Agreements and Actions; Employee Compensation. The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Company’s knowledge, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Company’s knowledge, threatened, that could have a material adverse effect on the assets, properties, financial condition, operating results, or business of the Company (as such business is presently conducted v\_field\_include\_proposed\_business\_in\_representation\_as\_to\_no\_labor\_disputes\_with\_material\_effect\_in\_company\_labor\_representation\_applicability and as it is proposed to be conducted v\_field\_end), nor is the Company aware of any labor organization activity involving its employees. The Company is not aware that any officer or key employee, or that any group of key employees, intends to terminate their employment with the Company, nor does the Company have a present intention to terminate the employment of any of the foregoing. The employment of each officer and employee of the Company is terminable at the will of the Company. To its knowledge, the Company has complied in all material respects with all applicable state and federal equal employment opportunity and other laws related to employment. The Company is not a party to or bound by any currently effective employment contract, deferred compensation agreement, bonus plan, incentive plan, profit sharing plan, retirement agreement, or other employee compensation agreement. v\_field\_include\_representation\_as\_to\_no\_severance\_in\_company\_labor\_representation\_applicability The Company is not obligated to pay severance or any other additional compensation upon the termination of any employee. v\_field\_end

v\_field\_annotated\_copy

*[Comment: Section 2.30 discloses any and all labor related commitments or contracts of the Company. This section also flushes out any disclosures required on the Schedule of Exceptions related to employment contracts and problems with employees. Counsel should consider including additional representations if material operations or numbers of employees are located overseas.]*

v\_field\_end

## Section 83(b) Elections. To the Company’s knowledge, all individuals who have purchased unvested shares of the Company’s Common Stock have timely filed elections under Section 83(b) of the Code and any analogous provisions of applicable state tax laws.

v\_field\_annotated\_copy

*[Comment: See Article 7 of the Founder/Employee Stock Purchase Agreement in Chapter 4 for an explanation of Section 83(b) elections. The consequences of failing to file such an election fall primarily on the individual employee involved. However, investors may be concerned that due to potentially large adverse tax consequences, key employees who have failed to make timely elections may lose motivation.]*

v\_field\_end

v\_field\_include\_company\_firpta\_representation\_applicability

## Real Property Holding Company. The Company is not currently, and has not been during the prior five (5) years, a United States real property holding corporation within the meaning of Section 897 of the Code, and the Company has filed with the Internal Revenue Service all statements, if any, with its United States income tax returns which are required under Section 1.897-2(h) of the Treasury Regulations.

v\_field\_end

v\_field\_include\_company\_firpta\_representation\_applicability\_annotation

*[Comment: Foreign investors (including foreign limited partners in U.S. venture funds) are taxed by the U.S. when they sell stock in U.S. corporations that are or have been “United States real property holding corporations” as defined by the Foreign Investment in Real Property Tax Act of 1980 (based on the amount of U.S. real property held). Note that this is not a covenant that the Company will not become a United States real property holding corporation in the future.]*

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_net\_operating\_losses\_applicability

## Net Operating Loss Carryforward. The information contained in the Schedule of Exceptions or otherwise provided to counsel for the Investors regarding the application of Section 382 of the Code to the Company’s federal net operating loss carryforward is true and correct v\_field\_include\_knowledge\_qualifier\_in\_company\_representation\_as\_to\_net\_operating\_losses\_applicability to the Company’s knowledge v\_field\_end.

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_net\_operating\_losses\_applicability\_annotation

*[Comment: Section 382 of the Code imposes limitations upon a Company’s ability to use its net operating losses if the ownership of the Company changes beyond specified thresholds. These ownership changes are calculated by reference to the value of the outstanding stock of the Company. For privately-held companies with multiple classes of stock, it may be difficult to determine the applicability of Section 382 with any degree of certainty as a result of the fact that the value of the various classes of stock of the Company cannot be definitively determined.]*

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_reductions\_from\_significant\_customers\_and\_suppliers\_applicability

## Significant Customers and Suppliers. No customer or supplier that was significant to the Company v\_field\_use\_general\_material\_liabilities\_representation\_instead\_of\_financial\_statements\_representation\_applicability since the Financial Bring Down Date v\_field\_else during the period covered by the Financial Statements or that has been significant to the Company thereafter v\_field\_end, has terminated, materially reduced or threatened to terminate or materially reduce its purchases from or provision of products or services to the Company, as the case may be.

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_product\_regulatory\_review\_applicability

## Product Regulatory Review.

## As to each of the products of the Company, including, without limitation, products or compounds currently under research and/or development by the Company, subject to the jurisdiction of the United States Food and Drug Administration (“FDA”) under the Federal Food, Drug and Cosmetic Act and the regulations thereunder (“FDCA”) (each such product, a “Life Science Product”), such Life Science Product is being researched, developed, manufactured, tested, distributed and/or marketed in compliance in all material respects with all applicable requirements under the FDCA and similar laws and regulations applicable to such Life Science Product, including those relating to investigational use, premarket approval, good manufacturing practices, labeling, advertising, record keeping, filing of reports and security. The Company has not received any notice or other communication from the FDA or any other Federal, state or foreign governmental entity (i) contesting the premarket approval of, the uses of or the labeling and promotion of any Life Science Product or (ii) otherwise alleging any violation by the Company of any law, regulation or other legal provision applicable to a Life Science Product.

## v\_field\_include\_representation\_as\_to\_no\_misstatement\_in\_company\_representation\_as\_to\_product\_regulatory\_review\_applicability

## Neither the Company, nor any officer, employee or agent of the Company has made an untrue statement of a material fact or fraudulent statement to the FDA or other Federal, state or foreign governmental entity performing similar functions or failed to disclose a material fact required to be disclosed to the FDA or such other Federal, state or foreign governmental entity.

v\_field\_end

v\_field\_end

v\_field\_include\_company\_representation\_as\_to\_product\_regulatory\_review\_applicability\_annotation

*[Comment: Section 2.35 discloses regulatory matters applicable to life sciences companies, particularly those involved in the biotechnology or medical device marketplace. Because these fields are expansive, care should be taken to customize the representation to the Company’s particular industry.]*

v\_field\_end

v\_field\_include\_company\_qsbs\_representation\_applicability

## Qualified Small Business Stock. As of the Closing: (a) the Company will be an eligible corporation as defined in Section 1202(e)(4) of the Code, (b) the Company will not have made any purchases of its own stock during the one-year period preceding the Closing having an aggregate value exceeding five percent (5%) of the aggregate value of all its stock as of the beginning of such period and (c) the Company’s aggregate gross assets, as defined by Code Section 1202(d)(2), at no time between v\_field\_use\_brackets\_for\_company\_qsbs\_representation\_window\_start\_date\_applicability [] v\_field\_else v\_field\_company\_qsbs\_representation\_window\_start\_date v\_field\_end and through the Closing have exceeded or will exceed $50 million, taking into account the assets of any corporations required to be aggregated with the Company in accordance with Code Section 1202(d)(3); provided, however, that in no event shall the Company be liable to the Investors for any damages arising from any subsequently proven or identified error in the Company’s determination with respect to the applicability or interpretation of Section 1202 unless such determination shall have been given by the Company in a manner either negligent or fraudulent.

v\_field\_end

v\_field\_include\_company\_qsbs\_representation\_applicability\_annotation

*[Comment: Internal Revenue Code Section 1202 provides for a 50% exclusion (subject to certain limitations) from taxable income of gains recognized on the disposition of certain stock in qualifying corporations that has been held for at least five years. On occasion, a venture capitalist may ask for a representation like the foregoing to assure that as of the date of investment the Company meets the requirements of Code Section 1202. The Company at times will resist this representation on the theory that the analysis regarding current compliance may be complex and, in any event, may not really benefit the investor because compliance with numerous other requirements during the period the investor holds the stock is needed for the investor to qualify for the benefits of Code Section 1202.]*

v\_field\_end

v\_field\_include\_company\_software\_representation\_applicability

## Software. All Software (as defined below): (a) is free of all viruses, worms, trojan horses and other infections, as well as from other intentionally harmful routines; (b) does not contain material bugs, errors, or problems that have or could reasonably be expected to materially disrupt its operation or have a material adverse impact on the operation of such any Software or the Company’s business; (c) does not contain any “open source,” “copy left,” “public” or other similar code or anything derived from or based on any of the foregoing, (d) is free from (and if distributed would still be free from) any requirement imposed by a licensor that recipients be entitled to source code or to modify or distribute any Software, (e) is v\_field\_use\_reasonableness\_for\_software\_security\_representation\_in\_company\_software\_representation\_applicability reasonably v\_field\_end secure, has not been breached or attacked, and has v\_field\_use\_reasonableness\_for\_software\_security\_representation\_in\_company\_software\_representation\_applicability reasonably v\_field\_end adequate capacity and safeguards to protect against such a breach or attack and (f) is adequate for the business as conducted v\_field\_include\_proposed\_business\_in\_company\_software\_representation\_applicability and proposed to be conducted v\_field\_end. With respect to Software obtained from third parties v\_field\_exclude\_possessed\_source\_code\_from\_knowledge\_qualifier\_exception\_on\_third\_party\_software\_in\_company\_software\_representation\_applicability (and with respect to which the Company does not possess source code) v\_field\_end, the representations and warranties of this Section are made to the Company’s knowledge. “Software” means software, programs, systems, networks, databases and related documentation, in any form (including Internet sites, Internet content and links) that is (a) material to the operation of the Company’s business as currently conducted v\_field\_include\_proposed\_business\_in\_company\_software\_representation\_applicability and proposed to be conducted v\_field\_end, or (b) manufactured, distributed, sold, licensed or marketed by the Company in connection with the Company’s business as currently conducted v\_field\_include\_proposed\_business\_in\_company\_software\_representation\_applicability and proposed to be conducted v\_field\_end.

v\_field\_end

v\_field\_include\_company\_solvency\_representation\_applicability

## Solvency. The Company has not: (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors; (c) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets; (d) suffered the attachment or other judicial seizure of all, or substantially all, of its assets; (e) admitted in writing its inability to pay its debts as they come due; or (f) made an offer of settlement, extension or composition to its creditors generally.

v\_field\_end

v\_field\_include\_company\_solvency\_representation\_applicability\_annotation

*[Comment: Consider including Section 2.38 with respect to any company having a long operating history or evidence of past or current financial distress.]*

v\_field\_end

v\_field\_include\_company\_fcpa\_representation\_applicability

## Foreign Corrupt Practices Act. None of the Company nor any of the Company’s directors, officers or employees have made, directly or indirectly, any payment or promise to pay, or gift or promise to give or authorized such a promise or gift, of any money or anything of value, directly or indirectly, to (a) any foreign official (as such term is defined in the U.S. Foreign Corrupt Practices Act (the “FCPA”)) for the purpose of influencing any official act or decision of such official or inducing him or her to use his or her influence to affect any act or decision of a governmental authority or (b) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any official act or decision of such party, official or candidate or inducing such party, official or candidate to use his, her or its influence to affect any act or decision of a foreign governmental authority, in the case of both (a) and (b) above in order to assist the Company or any of its affiliates to obtain or retain business for, or direct business to the Company or any of its affiliates, as applicable. None of the Company nor any of its directors, officers or employees has made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment of funds or received or retained any funds in violation of any law, rule or regulation.

v\_field\_end

v\_field\_include\_company\_fcpa\_representation\_applicability\_annotation

*[Comment: Consider including Sections 2.39 and 2.40 with respect to any company having significant foreign operations.]*

v\_field\_end

v\_field\_include\_company\_ofac\_representation\_applicability

## Compliance with Office of Foreign Assets Control.

## None of the Company nor the Company’s directors, officers or employees is an OFAC Sanctioned Person (as defined below). The Company and the Company’s directors, officers or employees are in compliance with, and have not previously violated, the USA Patriot Act of 2001, as amended through the date of this Agreement, to the extent applicable to the Company and all other applicable anti-money laundering laws and regulations. None of (i) the purchase and sale of the Shares, (ii) the use of the purchase price for the Shares, (iii) the execution, delivery and performance of this Agreement v\_field\_ancillary\_agreements\_applicability or any of the Ancillary Agreements v\_field\_end or (iv) the consummation of any transaction contemplated hereby v\_field\_ancillary\_agreements\_applicability or thereby v\_field\_end, or the fulfillment of the terms hereof or thereof, will result in a violation by anyone, including, without limitation, the Investors, of any of the OFAC Sanctions (as defined below) or of any anti-money laundering laws of the United States or any other applicable jurisdiction.

## For the purposes of the foregoing subsection (a):

## “OFAC Sanctions” means any sanctions program administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”) under authority delegated to the Secretary of the Treasury (the “Secretary”) by the President of the United States or provided to the Secretary by statute, and any order or license issued by, or under authority delegated by, the President or provided to the Secretary by statute in connection with a sanctions program thus administered by OFAC. For ease of reference, and not by way of limitation, OFAC Sanctions programs are described on OFAC’s website at www.treas.gov/ofac.

## “OFAC Sanctioned Person” means any government, country, corporation or other entity, group or individual with whom or which the OFAC Sanctions prohibit a U.S. Person from engaging in transactions, and includes without limitation any individual or corporation or other entity that appears on the current OFAC list of Specially Designated Nationals and Blocked Persons (the “SDN List”). For ease of reference, and not by way of limitation, OFAC Sanctioned Persons other than governments and countries can be found on the SDN List on OFAC’s website at www.treas.gov/offices/enforcement/ofac/sdn.

## “U.S. Person” means any U.S. citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person (individual or entity) in the United States, and, with respect to the Cuban Assets Control Regulations, also includes any corporation or other entity that is owned or controlled by one of the foregoing, without regard to where it is organized or doing business.

v\_field\_end

v\_field\_include\_company\_ofac\_representation\_applicability\_annotation

*[Comment: Consider including Sections 2.39 and 2.40 with respect to any company having significant foreign operations.]*

v\_field\_end

v\_field\_include\_custom\_company\_representations\_applicability

v\_field\_custom\_company\_representation\_hashes\_each

## v\_field\_custom\_company\_representation\_hashed\_title\_detail. v\_field\_custom\_company\_representation\_hashed\_representation\_language\_no\_period.

v\_field\_end

v\_field\_end

v\_capture\_end

v\_capture\_investor\_representations

# Representations and Warranties of the Investors. Each Investor, severally and not jointly, hereby represents and warrants that:

# Authorization. Such Investor has full power and authority to enter into this Agreement v\_field\_ancillary\_agreements\_applicability and the Ancillary Agreements v\_field\_end, and v\_field\_ancillary\_agreements\_applicability each such v\_field\_else this v\_field\_end Agreement constitutes its valid and legally binding obligation, enforceable in accordance with its terms except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors’ rights generally, (b) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (c) to the extent the indemnification provisions contained in the Investors’ Rights Agreement may be limited by applicable federal or state securities laws.

v\_field\_annotated\_copy

*[Comment: The representations and warranties from the investors serve two purposes: to provide that the agreement is binding on the investors and to provide support for the Company’s compliance with both state and federal securities laws for the offer and sale of its stock.]*

v\_field\_end

# Purchase Entirely for Own Account. This Agreement is made with such Investor in reliance upon such Investor’s representation to the Company, which by such Investor’s execution of this Agreement such Investor hereby confirms, that the Shares to be received by such Investor and the Conversion Shares (collectively, the “Securities”) will be acquired for investment for such Investor’s own account, not as a nominee or agent, and not with a view to the distribution of any part thereof, and that such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, such Investor further represents that such Investor does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

# Disclosure of Information. Such Investor believes it has received all the information it considers necessary or appropriate for deciding whether to purchase the Shares. Such Investor further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Shares and the business, properties, prospects and financial condition of the Company. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of the Investors to rely thereon.

# Investment Experience. Such Investor is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Shares. If other than an individual, Investor also represents it has not been organized for the purpose of acquiring the Shares.

v\_field\_annotated\_copy

*[Comment: Sections 3.3 and 3.4 constitute confirmations of the Investors’ ability to fend for themselves, which, together with the other representations of this Section 3, support private placement treatment under section 4(2) of the Act and SEC Regulation D (for non-accredited investors) for the sale of the Shares to the Investors.]*

v\_field\_end

# Accredited Investor. Such Investor is an “accredited investor” within the meaning of SEC Rule 501 of Regulation D, as presently in effect.

v\_field\_annotated\_copy

*[Comment: Section 3.5 can be included without some provision for exceptions only if all investors meet the “accredited investor” definition or are not “U.S. Persons,” as defined. If all investors are accredited investors or are not “U.S. Persons,” the Company’s burdens (and costs) are reduced in certain respects under Regulation D. It is, therefore, advantageous for the Company to limit its offering to these categories of investors, if feasible.]*

v\_field\_end

# Restricted Securities. Such Investor understands that the Securities will be characterized as “restricted securities” under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Act, only in certain limited circumstances. In this connection, such Investor represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

v\_field\_annotated\_copy

*[Comment: Section 3.6 serves to confirm the understanding of each investor that the Stock has not been registered under the Securities Act and that the Shares cannot and will not be sold without registration under the Act or exemption therefrom.]*

v\_field\_end

# Further Limitations on Disposition. Without in any way limiting the representations set forth above, such Investor further agrees not to make any disposition of all or any portion of the Securities unless and until:

## There is then in effect a Registration Statement under the Act covering such proposed disposition and such disposition is made in accordance with such Registration Statement; or

## (i) Such Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (ii) if reasonably requested by the Company, such Investor shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company that such disposition will not require registration of such shares under the Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144 except in unusual circumstances.

## Notwithstanding the provisions of subsections (a) and (b) above, no such registration statement or opinion of counsel shall be necessary for a transfer by an Investor that is a partnership to a partner of such partnership or a retired partner of such partnership who retires after the date hereof, or to the estate of any such partner or retired partner or the transfer by gift, will or intestate succession of any partner to his or her spouse or to the siblings, lineal descendants or ancestors of such partner or his or her spouse, if the prospective transferee agrees in all such instances in writing to be subject to the terms hereof to the same extent as if he or she were an original Investor hereunder.

## Legends. It is understood that the certificates evidencing the Securities may bear one or all of the following legends:

## “These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel satisfactory to the Company that such registration is not required or unless sold pursuant to Rule 144 of such Act.”

v\_field\_certificates\_may\_bear\_blue\_sky\_legends\_applicability

## Any legend required by applicable state “blue sky” securities laws, rules and regulations.

v\_field\_end

v\_field\_certificates\_may\_bear\_blue\_sky\_legends\_applicability\_annotation

*[Comment: Pursuant to section 18(b)(4)(D) of the Securities Act of 1933, the legend requirements of the various states do not apply to offerings made in accordance with SEC Rule 506.]*

v\_field\_end

v\_field\_include\_obligation\_to\_remove\_legends\_applicability

## The Company shall be obligated to reissue promptly unlegended certificates at the request of any holder thereof if the Company has completed its initial public offering under the Act and the holder shall have obtained an opinion of counsel (which counsel may be counsel to the Company) to the effect that the securities proposed to be disposed of may lawfully be so disposed without registration, qualification and legend.

v\_field\_end

## Exculpation Among Investors. Each Investor acknowledges that it is not relying upon any person, firm or corporation, other than the Company and its officers and directors, in making its investment or decision to invest in the Company. Each Investor agrees that no Investor nor the respective controlling persons, officers, directors, partners, agents, or employees of any Investor shall be liable to any other Investor for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the purchase of the Securities.

v\_field\_bridge\_conversion\_applicability

## Bridge Financing Conversion Notice. Each Investor acquiring Shares pursuant to the conversion of convertible promissory notes hereby v\_field\_investors\_to\_waive\_notice\_compliance\_for\_bridge\_conversion\_applicability waives v\_field\_else acknowledges and confirms that such Investor has duly and timely received v\_field\_end in connection with such conversion all notices required by the terms of such convertible promissory notes.

v\_field\_end

v\_field\_investors\_to\_waive\_notice\_compliance\_for\_bridge\_conversion\_applicability\_annotation

*[Comment: Often the promissory notes issued during a bridge financing will contain conversion rights that may be triggered by a venture capital equity financing. To help ensure an orderly process, such promissory notes typically contain notice provisions pursuant to which a company must notify the note holders of the terms of a proposed financing. Section 3.10 provides alternatives either for an acknowledgement that the required notices have been received or for a waiver of such obligations.]*

v\_field\_end

v\_field\_include\_further\_representations\_for\_foreign\_investors\_applicability

## Further Representations by Foreign Investors. If an Investor is not a United States person, such Investor hereby represents that he or she has satisfied himself or herself as to the full observance of the laws of his or her jurisdiction in connection with any invitation to subscribe for the Securities or any use of this Agreement, including (a) the legal requirements within his jurisdiction for the purchase of the Securities, (b) any foreign exchange restrictions applicable to such purchase, (c) any governmental or other consents that may need to be obtained, and (d) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of the Securities. Such Investor’s subscription and payment for, and his or her continued beneficial ownership of the Securities, will not violate any applicable securities or other laws of his or her jurisdiction.

v\_field\_end

v\_field\_include\_further\_representations\_for\_foreign\_investors\_applicability\_annotation

*[Comment: Additional representations and warranties will be necessary for foreign investors. The above example provides general representations for foreign investors, but counsel may wish to enlist the help of specialized or local counsel to ensure compliance by the Company with all applicable laws and regulations.]*

v\_field\_end

v\_field\_include\_custom\_investor\_representations\_applicability

v\_field\_custom\_investor\_representation\_hashes\_each

## v\_field\_custom\_investor\_representation\_hashed\_title\_detail. v\_field\_custom\_investor\_representation\_hashed\_representation\_language\_no\_period.

v\_field\_end

v\_field\_end

v\_capture\_end

v\_capture\_investor\_closing\_conditions

# Conditions of Investors’ Obligations at Closing. The obligations of each Investor under subsection 1.1(c) of this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, the waiver of which shall not be effective against any Investor who does not consent thereto v\_field\_subsequent\_closing\_applicability, except that Sections v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability 4.1, 4.3, 4.6 and v\_field\_include\_board\_size\_as\_investor\_closing\_condition\_applicability v\_field\_include\_board\_composition\_as\_investor\_closing\_condition\_applicability 4.10 v\_field\_else 4.9 v\_field\_end v\_field\_else v\_field\_include\_board\_composition\_as\_investor\_closing\_condition\_applicability 4.9 v\_field\_else 4.8 v\_field\_end v\_field\_end v\_field\_else 4.1, 4.3 and 4.6 v\_field\_end need not be fulfilled for subsequent sales of the Shares pursuant to Section 1.3 hereof v\_field\_end.

v\_field\_annotated\_copy

*[Comment: Section 4 states the conditions precedent and concurrent to the obligation of the investors to actually purchase the Shares. The Closing is contingent on the fulfillment or waiver of all conditions, and without such, the investors bear no liability to the Company for not purchasing the shares. Of course, in the vast majority of venture financings, signing and closing are simultaneous, so this section serves more as a closing checklist than a mechanism for triggering or escaping obligations. If this Agreement provides for subsequent closings (as set forth in Section 1.3), counsel should consider which conditions should apply to both the initial closing and the subsequent closing. In particular, care should be taken to consider whether a legal opinion of company counsel should be delivered at a subsequent closing.*

*In a situation where the closing of the sale of the Shares is coupled with the “formation” of the Company, this Agreement would also include conditions regarding obligations of the founders. These obligations might include the execution and delivery of employee stock purchase agreements, stock purchase agreements, employment agreements, proprietary information and invention agreements and voting agreements.]*

v\_field\_end

# Representations and Warranties. The representations and warranties of the Company contained in Section 2 shall be true on and as of the Closing v\_field\_specify\_nonsimultaneous\_closing\_date\_applicability with the same effect as though such representations and warranties had been made on and as of the date of such Closing v\_field\_end.

v\_field\_annotated\_copy

*[Comment: Section 4.1 serves to reaffirm the representations and warranties of the Company as of the day of closing. Thus, if there is any breach of a representation or warranty the investors will have no obligation to actually purchase the shares. In the event of a breach of the representations and warranties prior to closing, the investors may simply walk away, rather than being forced to sue for damages. Of course, identifying a breach between signing and closing is unlikely since signing and closing of a venture financing are normally simultaneous. The bracketed language may be excluded if signing and closing occurs simultaneously.]*

v\_field\_end

# Performance. The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

v\_field\_annotated\_copy

*[Comment: This section serves to reaffirm any and all closing conditions not specifically outlined in Section 4.]*

v\_field\_end

# Compliance Certificate. The President of the Company shall deliver to each Investor at the Closing a certificate stating that the conditions specified in Sections 4.1 and 4.2 have been fulfilled and stating that there shall have been no material adverse change in the business, affairs, v\_field\_include\_business\_prospects\_in\_closing\_compliance\_certificate\_applicability prospects, v\_field\_end operations, properties, assets or condition of the Company since the Financial Bring Down Date.

# Qualifications. All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

# Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to the Investors or special counsel for the Investors, and they shall have received all such counterpart original and certified or other copies of such documents as they may reasonably request.

# Secretary’s Certificate. The Secretary or Assistant Secretary of the Company shall deliver to each Investor at the Closing a certificate stating that the copies of the Company’s Restated Certificate and Bylaws and Board of Director and stockholder resolutions relating to the sale of the Shares attached thereto are true and complete copies of such documents and resolutions.

# Proprietary Information v\_field\_include\_employee\_stock\_purchase\_agreements\_in\_investor\_closing\_conditions\_applicability and Employee Stock Purchase v\_field\_end Agreements. Each employee of the Company shall have entered into a Proprietary Information and Inventions Agreement, and each consultant to the Company shall have entered into a Consulting Agreement, substantially in the form previously provided or made available to the Investors. v\_field\_include\_employee\_stock\_purchase\_agreements\_in\_investor\_closing\_conditions\_applicability Each holder of Common Stock of the Company shall have entered into an Employee Stock Purchase Agreement in the form previously provided to special counsel for the Investors. v\_field\_end

v\_field\_include\_board\_size\_as\_investor\_closing\_condition\_applicability

# Bylaws. The Bylaws of the Company shall provide that the Board of Directors of the Company shall consist of v\_field\_board\_total\_number\_seats\_words (v\_field\_board\_total\_number\_seats) persons.

v\_field\_end

v\_field\_include\_board\_composition\_as\_investor\_closing\_condition\_applicability

# Board of Directors. The directors of the Company shall be v\_field\_board\_composition\_at\_closing\_director\_hashes\_each v\_field\_board\_composition\_at\_closing\_director\_hashed\_name v\_field\_comma\_conjunctive v\_field\_end v\_field\_board\_vacancies\_applicability, and there shall be v\_field\_board\_number\_vacancies vacanc(ies) on the Board of Directors v\_field\_end.

v\_field\_end

v\_field\_include\_board\_composition\_as\_investor\_closing\_condition\_applicability\_annotation

*[Comment: Section 4.9 describes the Company’s board of directors at the time of the financing and does not contain any forward looking covenant.]*

v\_field\_end

v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability

# Opinion of Company Counsel. Each Investor shall have received from v\_field\_company\_counsel\_name, counsel for the Company, an opinion, dated as of the Closing, in the form attached hereto as Exhibit v\_field\_voting\_agreement\_applicability v\_field\_rofr\_and\_cosale\_agreement\_applicability E v\_field\_else D v\_field\_end v\_field\_rofr\_and\_cosale\_agreement\_else\_applicability D v\_field\_else C v\_field\_end.

v\_field\_end

v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability\_annotation

*[Comment: See Chapter 25 regarding a specific form of Legal Opinion.]*

v\_field\_end

# Investors’ Rights Agreement. The Company and each Investor shall have entered into the Investors’ Rights Agreement in the form attached as Exhibit B.

v\_field\_annotated\_copy

*[Comment: See Chapter 19 regarding a specific form of Investors’ Rights Agreement.]*

v\_field\_end

v\_field\_voting\_agreement\_applicability

# Voting Agreement. The Company, each Investor and the other parties thereto shall have entered into the Voting Agreement in the form attached hereto as Exhibit C.

v\_field\_end

v\_field\_annotated\_copy

*[Comment: See Chapter 20 regarding a specific form of Voting Agreement.]*

v\_field\_end

v\_field\_rofr\_and\_cosale\_agreement\_applicability

# v\_field\_rofr\_and\_cosale\_agreement\_name. The Company, each Investor and each of the other parties thereto shall have entered into the v\_field\_rofr\_and\_cosale\_agreement\_name in the form attached hereto as Exhibit v\_field\_voting\_agreement\_applicability D v\_field\_else C v\_field\_end.

v\_field\_end

v\_field\_annotated\_copy

*[Comment: See Chapter 21 regarding a specific form of First Refusal and Co-Sale Agreement.]*

v\_field\_end

v\_field\_include\_management\_rights\_letters\_applicability

# Management Rights Letter. v\_field\_management\_rights\_letter\_hashes\_each The Company and v\_field\_management\_rights\_letter\_hashed\_recipient\_names shall have entered into a Management Rights Letter in the form attached hereto as Exhibit v\_field\_voting\_agreement\_applicability v\_field\_rofr\_and\_cosale\_agreement\_applicability v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability F v\_field\_else E v\_field\_end v\_field\_else E v\_field\_end v\_field\_rofr\_and\_cosale\_agreement\_else\_applicability v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability E v\_field\_else D v\_field\_end v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_else\_applicability D v\_field\_else C v\_field\_end v\_field\_management\_rights\_letter\_hashes\_plurality\_applicability - v\_field\_ordinal\_index v\_field\_end. v\_field\_end

v\_field\_end

v\_field\_include\_management\_rights\_letters\_applicability\_annotation

*[Comment: Venture capital funds typically require the execution of a management rights letter in connection with a financing in order to help ensure compliance with venture capital operating company laws, rules and regulations.]*

v\_field\_end

v\_field\_include\_indemnification\_agreements\_as\_investor\_closing\_condition\_applicability

# Indemnification Agreement. The Company and v\_field\_investor\_closing\_condition\_indemnification\_agreement\_recipient\_hashes\_plurality\_applicability each of v\_field\_end v\_field\_investor\_closing\_condition\_indemnification\_agreement\_recipient\_hashes\_each v\_field\_investor\_closing\_condition\_indemnification\_agreement\_recipient\_hashed\_name v\_field\_comma\_conjunctive v\_field\_end shall have entered into an Indemnification Agreement in the form attached hereto as Exhibit v\_field\_voting\_agreement\_applicability v\_field\_rofr\_and\_cosale\_agreement\_applicability v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability v\_field\_include\_management\_rights\_letters\_applicability G v\_field\_else F v\_field\_end v\_field\_else F v\_field\_end v\_field\_else E v\_field\_end v\_field\_rofr\_and\_cosale\_agreement\_else\_applicability v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability v\_field\_include\_management\_rights\_letters\_applicability F v\_field\_else E v\_field\_end v\_field\_else D v\_field\_end v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_else\_applicability v\_field\_include\_management\_rights\_letters\_applicability E v\_field\_else D v\_field\_end v\_field\_else C v\_field\_end.

v\_field\_end

v\_field\_include\_custom\_investor\_closing\_condition\_applicability

v\_field\_custom\_investor\_closing\_condition\_hashes\_each

# v\_field\_custom\_investor\_closing\_condition\_hashed\_title\_detail. v\_field\_custom\_investor\_closing\_condition\_hashed\_closing\_condition\_language\_no\_period.

v\_field\_end

v\_field\_end

v\_capture\_end

v\_capture\_company\_closing\_conditions

# Conditions of the Company’s Obligations at Closing. The obligations of the Company to each Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by that Investor:

v\_field\_annotated\_copy

*[Comment: Similar to the Conditions of the Investors’ Obligations at Closing, this section states the conditions precedent and concurrent to the Company’s obligations to sell the Shares.]*

v\_field\_end

# Representations and Warranties. The representations and warranties of the Investors contained in Section 3 shall be true on and as of the Closing v\_field\_specify\_nonsimultaneous\_closing\_date\_applicability with the same effect as though such representations and warranties had been made on and as of the Closing v\_field\_end.

v\_field\_annotated\_copy

*[Comment: See Section 4.1 for explanation. This section is the Company’s counterpart to Section 4.1.]*

v\_field\_end

# Payment of Purchase Price. The Investor shall have delivered the purchase price specified in Section 1.1(c) v\_field\_include\_minimum\_number\_of\_shares\_in\_initial\_closing\_as\_company\_closing\_condition\_applicability, and Investors shall collectively have acquired and paid for at the closing at least v\_field\_initial\_closing\_minimum\_number\_shares Shares hereunder v\_field\_end.

# Qualifications. All authorizations, approvals, or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

v\_field\_include\_custom\_company\_closing\_conditions\_applicability

v\_field\_custom\_company\_closing\_condition\_hashes\_each

# v\_field\_custom\_company\_closing\_condition\_hashed\_title\_detail. v\_field\_custom\_company\_closing\_condition\_hashed\_closing\_condition\_language\_no\_period.

v\_field\_end

v\_field\_end

v\_capture\_end

v\_capture\_miscellaneous\_provisions

# Miscellaneous.

# Survival of Warranties. The warranties, representations and covenants of the Company and Investors contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investors or the Company.

v\_field\_include\_company\_indemnification\_of\_investors\_for\_reps\_and\_warranties\_applicability

# Indemnification. The Company, v\_field\_no\_time\_limit\_on\_company\_indemnification\_of\_investors\_for\_reps\_and\_warranties\_applicability without limitation as to time v\_field\_else for a period of v\_field\_time\_limit\_on\_company\_indemnification\_for\_reps\_and\_warranties\_number\_periods v\_field\_time\_limit\_on\_company\_indemnification\_for\_reps\_and\_warranties\_period\_type\_ambipluralize from the Closing v\_field\_end, assumes liability for and agrees to indemnify, defend and hold harmless each Investor and its officers, directors, stockholders, partners, members, employees, agents and affiliates (collectively, “Indemnified Persons”) from and against all diminution in value, losses, claims, damages, liabilities, obligations, fines, penalties, judgments, settlements, costs, expenses and disbursements (including attorneys’ fees and expenses) (collectively, “Losses”) arising out of or related to (a) any breach or inaccuracy of any representation or warranty of the Company contained in this Agreement; (b) any non-fulfillment or breach of any covenant or agreement of the Company contained in this Agreement or any Ancillary Agreement; or (c) incurred in connection with any action or proceeding against the Company or any Indemnified Person arising out of or in connection with this Agreement, any Ancillary Agreement (or any other document or instrument executed pursuant hereto or thereto), or the transactions contemplated herein or therein (a “Covered Proceeding”) other than, solely in regards to this clause (c), Losses that (i) are finally determined in such Covered Proceeding to be primarily and directly a result of (A) the gross negligence of such Indemnified Person, (B) a breach of a fiduciary duty, if any, owed by such Indemnified Person to the Company or (C) the intentional misconduct or a knowing violation of applicable law by such Indemnified Person or (ii) are the subject of a separate indemnification agreement entered into by the Company and such Indemnified Person, as to which Losses the provisions of such indemnification agreement, rather than this Section 6.2, shall apply. With respect to Losses arising out of or relating to Covered Proceedings, the Company agrees to reimburse each Indemnified Person promptly for all such Losses as they are incurred by such Indemnified Person after the Company receives a written undertaking by or on behalf of such Indemnified Person to reimburse the Company for any payments made by the Company to such Indemnified Person if it is finally determined by a court of competent jurisdiction that such Indemnified Person is not entitled to indemnification pursuant to clause (c) above. The obligations of the Company to each Indemnified Person under this Section 6.2 will be separate and distinct obligations and will survive any transfer of securities by any Investor and the expiration or termination of this Agreement v\_field\_ancillary\_agreements\_applicability or any Ancillary Agreement v\_field\_end. THE COMPANY AND THE INVESTORS INTEND THAT THE INDEMNIFIED PERSONS BE INDEMNIFIED FROM LIABILITY FOR THEIR OWN NEGLIGENCE PURSUANT TO THIS SECTION 6.2.

v\_field\_end

v\_field\_include\_company\_indemnification\_of\_investors\_for\_reps\_and\_warranties\_applicability\_annotation

*[Comment: Depending on the stage of the Company’s development, market factors and investor custom and geographic location, a survival period of a specific length may be negotiated. Additionally, depending upon the above factors, investors may seek a special indemnification from the Company for losses sustained on account of breaches or inaccuracies of Company representations/warranties, a breach of Company covenants, and/or legal proceedings relating to the investment. An example of such an indemnity is set forth below.]*

v\_field\_end

# Successors and Assigns. Except as otherwise provided herein, 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 (including transferees of any Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the 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.

# Governing Law. This Agreement shall be governed by and construed under the laws of the State of v\_field\_governing\_law\_state as applied to agreements among v\_field\_governing\_law\_state residents entered into and to be performed entirely within v\_field\_governing\_law\_state.

# Counterparts. This Agreement may be executed and delivered by facsimile or electronic signature and in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument.

# 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.

# Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the 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) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses set forth on the signature pages attached hereto (or at such other addresses as shall be specified by notice given in accordance with this Section).

# Finder’s Fee. Each party represents that it neither is nor will be obligated for any finders’ fee or commission in connection with this transaction. Each Investor agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finders’ fee (and the costs and expenses of defending against such liability or asserted liability) for which such Investor or any of its officers, partners, employees, or representatives is responsible.

The Company agrees to indemnify and hold harmless each Investor from any liability for any commission or compensation in the nature of a finders’ fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

# Expenses. Irrespective of whether the Closing is effected, v\_field\_reimburse\_investor\_expenses\_applicability the Company v\_field\_else each party to this Agreement v\_field\_end shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement. v\_field\_reimburse\_investor\_expenses\_applicability If the Closing is effected, the Company shall, at the Closing, reimburse the reasonable fees and out-of-pocket expenses of v\_field\_investor\_counsel\_name, special counsel for v\_field\_lead\_investor\_name v\_field\_investor\_expense\_reimbursement\_cap\_applicability, not to exceed v\_field\_investor\_expense\_reimbursement\_dollar\_cap v\_field\_end. v\_field\_lead\_investor\_name acknowledges that payment of the fees of v\_field\_investor\_counsel\_name by the Company raises a potential conflict of interest and hereby consents to the payment arrangement set forth herein. v\_field\_end If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement v\_field\_ancillary\_agreements\_applicability, the Ancillary Agreements v\_field\_end or the Restated Certificate, 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.

v\_field\_reimburse\_investor\_expenses\_applicability\_annotation

*[Comment: If counsel anticipates the use of any special outside counsel or extraordinary expenses with regard to the transaction, such items should be negotiated well prior to the closing.]*

v\_field\_end

v\_capture\_amendment\_and\_waiver\_provisions

# Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and v\_field\_custom\_investor\_vote\_to\_amend\_agreement\_applicability v\_field\_custom\_investor\_vote\_to\_amend\_agreement\_detail v\_field\_else the holders of v\_field\_agreement\_waiver\_percent\_threshold of the Conversion Shares issued or issuable upon conversion of the Shares purchased hereunder v\_field\_end. Any amendment or waiver effected in accordance with this section shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities are convertible), each future holder of all such securities, and the Company.

v\_capture\_end

# Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

v\_field\_include\_california\_securities\_law\_notice\_applicability

# Corporate Securities Law. THE SALE OF THE SECURITIES THAT ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION FOR SUCH SECURITIES PRIOR TO SUCH QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

v\_field\_end

v\_field\_include\_california\_securities\_law\_notice\_applicability\_annotation

*[Comment: Pursuant to section 18(b)(4)(D) of the Securities Act of 1933, the legend requirements of the various states do not apply to offerings made in accordance with SEC Rule 506.]*

v\_field\_end

# Aggregation of Stock. All shares of the Preferred Stock held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

# Entire Agreement. This Agreement and the documents referred to herein constitute the entire agreement among the parties and no party shall be liable or bound to any other party in any manner by any warranties, representations, or covenants except as specifically set forth herein or therein.

v\_field\_include\_company\_counsel\_conflict\_waiver\_applicability

# Waiver of Conflicts. Each party to this Agreement acknowledges that v\_field\_company\_counsel\_name, counsel for the Company, has in the past and may continue to perform legal services for certain of the Investors in matters unrelated to the transactions described in this Agreement, including the representation of such Investors in venture capital financings and other matters. Accordingly, each party to this Agreement hereby (a) acknowledges that they have had an opportunity to ask for information relevant to this disclosure; (b) acknowledges that v\_field\_company\_counsel\_name represented the Company in the transaction contemplated by this Agreement and has not represented any individual Investor or any individual stockholder or employee of the Company in connection with such transaction; and (c) gives its informed written consent to the representation by v\_field\_company\_counsel\_name of certain of the Investors in such unrelated matters and to representation of the Company by v\_field\_company\_counsel\_name in connection with this Agreement and the transactions contemplated hereby.

v\_field\_end

v\_field\_include\_company\_counsel\_conflict\_waiver\_applicability\_annotation

*[Comment: This conflict waiver should not be relied upon in lieu of an actual conflict letter from the client since it occurs at the end of the representation. This paragraph is simply meant to put all parties on notice to the potential conflict issues and act as a backstop if the original conflict waiver is invalid.]*

v\_field\_end

v\_field\_include\_company\_obligation\_to\_coordinate\_any\_publicity\_with\_investors\_applicability

# Publicity. The Company shall consult with v\_field\_lead\_investor\_name prior to issuing any press releases or otherwise making any public statement with respect to the transactions contemplated hereby and prior to making any filings with any federal or state governmental or regulatory agency or any self-regulatory organization with respect thereto. The Company shall not issue any press release or make any public disclosure indicating that any particular Investor is a party to this Agreement unless such press release or public disclosure shall be approved by such Investor in advance.

v\_field\_end

v\_capture\_end

[*Remainder of page intentionally left blank*]

**IN WITNESS WHEREOF**, the parties have executed this v\_field\_custom\_purchase\_agreement\_name\_applicability v\_field\_custom\_purchase\_agreement\_name v\_field\_else v\_field\_financing\_security\_name Purchase Agreement v\_field\_end as of the date first above written.

**COMPANY:**

**V\_FIELD\_COMPANY\_NAME\_UPCASE**

v\_sig\_company\_chained\_titled

v\_field\_else

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

v\_field\_end

Address: v\_field\_company\_street\_address

v\_field\_company\_city\_state\_zip

v\_field\_include\_company\_copy\_to\_address\_applicability

With a copy to:

v\_field\_company\_copy\_to\_street\_address

v\_field\_company\_copy\_to\_city\_state\_zip

v\_field\_include\_fax\_in\_company\_copy\_to\_address\_applicability

Fax: v\_field\_company\_copy\_to\_fax

v\_field\_end

v\_field\_end

v\_sigs\_investors

**IN WITNESS WHEREOF**, the parties have executed this v\_field\_custom\_purchase\_agreement\_name\_applicability v\_field\_custom\_purchase\_agreement\_name v\_field\_else v\_field\_financing\_security\_name Purchase Agreement v\_field\_end as of the date first above written.

**INVESTORS:**

**V\_SIGS\_INVESTORS\_HASHED\_NAME\_UPCASE**

v\_sig\_investor\_chained\_titled\_addressed

v\_field\_else

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: v\_sigs\_investors\_hashed\_street\_address

v\_sigs\_investors\_hashed\_city\_state\_zip

v\_field\_end

v\_sigs\_end

**Schedule A**

**Schedule of Investors**

v\_field\_subsequent\_closing\_applicability

**INITIAL CLOSING**

v\_field\_end

v\_capture\_initial\_closing\_investments

**Closing Date: v\_field\_use\_brackets\_for\_initial\_closing\_date\_applicability [] v\_field\_else v\_field\_initial\_closing\_date v\_field\_end**

|  |  |  |
| --- | --- | --- |
| **Name and Address** | **Shares** | **Purchase Price** |
| v\_field\_initial\_closing\_purchaser\_hashes\_each v\_field\_initial\_closing\_purchaser\_hashed\_name  v\_field\_initial\_closing\_purchaser\_hashed\_street\_address  v\_field\_initial\_closing\_purchaser\_hashed\_city\_state\_zip  v\_field\_initial\_closing\_purchaser\_hashed\_include\_initial\_closing\_purchaser\_copy\_to\_address\_applicability  With a copy to:  v\_field\_initial\_closing\_purchaser\_hashed\_copy\_to\_street\_address  v\_field\_initial\_closing\_purchaser\_hashed\_copy\_to\_city\_state\_zip  v\_field\_initial\_closing\_purchaser\_hashed\_include\_fax\_in\_initial\_closing\_purchaser\_copy\_to\_address\_applicability  Fax: v\_field\_initial\_closing\_purchaser\_hashed\_copy\_to\_fax  v\_field\_end  v\_field\_initial\_closing\_purchaser\_hashed\_include\_email\_in\_initial\_closing\_purchaser\_copy\_to\_address\_applicability  v\_field\_initial\_closing\_purchaser\_hashed\_copy\_to\_email  v\_field\_end  v\_field\_end | v\_field\_initial\_closing\_purchaser\_hashed\_number\_shares | v\_field\_initial\_closing\_purchaser\_hashed\_precise\_dollar\_purchase\_price |
| v\_field\_table\_row\_end **TOTAL:** | **v\_field\_initial\_closing\_purchaser\_hashes\_summed\_number\_shares** | **v\_field\_initial\_closing\_purchaser\_hashes\_summed\_precise\_dollar\_purchase\_price** |

v\_capture\_end

v\_field\_subsequent\_closing\_applicability

**SUBSEQUENT CLOSINGS**

v\_capture\_subsequent\_closing\_investments

|  |  |  |  |
| --- | --- | --- | --- |
| **Name and Address** | **Closing Date** | **Shares** | **Purchase Price** |
| v\_field\_subsequent\_closing\_purchaser\_hashes\_each v\_field\_subsequent\_closing\_purchaser\_hashed\_name  v\_field\_subsequent\_closing\_purchaser\_hashed\_street\_address  v\_field\_subsequent\_closing\_purchaser\_hashed\_city\_state\_zip  v\_field\_subsequent\_closing\_purchaser\_hashed\_include\_subsequent\_closing\_purchaser\_copy\_to\_address\_applicability  With a copy to:  v\_field\_subsequent\_closing\_purchaser\_hashed\_copy\_to\_street\_address  v\_field\_subsequent\_closing\_purchaser\_hashed\_copy\_to\_city\_state\_zip  v\_field\_subsequent\_closing\_purchaser\_hashed\_include\_fax\_in\_subsequent\_closing\_purchaser\_copy\_to\_address\_applicability  Fax: v\_field\_subsequent\_closing\_purchaser\_hashed\_copy\_to\_fax  v\_field\_end  v\_field\_subsequent\_closing\_purchaser\_hashed\_include\_email\_in\_subsequent\_closing\_purchaser\_copy\_to\_address\_applicability  v\_field\_subsequent\_closing\_purchaser\_hashed\_copy\_to\_email  v\_field\_end  v\_field\_end | v\_field\_subsequent\_closing\_purchaser\_hashed\_use\_brackets\_for\_closing\_date\_applicability [] v\_field\_else v\_field\_subsequent\_closing\_purchaser\_hashed\_closing\_date v\_field\_end | v\_field\_subsequent\_closing\_purchaser\_hashed\_number\_shares | v\_field\_subsequent\_closing\_purchaser\_hashed\_precise\_dollar\_purchase\_price |
| v\_field\_table\_row\_end **TOTAL:** |  | **v\_field\_subsequent\_closing\_purchaser\_hashes\_summed\_number\_shares** | **v\_field\_subsequent\_closing\_purchaser\_hashes\_summed\_precise\_dollar\_purchase\_price** |

v\_capture\_end

v\_field\_end

v\_field\_include\_detailed\_representation\_as\_to\_shareholders\_in\_company\_representation\_as\_to\_capitalization\_applicability

**Schedule B**

**Schedule of Holders**

v\_field\_simply\_list\_attached\_for\_detailed\_representation\_as\_to\_shareholders\_in\_company\_representation\_as\_to\_capitalization\_applicability

[Attached]

v\_field\_else

v\_capture\_schedule\_of\_holders

|  |  |  |
| --- | --- | --- |
| **Name** | **Class and/or Series** | **Shares** |
| v\_field\_shareholder\_hashes\_each v\_field\_shareholder\_hashed\_name | v\_field\_shareholder\_hashed\_class\_or\_series\_name | v\_field\_shareholder\_hashed\_number\_shares |
| v\_field\_table\_row\_end **TOTAL:** | **--** | **v\_field\_shareholder\_hashes\_summed\_number\_shares** |

v\_capture\_end

v\_field\_end

v\_field\_end

**EXHIBIT A**

**Restated Certificate**

**EXHIBIT B**

**Investors’ Rights Agreement**

v\_field\_voting\_agreement\_applicability

**EXHIBIT C**

**Voting Agreement**

v\_field\_end

v\_field\_rofr\_and\_cosale\_agreement\_applicability

**EXHIBIT v\_field\_voting\_agreement\_applicability D v\_field\_else C v\_field\_end**

**v\_field\_rofr\_and\_cosale\_agreement\_name**

v\_field\_end

v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability

**EXHIBIT v\_field\_voting\_agreement\_applicability v\_field\_rofr\_and\_cosale\_agreement\_applicability E v\_field\_else D v\_field\_end v\_field\_rofr\_and\_cosale\_agreement\_else\_applicability D v\_field\_else C v\_field\_end**

**Opinion of Counsel for the Company**

v\_field\_end

v\_field\_include\_management\_rights\_letters\_applicability

v\_field\_management\_rights\_letter\_hashes\_each

**EXHIBIT v\_field\_voting\_agreement\_applicability v\_field\_rofr\_and\_cosale\_agreement\_applicability v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability F v\_field\_else E v\_field\_end v\_field\_else E v\_field\_end v\_field\_rofr\_and\_cosale\_agreement\_else\_applicability v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability E v\_field\_else D v\_field\_end v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_else\_applicability D v\_field\_else C v\_field\_end v\_field\_management\_rights\_letter\_hashes\_plurality\_applicability - v\_field\_ordinal\_index v\_field\_end**

**Management Rights Letter (v\_field\_management\_rights\_letter\_hashed\_recipient\_names)**

v\_field\_end

v\_field\_end

v\_field\_include\_indemnification\_agreements\_as\_investor\_closing\_condition\_applicability

**EXHIBIT v\_field\_voting\_agreement\_applicability v\_field\_rofr\_and\_cosale\_agreement\_applicability v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability v\_field\_include\_management\_rights\_letters\_applicability G v\_field\_else F v\_field\_end v\_field\_else F v\_field\_end v\_field\_else E v\_field\_end v\_field\_rofr\_and\_cosale\_agreement\_else\_applicability v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_applicability v\_field\_include\_management\_rights\_letters\_applicability F v\_field\_else E v\_field\_end v\_field\_else D v\_field\_end v\_field\_include\_legal\_opinion\_as\_investor\_closing\_condition\_else\_applicability v\_field\_include\_management\_rights\_letters\_applicability E v\_field\_else D v\_field\_end v\_field\_else C v\_field\_end**

**Indemnification Agreement**

v\_field\_end