[COMPANY NAME]

RESTRICTED STOCK PURCHASE AGREEMENT

This Restricted Stock Purchase Agreement (the “**Agreement**”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and between [Company Name], a Delaware corporation (the “**Company**”), and [Purchaser Name] (“**Purchaser**”).

# **Purchase and Sale of the Shares**

**.**

## Purchase and Sale of the Shares

. Subject to the terms and conditions of this Agreement, Purchaser agrees to purchase from the Company, and the Company agrees to sell to Purchaser, [\_\_\_\_\_\_\_\_\_\_] shares (the “**Shares**”) of the Company’s Common Stock (the “**Common Stock**”) at a purchase price of $[\_\_\_\_\_\_\_\_\_\_] per share (the “**Purchase Price**”) for an aggregate Purchase Price of $[\_\_\_\_\_\_\_\_\_\_], at the Closing (as defined below). [***Intellectual Property Transfer – Alternative #1 for use with simple technology situation:*** As part of the consideration for the Company’s agreement to sell the Shares, Purchaser hereby transfers and assigns to the Company (i) the business plan of the Company (the “**Business Plan**”) and (ii) any and all right, title and interest that Purchaser has in the Company’s business and any Intellectual Property (as defined below) related to the Company’s business, as currently conducted and as contemplated to be conducted pursuant to the Business Plan or otherwise. For purposes hereof, “**Intellectual Property**” means: (i) United States and foreign patents, trademarks, copyrights and mask works, registrations and applications therefor, and rights granted upon any reissue, division, continuation or continuation-in-part thereof, (ii) trade secret rights arising out of the laws of any and all jurisdictions, (iii) ideas, inventions, concepts, technology, software, methods, processes, drawings, illustrations, writings know-how, show-how, trade names, domain names, web addresses and web sites, and all rights therein and thereto, (iv) any other intellectual property rights, whether or not registrable, and (v) licenses in or to any of the foregoing. Further, Purchaser agrees to take all actions reasonably requested by the Company to assist the Company in effecting the foregoing transfer and in establishing, perfecting, defending, enforcing and protecting the Company’s rights in any of the above transferred items, including without limitation assisting in the prosecution of any patent applications included in or based upon the Intellectual Property.] [***Intellectual Property Transfer – Alternative #2 for use with more complicated technology situation:*** As part of the consideration for the Company’s agreement to sell the Shares, Purchaser has executed and delivered to the Company the Technology Assignment Agreement provided herewith.]

## Closing

. The purchase and sale of the Shares under this Agreement will occur simultaneously with the execution and delivery of this Agreement by the parties or at such other time as the Company and Purchaser shall agree (the “**Closing**”). At the Closing: (i) Purchaser will deliver the aggregate Purchase Price to the Company by wire transfer, check, cash or any other method of payment permissible under applicable law and approved by the Board of Directors of the Company (the “**Board**”) (or any combination of such methods of payment); and (ii) the Company will enter such Shares in Purchaser’s name as of the date of the Closing in the books and records of the Company or, if applicable, will deliver the Shares to a duly authorized transfer agent of the Company. Purchaser’s right to purchase the Shares will terminate and the Purchaser will have no further right to purchase the Shares if the Closing does not occur within 30 days of the date first set forth above.

# **Securities Law Compliance**

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## Exemption from Registration

. The sale of the Shares has not been registered under the Securities Act of 1933, as amended (the “**Securities Act**”), or registered or qualified under applicable state securities laws in reliance upon certain exemptions from such registration and qualification. The Shares must be held indefinitely and may not be resold, transferred or otherwise disposed of without registration under the Securities Act and registration or qualification under applicable state securities laws or an opinion of counsel, in form and substance satisfactory to the Company, that such registration and qualification is not required.

## Investment Representations

. In connection with the purchase of the Shares, Purchaser represents to the Company as follows:

### Purchaser is aware of the Company’s business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Purchaser is purchasing the Shares for investment for Purchaser’s own account and not with a view to, or for resale in connection with, any “distribution” thereof within the meaning of the Securities Act or under any applicable state securities laws. Purchaser does not have any present intention to transfer the Shares to any other party. Purchaser understands that the exemption from registration under the Securities Act for the issuance of the Shares depends in part upon the bona fide nature of Purchaser’s investment intent as expressed in this Agreement.

### Purchaser understands that the Shares are “restricted securities” under federal and state securities laws and that, pursuant to these laws, Purchaser must hold the Shares indefinitely unless they are registered and qualified under such laws or an exemption from such registration and qualification is available. Purchaser acknowledges that the Company has no obligation to register or qualify the Shares for resale. Purchaser further acknowledges that, if an exemption from registration or qualification is available, it may be conditioned on certain requirements, including, but not limited to, the time and manner of sale, the holding period for the Shares and requirements relating to the Company, which are outside of Purchaser’s control and which the Company is under no obligation, and may not be able, to satisfy.

### Purchaser believes that an investment in the Shares is suitable for Purchaser based on Purchaser’s investment objectives and financial needs, and Purchaser is able to bear the economic risk of an investment in the Shares. Purchaser has such knowledge and experience in financial and business matters as to make Purchaser capable of evaluating the risks of the prospective investment and to make an informed investment decision and is able to bear the economic risk of an investment in the Shares. Purchaser has either (i) preexisting personal or business relationships with the Company or any of its officers, directors or controlling persons, or (ii) the capacity to protect Purchaser’s own interests in connection with the purchase of the Shares by virtue of the business or financial expertise of Purchaser or professional advisors to Purchaser who are unaffiliated with and who are not compensated by the Company or any of its affiliates, directly or indirectly.

### Purchaser realizes that an investment in the Shares is highly speculative and involves a high degree of risk, including, without limitation, the developmental stage of the Company, the need for additional capital, the ability of the Company to develop its products and services on a timely basis or at all, market acceptance of the Company’s products or services, the rapid technological change and competition in the industry and the ability of the Company to assert and protect its intellectual property rights.

# **Repurchase Right; Exercise of Repurchase Right**

**.** All Shares purchased by Purchaser pursuant to this Agreement that have not vested under the terms of this Agreement, together with any shares of Common Stock issued as a dividend or other distribution on, in exchange for or upon the conversion of such unvested Shares (collectively, the “**Subject Shares**”) shall be subject to a right of repurchase in favor of the Company (the “**Repurchase Right**”). Upon the date of termination of Purchaser’s Service to the Company (the “**Termination Date**”), the Company shall have the right to purchase from Purchaser all Subject Shares as of the Termination Date. The Company shall be deemed to have exercised its Repurchase Right automatically for all Subject Shares as of the Termination Date, unless within ninety (90) days thereafter, the Company notifies the holder of the Subject Shares in writing that it will not exercise its Repurchase Right as to some or all of the Subject Shares; *provided*, that notwithstanding the above, the Repurchase Right shall not be deemed to have been automatically exercised, and shall instead be deemed to become temporarily unexercisable as of such time and date in any case where such automatic exercise would result in a violation of applicable law by reason of the Company having insufficient assets to meet its obligations or otherwise; and *provided*, *further*, that the Repurchase Right shall once again be deemed exercisable (or, as provided above, exercised) as soon as a violation of applicable law would not result from its exercise. The repurchase price per share (the “**Repurchase Price**”) shall be the lesser of (x) the fair market value of the shares at the time the Repurchase Right is exercised, as determined by the Board and (y) the Purchase Price per share paid by Purchaser for such shares pursuant to this Agreement (adjusted to reflect any stock split, stock dividend or other change in the shares which may be made after the date of this Agreement). The Repurchase Right shall lapse with respect to the Subject Shares in accordance with the vesting schedule set forth in this Agreement. Any instrument(s) representing the shares to be repurchased shall be delivered to the Company properly endorsed for transfer. The Company shall, concurrently with the receipt of such instrument(s), pay to Purchaser the Repurchase Price. The Repurchase Price shall be paid, at the option of the Company, by cancellation of all or a portion of outstanding indebtedness, if any, or in cash or both.

# **Vesting Schedule**

**.** Subject to the terms and conditions of this Agreement, the Shares shall vest in accordance with the schedule set forth below. For purposes of this Agreement, “**Service**” means Purchaser’s service to the Company or one or more of its parent or subsidiaries as an employee, a consultant or a non-employee director. If the Shares vest in consideration of Purchaser’s Service as an employee or a consultant, vesting immediately stops upon termination of Purchaser’s Service as an employee or a consultant for any reason. If the Shares vest in consideration of Purchaser’s Service as a non-employee director, vesting immediately stops upon termination of Purchaser’s Service as a non-employee director. For purposes of this Agreement, Purchaser shall be deemed to have ceased rendering Service on the date recorded on the personnel or other records of the Company or the parent or subsidiary for which Purchaser provides services, as determined by the Board in its sole discretion based upon such records. Fractional vested Shares shall be rounded down to the nearest whole number at all times. Subject to the foregoing, as long as Purchaser continues to render Service, Purchaser shall acquire a vested interest in, and the Repurchase Right shall terminate with respect to, the Shares in accordance with the following vesting schedule:

“**Vesting Commencement Date**” means [\_\_\_].

[One-fourth (1/4th) of the Shares will vest on the date that is twelve (12) months after the Vesting Commencement Date and an additional one-forty-eighth (1/48th) of the Shares will vest on the corresponding day of each month thereafter (and if there is no corresponding day, the last day of such month), until all the Shares are vested, subject to Purchaser’s continuous Service as of each such vesting date.]

[***Delete entirely if no single-trigger acceleration:*** In the event that a Change in Control (as defined below) occurs during Purchaser’s continuous Service, then one hundred percent (100%) of the Shares then unvested will become vested, effective immediately prior to the consummation of the Change in Control.]

[***Delete entirely if no double-trigger acceleration:*** In the event that, upon or within twelve (12) months following a Change in Control (as defined below), (i) Purchaser’s continuous Service is involuntarily terminated without Cause (as defined below), or (ii) Purchaser resigns from continuous Service for Good Reason (as defined below), and in either case, other than as a result of Purchaser’s death or disability (as defined in Section 22(e)(3) of the Internal Revenue Code of 1986, as amended), then one hundred percent (100%) of the Shares then unvested will become vested, effective immediately prior to such termination of Purchaser’s continuous Service.]

[***Delete entirely if no double-trigger acceleration:***

As used herein, “**Cause**” means (i) any material breach by Purchaser of any material written agreement between Purchaser and the Company and Purchaser’s failure to cure such breach within thirty (30) days after receiving written notice thereof, (ii) any failure by Purchaser to comply with the Company’s material written policies or rules as they may be in effect from time to time, (iii) neglect or persistent unsatisfactory performance of Purchaser’s duties and Purchaser’s failure to cure such condition within thirty (30) days after receiving written notice thereof, (iv) Purchaser’s repeated failure to follow reasonable and lawful instructions from the Board or chief executive officer of the Company and Purchaser’s failure to cure such condition within thirty (30) days after receiving written notice thereof, (v) Purchaser’s conviction of, or plea of guilty or *nolo contendere* to, any crime that results in, or is reasonably expected to result in, material harm to the business or reputation of the Company, (vi) Purchaser’s commission of or participation in an act of fraud against the Company, (vii) Purchaser’s intentional material damage to the Company’s business, property or reputation, or (viii) Purchaser’s unauthorized use or disclosure of any confidential information or trade secrets of the Company or any other party to whom Purchaser owes an obligation of nondisclosure as a result of Purchaser’s relationship with the Company.

As used herein, “**Good Reason**” means (i) a material reduction of Purchaser’s base salary, other than an across-the-board salary reduction affecting all or substantially all similarly situated employees of the Company, or (ii) relocation of Purchaser’s principal place of employment that results in an increase in Purchaser’s one-way driving distance by more than fifty (50) miles from Purchaser’s then-current principal residence. In order to resign for Good Reason, Purchaser must provide written notice of the existence of the Good Reason condition to the Board within sixty (60) days after the condition arises, allow the Company thirty (30) days to cure such condition, and if the Company fails to cure the condition within such period, Purchaser’s resignation from all positions that Purchaser then holds with the Company based on the Good Reason condition specified in the notice must be effective not later than thirty (30) days after the end of the Company’s cure period.

## As used herein, “**Change in Control**” means (a) a sale of all or substantially all of the Company’s assets other than to an Excluded Entity (as defined below), (b) a merger, consolidation or other capital reorganization or business combination transaction of the Company with or into another corporation, limited liability company or other entity other than an Excluded Entity, or (c) the consummation of a transaction, or series of related transactions, in which any “person” (as such term is used in Section 13(d) and Section 14(d) of the Securities and Exchange Act of 1934, as amended) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Securities and Exchange Act of 1934, as amended), directly or indirectly, of all of the Company’s then outstanding voting securities. Notwithstanding the foregoing, a transaction shall not constitute a Change in Control if its purpose is to (A) change the jurisdiction of the Company’s incorporation, (B) create a holding company that will be owned in substantially the same proportions by the persons who hold the Company’s securities immediately before such transaction, or (C) obtain funding for the Company in a financing that is approved by the Company’s Board. An “**Excluded Entity**” means a corporation or other entity of which the holders of voting capital stock of the Company outstanding immediately prior to such transaction are the direct or indirect holders of voting securities representing at least a majority of the votes entitled to be cast by all of such corporation’s or other entity’s voting securities outstanding immediately after such transaction.]

# **Waiver, Assignment, Expiration of Repurchase Right**

**.** If the Company determines not to exercise the Repurchase Right as to all or a portion of the Subject Shares, the Company may, in the discretion of the Board, assign the Repurchase Right to any party selected by the Board, including, without limitation, one or more officers, directors, employees or stockholders of the Company. In the event of such an assignment, the Board may require that the assignee pay to the Company in cash an amount equal to the fair market value of the Repurchase Right so assigned. The Company shall promptly, prior to expiration of the ninety (90) day period referred to in Section 3 above, notify Purchaser of the number of Subject Shares assigned to such stockholders and shall notify both Purchaser and the assignee(s) of the time, place and date for settlement of such purchase, which must be made within ninety (90) days after the Termination Date. In the event that the Company and/or such assignee(s) elect not to exercise the Repurchase Right as to all or part of the Subject Shares, the Repurchase Right shall expire as to all shares which the Company and/or such assignee(s) have elected not to purchase.

# **Change in Control Payment Limitations**

**.** Notwithstanding anything in this Agreement to the contrary, if any acceleration of the vesting of the Shares or other actions with respect to the Shares (which actions could be deemed a “payment” within the meaning of Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the “**Code**”)), together with any other payments which Purchaser has the right to receive from the Company or any corporation which is a member of an “affiliated group” (as defined in Section 1504(a) of the Code without regard to Section 1504(b) of the Code) of which the Company is a member, would constitute a “parachute payment” (as defined in Section 280G(b)(2) of the Code), such deemed “payments” will be reduced to the largest amount as will result in no portion of such deemed “payments” being subject to the excise tax imposed by Section 4999 of the Code; *provided*, however, that such “payments” shall only be reduced if such reduction would result in Purchaser receiving a greater net benefit, on an after-tax basis (including after payment of any excise tax imposed by Section 4999 of the Code), than Purchaser would have received had such reduction not occurred. Any reduction in payments and/or benefits required by this section will occur in the following order: (1) reduction of cash payments; (2) reduction of vesting acceleration of equity awards; and (3) reduction of other benefits paid or provided to Purchaser. In the event that acceleration of vesting of equity awards is to be reduced, such acceleration of vesting will be cancelled in the reverse order of the date of grant for Purchaser’s equity awards. If two or more equity awards are granted on the same date, each award will be reduced on a pro-rata basis. In no event will Purchaser exercise any discretion with respect to the ordering of any reductions of payments or benefits under this section. Unless the Company and Purchaser otherwise agree in writing, any determination required under this section shall be made in writing by the Company’s independent public accountants or a national “Big Four” accounting firm selected by the Company (the “**Accountants**”), whose determination shall be conclusive and binding upon Purchaser and the Company for all purposes. For purposes of making the calculations required by this section, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Section 280G and 4999 of the Code. The Company and Purchaser shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this section. The Company shall bear all costs that the Accountants may reasonably incur in connection with any calculations contemplated by this section.

# **Escrow of Shares**

**.** To ensure that Purchaser’s unvested Shares are delivered to the Company upon its exercise of its Repurchase Right, Purchaser agrees to deliver to and deposit with the Secretary of the Company, or the Secretary’s designee, at the Closing, the instrument(s) evidencing the unvested Shares and a Stock Power in the form attached as **Exhibit A** executed by Purchaser and by Purchaser’s spouse (if required for transfer), with date and number of shares in blank, to hold such instrument(s) and Stock Power in escrow and to take all such actions and effectuate all such transfers and/or releases in accordance with the terms of this Agreement. Purchaser hereby acknowledges that the Secretary of the Company, or the Secretary’s designee, is so appointed as the escrow holder with the foregoing authorities as a material inducement to make this Agreement and that such appointment is coupled with an interest and is accordingly irrevocable. Purchaser agrees that the escrow holder shall not be liable to any party hereof (or to any other party). The escrow holder may rely upon any letter, notice or other document executed by any signature purported to be genuine and may resign at any time. Purchaser agrees that if the Secretary of the Company, or the Secretary’s designee, resigns as escrow holder, the Board shall have the power to appoint a successor to serve as escrow holder. Subject to the provisions of this Agreement, Purchaser shall exercise all rights and privileges of a stockholder of the Company with respect to the Shares deposited in escrow. Purchaser shall be deemed to be the holder of the Shares for purposes of receiving any dividends that may be paid with respect to such Shares and for the purpose of exercising any voting rights relating to such Shares, even if some or all of such Shares have not yet vested and been released from the Repurchase Right.

# **No Transfer of Subject Shares**

**.** Notwithstanding anything herein to the contrary, Purchaser may not transfer, assign, encumber or otherwise dispose of any Subject Shares without the Company’s written consent, except that Purchaser may transfer Subject Shares to one or more of Purchaser’s Family Members (as defined below), *provided* that the transferee agrees in writing on a form prescribed by the Company to be bound by all of the provisions of this Agreement to the same extent as they apply to Purchaser.

# **Company’s Right of First Refusal**

**.** Before any Shares acquired by Purchaser pursuant to this Agreement (or any beneficial interest in such Shares) may be sold, transferred, encumbered or otherwise disposed of in any way (whether voluntary, involuntary, by operation of law, by gift or otherwise) by Purchaser or any subsequent transferee (each, a “**Holder**”), such Holder must first offer such Shares to the Company pursuant to the right of first refusal contained in the Company’s bylaws as in effect at any given time, and in the absence of any such provision in the bylaws, then in accordance with the following (the “**Right of First Refusal**”):

## Notice of Proposed Transfer

. Holder shall promptly deliver a notice (“**Notice**”) to the Company stating (i) Holder’s bona fide intention to sell or transfer such Shares, (ii) the number of such Shares to be sold or transferred, and the basic terms and conditions of such sale or transfer, (iii) the price for which Holder proposes to sell or transfer such Shares, (iv) the name of the proposed purchaser or transferee, and (v) proof satisfactory to the Company that the proposed sale or transfer will not violate any applicable U.S. federal, state or foreign securities laws. The Notice shall be signed by both Holder and the proposed purchaser or transferee and must constitute a binding commitment subject to the Company’s Right of First Refusal as set forth herein.

## Exercise of Right of First Refusal

. Within thirty (30) days after receipt of the Notice, the Company may elect to purchase all or any portion of the Shares to which the Notice refers, at the price per share specified in the Notice. If the Company elects not to purchase all or any portion of the Shares, the Company may assign its right to purchase all or any portion of the Shares. The assignee(s) may elect within thirty (30) days after receipt by the Company of the Notice to purchase all or any portion of the Shares to which the Notice refers, at the price per share specified in the Notice. If the price specified in the Notice consists of no legal consideration (as, for example, in the case of a transfer by gift), the purchase price will be the fair market value of the Shares (as determined by the Board). An election to purchase shall be made by written notice to Holder. Payment for Shares purchased pursuant to this section shall be made within sixty (60) days after receipt of the Notice by the Company and, at the option of the Company, may be made by cancellation of all or a portion of outstanding indebtedness, if any, or in cash, by wire transfer or check, or any combination of such methods of payment.

## Holder’s Right to Transfer

. If all or any portion of the Shares to which the Notice refers are not elected to be purchased by the Company or any assignee(s) of the Company, Holder may sell those Shares to the person(s) named in the Notice at the price specified in the Notice, *provided* that such sale or transfer is consummated within ninety (90) days after receipt by the Company of the Notice, and *provided*, *further*, that any such sale is made in compliance with applicable U.S. federal, state and foreign securities laws and not in violation of any other contractual restrictions to which Purchaser is bound. The third-party purchaser shall agree in writing on a form prescribed by the Company to be bound by, and shall acquire the Shares subject to, the provisions of this Agreement, including the Company’s Right of First Refusal, to the same extent as they apply to Purchaser. Any proposed transfer on terms and conditions different from those set forth in the Notice, as well as any subsequent proposed transfer shall again be subject to the Company’s Right of First Refusal and shall require compliance with the procedures described in this section.

## Exception for Certain Family Transfers

. The Right of First Refusal contained in this section shall not apply to a transfer, including by will or intestate succession, to one or more of Holder’s Family Members, *provided* that the transferee agrees in writing on a form prescribed by the Company to be bound by all of the provisions of this Agreement to the same extent as they apply to Purchaser; and *provided*, *further*, that without the prior written consent of the Company, which may be withheld in the sole discretion of the Company, no more than three transfers may be made pursuant to this exception, including all transfers by Purchaser and all transfers by any transferee. For purposes of this Agreement, a person’s “**Family Member**” means (i) the subject person’s child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, (ii) any person sharing the subject person’s household (other than a tenant or employee), (iii) a trust in which these persons have more than fifty percent (50%) of the beneficial interest, (iv) a foundation in which these persons (or the subject person) control the management of assets, and (v) any other entity in which these persons own more than fifty percent (50%) of the voting interests.

## Involuntary Transfers

. In the event of any transfer by operation of law or other involuntary transfer (including death, whether by will or intestate succession, or divorce, but excluding a transfer to Family Members as set forth above) of all or a portion of the Shares by the record holder thereof, the Company shall have the right to purchase all or a portion of the Shares transferred at the fair market value of the Shares on the date of transfer (as determined by the Board). Upon such a transfer, the Holder shall promptly notify the Secretary of the Company of such transfer. The right to purchase such Shares shall be provided to the Company for a period of thirty (30) days following receipt by the Company of written notice from the Holder.

## Termination of Right of First Refusal

. The Right of First Refusal contained in this section shall terminate as to all Shares purchased hereunder upon the earlier of: (i) the first sale of Common Stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act (other than a registration statement relating solely to the issuance of Common Stock pursuant to a business combination or an employee incentive or benefit plan), and (ii) any transfer or conversion of Shares made pursuant to a statutory merger or statutory consolidation of the Company with or into another corporation or corporations if the common stock of the surviving corporation or any direct or indirect parent corporation thereof is registered under the Securities and Exchange Act of 1934, as amended. Notwithstanding anything to the contrary set forth in this Agreement, Purchaser hereby agrees to be bound by any and all restrictions on the transfer of Shares as set forth in the Company’s bylaws as in effect at any given time.

# **Legends**

**.** All instruments representing the Shares purchased under this Agreement shall, where applicable, have endorsed thereon the following legends and any other legends required by applicable securities laws:

THE SECURITIES REPRESENTED HEREBY OR REFERENCED HEREIN HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OR FOREIGN JURISDICTION, AND MAY BE OFFERED AND SOLD ONLY IF REGISTERED AND QUALIFIED PURSUANT TO THE RELEVANT PROVISIONS OF U.S. FEDERAL, STATE AND APPLICABLE FOREIGN SECURITIES LAWS OR IF THE COMPANY IS PROVIDED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION AND QUALIFICATION UNDER U.S. FEDERAL, STATE AND APPLICABLE FOREIGN SECURITIES LAWS IS NOT REQUIRED.

THE SECURITIES REPRESENTED HEREBY OR REFERENCED HEREIN MAY NOT BE SOLD, TRANSFERRED, ENCUMBERED OR IN ANY MANNER DISPOSED OF, EXCEPT IN COMPLIANCE WITH THE TERMS OF A WRITTEN AGREEMENT BETWEEN THE COMPANY AND THE INITIAL HOLDER HEREOF. SUCH AGREEMENT MAY PROVIDE FOR CERTAIN TRANSFER RESTRICTIONS, INCLUDING RIGHTS OF FIRST REFUSAL UPON AN ATTEMPTED TRANSFER OF THE SECURITIES AND CERTAIN REPURCHASE RIGHTS IN FAVOR OF THE COMPANY. THE COMPANY SHALL NOT REGISTER OR OTHERWISE RECOGNIZE OR GIVE EFFECT TO ANY PURPORTED TRANSFER OF SECURITIES THAT DOES NOT COMPLY WITH such transfer restrictions. THE SECRETARY OF THE COMPANY WILL UPON WRITTEN REQUEST FURNISH A COPY OF SUCH AGREEMENT TO THE HOLDER HEREOF WITHOUT CHARGE.

# **No Duty to Transfer in Violation of this Agreement**

**.** The Company shall not be required (a) to transfer on its books any securities of the Company which shall have been sold or transferred in violation of any of the provisions set forth in this Agreement or (b) to treat as owner of such securities or to accord the right to vote as such owner or to pay dividends to any transferee to whom such securities shall have been so transferred. Any sale or transfer of the securities of the Company in violation of this Agreement shall be void.

# **Rights of Purchaser**

**.**

## Except as otherwise provided herein, Purchaser shall, during the term of this Agreement, exercise all rights and privileges of a stockholder of the Company with respect to the Shares.

## Nothing in this Agreement shall be construed as a right by Purchaser to be retained by the Company, or a parent or subsidiary of the Company in any capacity. The Company reserves the right to terminate Purchaser’s Service at any time and for any reason without thereby incurring any liability to Purchaser.

## If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for any Shares to be repurchased in accordance with this Agreement, then from and after such time, the person from whom such Shares are to be repurchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed repurchased in accordance with the provisions hereof and the Company shall be deemed the owner of such Shares, whether or not the instrument(s) evidencing such Shares have been delivered as required by this Agreement.

# **Market Stand-Off Agreement**

**.** Purchaser hereby agrees that in connection with any underwritten public offering by the Company of its securities pursuant to an effective registration statement filed under the Securities Act, including the Company’s initial public offering, Purchaser shall not, directly or indirectly, engage in any transaction prohibited by the underwriters, or sell, make any short sale of, contract to sell, transfer the economic risk of ownership in, loan, hypothecate, pledge, grant any option for the purchase of, or otherwise dispose or transfer for value or agree to engage in any of the foregoing transactions with respect to any Common Stock or other securities of the Company without the prior written consent of the Company or its underwriters, for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act (or such longer period as the Company or its underwriters shall request to facilitate compliance with FINRA Rule 2241 or any successor or similar rule or regulation). The foregoing provisions shall not apply to the sale of any securities to an underwriter pursuant to an underwriting agreement. The underwriters in connection with any public offering subject to the foregoing provisions are intended third party beneficiaries and shall have the right to enforce the provisions hereof as though they were a party hereto. Purchaser hereby agrees to execute and deliver such other agreements as may be reasonably requested by the Company or its underwriters which are consistent with the foregoing or which are necessary to give further effect thereto. To enforce the provisions of this section, the Company may impose stop-transfer instructions with respect to the Common Stock or other securities of the Company until the end of the applicable stand-off period.

# **Waiver of Statutory Information Rights**

**.** Purchaser hereby acknowledges and agrees that until the first sale of the Company’s Common Stock to the public pursuant to an effective registration statement filed under the Securities Act, Purchaser will be deemed to have waived any rights that Purchaser might otherwise have had under Section 220 of the Delaware General Corporation Law to inspect for any proper purpose and to make copies and extracts from the Company’s stock ledger, a list of stockholders and its other books and records or the books and records of any subsidiary. This waiver applies only in Purchaser’s capacity as a stockholder and does not affect any other inspection rights Purchaser may have under other law or pursuant to a written agreement with the Company.

# **Tax Consequences**

**.**

## In connection with the transfer of any unvested Shares pursuant to this Agreement, Purchaser should consider making an election under Section 83(b) of the Code (an “**83(b) Election**”), a form of which is attached as **Exhibit B**. Purchaser understands that Section 83(a) of the Code taxes as ordinary income the difference between the amount paid for the Shares and the fair market value of the Shares as of the date any restrictions on the Shares lapse. In this context, “restriction” means the right of the Company to buy back the Shares pursuant to the Repurchase Right set forth in this Agreement. Purchaser understands that Purchaser may elect to be taxed at the time the Shares are purchased, rather than when and as the Repurchase Right expires, by filing an 83(b) Election with the Internal Revenue Service within 30 days after the date of the Closing. Even if the fair market value of the Shares at the time of the execution of this Agreement equals the amount paid for the Shares, the election must be made to avoid income under Section 83(a) in the future. Purchaser understands that failure to file such an election in a timely manner may result in adverse tax consequences for Purchaser. *To be filed in a timely manner, an* *83(b) Election must be filed within thirty (30) days after the date of the Closing.*

BY PROVIDING THE FORM OF 83(b) ELECTION, THE COMPANY DOES NOT THEREBY UNDERTAKE TO FILE THE ELECTION FOR PURCHASER. THE RESPONSIBILITY TO FILE REMAINS SOLELY WITH PURCHASER.

## Purchaser agrees that Purchaser is responsible for consulting Purchaser’s own tax advisor as to the tax consequences associated with the Shares. Purchaser further acknowledges that the Company has directed Purchaser to seek independent advice regarding the applicable provisions of the Code, the income tax laws of any municipality, state or foreign country in which Purchaser may reside, and the tax consequences of Purchaser’s death, and Purchaser has consulted, and has been fully advised by, Purchaser’s own tax advisor regarding such tax laws and tax consequences or has knowingly chosen not to consult such a tax advisor. Purchaser further acknowledges that neither the Company nor any subsidiary or representative of the Company has made any warranty or representation to the Purchaser with respect to the tax consequences of the Purchaser’s purchase of the Shares or of the making or failure to make an 83(b) Election. The tax rules governing equity are complex, change frequently and depend on the individual taxpayer’s situation. Although the Company may make available to Purchaser general tax information about the Shares, Purchaser agrees that the Company shall not be held liable or responsible for making such information available to Purchaser or for any tax or financial consequences that Purchaser may incur in connection with the Shares. Purchaser acknowledges that the ultimate liability for all tax-related items is and remains Purchaser’s responsibility and that the Company (i) makes no representations or undertakings regarding the treatment of any tax-related items in connection with any aspect of the purchase or vesting of the Shares, the subsequent sale of Shares and the receipt of any dividends; and (ii) does not commit to structure any transaction relating to the Shares to reduce or eliminate Purchaser’s liability for tax-related items.

## No Shares will be released to Purchaser unless Purchaser has paid, or made acceptable arrangements to pay, any taxes required to be withheld as a result of the transfer of Shares under this Agreement. Purchaser hereby authorizes withholding from payroll or any other payment due to Purchaser from the Company or Purchaser’s employer to satisfy any such withholding tax obligation.

# **Release**

**.** As a condition of Purchaser receiving the acceleration provisions upon termination (if any) set forth in this Agreement, Purchaser shall execute a release of claims (the “**Release**”) with the Company and permit such Release to become effective in accordance with its terms. Unless the Release is executed by Purchaser and delivered to the Company within the period of time set forth in the Release, and such Release becomes effective, Purchaser will not receive any of the benefits of the acceleration provisions provided for in this Agreement.

# **Miscellaneous**

**.**

## Governing Law

. This Agreement shall be governed by the internal law of the State of Delaware, without regard to conflicts of law principles that would result in the application of any law of a different jurisdiction. The parties agree that any action brought by either party to interpret or enforce any provision of this Agreement shall be brought in, and each party agrees to and does hereby submit to (a) the jurisdiction and venue of the state courts of the State of Delaware and the United States District Court for the District of Delaware or (b) if selected by the Company in its sole discretion, the jurisdiction and venue of the state courts of the state and the United States District Court for the federal judicial district in which the principal executive office of the Company is located.

## Entire Agreement

. This Agreement constitutes the entire agreement and understanding between the parties hereto with regard to the subject matter hereof and supersedes all prior discussions and agreements (whether oral or written) between the parties with respect thereto.

## Amendments and Waivers

. No amendments or waivers to this Agreement will be effective unless in writing and signed by the party against whom such amendment or waiver is to be enforced. The failure of the Company in any instance to exercise any of its rights under this Agreement shall not constitute a waiver of any other rights that may subsequently arise under this Agreement. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other or subsequent breach or condition.

## Successors and Assigns

. The provisions of this Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Except as otherwise expressly provided in this Agreement to the contrary, the provisions of this Agreement shall inure to the benefit of and be binding upon Purchaser and Purchaser’s successors and assigns.

## Assignment; Transfers

. Except as set forth in this Agreement, this Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by Purchaser without the prior written consent of the Company. Any attempt by Purchaser without such consent to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void.

## Notices

. Any notice required or permitted under this Agreement shall be in writing and shall be deemed effectively given when delivered personally or by overnight courier or sent by email, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party’s address as set forth on the signature page, as subsequently modified by at least ten (10) days’ advance written notice to the other party hereto, or if no address is otherwise specified, at the most recent address set forth in the Company’s books and records.

## Severability

. If any provision of this Agreement is deemed void or unenforceable, such provision shall nevertheless be enforced to the fullest extent allowed by law, and the validity of the remainder of this Agreement shall not be affected.

## Additional or Substituted Securities; Recapitalizations

. All references to the number of Shares and the purchase price of the Shares in this Agreement shall be adjusted to reflect any stock split, stock dividend or other change in the Shares which may be made after the date of this Agreement.

## Further Documents

. Purchaser hereby agrees to take whatever additional action and execute whatever additional documents the Company may in its judgment deem necessary or advisable in order to carry out the obligations or restrictions imposed on Purchaser under this Agreement.

## Counterparts

. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

## Electronic Delivery

. The Company may, in its sole discretion, decide to deliver any documents related to this Agreement by electronic means. Purchaser hereby consents to receive such documents by electronic delivery and agrees to participate through an online or electronic system established and maintained by the Company or a third party designated by the Company.

[Signature Page Follows]

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the date first indicated above.

**company:**

**[COMPANY NAME]**

By:

Name:

Title:

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the date first indicated above.

**PURCHASER:**

**[PURCHASER NAME]**

[By:

Name:

Title:

]**[[1]](#footnote-1)**

Address:

Email:

**SPOUSAL CONSENT[[2]](#footnote-2)**

I, the undersigned, am the spouse of Purchaser and hereby indicate by the execution of this Agreement my consent to be irrevocably bound by the terms and conditions of this Agreement as to my interests, if any, in the Shares, whether as community property or otherwise. I hereby appoint my spouse as my attorney-in-fact with respect to any amendment or exercise of any rights under this Agreement.

By:

Name:

EXHIBIT A

**FORM OF STOCK POWER**

STOCK POWER

FOR VALUE RECEIVED, the undersigned (“**Purchaser**”) hereby sells, assigns and transfers to [Company Name] (the “**Company**”), or its assignee, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shares of the Common Stock of the Company (the “**Shares**”), standing in Purchaser’s name on the books of the Company and represented by Certificate No. \_\_\_\_\_\_\_\_\_\_\_ or referenced in a notice of issuance and/or held in uncertificated form in Purchaser’s name on the books of the Company, and irrevocably constitutes and appoints the Secretary of the Company, or the Secretary’s designee, as Purchaser’s attorney-in-fact to transfer the Shares on the books of the Company with full power of substitution in the premises.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(Purchaser’s Signature)

(Print Purchaser’s Name)

(Purchaser’s Spouse’s Signature)

(Print Purchaser’s Spouse’s Name)

INSTRUCTIONS: PLEASE DO NOT FILL IN ANY BLANKS OTHER THAN THE SIGNATURE LINES. THE PURPOSE OF THIS STOCK POWER IS TO ENABLE THE COMPANY TO EXERCISE ITS “REPURCHASE RIGHT” SET FORTH IN THE RESTRICTED STOCK PURCHASE AGREEMENT WITHOUT REQUIRING ADDITIONAL SIGNATURES.

EXHIBIT B

FORM OF SECTION 83(B) ELECTION

**IF YOU WISH TO MAKE A SECTION 83(B) ELECTION, THE FILING OF SUCH ELECTION IS YOUR RESPONSIBILITY.**

**THE FORM FOR MAKING THIS SECTION 83(B) ELECTION IS ATTACHED TO THIS AGREEMENT.**

**YOU MUST FILE THIS FORM WITHIN 30 DAYS AFTER PURCHASING THE SHARES.**

**YOU (AND NOT THE COMPANY, ANY OF ITS AGENTS OR ANY OTHER PERSON) SHALL BE SOLELY RESPONSIBLE FOR FILING SUCH FORM WITH THE IRS, EVEN IF YOU REQUEST THE COMPANY, ITS AGENTS OR ANY OTHER PERSON TO MAKE THIS FILING ON YOUR BEHALF AND EVEN IF THE COMPANY, ANY OF ITS AGENTS OR ANY OTHER PERSON HAVE PREVIOUSLY MADE THIS FILING ON YOUR BEHALF.**

**The election should be filed by mailing a signed election form by certified mail, return receipt requested to the IRS Service Center where you file your tax returns. See <**[**www.irs.gov**](http://www.irs.gov)**>.**

**ELECTION UNDER SECTION 83(B) OF THE INTERNAL REVENUE CODE OF 1986**

The undersigned taxpayer (the “**Taxpayer**”) hereby elects, pursuant to Section 83(b) of the Internal Revenue Code, to include in Taxpayer’s gross income, the amount of any compensation taxable to Taxpayer in connection with Taxpayer’s receipt of the property described below:

1. The name, address, identification number and taxable year of the undersigned are:

|  |  |
| --- | --- |
| Name of Taxpayer: |   |
| Name of Spouse (if applicable): |   |
| Taxpayer’s Address: |     |
| Taxpayer Identification No. of Taxpayer: | **See below** |
| Taxpayer Identification No. of Spouse (if applicable): | **See below (if applicable)** |
| Taxable Year for which this election is being made: |   |

1. The property which is the subject of this election is:  **shares of the Common Stock (the “Shares”) of [Company Name], a Delaware corporation (the “Company”).**
2. The date on which the property was transferred to the undersigned is: .
3. The property is subject to the following restrictions: **The Shares may not be transferred and are subject to forfeiture under the terms of an agreement between the undersigned and the Company. These restrictions lapse upon the satisfaction of certain conditions contained in such agreement.**
4. The fair market value of such property at the time of transfer is (determined without regard to any restriction other than a restriction which by its terms will never lapse): .
5. The amount (if any) paid for such property: .

The Taxpayer has submitted a copy of this statement to the Company for whom the services were performed in connection with the Taxpayer’s receipt of the above-described property. The Taxpayer is the person performing the services in connection with the transfer of said property.

The undersigned understand(s) that the foregoing election may not be revoked except with the consent of the Commissioner.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Dated:** | **X** |  |  |
|  |  |  |
| **TAXPAYER:** |  | **TAXPAYER SPOUSE (IF APPLICABLE):** |
| **X** |  | **X** |
| (Signature) |  | (Signature (if applicable)) |
| **X** |  | **X** |
| (Taxpayer Identification No.) |  | (Taxpayer Identification No. (if applicable)) |

1. Use “by, name, title” signature block if Purchaser is an entity. Delete if an individual. [↑](#footnote-ref-1)
2. If Purchaser or Purchaser’s spouse are residents of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin or the Commonwealth of Puerto Rico, then have the spouse execute a spousal consent to ensure that if the Shares are treated as marital property, the Company has the informed consent of all necessary parties to the disposition of the Shares. [↑](#footnote-ref-2)