

**BRIDGE FINANCINGS OF EMERGING GROWTH COMPANIES –  
WHAT LAWYERS REPRESENTING INVESTORS AND COMPANIES NEED TO KNOW**

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## **Contents**

1. Summary Outline
2. Sample Bridge Financing Documents
  - (a) Sample Bridge Financing Note Purchase Agreement
  - (b) Sample Bridge Financing Promissory Note
  - (c) Sample Bridge Financing Warrant
3. Panelist Biographies

## 1. Summary Outline

## **Bridge Financings of Emerging Growth Companies – What Lawyers Representing Investors and Companies Need to Know**

### **Summary Outline for Bridge Financings**

#### **I. Bridge Financings Overview**

##### **A. What are they?**

- (1) Debt financing w/ possible equity upside
- (2) Equity Rights
  - (a) Conversion features
  - (b) Warrant coverage
  - (c) Possible other equity or equity-like “sweeteners”

##### **B. Used to “bridge” the venture:**

- (1) Angel rounds / pre-Series A financings
- (2) From one round to the next
- (3) To a change of control
- (4) To an IPO
- (5) To profitability / key customer contract(s)
- (6) Other milestones / events

##### **C. Anticipated Benefits - Generally**

- (1) Provides necessary capital to allow venture to operate until the anticipated event or milestone.
- (2) Simplified structure
- (3) Lower transaction costs
- (4) Adaptable
- (5) Intended to provide investors with the protections of debt instruments – though often limited from a practical and contractual standpoint – with equity upside.

##### **D. Investor Perspective**

- (1) Greater risk should provide potential for greater reward
- (2) Desire to protect or benefit existing investment
- (3) Reputational, investment partner and other “moral” considerations

E. Company Perspective

- (1) Much needed capital
- (2) Desire to limit impact on next financing, change of control or other milestone – for the benefit of all stockholders
- (3) Need to minimize cost and speed funding

II. Key Terms

A. Note and Warrant Purchase Agreement

- (1) Scope of Company Representations and Warranties
- (2) Scope of Company Covenants
  - (a) Are any included?
  - (b) If so, what are they?
    - (i) Debt covenants
    - (ii) Equity covenants
- (3) Other Possible Terms
  - (a) Closing deliverables
  - (b) Indemnification
  - (c) Mechanics of subsequent bridge financings
  - (d) Standstill

B. Convertible Promissory Note

- (1) Mandatory v. Optional Conversion / Both
  - (a) Conversion triggers
  - (b) Holder optional v. company optional conversion
  - (c) Multiple conversion scenarios
- (2) Conversion Security
  - (a) Common Stock v. Preferred
  - (b) Which class of preferred?
  - (c) Multiple conversion securities
- (3) Conversion Price
  - (a) Fixed at closing v. pricing in the next round, change of control or other event

- (b) Discount
- (4) Interest
- (5) Payment Terms
  - (a) Demand note v. stated term
  - (b) PIK or cash interest / treatment of interest on conversion
  - (c) Acceleration of maturity on next financing, change of control and other events
  - (d) Possible premium payments in connection with a change of control or other events – to provide investor with equity-like upside in certain situations
- (6) Secured v. Unsecured
- (7) Subordination
- (8) Transferability
- (9) Adjustments
  - (a) Equitable adjustments
  - (b) Possible price protection

C. Warrants

- (1) Exercise
  - (a) When and for how long
  - (b) Termination on changes in control (use or lose), IPO or other events
- (2) Underlying Security – Common Stock v. Preferred
- (3) Exercise Price
  - (a) Fixed at closing v. pricing in the next round, change of control or other event
  - (b) Discount
  - (c) Net issue election
- (4) Transferability
- (5) Adjustments
  - (a) Equitable adjustments

(b) Possible price protection

III. Fiduciary Duty and Related Party Transaction Considerations

IV. Other Considerations

A. Due Diligence

- (1) Scope
- (2) Rights of Existing Stockholders:
  - (a) Antidilution protection
  - (b) Preemptive rights
  - (c) Consent rights

B. Interaction of Bridge Securities with Existing Stockholder Agreements

- (1) Eligibility of Bridge Securities for Existing Stockholder Rights
- (2) Coverage of Bridge Securities by Existing Stockholder Obligations

C. Coordination Among Bridge Investors

- (1) Pari passu payments and prepayments
- (2) Amendment and waiver provisions
- (3) Actions with respect to enforcement / collateral

D. Potential Usury Concerns

V. Tax Matters

## **2. Sample Bridge Financing Documents**

**2. Sample Bridge Financing Documents**

**(a) Sample Bridge Financing Note Purchase Agreement**

## **SAMPLE BRIDGE FINANCING NOTE PURCHASE AGREEMENT**

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**This sample document is not intended to be an “off-the-shelf” form. Rather, it is illustrative of one approach that may be taken in a bridge financing transaction that is intended to bridge a company from one round of financing to the next. Changes may be required to conform the terms of this document to a transaction in which the purpose is to bridge the company to its initial institutional financing or to a change of control or other liquidity event. The terms of a bridge financing transaction may vary significantly depending upon a number of factors, including the anticipated term of the bridge loan, the assumed likelihood of a “Qualified Financing” or other applicable milestone, the company’s financial condition and development stage, the amount of the bridge financing and the nature of the investor (i.e. venture capital fund, strategic investor, other institutional investor or an individual). This document is not a substitute for detailed guidance from counsel experienced in such transactions, and is not legal advice. This sample document is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the U.S. Internal Revenue Code, or promoting, marketing or recommending to another party any transaction or matter addressed herein.**

**[COMPANY NAME]**

**CONVERTIBLE [SECURED] NOTE [AND WARRANT]  
PURCHASE AGREEMENT**

**[DATE]**

## CONVERTIBLE [SECURED] NOTE [AND WARRANT] PURCHASE AGREEMENT

This **CONVERTIBLE [SECURED] NOTE [AND WARRANT] PURCHASE AGREEMENT** (this “Agreement”) is entered into as of [\_\_\_\_\_], [\_\_\_\_\_] by and among [\_\_\_\_\_], a [\_\_\_\_\_] corporation (the “Company”), and each of the parties listed on Schedule I attached to this Agreement (each an “Investor” and, collectively, the “Investors”).

### **BACKGROUND**

The Company desires to issue and sell to each Investor and each Investor desires to purchase from the Company a convertible [**secured**] promissory note in substantially the form attached to this Agreement as Exhibit A (each a “Note” and, collectively, the “Notes”) which shall be convertible into equity securities of the Company on the terms and subject to the conditions stated therein[, **and a warrant, in substantially the form attached to this Agreement as Exhibit B (each a “Warrant” and, collectively, the “Warrants”) to purchase [Preferred Stock] [Common Stock] of the Company on the terms and subject to the conditions stated therein**]. The Notes[, **the Warrants**] and the equity securities issuable upon conversion or exercise thereof (and the securities issuable upon conversion of such equity securities) are collectively referred to herein as the “Securities.”

### **OPERATIVE TERMS**

The parties to this Agreement agree as follows:

**1. Defined Terms.** For purposes of this Agreement, the following capitalized terms have the meanings assigned to them in this Section 1. Capitalized terms used in this Agreement and not defined in this Section 1 have the meanings assigned to them elsewhere in this Agreement.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with, such Person. For the purposes of this definition, “control” when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Business Day” means any day other than a Saturday, Sunday or other day on which banks are required or permitted to be closed in [\_\_\_\_\_].

“Encumbrance” means any security interest, mortgage, lien, pledge, charge, easement, reservation, restriction, any similar right of any third party or any other encumbrance.

“Indebtedness” of any Person at any date means (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services

(other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), (ii) any other indebtedness of such Person which is evidenced by a note, bond, debenture or other similar instrument, (iii) all obligations of such Person under capitalized leases and financing leases, (iv) all obligations of such Person in respect of acceptances issued or created for the account of such Person, and (v) all liabilities secured by any Encumbrance (other than a Permitted Encumbrance) on any assets or property owned by such Person.

“Laws” means all laws, rules, regulations, ordinances, orders, judgments, injunctions, decrees and other legislative, administrative or judicial restrictions.

“Majority Investors” means (i) at or prior to the Closing, Investors who, subject to the terms and conditions of this Agreement, will purchase in the aggregate at least a majority in principal amount of all Notes to be issued at the Closing, and (ii) after the Closing, Investors that hold in the aggregate Notes representing at least a majority of the principal amount then outstanding under all Notes.

“Permitted Encumbrances” means any of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (i) Encumbrances arising by reason of (A) taxes that are not yet due and payable or are being contested in good faith by appropriate proceedings properly instituted and diligently conducted and in respect of which appropriate reserves are being maintained or (B) security for payment of workmen’s compensation or insurance consistent with past practice; (ii) Encumbrances of mechanics, materialmen, laborers, employees or suppliers or any similar Encumbrances arising by operation of law incurred in the ordinary course of business securing obligations that are not overdue by a period of more than sixty (60) days; (iii) any interest or title of a lessor or sub-lessor in any property the subject of a financing lease or operating lease, but only to the extent such financing or operating lease is Permitted Indebtedness; (iv) Encumbrances incurred or deposits made to secure letters of credit, the performance of tenders, bids, trade contracts, leases, licenses, statutory or regulatory obligations, bankers’ acceptances, surety and appeal bonds, government contracts, performance and return-of-money bonds and other obligations of a similar nature, in each case, incurred in the ordinary course of business (exclusive of obligations for the payment of borrowed money) and any bank’s unexercised right of set off with respect to deposits made in the ordinary course of business; and (v) Encumbrances arising by operation of law in favor of a landlord under a real property lease, but only if the Company is not in material breach or default thereof.

“Permitted Indebtedness” means (i) any Indebtedness referred to in Schedule 1 of this Agreement, (ii) the endorsement of negotiable instruments for deposit or collection or similar transaction in the ordinary course of business, (iii) any amendment, modification, restatement, refunding, extension, renewal, substitution, refinancing or replacement of the Indebtedness permitted by clause (i), so long as such amendment, modification, restatement, refunding, extension, renewal, substitution, refinancing or replacement does not (A) result in an increase in the aggregate amount of Indebtedness of the obligor thereof, (B) result in a shortening of the maturity of such Indebtedness, (C)

impose new or additional restrictions on the Company and its subsidiaries, or (D) grant new or additional collateral, rights or remedies to any lender of such Indebtedness, and (iv) any Indebtedness incurred pursuant to financing leases or operating leases entered into in the ordinary course of the Company's business provided the aggregate of all such financing and operating leases, in the aggregate, shall not exceed [\_\_\_\_\_].

“Person” means any individual, corporation, partnership, limited liability company, business trust, joint venture, joint stock company, trust, unincorporated organization or other entity or any government authority.

“Transaction Documents” means this Agreement, the Notes, **[the Warrants]**, **[the Security Agreement]** and the other documents, instruments and agreements to be executed and delivered at any Closing.

## 2. Purchase and Sale of Securities.

(a) Purchase and Sale of Securities. Upon the terms and subject to the conditions of this Agreement, at the Closing (as defined below), each Investor shall purchase and the Company shall sell and issue to each Investor a Note in the principal amount set forth opposite such Investor's name on Schedule I hereto **[and a Warrant to purchase the number of shares of the Company's capital stock as determined pursuant to the terms thereof]**<sup>1</sup> for the aggregate purchase price set forth opposite the Investor's name on Schedule I. The Company's agreements with each of the Investors are separate agreements, and the sales of the Notes **[and Warrants]** to each of the Investors are separate sales. **[The indebtedness evidenced by the Notes shall be secured by [certain] [all of] the assets of the Company in accordance with the provisions of a security agreement to be entered into by and among the Company and the [Investors / Investor Representative(s) (as defined therein)] in substantially the form attached to this Agreement as Exhibit C (the “Security Agreement”).]**

(b) Initial Closing. The purchase and sale of the Notes **[and Warrants]** shall take place at the offices of [\_\_\_\_\_] located at [\_\_\_\_\_] at [\_\_\_\_\_] **[on the date hereof] [on \_\_\_\_\_, \_\_\_\_\_]** or at such other time and place as the Company and the Majority Investors mutually agree upon in writing (the “Closing”). **[In the event there is more than one closing, the term “Closing” shall apply to each such Closing, unless otherwise explicitly stated herein.]**

(c) Delivery. At **[each] [the]** Closing, (i) the Company shall execute and deliver to each Investor the Note **[and Warrant]** to be purchased by such Investor, registered in the name of the Investor, against (A) payment of the purchase price therefor by wire transfer of same day, immediately available funds to an account designated by the Company, and (B) delivery of counterpart signature pages to this Agreement, the Note **[and Warrant]**, (ii) the

<sup>1</sup> Warrant coverage may be characterized as interest, and may result in the Notes being subject to the original issue discount or contingent payment debt instrument rules, which generally would require income to be recognized over the term of the loan and prior to receipt of any additional cash payments.

Company shall deliver each document and instrument required by Section 7 hereof, if any, [and] (iii) each Investor shall deliver each document and instrument required Section 8 hereof, if any[, and (iv) the Company and [each Investor] [the Investor Representative(s)] shall execute and deliver the Security Agreement].<sup>2</sup>

(d) [Additional Closings. Until the earlier of (i) such time as the aggregate amount of principal indebtedness evidenced by Notes sold by the Company pursuant to this Agreement equals a total of \$[\_\_\_\_\_], and (ii) [SPECIFIC DATE], the Company may sell and issue additional Notes [and Warrants] to such persons or entities as determined by the Company [with the reasonable consent of the Majority Investors], or to any Investor who desires to acquire additional Notes [and Warrants]. All such sales shall be made on the terms and conditions set forth in this Agreement. For purposes of this Agreement and all other Transaction Documents, any additional Investor so acquiring Notes [and Warrants] shall be deemed to be an “Investor” and any Notes [and Warrants] so acquired by such additional Investor shall be deemed to be “Notes,” [“Warrants”] and “Securities” hereunder.]

(e) [Certain Tax Matters. After consideration of all relevant factors, the Company and the Investors acknowledge and agree that the fair market value on the date hereof of each Warrant is equal to [\_\_\_\_\_ percent (\_\_\_%)] of the principal amount of the Note issued to the respective Investor. The parties will not take any position inconsistent with the forgoing, and the Company will file tax and information returns with the Internal Revenue Service and all other relevant tax authorities based on such determination.]<sup>3</sup>

(f) Use of Proceeds. The net proceeds received by the Company from the sale of the Notes [and Warrants] shall be used by the Company for [working capital and general corporate purposes].

**3. Representations and Warranties of the Company.** The Company hereby represents and warrants to each Investor that:<sup>4</sup>

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<sup>2</sup> Consider the need for any SBA required forms or information.

<sup>3</sup> The issuance of a note and warrant is treated for U.S. federal income tax purposes as an investment unit, and each component of the unit (the note and the warrant) attracts a portion of the total purchase price, based on its fair market value. If the total purchase price for the unit is equal to the face amount of the note, the note generally will be treated as issued with original issue discount (“OID”) equal to the value of the warrant, since that amount is treated as paid for the warrant (thereby reducing the purchase price for the note below its face amount). Generally, this creates additional interest income for the investors over the term of the note and a reporting obligation for the issuer. Most importantly, if the investors are foreign, the issuer also would have a withholding tax obligation on payments attributable to the OID. There are various approaches to dealing with OID in a bridge transaction. Among other things, the applicable statutory provisions and regulations provide for a de minimis exception – such that if the amount of OID is below a certain threshold, the OID is disregarded. Tax counsel should be consulted.

<sup>4</sup> This sample Note Purchase Agreement sets forth basic representations and warranties generally applicable for most bridge financing transactions. However, these representations and warranties are not necessarily the only ones appropriate and some may not be appropriate in all instances. As with other bridge financing terms, the nature and extent of representations and warranties can vary depending upon a number of

(a) **Organization, Good Standing and Qualification.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of [ ] and has all requisite corporate power and authority to own, lease and operate the assets used in its business, to carry on its business as now conducted [**and as presently proposed to be conducted**], to enter into this Agreement and the other Transaction Documents, to issue and sell the Notes [**and Warrants**] and to perform its other obligations hereunder and thereunder. 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.

(b) **Authorization.** All corporate action (including all action required of its Board of Directors, officers and stockholders) necessary for the authorization, execution and delivery of this Agreement and the other Transaction Documents and the performance of all obligations of the Company hereunder and thereunder and its consummation of the transactions contemplated hereby and thereby has been taken or will be taken prior to the Closing[; **provided, however, that no corporate authorization or approval has been obtained for the designation of any shares of Qualified Preferred or Non-Qualified Preferred (each as defined in the Notes)**]. Each of this Agreement, the Notes, [**the Warrants**] and the other Transaction Documents, when executed and delivered by the Company, constitutes or will constitute (when executed and delivered) valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms[, **except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of a specific performance, injunctive relief, or other equitable remedies**].

(c) **Capitalization.** [**MUST BE CONFORMED TO COMPANY**] The authorized capital stock of the Company consists, or will consist, immediately prior to the [**initial**] Closing, of:

(i) [ ] shares of Common Stock, par value \$[ ] per share, [ ] shares of which are issued and outstanding immediately prior to the [**initial**] Closing. All of the outstanding shares of Common Stock have been duly authorized, validly issued and are fully paid and nonassessable and were issued in compliance with all applicable federal and state securities laws. The Company has reserved [ ] shares of Common Stock for issuance upon conversion of the Preferred Stock and [**and [ ] shares of [Common / Preferred] Stock for issuance upon exercise of the Warrants**].

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factors, including (a) the company's financial condition, (b) whether the prospective investors are new or existing investors, (c) the purpose of the bridge financing, (d) whether the notes are secured, and (e) other factors that customarily influence the terms and bargaining positions of parties to an investment transaction. In a bridge financing by existing investors and/or where the next financing or other milestone is anticipated to occur shortly, representations and warranties are customarily less stringent than in other investment transactions. Depending on the circumstances, additional representations might include intellectual property, industry specific regulatory compliance, financial statements, absence of undisclosed liabilities, no material adverse effect and "full disclosure." Additionally, representations and warranties regarding the security interest, if any, should be set forth here or in the Security Agreement.

[(ii) [ ] shares of Preferred Stock, par value \$[ ] per share, of which [ ] shares have been designated Series A Preferred Stock, [ ] of which are issued and outstanding immediately prior to the initial Closing. All of the outstanding shares of Series A Preferred Stock have been duly authorized, validly issued and fully paid and nonassessable and were issued in compliance with all applicable federal and state securities laws. The Company has reserved [ ] shares of Preferred Stock for issuance upon conversion of the Notes **[and [ ] shares of [Common / Preferred] Stock for issuance upon exercise of the Warrants].**]

(iii) The Company has reserved [ ] shares of Common Stock for issuance to officers, directors, employees and consultants of the Company pursuant to its [ ] Plan, duly adopted by the Board of Directors and approved by the Company's stockholders (the "Plan"). Of such reserved shares of Common Stock, as of the **[initial]** Closing, (A) [ ] shares have been issued as awards of restricted stock, (B) options to purchase [ ] shares have been granted and are currently outstanding, and (C) [ ] shares of Common Stock remain available for issuance to officers, directors, employees and consultants pursuant to the Plan.

(iv) Except as set forth in **[IDENTIFY AGREEMENTS OR REFERENCE SCHEDULE]**, (A) there are no restrictions on the transfer of Preferred Stock or Common Stock of the Company, other than those imposed by the Company's Certificate of Incorporation and Bylaws as of the date hereof, or relevant state and federal securities laws, (B) no holder of any Preferred Stock or Common Stock is entitled to preemptive or similar statutory or contractual rights, either arising pursuant to any agreement or instrument to which the Company is a party or that are otherwise binding upon the Company, and (C) no Person has the right to demand or has other rights to cause the Company to register under the Securities Act of 1933, as amended (the "Securities Act"), any Common Stock or Preferred Stock presently outstanding or that may be subsequently issued, or any right to participate in any such registration.

(v) Except for the Notes, **[the Warrants]** and outstanding options issued pursuant to the Plan, there are no outstanding options, warrants, rights (including conversion or preemptive rights and rights of first refusal or similar rights) or agreements, orally or in writing, for the purchase or acquisition from the Company of any shares of its capital stock. **[REFERENCE SCHEDULE AS NECESSARY]**

(d) **No Conflict.** The execution and delivery by the Company of this Agreement, the Notes **[and Warrants]** and the other Transaction Documents, its consummation of the transactions contemplated hereby and thereby, and its compliance with the provisions hereof and thereof, will not (i) violate or conflict with its Certificate of Incorporation or Bylaws, (ii) violate, conflict with, or give rise to any right of termination, cancellation, rescission or acceleration under any **[material]** agreement, lease, security, license, permit, or instrument to which the Company is a party, or to which it or any of its assets is subject, (iii) result in the imposition of any Encumbrance on any asset of the Company **[(other than pursuant to the Security Agreement)]**, (iv) violate or conflict with any Laws, or (v) require any consent,

approval or other action of, notice to, or filing with any Person, except for those that have been obtained or made or will be obtained or made prior to Closing.

(e) **No Consent or Approval Required.** Except for any notices under applicable federal and state securities laws required or permitted to be filed (and which will be validly and timely filed) after the Closing, no authorization, consent, approval or other order of, or declaration to or filing with, any governmental agency or body or other Person is required for the valid authorization, execution and delivery by the Company of this Agreement, the Notes **[and Warrants]** and the other Transaction Documents, or for the consummation of the transactions contemplated hereby or thereby or, if required, the same has been obtained or effected. Subject in part to the truth and accuracy of each Investor's representations set forth in Section 4 of this Agreement, the offer, sale and issuance of the Notes **[and Warrants]** as contemplated by this Agreement are exempt from the registration requirements of the Securities Act and will not result in a violation of the qualification or registration requirements of any applicable state securities laws.

(f) **Litigation.** No actions, suits, proceedings or investigations are pending or, to the knowledge of the Company (after reasonable investigation), threatened against the Company at law or in equity in any court or before any other governmental authority.

(g) **Title to Assets.** The Company owns and has good and marketable title to, or a valid leasehold interest in, all of its assets and properties, free and clear of all Encumbrances, other than Permitted Encumbrances.

(h) **[FOR CONSIDERATION IN CALIFORNIA: Usury Exemption.** The lending transactions contemplated by this Agreement are exempt from the constitutional usury provisions of the California Constitution by operation of Section 25118 of the California Corporations Code, it being expressly acknowledged by the Company that, through its officers, it has a preexisting personal or business relationship with each Investor as such terms are used in Section 25118(f)(1) of such corporations code.]

(i) **[FOR CONSIDERATION IN CALIFORNIA: California Financial Code Exemption.** The Company is an "operating company" within the meaning of Section 22062(b)(2) of the California Financial Code in that (A) it primarily engages, wholly or substantially, directly or indirectly through a majority owned subsidiary or subsidiaries, in the production or sale, or the research or development, of a product or service other than the investment of capital, (B) it is not an individual or sole proprietorship, (C) it is not an entity with no specific business plan or purpose and its business plan is not to engage in a merger or acquisition with an unidentified company or companies or other entity or person, and (D) it intends to use the proceeds from the sale of the Notes **[and Warrants]** extended to it solely for the operation of the Company's business and uses other than personal, family, or household purposes. The Company's board of directors, in the exercise of its fiduciary duties, has approved the sale of the Notes based upon a reasonable inquiry concerning the Company's financing objectives and financial situation.]

4. **Representations and Warranties of the Investors.** Each Investor, severally and not jointly, hereby represents and warrants to the Company that:

(a) **Authorization.** Such Investor has full power and authority to enter into this Agreement. This Agreement, when executed and delivered by such Investor, will constitute a valid and legally binding obligation of the Investor, enforceable in accordance with its terms[, **except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of a specific performance, injunctive relief, or other equitable remedies**].

(b) **Purchase Entirely for Own Account.** The Note [and Warrant] to be acquired by the Investor will be acquired for investment for the Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing any Securities. The Investor has not been formed for the specific purpose of acquiring any of the Securities.

(c) **Restricted Securities.** The Investor understands that the Securities have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, on the bona fide nature of the investment intent and the accuracy of the Investor's representations as expressed herein. The Investor understands that the Securities are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Investor must hold the Securities indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. **[The Investor acknowledges that the Company has no obligation to register or qualify the Securities for resale.]** The Investor further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Securities, and on requirements relating to the Company which are outside of the Investor's control.

(d) **No Public Market.** The Investor understands that no public market now exists for any of the securities issued by the Company, that the Company has made no assurances that a public market will ever exist for the Securities.

(e) **Legends.** The Investor understands that the Securities, and any securities issued in respect thereof or exchange therefor, may bear legends substantially as set forth in clause (i) below and such other legends as are described in clause (ii) below.

(i) "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR REGISTERED OR QUALIFIED UNDER ANY APPLICABLE STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND REGISTRATION OR QUALIFICATION UNDER ANY APPLICABLE STATE SECURITIES LAWS OR (B) AN OPINION OF COUNSEL IN FORM AND SUBSTANCE

SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED PURSUANT TO AN EXEMPTION UNDER SUCH ACT AND SECURITIES LAWS.”

(ii) Such legends as may be authorized or required by any agreements pursuant to which Securities (other than the Note **[and Warrant]**) are issued and sold.

(f) **Accredited Investor.** The Investor is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

5. **Affirmative and Negative Covenants of the Company.**<sup>5</sup> So long as **[any amount] [at least \$\_\_\_\_\_] [at least \_\_\_\_\_ percent (\_\_\_%)]** of the principal under the Notes remains unpaid or outstanding, the Company covenants that it will comply with the following provisions unless, with respect to clauses (b) through (k) only, otherwise approved in writing by the Majority Investors:

(a) **Sufficient Shares; Underlying Securities.** The Company shall take or cause to be taken all action (including, without limitation, appropriate amendments to the Certificate of Incorporation of the Company or otherwise) necessary to assure that there exists a sufficient number of authorized shares of capital stock of the Company to permit the full and complete conversion, exercise or exchange of the Notes **[and Warrants]**. The Securities which shall be issuable upon conversion of the Notes **[and/or exercise or exchange of the Warrants]** (and the Securities issuable upon the conversion of such Securities) (collectively, the “Underlying Securities”), upon their issuance in compliance with the respective terms of the Notes **[and Warrants]** (or the conversion of other Underlying Securities), shall be duly authorized, validly issued and outstanding, fully paid and non-assessable, and free of any Encumbrances, except as provided in the applicable agreements governing all Investors of such Underlying Securities; provided, however, that such Securities may be subject to restrictions on transfer under state and federal securities laws. The Company shall cause the original issuance by the Company of the Underlying Securities not to be subject to any preemptive rights, rights of first refusal or similar rights.

(b) **Corporate Existence; Subsidiaries; Maintenance of Properties.** The Company will preserve and keep in full force and effect its corporate existence, rights and franchises. The Company will maintain all of its properties used or useful in the conduct of its business in good condition, repair and working order (normal wear and tear excepted) and cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Board of Directors of the Company (the “Board”) may be necessary

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<sup>5</sup> As with representations and warranties, this sample Note Purchase Agreement sets forth basic Company covenants that may be appropriate for many bridge financing transactions. However, these covenants are not necessarily the only ones appropriate and some of them may not be appropriate in all circumstances. As with other bridge financing terms, the nature and extent of Company covenants can vary depending on a number of factors – including the existence of any senior lenders and covenants that may exist in other investment documents that the Investors are parties to. In a classic bridge financing in which the next financing is anticipated to occur shortly, Company covenants are customarily less stringent than in other lending transactions.

so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section 5(b) shall prevent the Company from discontinuing the operation and maintenance of any of such properties if such discontinuance is, in the judgment of the Board, desirable and does not cause a material adverse effect on the business, assets (including intangible assets), liabilities, financial condition, property, prospects, or results of operations of the Company.

(c) **Insurance.** The Company will maintain with financially sound and reputable insurance companies, funds or underwriters, insurance of the kinds, covering the risks and in the relative proportionate amounts usually carried by reasonable and prudent companies conducting businesses similar to that of the Company, except as otherwise determined by the Board.<sup>6</sup>

(d) **Taxes.** The Company will pay and discharge, or cause to be paid and discharged, before the same shall become overdue, all federal, state, county, local or foreign taxes, assessments and other governmental charges imposed upon the Company and its respective real properties, sales and activities, or any part thereof, or upon the income or profits therefrom, as well as all claims for labor, materials, or supplies, which if unpaid might (by law or otherwise) become a lien or charge upon any of its properties; provided, however, that any such tax, assessment, charge, levy or claim need not be paid if the validity or amount thereof shall be contested in good faith by appropriate proceedings and if the Company shall have set aside on its books adequate reserves with respect thereto; and provided, further, that the Company will pay or cause to be paid all such taxes, assessments, charges, levies or claims forthwith upon the commencement of foreclosure on any lien which may have attached as security therefore.

(e) **Inspection of Properties and Books.** Prior to the Company's initial public offering, the Company shall permit each Investor or any of their designated representatives to visit and inspect any of its properties, to examine its books of account (and to make copies thereof and extracts therefrom), and to discuss its affairs, finances and accounts with, and to be advised as to the same by, its officers, upon reasonable prior notice and during normal business hours, in a manner calculated not to disrupt ongoing business activities and at such intervals as such Investor may reasonably request; and provided that reasonable provisions are made to honor and protect the Company's confidential information and the attorney client privilege between the Company and its counsel.

(f) **Compliance with Laws, Contracts, Licenses and Permits.** The Company will (i) comply in all material respects with all applicable laws and regulations wherever its business is conducted, (ii) comply with the provisions of its Certificate of Incorporation and Bylaws and the Transaction Documents, (iii) comply in all material respects with all agreements and instruments by which it or any of its properties may be bound, (iv) comply with all applicable decrees, orders, and judgments and (v) comply in all material respects with all required approvals, permits and licenses. In furtherance and not in limitation of the foregoing, the Company will comply with all of its obligations under **[INSERT EXISTING INVESTMENT DOCUMENTS]**. If any authorization, consent, approval, permit or license

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<sup>6</sup> Consider whether key-man and/or D&O insurance will be required, and to what extent. If so, consider whether it will be a closing condition or only a post-closing covenant.

from any officer, agency or instrumentality of any government shall become necessary or required in order that any of the Company may fulfill any of its obligations hereunder, the Company will promptly take or cause to be taken all reasonable steps within its power to obtain such authorization, consent, approval, permit or license.

(g) **Annual Statements.** Within [ninety (90)] days after the close of each fiscal year, the Company will deliver to each of the [Majority Investors] [Investors] [audited] balance sheets and statements of income, retained earnings, and cash flows of the Company as of and for the most recently completed fiscal year.

(h) **Quarterly Statements.** Within [forty five (45)] days after the end of each fiscal quarter, the Company will deliver to each of the [Majority Investors] [Investors] unaudited balance sheets and statements of income, retained earnings and cash flows of the Company as of and for such fiscal quarter and cumulatively as of and for each fiscal quarter completed in the then current fiscal year.

(i) **Budget.** For each fiscal year, the Company will deliver to each of the [Majority Investors] [Investors] an annual budget and business plan of the Company, prepared by executive management and approved by the Board. Such annual budget and business plan shall be delivered no later than [thirty (30)] days prior to the start of the applicable fiscal year.

(j) **Other Information.** From time to time, prior to the Company's initial public offering, upon the request of any [Majority Investor] [Investor], the Company will furnish such information regarding the business, affairs, prospects and financial condition of the Company as such [Majority Investor] [Investor] may reasonably request.

(k) **Negative Covenants.** The Company will not:

(i) Create, incur, assume, suffer to exist or guaranty any Indebtedness other than Permitted Indebtedness.

(ii) Create, incur, assume, or suffer to exist any Encumbrance upon or with respect to any assets or properties of the Company, other than Permitted Encumbrances.

(iii) Make any advance, loan or extension of credit to, make any cash investment in, or purchase for cash any stock, bonds, notes, debentures or other securities of any Person, other than (A) investments in cash equivalents, (B) advances or other similar payments to distributors, vendors or suppliers in the ordinary course of business, and (C) advances to directors, officers, employees and consultants in the ordinary course of business related to performance of Company duties.

(iv) Enter into any transaction or agreement with any officer, director or affiliate.

(v) Redeem, purchase or acquire any of its capital stock or any other security of the Company, other than repurchases of Common Stock at or below fair market value from officers or employees in connection with their termination.

(vi) Change its state of incorporation or principal place of business.

**6. Lock-up Agreement. [CONSIDER CONFORMING LOCK-UP PROVISIONS TO THOSE IN CURRENT STOCKHOLDER AGREEMENTS]**

(a) **Investor Lock-up.** No Investor shall sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any equity securities of the Company, however or whenever acquired (including sales pursuant to Rule 144 under the Securities Act), or any securities convertible into or exchangeable or exercisable for such securities (including, in each case, the Securities), during the seven (7) days prior to and the 180-day period beginning on the effective date of the Company's initial public offering (the "IPO Holdback Period"), except as part of such initial public offering, unless the underwriters managing the registered public offering otherwise agree in writing. Notwithstanding the foregoing, this Section 6(a) shall not be applicable to or otherwise be binding on the Investors unless the Company complies with its obligations under Section 6(b) in connection with any such offering. If (i) the Company issues an earnings release or material news or a material event relating to the Company occurs during the last seventeen (17) days of the IPO Holdback Period or (ii) prior to the expiration of the IPO Holdback Period, the Company announces that it will release earnings results during the sixteen (16) day period beginning upon the expiration of such period, then to the extent necessary for a managing or co-managing underwriter of a registered offering to comply with NASD Rule 2711(f)(4), the IPO Holdback Period will be extended until eighteen (18) days after the earnings release or the occurrence of the material news or event, as the case may be. The restriction in the immediately preceding sentence is the "Holdback Extension." Notwithstanding the foregoing, nothing in this Section 6 shall prevent an Investor from making a transfer of any Common Stock that was listed on a national stock exchange or actively traded over-the-counter at the time it was acquired by the Investor or was acquired by such Investor pursuant to Rule 144A of the Act, including any shares acquired in the initial public offering by the Company.

(b) **Company Lock-Up.** The Company (i) shall not effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities, during the IPO Holdback Period (in each case including during any period of Holdback Extension) (except as part of such underwritten registration or pursuant to registrations on Form S-8 or any successor form), unless the underwriters managing the registered public offering otherwise agree in writing, and (ii) shall cause each of its executive officers and directors and holders of at least [\_\_\_\_\_] percent ([\_\_]%) [**DRAFT NOTE: TYPICALLY 2-5%.**] (on a fully-diluted basis) of its Common Stock, or any securities convertible into or exchangeable or exercisable for or having residual economic rights comparable to Common Stock (other than holders that purchased shares solely in a registered public offering), to agree not to effect any public sale or distribution (including sales pursuant to Rule 144 under the Securities Act) of any such securities during such periods (except as part of such underwritten registration, if otherwise permitted), unless the underwriters managing the registered public offering otherwise agree in writing.

(c) **Limitation.** The restrictions set forth in Section 6(a) shall not apply unless the Company complies with its obligations in Section 6(b), and each of its executive

officers and directors and holders of at least [\_\_\_\_\_] percent ([\_\_]%) **[DRAFT NOTE: TYPICALLY 2-5%.]** (on a fully-diluted basis) of its Common Stock, or any securities convertible into or exchangeable or exercisable for or having residual economic rights comparable to Common Stock (other than holders that purchased shares solely in a registered public offering) comply with the provisions of Section 6(b)(ii).

(d) **Stop-Transfer Instructions.** The Company may impose stop-transfer instructions with respect to the shares of its common stock (or other securities) subject to the foregoing restriction during any IPO Holdback Period or any period of Holdback Extension.

(e) **Transferees Bound.** Each Investor agrees that prior to the Company's initial public offering it will not sell, loan, grant any option for the purchase of, or otherwise dispose of any equity securities of the Company, however or whenever acquired (including sales pursuant to Rule 144 under the Securities Act), or any securities convertible into or exchangeable or exercisable for such securities (including, in each case, the Securities) unless each transferee agrees in writing to be bound by all of the provisions of this Section 6 or is otherwise subject to substantially similar obligations pursuant to an agreement with the Company.

7. **Conditions of the Investors' Obligations at Closing.**<sup>7 8</sup> The obligations of each Investor at Closing are subject to the fulfillment, on or before such Closing, of each of the following conditions, unless otherwise waived by the Majority Investors in accordance with the terms hereof:

(a) **Representations and Warranties.** The representations and warranties of the Company contained in Section 3 shall have been true and correct on the date hereof, and shall be true and correct, in all material respects, as of the Closing with the same effect as though such representations and warranties had been made as of the Closing; provided, however, that in determining whether this condition has been satisfied, all materiality, material adverse effect and similar qualifications in the Company's representations and warranties in Section 3 shall be disregarded and the representations and warranties in Section 3(a), (b) and (c) shall be true and correct in all respects.

(b) **Legal Requirements.**

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<sup>7</sup> If multiple Closings are permitted, consider and provide for which conditions apply to the initial Closing and which apply to all Closings.

<sup>8</sup> Consider additional closing deliverables, such as (a) compliance and secretary certificates, (b) good standing certificates, (c) certified organizational documents, (d) UCC statements, and (e) an opinion of Company counsel. Such requirements vary from transaction to transaction.

Consider whether additional conditions are appropriate in order to mitigate any conflict of interest or fiduciary duty concerns. These might include delivery of evidence of one or more of the following (a) informed, unanimous Board approval; (b) informed, unanimous approval by independent directors after executive session; (c) informed, majority or higher percentage approval by disinterested stockholders (including founders and other key holders); and (d) a full or partial rights offering.

(i) 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 to be obtained prior to the Closing in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be obtained and effective as of the Closing[, **other than such filings as are required to designate the Qualified Preferred**].

(ii) Additionally, the sale and issuance by the Company, and the purchase by the Investors, of the Notes [**and Warrants**] shall otherwise be legally permitted by all laws and regulations to which the Investors and the Company are subject.

(c) **Waivers; Specific Consents.** [SPECIFIC CONDITIONS SHOULD BE ADDED WITH RESPECT TO REQUIRED CONSENTS OR WAIVERS UNDER EXISTING STOCKHOLDER AGREEMENTS, INCLUDING WAIVERS OF ANY RIGHTS OF FIRST REFUSAL AND SIMILAR COVENANTS. CONSIDER ALSO WHETHER THIS IS A DILUTIVE ISSUANCE AND WHETHER WAIVER OF ANY ANTIDILUTION PROTECTION WILL BE A CONDITION.]

(d) **Proceedings and Documents.** All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents and instruments incident to such transactions shall be reasonably satisfactory in form and substance to the Majority Investors.

(e) **Security Agreement.** The Company and the [Investors] [Investor Representatives] shall have executed and delivered the Security Agreement.]

(f) **Amendment of Certain Agreements.** [SPECIFIC CONDITIONS SHOULD BE CONSIDERED REGARDING THE AMENDMENT OF EXISTING SHAREHOLDER DOCUMENTS AND/OR THE CERTIFICATE OF INCORPORATION TO PROVIDE THAT EXERCISES OF THE NOTES AND WARRANTS DO NOT TRIGGER RIGHTS OF FIRST REFUSAL, ANTIDILUTION PROTECTION OR OTHER RIGHTS (AS AN ALTERNATIVE TO WAIVERS). ADDITIONALLY, SUCH AMENDMENTS SHOULD PROVIDE THAT IF THE NOTES OR WARRANTS ARE EXERCISED FOR NON-QUALIFIED PREFERRED, THE HOLDERS ARE ENTITLED TO ALL RIGHTS AND SUBJECT TO ALL OBLIGATIONS UNDER EXISTING DOCUMENTS WITH RESPECT THERETO. ADDITIONALLY, CONSIDER INCLUSION OF SECURITIES ISSUED UNDER THE WARRANT IN KEY EQUITY DEFINITIONS, FOR EXAMPLE “REGISTRABLE SECURITIES” UNDER ANY REGISTRATION RIGHTS AGREEMENT.]

(g) **Investment Amount.** At the [initial] Closing, the Notes purchased by all Investors shall be for an aggregate principal amount of at least \$[\_\_\_\_\_].

(h) **No Material Adverse Effect.** There shall not have occurred, arisen or been discovered any fact, circumstance or event that has or could reasonably be expected to have, a material adverse effect on the Company or its business, assets, prospects, affairs, operations, financial or other condition or results of operations.]

**8. Conditions of the Company's Obligations at Closing.**<sup>9</sup> The obligations of the Company at Closing are subject to the fulfillment, on or before the Closing, of each of the following conditions, unless otherwise waived in writing:

(a) **Representations and Warranties.** The representations and warranties of each Investor contained in Section 4 shall have been true and correct on the date hereof, and shall be true and correct, in all materials respects, as of the Closing with the same effect as though such representations and warranties had been made in writing as of the Closing provided, however, that in determining whether this condition has been satisfied, all materiality, material adverse effect and similar qualifications in the Company's representations and warranties in Section 4 shall be disregarded and the representations and warranties in Section 4(a) and (f) shall be true and correct in all respects.

(b) **Legal Requirements.**

(i) 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 to be obtained prior to the Closing in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be obtained and effective as of the Closing[, **other than such filings as are required to designate the Qualified Preferred**].

(ii) Additionally, the sale and issuance by the Company, and the purchase by the Investors, of the Notes [**and Warrants**] shall otherwise be legally permitted by all laws and regulations to which the Investors and the Company are subject.

**9. Indemnification.**<sup>10</sup>

(a) **Survival of Representations, Warranties and Covenants.** All representations, warranties and covenants hereunder shall survive the execution and delivery of the Agreement indefinitely until, by their respective terms, they are no longer operative.

(b) **Indemnification.** The Company shall indemnify and hold harmless the Investors, their respective Affiliates, and each of their respective stockholders, officers, directors, managers, employees, agents, partners, members, representatives, successors and permitted assigns (collectively, the "Investor Parties") from and against all losses, damages, liabilities, fines, obligations, taxes, costs and expenses (including reasonable attorney's fees and expenses and all reasonable amounts paid in investigation or defense) (collectively, "Losses") actually incurred by an Investor Party that arise or result from: (i) any breach of any of the representations or warranties of the Company set forth in this Agreement or contained in any certificate, instrument or document delivered at the Closing; (ii) the failure of the Company to perform any of its respective covenants or agreements contained herein; or (iii) any transaction by the Company financed or to be financed in whole or in part, directly or indirectly, with proceeds from the sale of any of the Notes [**or Warrants**].

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<sup>9</sup> See second paragraph of Notes 8.

<sup>10</sup> Company and Company counsel should consider whether it is appropriate to pursue time and other limitations on this indemnification obligation.

**10. Additional Provisions.**

(a) **Assignment; Parties in Interest.** This Agreement and the rights hereunder are not assignable unless such assignment is consented to in writing by both the Company and the Majority Investors, except that an Investor may assign its rights hereunder (i) if such Investor is a partnership or limited liability company, to any partner, member, manager or Affiliate thereof, (ii) if such Investor is a corporation, to any Affiliate of such Investor, or (iii) if such Investor is a natural person, to the spouse or descendants of such Investor or any trust for the benefit of any thereof; provided, however, that the Company is given written notice at the time of such assignment stating the name and address of the assignee and identifying the Securities with respect to which the rights and benefits hereunder are being assigned and such assignee expressly agrees in writing with the Company and the other Investors to be bound by and to comply with this Agreement. Anything contained herein to the contrary notwithstanding, no Investor (or permitted assignee of an Investor) shall, without the consent of the Company, be permitted to assign any rights and/or benefits hereunder to a Person that is then actively engaged in a business that is directly competitive with the business then primarily and actively conducted or engaged in by the Company. Subject to the foregoing, this Agreement and all the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors or permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective permitted successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(b) **Governing Law; Venue.** This Agreement and all claims arising from and relating to this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby shall be governed by and interpreted and enforced in accordance with the Laws of the State of [\_\_\_\_\_], without regard to the conflicts of laws rules thereof. All disputes and controversies arising out of or in connection with this Agreement shall be resolved exclusively by the state and federal courts located in [\_\_\_\_\_] and each party hereto agrees to submit to the jurisdiction of said courts and agrees that venue shall lie exclusively with such courts. **[FOR CONSIDERATION IN CALIFORNIA: Notwithstanding any provision of this Agreement to the contrary, this Agreement shall be (to the extent necessary to satisfy the requirements of Section 22062(b)(3)(D) of the California Financial Code) subject to the implied covenant of good faith and fair dealing arising under Section 1655 of the California Civil Code.]**

(c) **Counterparts; Signatures.** This Agreement may be executed in one or more counterpart signature pages, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement, which shall be binding upon all of the parties hereto notwithstanding the fact that all parties are not signatory to the same counterpart. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in “portable document format” (“pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.

(d) **Interpretation.** When a reference is made to a Section or Exhibit, such reference shall be to a Section or Exhibit of or to this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” Unless the context requires otherwise, words using the singular or plural number also include the plural or singular number, respectively, and the use of any gender herein shall be deemed to include the other genders. References to “dollars” or “\$” are to U.S. dollars. The terms “hereof,” “herein,” “hereby,” “hereto” and derivative or similar words refer to this entire Agreement. This Agreement was prepared jointly by the parties hereto and no rule that it be construed against the drafter will have any application in its construction or interpretation. The headings contained in this Agreement are inserted for convenience only and shall not be considered in interpreting or construing any of the provisions contained in this Agreement.

(e) **Notices.** All notices, requests, demands and other communications under this Agreement and the other Transaction Documents shall be in writing and shall be deemed to have been duly given (i) if delivered personally or actually received, as of the date received, (ii) if delivered by certified mail, return receipt requested, seven (7) Business Days after being mailed, or (iii) if delivered by a nationally recognized overnight delivery service, one (1) Business Day after being deposited (with all fees prepaid) with such delivery service for next Business Day delivery, to such party at its address set forth below (or such other address as it may from time to time designate in writing to the other parties hereto):

If to the Company, to:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Telephone: [\_\_\_\_\_  
Attention: [\_\_\_\_\_]

with courtesy copies to (which shall not constitute notice):

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Telephone: [\_\_\_\_\_  
Attention: [\_\_\_\_\_]

If to an Investor, at its address set forth on Schedule I.

(f) **Finder’s Fee.** Each party represents that it neither is nor will be obligated for any finder’s 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 finder’s fee (and the costs and expenses of defending against such liability or asserted liability) for which each Investor or any of its officers, 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 finder's 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.

(g) **Amendments and Waivers.** Any term of this Agreement may be amended or waived only with the written consent of the Company and the Majority Investors. Any amendment or waiver effected in accordance with this Section 10(g) shall be binding upon each Investor, each transferee of the Securities, each future holder of all such Securities, and the Company, regardless of whether he, she or it has given its written consent. Notwithstanding the foregoing, if any amendment or waiver materially and adversely treats one or more Investors in a manner that is disproportionate to such treatment of all other Investors, such amendment or waiver shall also require the written consent of the Investors disproportionately treated. This Section 10(g) may not be amended without the written consent of the Company and all Investors.

(h) **Severability.** If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof or such provision to any other person or circumstance or in any other jurisdiction.

(i) **Entire Agreement.** This Agreement (including the exhibits and schedules hereto) and the other Transaction Documents constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings between the parties with respect to such subject matter.

(j) **Exculpation Among Investors.** Each Investor acknowledges that it is not relying upon any other Investor or any other Investor's controlling persons, officers, directors, partners, agents or employees 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 for any action heretofore taken or omitted to be taken by any of them in connection with the Securities.

(k) **Expenses.** The Company shall pay all documented out-of-pocket legal, due diligence and administrative fees and expenses of [\_\_\_\_\_], as counsel for [\_\_\_\_\_], in connection with the preparation, execution and delivery of this Agreement and the other Transaction Documents[; **provided, however, that in no event shall such amounts exceed \$[\_\_\_\_\_]**]. The Company shall pay on demand all reasonable fees and expenses of the Majority Investors, including reasonable attorneys' fees and expenses incurred by the Majority Investors, with respect to any amendments or waivers hereof requested by the Company or in the enforcement or attempted enforcement of any of the obligations of the Company to the Majority Investors under the Transaction Documents or in preserving any of the Holders rights and remedies (including, without limitation, all such fees and expenses incurred in connection with any "workout" or restructuring affecting the Transaction Documents or the obligations thereunder or any bankruptcy or similar proceeding involving the Company). All other Investors shall bear their own fees and expenses.

(l) **Counsel.** Each party to this Agreement acknowledges that [\_\_\_\_\_] acted solely as counsel to [\_\_\_\_\_] in connection with the Transaction Documents and the transactions contemplated hereby and thereby and that he, she or it retained or had sufficient opportunity to retain independent legal counsel and other advisors in connection with the Transaction Documents and the transactions contemplated hereby and thereby.

(m) **[FOR CONSIDERATION IN CALIFORNIA: California 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 THEREFOR 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.]**

(Signature Pages Follow)

**COUNTERPART SIGNATURE PAGE  
TO  
CONVERTIBLE [SECURED] NOTE [AND WARRANT] PURCHASE AGREEMENT**

The parties hereto have executed this Convertible [Secured] Note [and Warrant] Purchase Agreement as of the date first set forth above.

**COMPANY:**

**[COMPANY NAME]**

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

Name:

Title:

**INVESTORS:**

[\_\_\_\_\_]

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

Name:

Title:

[\_\_\_\_\_]

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

Name:

Title:

**2. Sample Bridge Financing Documents**

**(b) Sample Bridge Financing Promissory Note**

## **SAMPLE BRIDGE FINANCING PROMISSORY NOTE**

Mark A. Danzi  
Hill Ward Henderson  
Tampa, Florida  
[mdanzi@hwlaw.com](mailto:mdanzi@hwlaw.com)

**This sample document is not intended to be an “off-the-shelf” form. Rather, it is illustrative of one approach that may be taken in a bridge financing transaction that is intended to bridge a company from one round of financing to the next. Changes may be required to conform the terms of this document to a transaction in which the purpose is to bridge the company to its initial institutional financing or to a change of control or other liquidity event. The terms of a bridge financing transaction may vary significantly depending upon a number of factors, including the anticipated term of the bridge loan, the assumed likelihood of a “Qualified Financing” or other applicable milestone, the company’s financial condition and development stage, the amount of the bridge financing and the nature of the investor (i.e. venture capital fund, strategic investor, other institutional investor or an individual). This document is not a substitute for detailed guidance from counsel experienced in such transactions, and is not legal advice. This sample document is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the U.S. Internal Revenue Code, or promoting, marketing or recommending to another party any transaction or matter addressed herein.**

**THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR REGISTERED OR QUALIFIED UNDER ANY APPLICABLE STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND REGISTRATION OR QUALIFICATION UNDER ANY APPLICABLE STATE SECURITIES LAWS OR (B) AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED PURSUANT TO AN EXEMPTION UNDER SUCH ACT AND SECURITIES LAWS.**

**THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF ARE SUBJECT TO RESTRICTIONS ON TRANSFER CONTAINED IN THE CONVERTIBLE [SECURED] NOTE [AND WARRANT] PURCHASE AGREEMENT, DATED AS OF [\_\_\_\_], BY AND AMONG THE COMPANY, HOLDER AND THE OTHER PARTIES NAMED THEREIN.**

**[INSERT SUBORDINATION LANGUAGE, AS APPLICABLE]**

**[COMPANY NAME]**

**CONVERTIBLE [SECURED] PROMISSORY NOTE**

**[\$\_\_\_\_\_]**

**as of [\_\_\_\_], [\_\_\_\_]**

**FOR VALUE RECEIVED, [COMPANY NAME] (the “Company”), a [\_\_\_\_] corporation promises to pay to [INVESTOR] (“Holder”), or its registered assigns, the principal sum of [BRIDGE LOAN AMOUNT] (\$[\_\_\_\_]), or such lesser amount as shall equal the outstanding principal amount hereof (the “Principal Balance”), together with interest from the date of this Convertible [Secured] Promissory Note (this “Note”) on the unpaid Principal Balance at a rate equal to [INTEREST RATE] ([\_\_\_\_]%) per annum (subject to Section 14 below), computed on the basis of the actual number of days elapsed and a year of 365 days. [Interest shall compound [daily] [monthly] [quarterly] [annually].] This Note is one of the “Notes” issued [or to be issued] pursuant to the Convertible [Secured] Note [and Warrant] Purchase Agreement dated as of [the date hereof] [\_\_\_\_] (as amended, modified or supplemented, the “Note Purchase Agreement”) by and among the Company, Holder and the other parties named therein. This Note and such other Notes are sometimes referred to herein as the “Notes,” and Holder and the holders of the other Notes are sometimes referred to herein as the “Holders.” [This Note is secured by security interests granted under the Security Agreement dated as of the date hereof, between the Company, [Holder] [the Investor Representative(s) (as defined in the Security Agreement)] and the other parties thereto.]**

The following is a statement of the rights of Holder and the conditions to which this Note is subject, and to which Holder, by the acceptance of this Note, agrees:

1. **Certain Definitions.** As used in this Note, the following capitalized terms have the meanings set forth below. Capitalized terms used herein and not defined shall have the meanings given to them in the Note Purchase Agreement:

(a) “Act” shall mean the Securities Act of 1933, as amended.

(b) “Change of Control” means (i) any merger with or into, acquisition of, consolidation with, or other similar transaction involving the, Company; provided, however, that any such transaction in which the stockholders of the Company existing immediately before such transaction own more than fifty percent (50%) of the total voting power of the resulting entity’s then outstanding securities after giving effect to such transaction, shall not constitute a Change of Control; [**and provided further, that the sale and issuance by the Company of Preferred Stock in an equity financing for the sole purpose of raising funds for general corporate purposes (a “Financing”) shall not constitute a Change of Control**]; (ii) the sale, transfer, lease, license or other disposition of all or substantially all of the assets of the Company [(**other than the non-exclusive license of assets by the Company to its customers in the ordinary course of business**)]; (iii) any transaction or series of related transactions pursuant to which any Person or “group” (as such term is used in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) becomes the “beneficial owner” (as such term is defined in Rule 13d-3 promulgated under the Exchange Act) of more than [**fifty percent 50%**] of the total voting power of the Company’s then outstanding securities[, **other than in the case of a Financing**]; or (iv) a liquidation, dissolution or winding up of the Company.

(c) “Event of Default” has the meaning given in Section 6 hereof.

(d) “Lien” shall mean, with respect to any property, any security interest, mortgage, lien, pledge, charge, easement, reservation, restriction, any similar rights of any third party or other encumbrance in, of, or on such property or the income therefrom.

(e) “Material Adverse Effect” shall mean a material adverse effect on (i) the Company or its business, assets, [**prospects**], affairs operations, financial or other condition or results of operations; (ii) the ability of the Company to pay or perform the Obligations in accordance with the terms of this Note and the other Transaction Documents and to avoid an Event of Default, or an event which, with the giving of notice or the passage of time or both, would constitute an Event of Default, under any Transaction Document; or (iii) the rights and remedies of Holder under this Note, the other Transaction Documents or any related document, instrument or agreement.

(f) “Obligations” shall mean and include all loans, advances, debts, liabilities and obligations of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money) owed by the Company to Holder, now existing or hereafter arising under or pursuant to the terms of this Note, the Note Purchase Agreement and the other Transaction Documents, including, all interest, fees, charges, expenses, attorneys’ fees and costs and accountants’ fees and costs chargeable to and payable by the Company hereunder

and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code, as amended from time to time, including post-petition interest, and whether or not allowed or allowable as a claim in any such proceeding.

(g) “Person” means any individual, corporation, partnership, limited liability company, business trust, joint venture, joint stock company, trust, unincorporated organization or other entity or any government authority.

(h) “Preferred Stock” means the Company’s preferred stock, par value \$[\_\_\_\_] per share.

(i) “Qualified Financing” means a financing in a single or a series of related transactions (all of which are consummated within **[ninety (90)]** days of each other), with the principal purpose of raising capital, pursuant to which the Company sells shares of **[Qualified]** Preferred Stock with aggregate gross, cash proceeds to the Company of not less than [\_\_\_\_\_] dollars (\$[\_\_\_\_\_] (or such lesser amount approved in writing by the Majority Investors). **[The foregoing amount shall be calculated exclusive of any amounts converted under this Note and the other Notes and any other convertible notes or other monetary obligations which are converted in connection with the Qualified Financing.]**

(j) [**“Qualified Preferred Stock”** means shares of the Company’s [then most senior series of Preferred Stock] [Series [\_\_\_\_] Preferred Stock, par value \$[\_\_\_\_] per share].]

## 2. Maturity.<sup>1</sup>

### [Option One – Term Note]

[Unless converted as provided in Section 4, principal under this Note shall be due and payable **[on the first to occur of (a) the consummation of a Change of Control (in which case such payment shall be made immediately upon the consummation thereof), and (b) \_\_\_\_\_ (the “Maturity Date”)] [in \_\_\_ equal quarterly installments, with the first such installment due on \_\_\_\_\_; **provided, however,** that all principal under this Note shall be due and payable immediately upon the consummation of a Change of Control (the**

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<sup>1</sup> It is important for the investor’s counsel to consider the investor’s ability to convert this Note prior to a mandatory prepayment or acceleration. If the investor is expecting to receive equity-like upside on certain events – such as a change of control or IPO – it would not be consistent with that expectation for the Note to be prepaid with only accrued interest. This sample Note deals with that concern in connection with a change of control by requiring advance notice and an opportunity to convert pursuant to Section 4(b)(iii). It also provides that other prepayments are not permitted or only permitted after advance notice. An alternative is to provide for payment of a premium in connection with any mandatory prepayment (i.e. a multiple of the investment amount) to approximate the potential equity upside or compensate the investor in a situation where the investor does not have the ability to convert. (Note: A premium payment upon a liquidity event prior to conversion may be characterized as interest, and may result in the Note being subject to the original issue discount or contingent payment debt instrument rules, which generally would require income to be recognized over the term of the loan and prior to receipt of any additional cash payments.) See also Note 2.

**date on which the last payment of principal is due is referred to herein as the “Maturity Date”]**. Subject to Section 4 below, accrued and unpaid interest under this Note [**shall not be due and payable until the Maturity Date**] [**shall be due and payable with each installment of principal**]. All other amounts due hereunder shall be paid at the same time as the payment of principal. Notwithstanding the foregoing, the entire unpaid principal amount of this Note, together with accrued and unpaid interest thereon and other amounts due hereunder, shall become immediately due and payable upon an Event of Default specified in clauses (e) and (f) of the definition thereof.]

### **[Option Two – Demand Note]**

[Unless converted as provided in Section 4, principal and any accrued but unpaid interest under this Note and any other amounts payable hereunder, shall be due and payable upon demand by Holder at any time after **[the date hereof]** [\_\_\_\_\_]; provided, however, that all principal and accrued interest under this Note shall be due and payable immediately upon the consummation of a Change of Control (the date of such demand or Change of Control, the “Maturity Date”). Additionally, notwithstanding the foregoing, the entire unpaid principal sum of this Note, together with accrued and unpaid interest thereon, shall become immediately due and payable upon an Event of Default specified in clauses (e) and (f) of the definition thereof.]

**3. Payment; Prepayment.** All payments of principal, interest and any other amounts (other than by conversion) shall be made in lawful money of the United States of America and in immediately available funds at such place as Holder hereof may from time to time designate in writing to the Company. Payment shall be credited first to amounts due other than principal and interest, then to the accrued interest then due and payable[, if any,] and then the remainder applied to principal. [**Prepayment of this Note may be made at any time without penalty upon [\_\_\_\_\_ (\_\_\_)] days written notice to Holder, provided that all of the Notes shall be prepaid on a pro rata basis. [This Note may not be prepaid without Holder’s prior written consent.]**<sup>2</sup> All payments by the Company under this Note shall be made without set-off or counterclaim and be free and clear and without any deduction or withholding for any taxes or fees of any nature whatsoever, unless the obligation to make such deduction or withholding is imposed by law. The Company shall pay and save Holder harmless from all liabilities with respect to or resulting from any delay or omission to make any such deduction or withholding required by law.

### **4. Conversion.**

#### **(a) Automatic Conversion.**

**(i) Qualified Financing.** In the event the Company consummates a Qualified Financing prior to the payment or conversion in full of all principal and accrued

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<sup>2</sup> Prepayment without the investor’s consent may not be appropriate where the investor has taken risk in making the bridge loan on the expectation of potential upside through conversion of the Note. Prepayment under certain circumstances could prevent the investor from realizing the bargained for benefit of the bridge transaction – such as prepayment prior to a Qualified Financing, favorable change of control or other positive development. Advance notice may alleviate this concern in some circumstances. See also Note 1.

interest under this Note, then this Note shall be automatically converted into the number (rounded to the nearest whole) of fully paid and non-assessable shares of **[Qualified Preferred Stock] [Preferred Stock sold in such Qualified Financing]** equal to (A) the Principal Balance plus **[at the Company's option] [at Holder's option] [at the election of the Majority Investors]** accrued and unpaid interest on this Note through the date of conversion, divided by (B) **[[\_] percent ([\_]%) of]**<sup>3</sup> the lowest purchase price per share of **[Qualified Preferred Stock] [Preferred Stock sold in such Qualified Financing]** paid by other investors in the Qualified Financing. The **[Qualified]** Preferred Stock issued upon conversion of this Note shall have all of the organic and contractual rights, preferences, privileges and obligations and, except as specified herein, shall be issued in accordance with the same terms and conditions as the securities offered in the Qualified Financing. Additionally, in connection with the foregoing automatic conversion, Holder shall also receive any other securities, such as warrants to purchase shares of the Company's capital stock, to be issued to the investors in the Qualified Financing in addition to the **[Qualified]** Preferred Stock. In conjunction with such conversion, Holder shall become a party to, and shall execute all applicable Qualified Financing documentation; provided, however, that the terms of such documents shall be no less favorable to Holder than to the purchasers in the Qualified Financing (it being understood that such documents shall not be deemed less favorable to Holder merely because they condition rights or benefits on minimum equity ownership, so long as such conditions apply to all purchasers).

(ii) **[Majority Investors' Election]**. In the event the Majority Investors elect to convert their Notes under any clause of **Section 4(b)** below, then this Note shall be automatically converted as though Holder had elected to convert this Note under the same clause of **Section 4(b)** pursuant to which the Majority Investors elected to convert their Notes.]

(b) Optional Conversion.<sup>4</sup>

(i) Qualified Financing Preferred Stock. If, prior to the payment or conversion in full of all principal and accrued interest under this Note, the Company issues shares of **[Qualified]** Preferred Stock in a transaction or series of related transactions that do not meet the requirements of a Qualified Financing (a "Non-Qualified Financing"), then, subject to **Section 4(a)(ii)** above, this Note may be converted, in whole **[or] [but not]** in part, at the election of Holder, into a number of shares of such **[Qualified]** Preferred Stock determined by dividing (A) the Principal Balance plus **[at the Company's option] [at Holder's option] [at the election of the Majority Investors]** accrued and unpaid interest on this Note through the date of conversion, divided by (B) **[[\_] percent ([\_]%) of]** the lowest purchase price per share of such

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<sup>3</sup> A significant conversion price discount may be characterized as interest. Among other things, such deemed interest may result in the Note being subject to the original issue discount or contingent payment debt instrument rules, which generally would require income to be recognized over the term of the loan and prior to receipt of any additional cash payments.

<sup>4</sup> Changes may be required to existing Preferred Stock documents to assure that the Preferred Stock issued on an optional conversion will have all applicable rights and preferences and be subject to applicable obligations.

**[Qualified]** Preferred Stock paid by other investors in the Non-Qualified Financing. Preferred Stock issued upon conversion of this Note pursuant to this Section 4(b)(i) shall have all of the organic and contractual rights, preferences and privileges and, except as specified herein, shall be issued in accordance with the same terms and conditions as the securities offered in the Non-Qualified Financing. In conjunction with such conversion, Holder shall become a party and shall execute all applicable Non-Qualified Financing documentation; provided, however, that the terms of such documents shall be no less favorable to Holder than to the purchasers in the Non-Qualified Financing (it being understood that such documents shall not be deemed less favorable to Holder merely because they condition rights or benefits on minimum equity ownership, ownership, so long as such conditions apply to all purchasers).

(ii) Alternative Preferred Stock. Subject to Section 4(a)(ii) above, this Note may be converted at any time prior to the payment in full of all principal and accrued interest under this Note, in whole **[or] [but not]** in part, at the election of Holder, into a number of shares of the Company's then most senior series of Preferred Stock (the "Alternative Preferred Stock") determined by dividing (A) the Principal Balance plus **[at the Company's option] [at Holder's option] [at the election of the Majority Investors]** accrued and unpaid interest on this Note through the date of conversion by (B) **[ ]** percent (**[ ]**%) of] the then applicable per share conversion price (as adjusted) for the Alternative Preferred Stock.

(iii) Change of Control. Prior to the consummation of any Change of Control, the Company shall give Holder at least **[ ]** (**[ ]**) days notice thereof, which notice shall set forth in reasonable detail the terms and provisions of such Change of Control. Thereafter, the Company shall give Holder the reasonable opportunity to convert this Note pursuant to this Section 4(b) (which conversion Holder may condition on the consummation of such Change of Control). If Holder elects to convert this Note prior to such Change of Control, Holder shall be treated no differently in such transaction (on a proportionate basis) than holders of the class of Preferred Stock into which this Note converts.

(c) Conversion Procedure.

(i) Conversion Pursuant to Section 4(a). The Company shall give Holder of this Note prompt notice of any Qualified Financing prior to the consummation thereof. Upon the date of automatic conversion of this Note **[(including pursuant to Section 4(a)(ii))]**, the Principal Balance plus unpaid and accrued interest thereon **[, as applicable]** through the date of conversion shall be converted without any further action by Holder and whether or not the Note is surrendered to the Company. The Company shall not be obligated to issue certificates evidencing the shares of **[Qualified]** Preferred Stock issuable upon conversion unless this Note is delivered to the Company, or Holder notifies the Company that this Note has been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Company to indemnify the Company from any damages incurred by it in connection with such loss, mutilation or destruction. The Company shall, at its sole cost and within five (5) business days after such delivery, or such agreement and indemnification, issue and deliver certificates representing the number of fully paid and non-assessable shares of **[Qualified]** Preferred Stock into which the Note converts in accordance with the provisions herein (bearing such legends as are required by the Note Purchase Agreement, the Qualified Transaction documents and applicable state and federal laws in the opinion of counsel to the Company), and any other securities and property to

which Holder is entitled upon such conversion under the terms of this Note, including a check payable to Holder for any cash amounts payable as described in Section 5. The Company shall take all action necessary and appropriate to designate and authorize a sufficient number of shares of the Company's [**Qualified**] Preferred Stock (and Common Stock upon conversion thereof) to be issued in the event of a conversion pursuant to this Section 4(c)(i). The conversion shall be deemed to have been made immediately upon the consummation of the Qualified Financing or upon the effectiveness of a conversion under Section 4(b) that triggers the provisions of Section 4(a)(ii).

(ii) Conversion Pursuant to Section 4(b). Before Holder shall be entitled to convert this Note under Section 4(b), it shall surrender this Note (or deliver a written notice that this Note has been lost, stolen or destroyed along with an executed agreement reasonably satisfactory to the Company to indemnify the Company from any damages incurred by it in connection with such loss, mutilation or destruction), at the office of the Company along with written notice of the election to convert the same pursuant to Section 4(b), and shall state therein the name or names in which the certificate or certificates for shares are to be issued. The Company shall, at its sole cost and as soon as practicable thereafter, issue and deliver to Holder of this Note a certificate or certificates representing the number of fully paid and non-assessable shares to which Holder is entitled upon conversion (bearing such legends as are required by the Note Purchase Agreement, the Non-Qualified Transaction documents (if any) and applicable state and federal laws in the opinion of counsel to the Company), and any other securities and property to which Holder is entitled upon such conversion under the terms of this Note, including a check payable to Holder for any cash amounts payable as described in Section 5. The conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of this Note along with written notice contemplated by this Section 4(c)(ii) and the Person or Persons entitled to receive the shares upon such conversion shall be treated for all purposes as the record Holder or Holders of such shares as of such date. The Company shall take all action necessary and appropriate to designate and authorize a sufficient number of shares of the Company's [**Qualified**] Preferred Stock (and Common Stock upon conversion thereof) to be issued in the event of a conversion pursuant to this Section 4(c)(ii).

**5. Fractional Shares; Related Interest; Effect of Conversion**. No fractional shares shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to Holder upon the conversion of this Note, the Company shall pay to Holder an amount equal to the product obtained by multiplying the conversion price by the fraction of a share not issued pursuant to the previous sentence. In addition, the Company shall pay to Holder any interest accrued on the amount to be paid pursuant to the previous sentence. Upon conversion of this Note, the Company will be forever released from all of its obligations and liabilities under this Note with regard to that portion of the principal amount and accrued interest being converted, including without limitation the obligation to pay such portion of the principal amount and accrued interest.

**6. Events of Default**. The occurrence of any of the following shall constitute an "Event of Default" under this Note and the other Transaction Documents:

(a) Failure to Pay. The Company shall fail to pay (i) any principal or interest payment on the due date hereunder, or (ii) any other payment required under the terms of this



(g) Judgments. Either (i) a final judgment or order for the payment of money in excess of [\_\_\_\_\_ (\$\_\_\_\_\_)] shall be rendered against the Company and both (A) the same shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed and (B) no insurer of the Company shall have acknowledged without reservation coverage in full for such amount, or (ii) any judgment, writ, assessment, warrant of attachment, or execution or similar process shall be issued or levied against a substantial part of the Company's assets and such judgment, writ, or similar process shall not be released, stayed, vacated or otherwise dismissed within ninety (90) days after issue or levy;

(h) Transaction Documents. Any Transaction Document or any material term thereof shall cease to be, or be asserted by the Company not to be, a legal, valid and binding obligation of the Company enforceable in accordance with its terms[;] [or]

(i) any Change of Control occurs [; or] [.]

(j) [**Material Adverse Effect. One or more conditions exist or events have occurred which could reasonably indicate, or reasonably result in, a Material Adverse Effect.**]

**7. Rights of Holder upon Default**. If an Event of Default occurs, the Company shall provide written notice thereof to Holder within [\_\_\_\_\_ (\_\_\_)] Business Days. Upon the occurrence or existence of any Event of Default (other than an Event of Default, referred to in Sections 6(e) and 6(f)) and at any time thereafter during the continuance of such Event of Default, Holder may, [**with the written consent of the Majority Investors,**] by written notice to the Company, declare all outstanding Obligations payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Transaction Documents to the contrary notwithstanding. Upon the occurrence or existence of any Event of Default described in Sections 6(e) and 6(f), immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Transaction Documents to the contrary notwithstanding. In addition to the foregoing remedies, [**subject to the terms of Section 15,**] upon the occurrence or existence of any Event of Default, Holder may exercise any other right, power or remedy granted to it by the Transaction Documents (including the Security Agreement) or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

**8. Waiver and Amendment**. Any term of this Note may be amended or waived only with the written consent of the Company and the Majority Investors. Any amendment or waiver effected in accordance with this Section 8 shall be binding upon the Company and each Holder, regardless of whether he, she or it has given its written consent. Notwithstanding the foregoing, [(a)] if any amendment or waiver materially and adversely treats one or more Holders in a manner that is disproportionate to such treatment of all other Holders, such amendment or waiver shall also require the written consent of Holders disproportionately treated, and [(b) **no amendment or waiver of this Note shall change the principal amount outstanding without**

**the consent of Holder**]. This Section 8 may not be amended without the written consent of the Company and all Investors.

**9. Successors and Assigns.** Subject to the restrictions on transfer described in Sections 10 and 11 below, the rights and obligations of the Company and Holder of this Note shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

**10. Transfer of this Note.**

**[Option One – Free Transferability]**

[With respect to any offer, sale or other disposition of this Note, Holder will give written notice to the Company prior thereto, describing briefly the manner thereof, together with a written opinion of Holder's counsel, or other evidence if reasonably satisfactory to the Company, to the effect that such offer, sale or other disposition may be effected without registration or qualification (under any federal or applicable state securities law then in effect). Upon receiving such written notice and reasonably satisfactory opinion, if so requested, or other evidence, the Company, as promptly as practicable, shall notify Holder that Holder may sell or otherwise dispose of this Note, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this Section 10 that the opinion of counsel for Holder, or other evidence, is not reasonably satisfactory to the Company, the Company shall so notify Holder promptly after such determination has been made. Each Note thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company as provided in the Note Purchase Agreement. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered Holder hereof as the owner and Holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary.]

**[Option Two – No Transfers]**

[Notwithstanding Section 9, Holder may not assign, pledge, or otherwise transfer this Note without the prior written consent of the Company, except that Holder may assign this Note and its rights hereunder (a) if Holder is a partnership or limited liability company, to any partner, member, manager or Affiliate (as hereinafter defined) thereof, (b) if Holder is a corporation, to any Affiliate of Holder or (c) if Holder is a natural person, to the spouse or descendants of such person or any trust for the benefit of any thereof; provided that the Company is given written notice at the time of such assignment stating the name and address of the assignee and such transferee agrees in writing to be bound by the terms of this Note, the Purchase Agreement and the other Transaction Documents. Anything contained herein to the contrary notwithstanding, no Holder (or permitted assignee of a Holder) shall, without the consent of the Company, be permitted to assign any rights and/or benefits hereunder to a Person that is then actively engaged

in a business that is directly competitive with the business then primarily and actively conducted or engaged in by the Company. Subject to all of the foregoing, this Note may be transferred only upon compliance with the securities law restrictions set forth in this Note, the Note Purchase Agreement and the other Transaction Documents, the surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee. Interest and principal are payable only to the registered holder of this Note. “Affiliate” shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with, such Person. For the purposes of this definition, “control” when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.]

**11. Assignment by the Company.** Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of Holder.

**12. Notices.** All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be made and effective as set forth in Section 10(e) of the Note Purchase Agreement.

**13. Pari Passu Notes.** Holder acknowledges and agrees that the payment of all or any portion of the outstanding principal amount of this Note and all interest hereon shall be pari passu in right of payment and in all other respects to the other Notes issued pursuant to the Note Purchase Agreement. All payments of principal and interest on the Notes shall be made pro rata based on the unpaid Principal Balance under each Note. If Holder receives any payment or other amount in excess of that which he, she or it is entitled to under this Section 13, he, she or it shall, and shall be deemed to, hold such excess amount in trust for the benefit of Holders who are entitled thereto and shall pay such excess amount over to such other Holders as promptly as practicable.

**14. Default Rate; Usury.** During any period in which an Event of Default has occurred and is continuing, the Company shall pay interest on the unpaid principal balance hereof at a rate per annum equal to the rate otherwise applicable hereunder plus [\_\_\_\_\_ (\_\_\_%)]. In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note.

**15. Coordinated Action.** Holder may not institute any action to collect this Note or any other action with respect to this Note or the Obligations without the prior written consent of the Majority Investors. The Majority Investors may designate a single Holder to institute any such action on behalf of all Holders, and Holder agrees and acknowledges that such designate Holder shall serve as the representative of all Holders in a single action. Such Holder shall be indemnified and held harmless from and against any and all costs,

**expenses, fees and liabilities which it may incur in connection with pursuing such action, and shall have no liability whatsoever to the other Holders for any actions taken or omitted in good faith in connection therewith.]**

**16. Expenses; Waivers.** If [Holder] [any Holder designated by the Majority Investors] institutes an action [permitted by Section 15] to collect this Note, the Company promises to pay all costs and expenses incurred by such Holder in connection therewith, including, without limitation, reasonable attorneys' fees and costs[, **unless the Company is determined to be the prevailing party in such action, in which case Holder shall pay its pro rata share of the Company's costs and expenses, including, without limitation, reasonable attorneys' fees and costs**]. The Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.

**17. Stockholders, Officers and Directors Not Liable.** In no event shall any stockholder, officer or director of the Company be liable for any amounts due or payable pursuant to this Note.

**18. Loss of Note.** Upon receipt by the Company of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Note or any Note exchanged for it, and indemnity satisfactory to the Company (in case of loss, theft or destruction) or surrender and cancellation of such Note (in the case of mutilation), the Company will (at its expense) make and deliver in lieu of such Note a new Note of like tenor.

**19. Saturdays, Sundays, Holidays.** If any date that may at any time be specified in this Note as a date for the making of any payment of principal or interest under this Note shall fall on Saturday, Sunday or on a day which in [\_\_\_\_\_], shall be a legal holiday, then the date for the making of that payment shall be the next subsequent day which is not a Saturday, Sunday, or legal holiday.

**20. No Impairment.** The Company will not, by amendment of its Certificate of Incorporation, as the same may be amended from time to time, or through reorganization, consolidation, merger, dissolution, sale of assets or another voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of Holder of this Note against impairment.

**21. No Rights as a Stockholder.** Nothing contained in this Note shall be construed as conferring upon Holder hereof or its transferee, prior to the conversion of this Note, the right to vote or to receive dividends or to consent or to receive notice as a stockholder in respect of any meeting of stockholders for the election of directors of the Company or of any other matter, or any other rights as a stockholder of the Company.

**22. Counterparts; Facsimile Signatures.** This Note may be executed in one or more counterpart signature pages, each of which will be deemed to be an original copy of this Note and all of which, when taken together, will be deemed to constitute one and the same agreement,

which shall be binding upon all of the parties hereto notwithstanding the fact that all parties are not signatory to the same counterpart. The exchange of copies of this Note and of signature pages by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.

**23. Governing Law.** This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of [\_\_\_\_], without regard to the conflicts of law provisions of the State of [\_\_\_\_], or of any other state. All disputes and controversies arising out of or in connection with this Note shall be resolved exclusively by the state and federal courts located in [\_\_\_\_] County in the State of [\_\_\_\_], and each of the Company and Holder hereto agrees to submit to the jurisdiction of said courts and agrees that venue shall lie exclusively with such courts. **[FOR CONSIDERATION IN CALIFORNIA: Notwithstanding any provision of this Note to the contrary, this Note shall be (to the extent necessary to satisfy the requirements of Section 22062(b)(3(D) of the California Financial Code) subject to the implied covenant of good faith and fair dealing arising under Section 1655 of the California Civil Code.]**

(Signature Page Follows)

**COUNTERPART SIGNATURE PAGE  
TO  
CONVERTIBLE [SECURED] PROMISSORY NOTE**

**IN WITNESS WHEREOF**, the undersigned has caused this Convertible [Secured] Promissory Note to be executed and issued as of the date first written above.

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Agreed as of the date first set forth above:

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

**2. Sample Bridge Financing Documents**

**(c) Sample Bridge Financing Warrant**

## **SAMPLE BRIDGE FINANCING WARRANT**

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**This sample document is not intended to be an “off-the-shelf” form. Rather, it is illustrative of one approach that may be taken in a bridge financing transaction that is intended to bridge a company from one round of financing to the next. Changes may be required to conform the terms of this document to a transaction in which the purpose is to bridge the company to its initial institutional financing or to a change of control or other liquidity event. The terms of a bridge financing transaction may vary significantly depending upon a number of factors, including the anticipated term of the bridge loan, the assumed likelihood of a “Qualified Financing” or other applicable milestone, the company’s financial condition and development stage, the amount of the bridge financing and the nature of the investor (i.e. venture capital fund, strategic investor, other institutional investor or an individual). This document is not a substitute for detailed guidance from counsel experienced in such transactions, and is not legal advice. This sample document is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the U.S. Internal Revenue Code, or promoting, marketing or recommending to another party any transaction or matter addressed herein.**

THIS WARRANT AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR REGISTERED OR QUALIFIED UNDER ANY APPLICABLE STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND REGISTRATION OR QUALIFICATION UNDER ANY APPLICABLE STATE SECURITIES LAWS OR (B) AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED PURSUANT TO AN EXEMPTION UNDER SUCH ACT AND SECURITIES LAWS.

THIS WARRANT AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF ARE SUBJECT TO RESTRICTIONS ON TRANSFER CONTAINED IN THE CONVERTIBLE [SECURED] NOTE AND WARRANT PURCHASE AGREEMENT, DATED AS OF [\_\_\_\_\_] BY AND AMONG THE COMPANY, HOLDER AND THE OTHER PARTIES THERETO.

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Warrant No. \_\_\_\_\_

Original Issue Date: \_\_\_\_\_

[NAME OF COMPANY]

**[PREFERRED STOCK] [COMMON STOCK] PURCHASE WARRANT**

**THIS CERTIFIES THAT**, for value received, [\_\_\_\_\_] , or its registered assigns (“Holder”), is entitled to subscribe for and purchase from [\_\_\_\_\_] , a [\_\_\_\_\_] corporation (the “Company”), upon the terms and conditions hereinafter set forth, up to that number of fully paid and non-assessable shares of Subject Securities as shall equal the Applicable Amount, at a price per share equal to the Warrant Purchase Price. The initial Warrant Purchase Price and the number and character of shares of Subject Securities with respect to which this Warrant is exercisable, are subject to adjustment as hereinafter provided. This Warrant is one of an issue of the Company’s **[Preferred Stock] [Common Stock]** Purchase Warrants (along with any and all warrants issued in substitution therefor, the “Warrants”) issued pursuant to the Convertible **[Secured]** Note and Warrant Purchase Agreement (the “Purchase Agreement”), dated as **[of the date hereof]** [\_\_\_\_\_] , by and between the Company and the Investors identified on Schedule I thereto. The Warrants are identical in all respects, except as to the names of the holders thereof (together, the “Warrantholders”) and the number of shares of Subject Securities purchasable thereunder.

1. **Defined Terms.** For purposes of this Warrant, the following capitalized terms have the meanings assigned to them in this Section 1. Capitalized terms used in this Warrant and not defined in this Section 1 have the meanings assigned to them elsewhere in this Warrant.

“Applicable Amount”<sup>1</sup>

**[IF A COMMON STOCK WARRANT:** means [insert specific number of shares using standard warrant coverage formula and agreed upon exercise price].]

**[IF A PREFERRED STOCK WARRANT:** means [insert the warrant coverage amount (i.e., principal amount of note purchased by Holder multiplied by the coverage percentage)], divided by the Warrant Purchase Price.]

“Business Day” means any day other than a Saturday, Sunday or other day on which banks are required or permitted to be closed in [\_\_\_\_\_].

“Change of Control” means (i) any merger with or into, acquisition of, consolidation with, or other similar transaction involving the, Company; provided, however, that any such transaction in which the shareholders of the Company existing immediately before such transaction own more than fifty percent (50%) of total voting power of the resulting entity’s then outstanding securities after giving effect to such transaction, shall not constitute a Change of Control; **[and provided further, that the sale and issuance by the Company of preferred stock in an equity financing for the sole purpose of raising funds for general corporate purposes (a “Financing”) shall not constitute a Change of Control]**; (ii) the sale, transfer, lease, license or other disposition of all or substantially all of the assets of the Company **[(other than the non-exclusive license of assets by the Company to its customers in the ordinary course of business)]**; (iii) any transaction or series of related transactions pursuant to which any Person or “group” (as such term is used in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) becomes the “beneficial owner” (as such term is defined in Rule 13d-3 promulgated under the Exchange Act) of more than **[fifty percent 50%]** of the total voting power of the Company’s then outstanding securities**[, other than in the case of a Financing]**; or (iv) a liquidation, dissolution or winding up of the Company.

“Expiration Date” means the earlier to occur of (i) the date ten (10) years from the date of this Warrant; provided, however, that if such date is not a Business Day, then the Expiration Date shall be the next succeeding Business Day, and (ii) the date on which a Change of Control is consummated.

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<sup>1</sup> The number of shares of Common Stock or Preferred Stock covered by the warrant in a bridge financing is determined by taking a percentage of the bridge note’s principal amount (such percentage is often referred to as the “warrant coverage”) and dividing it by the Warrant Purchase Price. For example, if the warrant coverage was 100%, then the number of shares issuable hereunder would be equal to the quotient of (a) the entire initial principal amount under the Holder’s Note, divided by (b) the Warrant Purchase Price. The amount of the warrant coverage may vary based on a number of different factors. Warrant coverage may also adjust based on how long the Note is outstanding (i.e. increased warrant coverage depending on how long it takes the Company to consummate the Qualified Financing ).

“Notes” means the Convertible [**Secured**] Promissory Notes issued by the Company pursuant to the Purchase Agreement.

“Qualified Financing” has the meaning set forth in the Notes.

“Subject Securities” means [the Company’s Common Stock, par value \$[\_\_\_] per share] [shares of the Company’s Qualified Preferred Stock (as defined the Notes) sold in a Qualified Financing] [shares of the Company’s Preferred Stock, par value \$[\_\_\_] per share, sold in a Qualified Financing] [shares of the Company’s Series [\_\_\_] Preferred Stock, par value \$[\_\_\_] per share].

“Trigger Date”

[**IF A COMMON STOCK WARRANT:** means the earlier to occur of (i) the consummation of a Qualified Financing, (ii) the date [\_\_\_\_\_] (\_\_\_) days prior to the consummation of a Change of Control, and (iii) the failure of the Company to repay the Notes in full prior to [**INSERT SPECIFIC DATE**].]

[**IF A PREFERRED STOCK WARRANT:** means the date on which a Qualified Financing is consummated.]

“Warrant Purchase Price”

[**IF A COMMON STOCK WARRANT:** means [Insert agreed upon exercise price. With a Common Stock warrant, the exercise price is often \$0.01 per share, i.e. a “penny warrant.”], subject to adjustment as set forth herein.]

[**IF A PREFERRED STOCK WARRANT:** means [[\_\_\_] percent ([\_\_\_]%) of] the lowest purchase price per share of Subject Securities paid by purchasers in a Qualified Financing, subject to adjustment as set forth herein.]

## 2. **Exercise of Warrant.**

2.1 **Timing.** This Warrant shall be exercisable at any time and from time to time on and after the Trigger Date up to and including 6:00 PM [**COMPANY LOCAL TIME**] on the Expiration Date. In no event shall this Warrant be exercisable prior to the Trigger Date or after 6:00 PM [**COMPANY LOCAL TIME**] on the Expiration Date.

2.2 **Exercise in Full.** Subject to the provisions hereof, this Warrant may be exercised in full by Holder by surrender of this Warrant, together with a subscription in the form of Exhibit A attached hereto (the “Form of Subscription”), duly completed, executed and delivered by Holder, to the Company at its principal office, accompanied by payment, in cash, by wire transfer of same day immediately available funds, by certified or bank check payable to the order of the Company or with a combination of payment methods provided for herein, in an aggregate

amount obtained by multiplying the number of shares (as adjusted) of Subject Securities called for on the face of this Warrant by the Warrant Purchase Price.<sup>2</sup>

2.3 Partial Exercise. Subject to the provisions hereof, this Warrant may be exercised in part by surrender of this Warrant in the manner and at the place provided in Section 2.2, except that the amount payable by Holder upon any partial exercise shall be the amount obtained by multiplying (a) the number of shares (without giving effect to any adjustment therein) designated by Holder in the Form of Subscription duly completed, executed and delivered by Holder to the Company in connection with such partial exercise by (b) the Warrant Purchase Price (the "Partial Exercise Payment"). Upon any such partial exercise accompanied by the Partial Exercise Payment, the Company at its expense will forthwith issue and deliver to or upon the order of Holder a new Warrant of like tenor, in the name of Holder or as Holder (upon payment by Holder of any applicable transfer taxes) may request, providing for in the aggregate on the face or faces thereof the number of shares of Subject Securities equal to the number of such shares (as adjusted) provided for on the face of this Warrant minus the number of such shares designated by Holder in the Form of Subscription, duly completed, executed and delivered by Holder to the Company.

2.4 Net Issue Election. In lieu of paying all or a portion of the Warrant Purchase Price in cash, Holder may elect to receive, without the payment by Holder of any additional consideration, shares of Subject Securities equal to the value of this Warrant or any portion hereof, as determined below, by the surrender of this Warrant or such portion to the Company, with the Form of Subscription duly completed and executed by Holder, at the principal office of the Company. Thereupon, the Company shall issue to such Holder such number of fully paid and nonassessable shares of Subject Securities as is computed using the following formula:

$$X = \frac{Y (A - B)}{A}$$

where:

X = the number of shares to be issued to Holder pursuant to this Section 2.4.

Y = the number of shares of Subject Securities covered by this Warrant in respect of which the net issue election is made pursuant to this Section 2.4.

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<sup>2</sup> Consider a requirement that the Holder execute and deliver an agreement to be bound by existing contractual restrictions on holders of the securities for which this Warrant is exercisable, and benefit from existing contractual rights of holders of such securities. These obligations and rights might include restrictions on transfer, preemptive rights, rights of first refusal, co-sale provisions, a drag-along and registration rights. This will depend, in part, on what the trigger event is that permits exercise of this Warrant and what security the Warrant is exercisable for. For example, if this Warrant is exercisable only after the Qualified Financing and is exercisable for Qualified Preferred, the obligation would be to enter into the agreements entered into in connection with the Qualified Financing. However, in some instances, this may not be necessary – such as where Holder is an existing investor and the terms of the existing agreements are broad enough to cover all equity securities held by Holder.

A = the Fair Market Value (as defined below) of one share of Subject Securities at the time the net issue election is made pursuant to this Section 2.4.

B = the Warrant Purchase Price in effect under this Warrant at the time the net issue election is made pursuant to this Section 2.4.

As used in this Warrant, the term "Fair Market Value" means:

- (a) if the exercise is in connection with an initial public offering of the Company's Common Stock, and if the Company's registration statement relating to such public offering has been declared effective by the Securities and Exchange Commission, then the fair market value of one share of Subject Securities shall equal (i) if the Subject Securities are Common Stock, the initial "Price to Public" per share specified in the final prospectus with respect to the offering, or (ii) if the Subject Securities are not Common Stock, the number of shares of Common Stock into which one share of Subject Securities is convertible or exchangeable, multiplied by such "Price to Public";
- (b) if the exercise is in connection with a Change of Control, the fair market value per share of Subject Securities shall be deemed to be the value of the consideration per share of Subject Securities to be received by the holders of such Subject Securities pursuant to, or in connection with, such transaction;
- (c) if this Warrant is exercised after, and not in connection with, the Company's initial public offering, and not in connection with a Change of Control, and if the Company's Common Stock is traded on a national securities exchange or actively traded over-the-counter:
  - (i) if the Company's Common Stock is traded on a national securities exchange, the fair market value of one share of Subject Securities shall be deemed to be (A) if the Subject Securities are Common Stock, the average of the closing prices over a twenty (20) trading-day period ending three trading days before the date of calculation, or (B) if the Subject Securities are not Common Stock, the number of shares of Common Stock into which one share of Subject Securities is convertible or exchangeable, multiplied by such average; or
  - (ii) if the Company's Common Stock is actively traded over-the-counter, the fair market value shall be deemed to be (A) if the Subject Securities are Common Stock, the average of the closing bid or sales price (whichever is applicable) over the twenty (20) trading-day period ending three trading days before the date of calculation, or (B) if the Subject Securities are not Common Stock,

the number of shares of Common Stock into which one share of Subject Securities is convertible or exchangeable, multiplied by such average; or

- (d) if neither (a), (b) nor (c) is applicable, the fair market value shall be the highest price per share which the Company could obtain on the date of calculation from a willing buyer in an arms' length transaction for shares of Subject Securities sold by the Company from authorized but unissued shares, as **[agreed by the Company and [Holder] [the holders of Warrants representing the right to purchase at least a majority of all shares of Subject Securities purchasable under all Warrants]] [determined in good faith by the Board of Directors].**

2.5 Company to Reaffirm Obligations. The Company will, at the time of any exercise of this Warrant, upon the request of Holder hereof, acknowledge in writing its continuing obligation to afford to Holder any rights to which Holder shall continue to be entitled after such exercise in accordance with the provisions of this Warrant.

**3. Delivery of Stock Certificates on Exercise.** The Company agrees that shares purchased hereunder shall be deemed to have been issued to Holder as the record owner of such shares immediately prior to the close of business on the date this Warrant shall have been surrendered and delivery of payment for such shares shall have been made as required hereby. As soon as practicable after the exercise of this Warrant in full or in part, and in any event within five (5) days thereafter, the Company at its expense (including the payment by it of any applicable issue taxes) will cause to be issued in the name of and delivered to Holder, or as Holder (upon payment by Holder of any applicable transfer taxes) may direct (provided delivery to any person other than Holder is in compliance with federal and state securities laws), a certificate or certificates for the number of fully paid and non-assessable shares of Subject Securities (or Other Securities (as defined below)) to which Holder shall be entitled upon such exercise, plus, in lieu of any fractional share to which Holder would otherwise be entitled, cash equal to such fraction multiplied by the then current Fair Market Value of one full share, together with any other stock or other securities and property (including cash, where applicable) to which Holder is entitled upon such exercise pursuant to Section 4 hereof or otherwise.

**4. Adjustments.**<sup>3</sup>

4.1 Warrant Purchase Price. The Warrant Purchase Price defined in Section 1 of this Warrant shall be subject to adjustment from time to time as hereinafter provided. After any such adjustment, the term "Warrant Purchase Price" shall mean the Warrant Purchase Price resulting from such adjustments.

4.2 Adjustment of Number of Shares. Upon each reduction of the Warrant Purchase Price, Holder shall thereafter be entitled to purchase, at the Warrant Purchase Price resulting

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<sup>3</sup> Under certain circumstances, the investor and investor's counsel may want to consider adding price-based antidilution protection. Such provisions may be appropriate, among other circumstances, if the Warrant is a Common Stock warrant with an exercise price that is not nominal.

from such reduction, the number of shares of Subject Securities obtained by multiplying the Warrant Purchase Price in effect immediately prior to such reduction by the number of shares purchasable pursuant hereto immediately prior to such reduction and dividing the product thereof by the Warrant Purchase Price resulting from such reduction.

4.3 Reorganization; Reclassification. In the event of a reorganization, share exchange, or reclassification, other than a change in par value, from par value to no par value, from no par value to par value or a transaction described in Sections 4.4 or 4.5 below, Holder shall have the right to purchase and receive, upon the basis and upon the terms and conditions specified in this Warrant and in lieu of Subject Securities immediately theretofore purchasable upon the exercise of this Warrant, the kind and number of shares of stock or other securities or other property of the Company which Holder would have been entitled to receive if Holder had held the Subject Securities purchasable upon exercise of this Warrant immediately prior to such reorganization, share exchange or reclassification.

4.4 Merger, Consolidation. Without limitation to the provisions of Section 4.3 above, in the event of a merger or consolidation to which the Company is a party but which does not constitute a Change of Control, Holder hereof shall have the right to purchase, upon the basis and upon the terms and conditions specified in this Warrant and in lieu of Subject Securities immediately theretofore purchasable upon the exercise of this Warrant, the kind and number of shares of stock and/or other securities, cash or other property which Holder would have been entitled to receive if Holder had held the Subject Securities purchasable and receivable upon exercise of this Warrant immediately prior to such merger or consolidation.

4.5 Subdivision or Combination of Shares. In case outstanding shares of Subject Securities shall be subdivided, the Warrant Purchase Price shall be proportionately reduced as of the effective date of such subdivision or as of the date a record is taken of holders of Subject Securities for the purpose of so subdividing, whichever is earlier. In case outstanding shares of Subject Securities shall be combined, the Warrant Purchase Price shall be proportionately increased as of the effective date of such combination or as of the date a record is taken of the holders of Subject Securities for the purpose of so combining, whichever is earlier.

4.6 Stock Dividend. In case shares of Subject Securities are issued as a dividend or other distribution on the Subject Securities (or such dividend is declared), then the Warrant Purchase Price shall be adjusted, as of the date a record is taken of holders of Subject Securities for the purpose of receiving such dividend or other distribution (or if no such record is taken, as at the earliest of the date of such declaration, payment or other distribution), to that price determined by multiplying the Warrant Purchase Price in effect immediately prior to such declaration, payment or other distribution by a fraction (a) the numerator of which shall be the number of shares of Subject Securities outstanding immediately prior to the declaration or payment of such dividend or other distribution, and (b) the denominator of which shall be the total number of shares of Subject Securities outstanding immediately after the declaration or payment of such dividend or other distribution. In the event that the Company shall declare or pay any dividend on the Subject Securities payable in any right to acquire Subject Securities for no consideration, then the Company shall be deemed to have made a dividend payable in Subject Securities of an amount of shares equal to the maximum number of shares issuable upon exercise

of such rights to acquire Subject Securities. For purposes of the formula expressed in this Section 4.6, all shares of Subject Securities issuable upon the exercise of outstanding Options or issuable upon the exercise (at the Warrant Purchase Price in effect immediately before such determinations) of this Warrant or outstanding Convertible Securities (including Convertible Securities issued upon the exercise of outstanding Options), shall be deemed outstanding shares of Subject Securities.

**4.7 [Conversion of Preferred Stock. If all of the outstanding Preferred Stock of the Company is converted into shares of Common Stock, then this Warrant shall automatically become exercisable for that number of shares of Common Stock equal to the number of shares of Common Stock that would have been received if this Warrant had been exercised in full and the shares of Preferred Stock received thereupon had been simultaneously converted into shares of Common Stock immediately prior to such event, and the Warrant Purchase Price shall be automatically adjusted to equal the number obtained by dividing (a) the aggregate Warrant Purchase Price of the shares of Preferred Stock for which this Warrant was exercisable immediately prior to such conversion, by (b) the number of shares of Common Stock for which this Warrant is exercisable immediately after such conversion.]**

4.8 Other Action Affecting Subject Securities. In case the Company shall take any action affecting the outstanding number of shares of Subject Securities other than an action described in any of the above Sections 4.3, 4.4, 4.5, [or] 4.6 [or 4.7] which would have an inequitable effect on Holder, the Warrant Purchase Price shall be adjusted in such manner and at such time as the Company's Board of Directors determines in good faith to be equitable in the circumstances.

4.9 Notices of Adjustments. Whenever the Warrant Purchase Price and/or the number of shares of Subject Securities subject to this Warrant are adjusted as herein provided, an officer of the Company shall compute the adjusted Warrant Purchase Price and the adjusted number of Subject Securities in accordance with the foregoing provisions and shall prepare a written certificate setting forth such adjusted Warrant Purchase Price and number of Subject Securities and showing in detail the facts upon which such adjustment is based, and such written instrument shall promptly (but no later than seven (7) Business Days) be delivered to Holder. For avoidance of doubt, the preparation and delivery of the certificate contemplated by this Section 4.9 shall not be a condition to the effectiveness of any adjustment pursuant to this Section 4.

4.10 Other Notices. In the event:

- (a) the Company declares a dividend (or any other distribution) on the Subject Securities otherwise than in shares of Subject Securities;
- (b) the Company authorizes the granting to the holders of Subject Securities of rights to subscribe for or purchase any shares of capital stock of any class or any other rights;
- (c) of any Change of Control; or

- (d) there shall be an initial public offering of the Company's equity securities;

then, the Company shall cause to be delivered to Holder, at least **[twenty (20)]** days prior to the applicable record date or effective date hereinafter specified, a notice stating the date on which a record is to be taken for the purpose of such dividend, distribution or rights, or, if a record is not to be taken, the date as of which the holder of record of Subject Securities to be entitled to such dividend, distribution or rights are to be determined, or the date on which such dividend, granting of rights, or Change of Control or initial public offering is expected to become effective, and the date as of which it is expected that holders of record of Subject Securities shall be entitled to exchange their shares of Subject Securities for securities or other property deliverable upon such dividend, granting of rights, or Change of Control. Additionally, in the event of a Change of Control, Holder shall be afforded the opportunity to exercise this Warrant in connection therewith and Holder may condition such exercise on the consummation thereof, if it is otherwise then exercisable.

4.11 No Physical Change Necessary. The physical form of this Warrant need not be revised, amended or changed because of any adjustment pursuant to this Section 4. Instead, all such adjustments shall be self-executing and shall be deemed effective without any such physical revision, amendment or change.

**5. Further Assurances.** The Company will take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of stock upon the exercise of this Warrant from time to time outstanding.

**6. Reservation of Stock, etc., Issuable on Exercise of Warrant.** The Company represents, warrants and covenants that the Subject Securities issuable upon exercise of this Warrant have been duly authorized by all required corporate action on the part of the Company, and when issued, sold and delivered, will be duly and validly issued, fully paid and non-assessable, and will be free and clear from any taxes, liens, charges or encumbrances other than those created by, or imposed upon, Holder through no action of the Company and taxes in respect of any transfer occurring contemporaneously with such issue. The Company shall from time to time take all such action as may be requisite to assure that the par value per share of Subject Securities is at all times equal to or less than the Warrant Purchase Price per share then in effect. Until the expiration of the period within which the rights represented by this Warrant may be exercised, the Company shall at all times have authorized, and reserved for the purpose of issuance or transfer upon exercise of the rights evidenced by this Warrant, a sufficient number of shares of Subject Securities to provide for the exercise of the rights represented by this Warrant. The Company shall take all such action as may be necessary to assure that such Subject Securities may be so issued without violation of any applicable law or regulation, or of any requirements of any domestic securities exchange upon which the Subject Securities of the Company may be listed. The Company shall not take any action which would result in any adjustment of the Warrant Purchase Price if the total number of shares of Subject Securities issuable after such action upon exercise of all Warrants then outstanding would exceed the total number of then authorized but unissued Subject Securities reserved therefore.

**7. Exchange of Warrant.** Upon surrender for exchange of this Warrant, properly endorsed, to the Company, the Company at its own expense will issue and deliver to or upon the order of Holder a new Warrant of like tenor, in the name of Holder or as Holder (upon payment by Holder of any applicable transfer taxes) may direct (provided such delivery to another person is in compliance with federal and state securities laws), calling in the aggregate on the face or faces thereof for the number of shares of Subject Securities called for on the face of the Warrant so surrendered.

**8. Replacement of Warrant.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company at its expense will execute and deliver, in lieu thereof, a new Warrant of like tenor.

**9. Warrant Agent.** The Company may, by written notice to Holder, appoint an agent having an office in the United States, for the purpose of issuing the Subject Securities upon the exercise of this Warrant pursuant to Section 2, exchanging the Warrant pursuant to Section 8, and replacing the Warrant pursuant to Section 8, or any of the foregoing, and thereafter any such issuance, exchange or replacement, as the case may be, shall be made at such office by such agent.

**10. Remedies.** The Company stipulates that the remedies at law of Holder in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant are not and will not be adequate, and that such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise, without the necessity of proving damages or posting any bond in connection therewith.

**11. Transfer of Warrant and Related Provisions.**

11.1 Transfer. This Warrant is issued upon the following terms, all of which each Holder or owner hereof by the taking hereof consents and agrees:

(a) Subject to the provisions hereof, title to this Warrant may be transferred by endorsement (by Holder executing the form of assignment attached hereto as Exhibit B) and delivery in the same manner as in the case of a negotiable instrument transferable by endorsement and delivery.

(b) Subject to the foregoing, any person in possession of this Warrant properly endorsed is authorized to represent himself as absolute owner hereof and is empowered to transfer absolute title hereto by endorsement and delivery hereof to a bona fide purchaser hereof for value; each prior taker or owner waives and renounces all of his equities or rights in this Warrant in favor of each such bona fide purchaser and each such bona fide purchaser shall acquire absolute title hereto and to all rights represented hereby;

(c) Until this Warrant is transferred on the books of the Company, the Company may treat the registered Holder as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary.

(d) **[Notwithstanding anything contained herein to the contrary, this Warrant and the rights and obligations of the parties hereunder shall not be transferable, except that Holder may assign this Warrant and its rights hereunder (a) if Holder is a partnership or limited liability company, to any partner, member, manager or Affiliate (as hereinafter defined) thereof, (b) if Holder is a corporation, to any Affiliate of Holder or (c) if Holder is a natural person, to the spouse or descendants of such Holder or any trust for the benefit of any thereof; provided, however, that the Company is given written notice at the time of such assignment stating the name and address of the assignee and such assignee agrees in writing with the Company to be bound by and to comply with all applicable provisions of this Warrant.] [Subject to all of the foregoing,] [T]his Warrant shall bind and inure to the benefit of the Company, Holder, and its or his respective successors, permitted assigns, heirs and legal representatives. Any assignment pursuant to this Section 11.1 shall not relieve, release or otherwise discharge Holder effecting such assignment from its obligations under this Warrant. Anything contained herein to the contrary notwithstanding, no Holder (or permitted assignee of a Holder) shall, without the consent of the Company, be permitted to assign any rights and/or benefits hereunder to a Person that is then actively engaged in a business that is directly competitive with the business then primarily and actively conducted or engaged in by the Company. “Affiliate” shall mean, with respect to any Person (as hereinafter defined), any other Person directly or indirectly controlling, controlled by or under common control with, such Person. For the purposes of this definition, “control” when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. “Person” means any individual, corporation, partnership, limited liability company, business trust, joint venture, joint stock company, trust, unincorporated organization or other entity or any government authority.**

#### 11.2 Additional Restrictions on Transferability.

(a) The shares issuable upon exercise hereof shall not be transferable except upon the conditions set forth in this Section 11.2, which conditions are intended to insure compliance with the provisions of the Securities Act of 1933 (the “Securities Act”) and applicable state laws in respect of the transfer hereof.

(b) In no event shall the Company be obligated to effect any transfer of this Warrant or the shares issuable upon exercise hereof unless a registration statement is in effect with respect thereto under the Securities Act, as amended, or an exemption from the requirement of registration is then applicable.

(c) Each certificate representing shares issuable upon exercise hereof or any other securities issued in respect thereof shall be stamped or otherwise imprinted with a Securities Act legend in substantially the form stamped on the first page of this Warrant; provided, however, that the Securities Act legend may be removed from this Warrant and no

such legend shall be required on any such shares or securities if (i) in the opinion of counsel reasonably satisfactory to the Company, registration of any future transfer of this Warrant or such shares is not required by the applicable provisions of the Securities Act, or (ii) the Company shall waive the requirement of such legends.

(d) Holder of this Warrant or any shares issuable upon exercise of the Warrant, by acceptance thereof agrees to be bound by the provisions of Section 6 of the Purchase Agreement solely with respect thereto.

(e) Notwithstanding the foregoing, the restrictions imposed by this Section 11.2 shall cease and terminate upon the earlier to occur of (i) the date this Warrant or such shares are sold or otherwise disposed of pursuant to an effective registration statement under the Securities Act or in a manner that does not require that this Warrant or the shares so transferred continue to bear the legend set forth in paragraph (c) above (as contemplated thereby), or (ii) Holder or such shares has met the requirements for transfer of this Warrant or such shares under Rule 144(k). Whenever the restrictions imposed by this Section 11.2 shall terminate, the holder of any shares as to which such restrictions have terminated shall be entitled to receive from the Company, without expense, a new certificate not bearing the restrictive legend set forth in paragraph (c) above and not containing any other reference to the restrictions imposed by this Section.

**12. No Voting or Dividend Rights.** This Warrant does not confer upon Holder the right to vote or to consent or to receive notice as a stockholder of the Company, in respect of meetings of stockholders for the election of directors of the Company or any other matters or any rights whatsoever as a stockholder of the Company prior to the exercise hereof. No cash dividends shall be payable or accrued in respect of this Warrant or the shares purchasable hereunder until, and only to the extent that, this Warrant shall have been exercised.

**13. No Impairment.** The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but it will at all times in good faith assist in the carrying out of all of the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect Holder against impairment.

**14. Entire Agreement.** This Warrant and the Purchase Agreement constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings between the parties with respect to such subject matter.

**15. Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) if delivered personally or actually received, as of the date received, (b) if delivered by certified mail, return receipt requested, seven (7) Business Days after being mailed, or (c) if delivered by a nationally recognized overnight delivery service, one (1) Business Day after being deposited (with all fees prepaid) with such delivery service for next Business Day delivery, to such party at its address

set forth below (or such other address as it may from time to time designate in writing to the other parties hereto):

If to the Company, to:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Telephone: [\_\_\_\_\_  
Attention: [\_\_\_\_\_]

If to Holder, to its address set forth on its signature page hereto.

**16. Counterparts; Signatures.** This Warrant may be executed in one or more counterpart signature pages, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement, which shall be binding upon all of the parties hereto notwithstanding the fact that all parties are not signatory to the same counterpart. The exchange of copies of this Warrant and of signature pages by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.

**17. Governing Law; Venue.** This Warrant and all claims arising from and relating to this Warrant and the transactions contemplated hereby shall be governed by and interpreted and enforced in accordance with the Laws of the State of [\_\_\_\_\_] , without regard to the conflicts of laws rules thereof. All disputes and controversies arising out of or in connection with this Warrant shall be resolved exclusively by the state and federal courts located in [\_\_\_\_\_] and each party hereto agrees to submit to the jurisdiction of said courts and agrees that venue shall lie exclusively with such courts. **[FOR CONSIDERATION IN CALIFORNIA: Notwithstanding any provision of this Warrant to the contrary, this Warrant shall be (to the extent necessary to satisfy the requirements of Section 22062(b)(3)(D) of the California Financial Code) subject to the implied covenant of good faith and fair dealing arising under Section 1655 of the California Civil Code.]**

**18. Amendments and Waivers.** Any term of this Warrant may be amended or waived only with the written consent of the Company and the holders of Warrants representing the right to purchase at least majority of all shares of Subject Securities purchasable under all Warrants. Any amendment or waiver effected in accordance with this Section 18 shall be binding upon each Holder and the Company, regardless of whether he, she or it has given its written consent. Notwithstanding the foregoing, if any amendment or waiver materially and adversely treats one or more Warranholders in a manner that is disproportionate to such treatment of all other Warranholders, such amendment or waiver shall also require the written

consent of the Warrantholders disproportionately treated. This Section 18 may not be amended without the written consent of the Company and all Holders.

**19. Saturdays, Sundays, Holidays.** If the last or appointed day for the taking of any action or the expiration of any right required or granted under this Warrant shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

**20. Interpretation.** When a reference is made to a Section, Schedule or Exhibit, such reference shall be to a Section, Schedule or Exhibit of or to this Warrant unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Warrant, they shall be deemed to be followed by the words “without limitation.” Unless the context requires otherwise, words using the singular or plural number also include the plural or singular number, respectively, and the use of any gender herein shall be deemed to include the other genders. References to “dollars” or “\$” are to U.S. dollars. The terms “hereof,” “herein,” “hereby,” “hereto” and derivative or similar words refer to this entire Warrant. This Warrant was prepared jointly by the parties hereto and no rule that it be construed against the drafter will have any application in its construction or interpretation. The headings contained in this Warrant are inserted for convenience only and shall not be considered in interpreting or construing any of the provisions contained in this Warrant.

[Signature Pages Follow]

**COUNTERPART SIGNATURE PAGE  
TO  
[COMMON STOCK] [PREFERRED STOCK] PURCHASE WARRANT**

The parties hereto have executed this [Common Stock] [Preferred Stock] Purchase Warrant as of the date first set forth above.

**COMPANY:**

[COMPANY NAME]

By: \_\_\_\_\_  
Name:  
Title:

**HOLDER:**

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

Address:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_]

**EXHIBIT A**

**FORM OF SUBSCRIPTION**

(To be signed only upon exercise of Warrant)

To: **[COMPANY NAME]**

The undersigned, the holder of the within Warrant, hereby irrevocably elects to exercise the purchase right represented by such Warrant for, and to purchase thereunder, [\_\_\_\_\_ shares of Subject Securities, and herewith makes payment of \$\_\_\_\_\_ therefor,] and/or [such [additional] number of shares as may be issuable pursuant to Section 2.4 without payment of any additional consideration by surrender of such portion of this Warrant as relates to the right to purchase \_\_\_\_\_ shares of Subject Securities] and requests that the certificates for such shares be issued in the name of, and delivered to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Taxpayer Identification Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

(Signature must conform in all respects to name of  
holder as specified on the face of the Warrant)

**EXHIBIT B**

**FORM OF ASSIGNMENT**

(To be signed only upon transfer of Warrant)

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Warrant and the right represented by thereby to purchase shares of Subject Securities (as defined in the within Warrant) of [**COMPANY NAME**] to which the within Warrant relates, and appoints \_\_\_\_\_ as attorney to transfer such right on the books of such corporation with full power of substitution in the premises.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Signature guaranteed, as may be required

### **3. Panelist Biographies**



# RICHARDS LAYTON & FINGER

## **C. STEPHEN BIGLER**

**Director**

**bigler@rlf.com**

**Direct: (302) 651-7724**

**Fax: (302) 498-7724**

One Rodney Square  
920 North King Street  
Wilmington, DE 19801

Phone: 302-651-7700

**C. STEPHEN BIGLER**, a director in the Corporate Department and a member of the corporate transactional group, is the incoming president of the firm (July 1, 2008). Mr. Bigler's practice involves counseling corporations, officers, directors, board committees, stockholders, and investors on matters involving the General Corporation Law of the State of Delaware and related issues of fiduciary duty concerning entity formation, mergers and acquisitions, divestitures, defensive planning, capital-raising transactions, and stockholder meetings. His practice also includes rendering legal opinions on Delaware corporate law issues.

Mr. Bigler handles matters arising in a wide variety of transactional and operational contexts for major national and international clients, including Roche, Esmark, General Motors, and Bank of America Corporation, among others. He is a frequent speaker regarding current Delaware corporate law practice and developments, and has written numerous articles on aspects of Delaware corporate law for a variety of publications.

Active in the American Bar Association, Mr. Bigler is a member of its Business Law Section and serves on the Corporate Practice Committee and the Public Companies Task Force of the Negotiated Acquisitions Committee. He is also a member of the Corporate Law Section of the Delaware State Bar Association. In addition, Mr. Bigler was one of a group of venture capital lawyers who participated in the drafting of model financing documents for the National Venture Capital Association.

Mr. Bigler is ranked as a top lawyer in the 2008 editions of *Chambers USA – America's Leading Lawyers for Business* and *The International Who's Who of Merger & Acquisition Lawyers*. He received a JD from the University of Virginia School of Law and a BS, *magna cum laude*, from Washington & Lee University.



## **Mark A. Danzi**

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Mark A. Danzi is a shareholder with Hill Ward Henderson in Tampa, Florida. Mark concentrates his practice on corporate and securities law, and counsels clients in connection with venture capital and private equity investments, public and private securities offerings, mergers and acquisitions and securities compliance. Mark previously practiced in the New York, New York office of a global law firm and with the U.S. Securities and Exchange Commission. Through his experience in New York and Tampa, Mark has represented venture capital, private equity and state pension funds, emerging growth and established private companies, large to small cap public companies and large and boutique investment banks in an array of corporate transactions and securities matters. Mark is Vice Chair of the American Bar Association's Private Equity and Venture Capital Committee. He frequently writes and speaks on venture capital, M&A and securities matters. Mark received his law degree (*summa cum laude*) from American University and his B.A. from Bucknell University.

**Warren P. Kean**  
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Warren P. Kean is a partner in the Charlotte office of K&L Gates. His practice focuses on utilizing, and advising clients on all matters relating to, limited liability companies and partnerships.

Mr. Kean is a graduate of Washington and Lee University (BA, *cum laude*), Louisiana State University School of Law (JD, member of the *Louisiana Law Review* and the Order of the Coif), New York University (LL.M. in taxation and graduate editor of the *Tax Law Review*), Georgetown University (LL.M. in securities regulation, recipient of Thomas Bradbury Chetwood S.J. prize for being the top graduate).

Mr. Kean chairs the North Carolina Bar Association's ad hoc committee organized to review the Revised Uniform Limited Liability Company Act and make recommendations concerning its adoption by North Carolina or propose other revisions and updates to the N.C. Limited Liability Company Act. Mr. Kean is the immediate past chair of the Tax Committee of the American Bar Association's Business Law Section. He also is an active member of the Partnerships and Unincorporated Business Organizations Committee of the American Bar Association's Business Law Section and chairs its ad hoc subcommittee responsible for drafting the ABA Business Law Section's Model Operating Agreements.

Mr. Kean frequently writes and speaks on tax and non-tax topics relating to limited liability companies and partnerships on the state, regional and national level.



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## Iris K. Linder

### Law Practice

Iris Linder is a senior partner with Fraser Trebilcock Davis & Dunlap, P.C., located in Lansing, Michigan. She is the Chairperson of the firm's Business Department and also serves on the firm's Board of Directors.

Ms. Linder has practiced law for 28 years, primarily in the areas of corporate law and business financings and securities. She has practiced in the venture capital arena for over 20 years, representing venture capital firms, angel groups, less structured investors, and companies receiving financing. Her securities practice includes an active private placement practice, as well as representation of publicly traded companies. She does substantial corporate law work, as well as work with a significant number of limited liability companies. In addition to her venture capital practice, Ms. Linder also represents several oil and gas exploration and independent producer companies in connection with their corporate and securities needs.

### Professional Activities

Ms. Linder belongs to the American Bar Association where she is a member of the Business Law Section's Private Equity and Venture Capital Committee and the Federal Regulation of Securities Committee. She belongs to the State Bar of Michigan where she is active on the Blue Sky Law Subcommittee of the Business Law Section.

### Honors and Distinctions

- Named to the *Best Lawyers In America – Securities & Corporate Law*, 25<sup>th</sup> Anniversary Edition, 2008
- Listed in *Who's Who in American Women*
- Listed in *Who's Who in Professionals*

### Education

- University of Michigan Law School (J.D. cum laude, 1980)
- University of Kansas and Michigan State University (B.S. with high honors, 1976)

### Teaching Experience

- Adjunct Faculty, Securities Regulation, Thomas M. Cooley Law School (1999-2003)

**Yoichiro (“Yokum”) Taku**  
Wilson Sonsini Goodrich & Rosati  
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Yoichiro (“Yokum”) Taku is a corporate and securities partner in the Palo Alto, California office of Wilson Sonsini Goodrich & Rosati. Yokum represents technology and growth companies at all stages of development, through private financings, strategic transactions, public offerings, and mergers and acquisitions. He also represents investors in venture capital financings. Yokum has advised numerous entrepreneurs from initial company formation to liquidity event. At any time, Yokum typically represents several start-up companies seeking venture financing, private companies that have received financing, and publicly traded companies.

Yokum also leads Wilson Sonsini Goodrich & Rosati’s Japan practice. He advises U.S. companies on their transactions in Japan, and Japanese companies on their transactions in the United States. Yokum also advises numerous companies with operations in Asia, including China, Taiwan, Korea and Singapore.

Yokum maintains a personal blog at [www.startupcompanylawyer.com](http://www.startupcompanylawyer.com). Yokum graduated from the University of Chicago Law School in 1993.