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Seed Capital
Checklists, Forms and Other Resources

A Guide for Sustainable Entrepreneurs

SUSTAINABLE ENTREPRENEURSHIP PROJECT

Dr. Alan S. Gutterman
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Seed Capital—Checklists, Forms and Other Resources: A Guide for Sustainable Entrepreneurs

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About the Project

The Sustainable Entrepreneurship Project (www.seproject.org) engages in and promotes research, education and training activities relating to entrepreneurial ventures launched with the aspiration to create sustainable enterprises that achieve significant growth in scale and value creation through the development of innovative products or services which form the basis for a successful international business. In furtherance of its mission the Project is involved in the preparation and distribution of Libraries of Resources for Sustainable Entrepreneurs covering Entrepreneurship, Leadership, Management, Organizational Design, Organizational Culture, Strategic Planning, Governance, Corporate Social Responsibility, Compliance and Risk Management, Finance, Human Resources, Product Development and Commercialization, Technology Management, Globalization, and Managing Growth and Change.

About the Author

Dr. Alan S. Gutterman is the Founding Director of the Sustainable Entrepreneurship Project and the Founding Director of the Business Counselor Institute (www.businesscounselorinstitute.org), which distributes Dr. Gutterman's widely-recognized portfolio of timely and practical legal and business information for attorneys, other professionals and executives in the form of books, online content, webinars, videos, podcasts, newsletters and training programs. Dr. Gutterman has over three decades of experience as a partner and senior counsel with internationally recognized law firms counseling small and large business enterprises in the areas of general corporate and securities matters, venture capital, mergers and acquisitions, international law and transactions, strategic business alliances, technology transfers and intellectual property, and has also held senior management positions with several technology-based businesses including service as the chief legal officer of a leading international distributor of IT products headquartered in Silicon Valley and as the chief operating officer of an emerging broadband media company. He received his A.B., M.B.A., and J.D. from the University of California at Berkeley, a D.B.A. from Golden Gate University, and a Ph. D. from the University of Cambridge. For more information about Dr. Gutterman, his publications, the Sustainable Entrepreneurship Project or the Business Counselor Institute, please contact him directly at alangutterman@gmail.com.

Finance:
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This is a Part from the Library and you can get copies of other Parts and/or chapters by contacting the Sustainable Entrepreneurship Project (www.seproject.org) at alangutterman@gmail.com. The Project also prepares and distributes other Libraries of Resources for Sustainable Entrepreneurs covering Entrepreneurship, Leadership, Management, Organizational Design, Organizational Culture, Strategic Planning, Governance, Corporate Social Responsibility, Compliance and Risk Management, Human Resources, Product Development and Commercialization, Technology Management, Globalization, and Managing Growth and Change.

Attorneys acting as business counselors to sustainable entrepreneurs who are interested in forms, commentaries and other practice tools relating to the subject matter of this Part or chapter should also contact Dr. Gutterman at the e-mail address provided above.

PART III
SEED CAPITAL
CHECKLISTS, FORMS AND OTHER RESOURCES

§1 Introduction

Founders and investors participating in seed capital financings have three basic options to choose among when selecting the financing instrument:

- **Debt Financing:** Debt instruments, generally in the form of a "convertible note", are arguably the most frequently used instrument for seed financings and include typical terms such as principal amounts due at a maturity date, accrued interest provisions and a claim on the company's assets as an unsecured creditor (although in rare instances a convertible note will also be "secured"). It is intended that the notes will eventually, prior to the maturity date, convert into the same preferred equity security that the company issues in its Series A round to venture capitalists and institutional investors. The terms of that conversion will depend on provisions negotiated by the company and the noteholders, including the discount rate and the valuation cap. Provisions are also included to address what happens in the event the company is sold prior to a Series A round and what happens if the notes remain outstanding on the maturity date. In rare instances, companies may also raise seed capital through the issuance of "straight" (i.e., non-convertible) notes.
- **Equity Financing:** Although less common in the range of seed capital financings, companies may issue some form of convertible preferred stock in the later stages of seed financing and/or when the size of the financing is relatively large and the investor group is experienced and sophisticated and each investing fairly large amounts of money (i.e, over $100,000 per investor). The instrument is often referred to as "Series Seed Preferred Stock" and will include several of the same protections and rights afforded to investors in the Series A round such as information rights and rights to vote separately on certain actions proposed by the founders as common stockholders. At the same time, Series Seed Preferred Stock typically does not include some of the more complex terms seen in Series A rounds such as registration rights, rights of first refusal and co-sale, price-based anti-dilution provisions, drag-along rights and rights to designate a representative on the board of directors. The liquidation rights of Series Seed Preferred are typically limited to a return of the purchase price before distributions are made to common stockholders, with a right to convert to common stock and waive the liquidation preference. Common stock may also be issued to seed investors; however, such investor generally seek protections and preferences that are best provided through preferred shares. Warrants to purchase common and/or preferred shares may also be issued to seed investors as an additional inducement for them to invest at an early and riskier stage.
- **SAFEs (Simple Agreement for Future Equity):** Safes were developed as a company-friendly alternative to convertible notes that have the same conversion features of notes (and the same variables to consider, such as discount rate and

valuation cap) without a maturity date or interest accrual. Safes seem to be more prevalent among "hot" deals where investors are scrambling to be included and have less leverage to negotiate more protections like those normally seen in convertible notes. Safes were developed to provide a quick and low cost solution to seed financing, and this can be accomplished if investors understand what they are buying. Investors seeking some protections or rights while accepting a Safe can bargain for information rights, rights of first refusal etc. to be included in a side letter.

§2 Steps for managing and completing a seed capital financing

Regardless of the type of instrument selected and used for capital raising, sustainable entrepreneurs should be prepared to take the following steps for managing and completing a seed capital financing:

- Prepare a business plan or business model canvass that provides prospective investors with all necessary material information regarding the company's business model and strategies and, most importantly, the projected path to a Series A Preferred stock financing.
- In consultation with investors, select the appropriate form of instrument for the financing (e.g., convertible note, preferred or common stock or Safe) and prepare the related term sheet to ensure parties are in agreement on fundamental issues included the anticipated amount of time before a Series A Preferred stock financing will close.
- Ensure that all investors have received and completed documentation necessary qualify them as "accredited" or otherwise "sophisticated" investors and that such investors have been advised of risk factors associated with their investment.
- With the assistance of counsel, prepare the necessary documentation for the transaction, such as investment agreement (i.e., note or series seed preferred purchase agreement; charter documents; form of note or Safe).
- Prepare required resolutions for board and stockholder consents and ensure that all necessary federal and state securities law filings will be completed.
- Complete the "closing" including execution and delivery of all required documents and receipt of cash from the investors.
- Log all documentation into company's record retention system and calendar all material post-closing actions such as maturity date of promissory notes, distribution of financial and business information to investors etc.

§3 Forms

Forms in this collection include the following (form number in parentheses):

1. Debt Financings

- Term sheet for convertible note financing (1)
- Note purchase agreement (basic) (2)
- Note purchase agreement (long-form) (3)

- Convertible promissory note (4)
- Straight (non-convertible) promissory note (5)
- Board consent for convertible note financing (6)

2. Equity Financings

- Term sheet for Series Seed preferred (7)
- Series Seed stock investment agreement (8)
- Series Seed certificate of incorporation (9)
- Subscription agreement for offer and sale of equity securities (10)
- Investor questionnaire (11)
- Board consent for Series Seed financing (12)
- Stockholder consent for Series Seed financing (13)

3. SAFE Financings

- Standard SAFE (Cap) (14)
- Standard SAFE (Cap and Discount) (15)
- Standard SAFE (Discount) (16)
- Standard SAFE (MFN) (17)
- SAFE side letter (18)

§4 Additional resources

A wide array of resources, including additional forms and checklists, are available online for sustainable entrepreneurs. All of these resources should be consulted with caution and sustainable entrepreneurs should always consult experienced legal counsel when seeking seed capital financing since mistakes at this critical junction can severely hamper the company's efforts to scale its business and obtain additional capital in the future. A selected group of web resources that are available as of the date of this publication includes the following:

- TechStars (http://www.techstars.com/docs/)
- Y Combinator (http://ycombinator.com)
- Orrick Startup Forms Library (https://www.orrick.com/Total-Access/Tool-Kit/Start-Up-Forms)
- Series Seed (http://www.seriesseed.com)
- Cooley GO (https://www.cooleygo.com/documents/)
- Wilmer Hale Launch (https://launch.wilmerhale.com/)
- Founders Workbench (http://www.foundersworkbench.com/)
- Startup Company Lawyer (http://www.startupcompanylawyer.com/)
- Clerky (https://www.clerky.com/)
- Startup Law (http://www.calstartuplawfirm.com/business-lawyer-blog/main.php)
- Startup Lawyer (http://startuplawyer.com/)

- The Startup Garage (https://thestartupgarage.com/)
- NextView Ventures (http://nextviewventures.com/blog/)
- K9 Ventures (http://www.k9ventures.com/)
- Raising Seed Capital ((https://www.slideshare.net/schlaf/raising-a-seed-round)

§1 Summary of proposed terms for convertible promissory note financing[1]

[NEWCO, INC.]

SUMMARY OF PROPOSED TERMS FOR CONVERTIBLE PROMISSORY NOTE FINANCING[2]

The following is a summary of the basic terms and conditions of a proposed convertible promissory note financing of **[**Newco, Inc.**]**, a **[**_____**]** corporation (the "***Company***"). This term sheet is for discussion purposes only and is not binding on Company or the Investors (as defined below), nor is Company or any of the Investors obligated to consummate the convertible promissory note financing until a definitive convertible note purchase agreement has been agreed to and executed by Company and the Investors.

Financing Amount:	Up to $_____[3] in aggregate principal amount of convertible promissory notes (the "***Notes***").
Closings:	The Company may close the sale of the Notes in one or more closings with one or more purchasers of the Notes acceptable to the Company (the "***Investors***").[4]

[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] This document is a template for a summary of proposed terms for a convertible promissory note financing (i.e., a "term sheet"). The document highlights all of the key issues that need to be considered when structuring a convertible note financing and the notes provide guidance on "typical" terms and the considerations that should be taken into account during negotiations with investors. Obviously the final form of term sheet needs to conform with the actual terms of the specific transaction. Highlighted items should be completed as required under the specific conditions under which the document is being used. Certain of the highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes. Reference should be made to the templates for convertible promissory notes available elsewhere in this collection.

[3] Insert anticipated amount of money that the company intends to raise through the financing described in the term sheet.

Definitive Agreement: The Notes will be issued and sold pursuant to a convertible note purchase agreement prepared by the Company's legal counsel and will contain customary representations and warranties of the Company and the Investors (the "***Note Purchase Agreement***").

Maturity Date: Principal and unpaid accrued interest on the Notes will be due and payable _____[5] months from the date of the Note Purchase Agreement (the "***Maturity Date***").

Interest: Simple interest will accrue on an annual basis at the rate of _____%[6] per annum based on a 365 day year.

Conversion to Equity: Automatic Conversion in a Qualified Financing. If the Company issues equity securities ("***Equity Securities***") in a transaction or series of related transactions resulting in aggregate gross proceeds to the Company of at least $_____[7], including conversion of the Notes and any other indebtedness (a "***Qualified Financing***"), then the Notes, and any accrued but unpaid interest thereon, will automatically convert into the equity securities issued pursuant to the Qualified Financing at a conversion price equal to [the lesser of (i)][8] ____%[9] of the per share price

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(footnote continued from previous page)

[4] While the company may be able to raise all of the required funds in a single closing, the documents frequently provide for multiple closings and allow the company the flexibility to offer and sale additional notes up the agreed maximum amount of the offering without the need for approval from previous investors for a specific period, generally running 90 to 180 days, following the initial closing.

[5] The typical term of a note issued in a convertible note financing is six to twelve months; however, the term of the note should be consistent with the mutual understanding of the company and the investors as to how long it will reasonably take the company to get to the point where it will be able to complete a "Qualified Financing", as defined in the term sheet.

[6] The typical interest rate ranges from 7% to 12%; however, before setting the rate it is important to check with counsel to confirm that the actual interest rate used is sufficiently high to avoid imputed interest income to the company.

[7] This paragraph describes an equity financing that will result in the automatic conversion of the notes into equity. Because the conversion is automatic (as opposed to occurring at the investors' election) the investors will want to see a dollar value here that represents a "real" round of equity financing. What represents a "real" round of financing will vary depending on the company's stage of development. For very early stage companies, it may be anticipated that the notes should convert upon the closing of a Series Seed Preferred round that raises between $500,000 and $1,000,000 in new money (i.e., not including the conversion of the notes). For a later stage company, a "real" round of financing will be a Series A Preferred financing that brings in $3,000,000 or more of new money.

[8] Sometimes investors are concerned that notwithstanding that discounted conversion price provided for in this paragraph, the effective pre-money valuation in the Qualified Financing will still be too high given the risks involved when the investors made their investment by purchasing the notes. The optional language allows the investors to "cap" the effective pre-money valuation at which the notes would convert in a Qualified Financing at some pre-agreed amount. As a point of reference, most investors do not insist on this optional language, so the founders and other executives of the company should not necessarily offer to include a cap initially and wait to see whether it becomes an important for the target investors.

paid by the purchasers of such equity securities in the Qualified Financing [or (ii) the price equal to the quotient of $_____[10] divided by the aggregate number of outstanding shares of the Company's Common Stock as of immediately prior to the initial closing of the Qualified Financing (assuming full conversion or exercise of all convertible and exercisable securities then outstanding other than the Notes)].

Voluntary Conversion at the Maturity Date. If the Notes have not been previously converted pursuant to a Qualified Financing, then, effective upon the Maturity Date, the Requisite Holders (as defined below) may elect to convert each of the Notes into shares of the Company's Common Stock at a conversion price equal to the quotient of $_____[11] divided by the aggregate number of outstanding shares of the Company's Common Stock as of the Maturity Date (assuming full conversion or exercise of all convertible and exercisable securities then outstanding other than the Notes). Any election to convert the Notes pursuant to this paragraph will be made in writing and delivered to the Company at least five days prior to the

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(footnote continued from previous page)

[9] Part of what incentivizes investors to participate in a financing for an early stage company operating in a highly risky enviroment is that their notes will convert into Equity Securities of the company at a discount to the purchase price paid by investors in a later Qualified Financing. The discount will depend on a variety of factors and will generally range from 10% to 30%. The term of the note and the risk associated with closing a Qualified Financing within the term are the most important considerations and the shorter the term of the Notes and the less risky the investment, the lower the expected discount. When drafting, care should be taken to use the correct number. If, for example, the intent is to provide for a 10% discount to the purchase price paid by the investors in the Qualified Financing, then 90% should be inserted into this blank (not 10%).

[10] See fn. 7.

[11] While the primary expectation of the parties at the time the notes are first issued is that they will eventually be converted during the term of the note upon completion of a Qualified Financing; however, since there is no guarantee that a Qualified Financing will occur the parties must reach agreement in advance on the pre-money valuation of the company used for purposes of calculating the number of shares of the company's common stock to be issued to the investors if the notes are converted into equity outside the context of a Qualified Financing. The valuation amount is generally set anywhere from 10% to 50% lower than the pre-money valuation that the company reasonably anticipates for the Qualified Financing at the time the notes are first issued. For example, if, at the time the notes are first issued, the company anticipates closing a Qualified Financing within the agreed term of the note that would value the Company at $8,000,000, then the value range inserted here would typically be between $4,000,000 and $7,200,000. As with the conversion discount described in fn. 8, as a general rule, the shorter the term of the notes and the less risky the investment, the lower the expected discount. In some cases, the note will provide for conversion into a new series of preferred shares, such as Series Seed Preferred, with basic protections for the investors in the event of liquidation that provide them with preferences over the holders of common shares. It is generally expected that these preferred shares would eventually be converted into, or exchanged for, any preferred shares that are eventually issued in a larger financing with terms and conditions similar to those found in a Qualified Financing.

Maturity Date.

[Sale of the Company:[12] If a Qualified Financing has not occurred and the Company elects to consummate a sale of the Company prior to the Maturity Date, then notwithstanding any provision of the Notes to the contrary (i) the Company will give the Investors at least five days prior written notice of the anticipated closing date of such sale of the Company and (ii) the Company will pay the holder of each Note an aggregate amount equal to _____[13] times the aggregate amount of principal and interest then outstanding under such Note in full satisfaction of the Company's obligations under such Note.]

Pre-Payment: The principal and accrued interest may not be prepaid unless approved in writing by Investors holding Notes whose aggregate principal amount represents a majority of the outstanding principal amount of all then-outstanding Notes (the "***Requisite Holders***").

Amendment and Waiver: The Note Purchase Agreement and the Notes may be amended, or any term thereof waived, upon the written consent of the Company and the Requisite Holders.

No Security Interest: The Notes will be a general unsecured obligation[14] of the Company.

Fees and Expenses: Each Investor will bear its own fees and expenses incurred in the transactions contemplated by this term sheet.

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[12] While relatively rare, it is possible that the company will be sold prior to the Maturity Date and before any Qualified Financing is completed. In that situation, the investors will almost always want their notes repaid at the closing of the sale and will want to be compensated beyond the principal and accrued interest on their notes for the risks that they took on loan funds to the company when it was not clear that a sale or Qualified Financing would occur before the Maturity Date. This optional paragraph gives the investors the ability to get equity-like "upside" in a sale of the company by requiring the company to repay a multiple of the principal and interest actually outstanding under the notes at the time of the sale. Alternative approaches to this scenario may provide the investors with the option to convert their notes into common shares of the company prior to the sale, thus allowing them to share in the proceeds from the sale with the other common shareholders. Whether or not this option is elected will depend, of course, on whether exercise would result in larger proceeds to the investors than accepting the agreed multiple of outstanding principal and interest.

[13] When this provision is used, the multipliers generally range from 1.5X to 3X.

[14] While relatively uncommon, it is possible to issue secured convertible promissory notes to provide investors with collateral to secure repayment of their notes; however, any secured interest offered to investors will generally be subordinated to senior indebtedness such as credit arrangements with banks and other financial institutions. If a security interest is granted it should be briefly described in the term sheet.

§2 Note purchase agreement (basic)[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

[NEWCO, INC.]

CONVERTIBLE PROMISSORY NOTE PURCHASE AGREEMENT[2]

THIS CONVERTIBLE PROMISSORY NOTE PURCHASE AGREEMENT (the "***Agreement***") is made as of _____ __, 20__ (the "***Effective Date***") by and among [**NEWCO, INC.**], a Delaware corporation (the "***Company***"), and the persons and entities named on the Schedule of Purchasers attached hereto (individually, a "***Purchaser***" and collectively, the "***Purchasers***").

RECITAL

To provide the Company with additional resources to conduct its business, the Purchasers are willing to loan to the Company in one or more disbursements up to an aggregate amount of $_____, subject to the conditions specified herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the representations, warranties, covenants and conditions set forth below, the Company and each Purchaser, intending to be legally bound, hereby agree as follows:

1. AMOUNT AND TERMS OF THE LOAN

[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] This document is a template for a convertible note purchase agreement which includes all of the basic terms and provisions generally seen in convertible note financings of up to $1,000,000. Highlighted items should be completed as required under the specific conditions under which the document is being used. Certain of the highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes.

1.1 The Loan. Subject to the terms of this Agreement, each Purchaser agrees to lend to the Company at the Closing (as hereinafter defined) the amount set forth opposite such Purchaser's name on the Schedule of Purchasers attached to this Agreement (each, a "***Loan Amount***") against the issuance and delivery by the Company of a convertible promissory note for such amount, in substantially the form attached hereto as **EXHIBIT A** (each, a "***Note***" and collectively, the "***Notes***"). Each Note shall be convertible into shares of Preferred Stock or Common Stock of the Company (as provided in the Note). Except as otherwise provided herein to the contrary, each Note transaction between the Company and each Purchaser shall be considered a several and not a joint transaction, and the breach of this Agreement or the applicable Note by a Purchaser shall not be deemed to be a breach by any other Purchaser.

2. CLOSING AND DELIVERY

2.1 Closing. The closing of the sale and purchase of the Notes (the "***Closing***") shall be held on the Effective Date, or at such other time as the Company and Purchasers may mutually agree (such date is hereinafter referred to as the "***Closing Date***").

2.2 Subsequent Sales of Notes. At any time on or before the _____[3] day following the Closing, the Company may sell Notes representing up to the balance of the authorized principal amount not sold at the Closing (the "***Additional Purchasers***"). All such sales made at any additional closings (each an "***Additional Closing***") shall be made on the terms and conditions set forth in this Agreement and (i) the representations and warranties of the Company set forth in Section 3 hereof shall speak as of the Closing and the Company shall have no obligation to update any disclosure related thereto, and (ii) the representations and warranties of the Additional Purchasers in Section 4 hereof shall speak as of such Additional Closing. This Agreement, including without limitation, the Schedule of Purchasers, may be amended by the Company without the consent of Purchasers to include any Additional Purchasers upon the execution by such Additional Purchasers of a counterpart signature page hereto. Any Notes sold pursuant to this Section 2.2 shall be deemed to be "Notes," for all purposes under this Agreement and any Additional Purchasers thereof shall be deemed to be "Purchasers" for all purposes under this Agreement.

2.3 Delivery. At the Closing and each Additional Closing (i) each Purchaser shall deliver to the Company a check or wire transfer funds in the amount of such Purchaser's Loan Amount; and (ii) the Company shall issue and deliver to each Purchaser a Note in favor of such Purchaser payable in the principal amount of such Purchaser's Loan Amount.

[3] Typically this would be 180 days or fewer from the initial Closing.

3. REPRESENTATIONS, WARRANTIES THE COMPANY[4]

The Company hereby represents and warrants to each Purchaser as of the Closing as follows:

3.1 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 _____. The Company has the requisite corporate power to own and operate its properties and assets and to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified and is authorized to do business and is in good standing as a foreign corporation in all jurisdictions in which the nature of its activities and of its properties (both owned and leased) makes such qualification necessary, except for those jurisdictions in which failure to do so would not have a material adverse effect on the Company or its business.

3.2 Corporate Power. The Company has all requisite corporate power to execute and deliver this Agreement, to issue each Note (collectively, the "***Loan Documents***") and to carry out and perform its obligations under the terms of the Loan Documents.

3.3 Authorization. All corporate action on the part of the Company, its directors and its stockholders necessary for the authorization of the Loan Documents and the execution, delivery and performance of all obligations of the Company under the Loan Documents, including the issuance and delivery of the Notes and the reservation of the equity securities issuable upon conversion of the Notes (collectively, the "***Conversion Securities***") has been taken or will be taken prior to the issuance of such Conversion Securities. The Loan Documents, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company enforceable in accordance with their terms, subject to laws of general application relating to bankruptcy, insolvency, the relief of debtors and, with respect to rights to indemnity, subject to federal and state securities laws. The Conversion Securities, when issued in compliance with the provisions of the Loan Documents will be validly issued, fully paid and nonassessable and free of any liens or encumbrances and issued in compliance with all applicable federal and securities laws.

3.4 Governmental Consents. All consents, approvals, orders, or authorizations of, or registrations, qualifications, designations, declarations, or filings with, any governmental authority, required on the part of the Company in connection with the valid execution and delivery of this Agreement, the offer, sale or issuance of the Notes and the Conversion Securities issuable upon conversion of the Notes or the consummation of any other transaction contemplated hereby shall have been obtained and will be effective at such time as required by such governmental authority.

[4] This section includes a short-form version of representations and warranties from the company that is generally limited to regulatory and procedural matters associated with the organization of the company and the authorization and conduct of the offer and sale of the notes and securities into which such notes may be converted. While this may be appropriate when the company is newly organized and has not been engaged in a material level of operational activities, established issuers are often asked to provide more extensive representations and warranties of a number of business and financial topics such as capitalization, litigation, intellectual property, employee and consultant matters, title to property and assets, material contracts, liabilities and overall financial condition and disclosure. For example of long-form representations and warranties of the company, see § 1:30.

3.5 Compliance with Laws. To its knowledge, the Company is not in violation of any applicable statute, rule, regulation, order or restriction of any domestic or foreign government or any instrumentality or agency thereof in respect of the conduct of its business or the ownership of its properties, which violation would materially and adversely affect the business, assets, liabilities, financial condition or operations of the Company.

3.6 Compliance with Other Instruments. The Company is not in violation or default of any term of its certificate of incorporation or bylaws, or of any provision of any mortgage, indenture or contract to which it is a party and by which it is bound or of any judgment, decree, order or writ, other than such violations that would not individually or in the aggregate have a material adverse effect on the Company. The execution, delivery and performance of the Loan Documents, and the consummation of the transactions contemplated by the Loan Documents will not result in any such violation or be in conflict with, or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, decree, order or writ or an event that results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations or any of its assets or properties. The sale of the Notes and the subsequent issuance of the Conversion Securities are not and will not be subject to any preemptive rights or rights of first refusal that have not been properly waived or complied with.

3.7 Offering. Assuming the accuracy of the representations and warranties of the Purchasers contained in Section 4 hereof, the offer, issue, and sale of the Notes and the Conversion Securities (collectively, the "***Securities***") are and will be exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended (the "***Act***"), and have been registered or qualified (or are exempt from registration and qualification) under the registration, permit, or qualification requirements of all applicable state securities laws. No "bad actor" disqualifying event described in Rule 506(d)(1)(i)-(viii) adopted by the Securities and Exchange Commission (the "***SEC***") under the Act, and the regulations thereunder (a "***Disqualification Event***") is applicable to the Company or, to the Company's knowledge, any Company Covered Person, except for a Disqualification Event as to which Rule 506(d)(2)(ii–iv) or (d)(3) is applicable. "***Company Covered Person***" means, with respect to the Company as an "issuer" for purposes of Rule 506 promulgated by the SEC under the Act, any person listed in the first paragraph of Rule 506(d)(1).

3.8 Use of Proceeds. The Company shall use the proceeds of sale and issuance of the Notes for the operations of its business, and not for any personal, family or household purpose.

4. REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS

4.1 Purchase for Own Account. Each Purchaser represents that it is acquiring the Securities solely for its own account and beneficial interest for investment and not for sale or with a view to distribution of the Securities or any part thereof, has no present intention of selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the same, and does not presently have reason to anticipate a change in such intention.

4.2 Information and Sophistication. Without lessening or obviating the representations and warranties of the Company set forth in Section 3, each Purchaser hereby: (i) acknowledges that it has received all the information it has requested from the Company and it considers necessary or appropriate for deciding whether to acquire the Securities, (ii) represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Securities and to obtain any additional information necessary to verify the accuracy of the information given the Purchaser and (iii) further represents that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risk of this investment.

4.3 Ability to Bear Economic Risk. Each Purchaser acknowledges that investment in the Securities involves a high degree of risk, and represents that it is able, without materially impairing its financial condition, to hold the Securities for an indefinite period of time and to suffer a complete loss of its investment.

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

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

(b) The Purchaser shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and if reasonably requested by the Company, such Purchaser shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration under the Act or any applicable state securities laws, provided that no such opinion shall be required for dispositions in compliance with Rule 144, except in unusual circumstances.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, no such registration statement or opinion of counsel shall be necessary for a transfer by such Purchaser to a partner (or retired partner) or member (or retired member) of such Purchaser in accordance with partnership or limited liability company interests, or transfers by gift, will or intestate succession to any spouse or lineal descendants or ancestors, if all transferees agree in writing to be subject to the terms hereof to the same extent as if they were Purchasers hereunder.

4.5 Accredited Investor Status. Each Purchaser is an "accredited investor" within the meaning of Rule 501 of Regulation D adopted by the SEC under the Act, as presently in effect. Each Purchaser acknowledges and agrees that the sale of the Securities to any Purchaser shall not be deemed to have occurred unless and until Company has advised the Purchaser that it has verified such Purchaser's accredited investor status as required under Rule 506(c) of Regulation D under the Act. Purchaser shall cooperate with any request made by the Company to verify such Purchaser's accredited investor status and hereby represents and warrants to the Company that any information provided to the Company in order to verify such status is true and

correct. Purchaser also understands that acceptance of Lenders' subscription for any Securities is conditioned upon Company's compliance with applicable state securities laws and Company may determine, in its sole discretion, not to sell the Securities in a particular state.

4.6 Legend Requirements.

(a) Each certificate representing the Securities (unless otherwise permitted by the provisions of this Agreement) shall be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws or as provided elsewhere in this Agreement):

THIS [CONVERTIBLE PROMISSORY NOTE AND ANY SECURITIES INTO WHICH THIS CONVERTIBLE PROMISSORY NOTE IS CONVERTIBLE][THESE SECURITIES] HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD, MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR QUALIFICATION OR AN EXEMPTION THEREFROM UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

(b) The Company hereby agrees, for the benefit of the Purchasers, that it will not register any transfer of the Securities not made pursuant to registration under the Securities Act, or pursuant to an available exemption from registration.

4.7 California Corporate Securities Law. THE SALE OF THE SECURITIES THAT ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION 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. [5]

4.8 Authorization. The Purchaser has full power and authority to enter into the Agreement and the Note. The Agreement and Note to which the Purchaser is a party, when executed and delivered by the Purchaser, will constitute valid and legally binding obligations of the Purchaser, enforceable in accordance with their 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 specific performance, injunctive relief or other equitable remedies.

[5] To be used if the offer and sale is subject to California securities laws. Securities laws of all states in which the notes are to be offered and sold should be consulted to determine if there any additional legend or notice requirements that must be satisfied.

4.9 Foreign Investors. If the Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code), the Purchaser hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction its jurisdiction outside of the United States in connection with any invitation to subscribe for the Securities or any use of this Agreement, including (i) the legal requirements within its foreign jurisdiction for the purchase of the Shares, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained in such jurisdiction, and (iv) the income tax and other tax consequences in such jurisdiction, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of the Securities. The Purchaser's subscription and payment for and continued beneficial ownership of the Securities will not violate any applicable securities or other laws of the Purchaser's foreign jurisdiction.

5. FURTHER AGREEMENTS[6]

5.1 "Market Stand-Off" Agreement. Each Purchaser agrees that such Purchaser shall not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any Common Stock (or other securities) of the Company held by such Purchaser (other than those included in the registration) during the 180-day period following the effective date of the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with FINRA Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation), provided that all officers and directors of the Company are bound by and have entered into similar agreements. Each Purchaser agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the Purchaser's obligations under Section 5.1 or that are necessary to give further effect to this Section 5.1. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, each Purchaser shall provide, within 10 days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Act. The obligations described in this Section 5.1 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future.

5.2 Further Assurances. Each Purchaser agrees and covenants that at any time and from time to time it will promptly execute and deliver to the Company such further instruments and documents and take such further action as the Company may reasonably require in order to

[6] Particularly when the company is raising relatively large amounts of capital from the sale of convertible notes, the investors may be offered additional rights and privileges with respect to information, future offerings and protections under covenants entered into by the company with respect to the use of proceeds and operational matters such as agreements with employees and consultants. The note purchase agreement at § 1:30 includes additional investors' rights and reference should also be made to the rights provided to investors under the Series Seed Stock Investment Agreement at § 1:36.

carry out the full intent and purpose of this Agreement and to comply with state or federal securities laws or other regulatory approvals.

6. MISCELLANEOUS

6.1 Binding Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, expressed or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.2 Governing Law. This Agreement and all matters arising out of or relating to this Note shall be governed by and construed in accordance with the General Corporation Law of the State of _____ ("GCL") as to matters within the scope of the GCL, and as to all other matters shall be governed by and construed in accordance with the internal laws of the State of _____, USA, in each case without reference to conflict of laws principles. 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 _____, _____, USA, and each party hereto agrees to submit to the jurisdiction of said courts and agrees that venue shall lie exclusively with such courts.

6.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be deemed to be original signatures for purposes hereof.

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

6.5 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company at the address on the signature page below, and to Purchaser at the addresses set forth on the Schedule of Purchasers attached hereto or at such other addresses as the Company or Purchaser may designate by 10 days advance written notice to the other parties hereto.

6.6 Modification; Waiver. No modification or waiver of any provision of this Agreement or consent to departure therefrom shall be effective only upon the written consent of the Company and the holders of the Notes representing a majority of the aggregate principal amount of all Notes then outstanding (the "***Requisite Holders***"). Any provision of the Notes may be amended or waived by the written consent of the Company and the Requisite Holders and any such amendment or waiver shall be binding on all of the parties hereto.

6.7 Expenses. The Company and each Purchaser shall each bear its respective expenses and legal fees incurred with respect to this Agreement and the transactions contemplated herein**.**

6.8 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to each Purchaser, upon any breach or default of the Company under the Loan Documents shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character by Purchaser of any breach or default under this Agreement, or any waiver by any Purchaser of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in writing and that all remedies, either under this Agreement, or by law or otherwise afforded to the Purchaser, shall be cumulative and not alternative.

6.9 Entire Agreement. This Agreement and the Exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other party in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

6.10 Assignment. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Notwithstanding the foregoing, the Holder may not sell, convey, gift, assign, pledge, delegate or otherwise transfer (collectively "assign" or "assignment" or any variation thereof) this Agreement or any rights or obligations hereunder without the prior written consent of the Company, which may be withheld in its reasonable discretion, provided further that in all events this Agreement or any rights or obligations hereunder may not be assigned at any time in contravention of applicable federal and other securities laws. Any purported assignment in violation of this Section shall be null and void. For these purposes "assignment" or "assign" includes without limitation any sale or transfer of a controlling interest in the Purchaser or successor or otherwise permitted assignee.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this **CONVERTIBLE PROMISSORY NOTE PURCHASE AGREEMENT** as of the date first written above.

COMPANY:

[NEWCO, INC.]

By:_____
Name:_____
Title:_____

Address:
_____
_____
_____

IN WITNESS WHEREOF, the parties have executed this **CONVERTIBLE PROMISSORY NOTE PURCHASE AGREEMENT** as of the date first written above.

PURCHASER:

_____
(Entity name, if applicable)

By:_____
Name:_____
Title:_____

Address:
_____
_____
_____

SCHEDULE OF PURCHASERS

Name and Address	Loan Amount

EXHIBIT A

FORM OF CONVERTIBLE PROMISSORY NOTE

§3 Note purchase agreement (long-form)[1]

NOTE PURCHASE AGREEMENT[2]

THIS NOTE PURCHASE AGREEMENT ("**Agreement**") is made as of _____, 20__ (the "**Effective Date**"), by and between [Newco, Inc.], a _____ corporation (the "**Company**"), and the "**Lender**" named below on the signature page to this Agreement (which Lender shall also be recognized as being the "Holder" in the applicable Convertible Note (as defined below)). This Agreement is entered into under the following circumstances:

The parties desire to provide for loans by Lender to the Company, and for the issuance of a Convertible Note in return for those loans.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Loans**. Lender shall, upon the terms and subject to the conditions set forth in this Agreement, lend to the Company up to _____ Dollars ($_____), which loans are referred to hereinafter as the "**Loan**." The duties and rights of the parties with respect to the Loan shall be as set forth in a Convertible Promissory Note in substantially the form attached hereto as Exhibit A (the "**Convertible Note**").

2. **Conditions Precedent to Each Loan**. The obligation of the Company to make each Loan is subject to the satisfaction of the following conditions:

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[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] This document is a template for a note purchase agreement which includes detailed representations and warranties from the issuer and various covenants from the issuer to the investors similar to those found in an offering of equity securities. The protective provisions will generally be found in convertible note financings over $1,000,000. Highlighted items should be completed as required under the specific conditions under which the document is being used. Certain of the highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes.

2.1. Compliance. The representations and warranties of the Company in this Agreement shall be true in all material respects.

2.2. No Default. No Event of Default, as defined in the Convertible Note, shall exist, and no condition, event or act which, with the giving of notice would constitute an Event of Default, shall have occurred and be continuing with respect to any Convertible Note previously issued to Lender.

2.3. Maximum Amount of Loans. The total Loans made pursuant to this Agreement shall not have exceeded _____ Dollars ($_____).

3. **Closing.** The closing (the "**Closing**") of the issuance of the Convertible Note in return for the Loans shall take place upon the execution and delivery of this Agreement and the Convertible Note and shall be subject to the satisfaction of all conditions set forth in this Agreement and the Convertible Note. Upon the Closing, Lender shall make the initial Loan to the Company, the Company shall deliver to Lender an executed form of the Convertible Note which shall include the date of issuance and the principal amount of the Convertible Note.

4. **Representations and Warranties of the Company.** In connection with the transactions provided for herein, the Company hereby represents and warrants to the Lender that:

4.1. **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 carry on its business as now conducted. 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 (a **"Material Adverse Effect"**). The Company does not currently own or control, directly or indirectly, any interest in any other corporation, partnership, trust, joint venture, limited liability company, association, or other business entity. The Company is not a participant in any joint venture, partnership or similar arrangement.

4.2. **Authorization.** Except for the authorization of shares of the Company's capital stock issuable in the event of the conversion of the Convertible Note, all corporate action has been taken on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement, and the Convertible Note. Except as may be limited by applicable bankruptcy, insolvency, reorganization, or similar laws relating to or affecting the enforcement of creditors' rights, the Company has taken all corporate action required to make all of the obligations of the Company reflected in this Agreement and the Convertible Note, the valid and enforceable obligations they purport to be.

4.3. **Compliance with Other Instruments.** The Company is not in violation or default (a) of any provisions of the Certificate of Incorporation or Bylaws of the

Company, (b) of any judgment, order, writ or decree of any court or governmental entity, (c) under any agreement, instrument, contract, lease, note, indenture, mortgage or purchase order, (d) to its knowledge, of any provision of federal or state statute, rule or regulation applicable to the Company, the violation of which would have a Material Adverse Effect. Neither the authorization, execution and delivery of this Agreement, nor the issuance and delivery of the Convertible Note, will constitute or result in a material default or violation of any law or regulation applicable to the Company or any material term or provision of the Company's current Certificate of Incorporation or bylaws or any material agreement or instrument by which it is bound or to which its properties or assets are subject.

4.4. **Financial Statements**. The Company has made available to Lender its unaudited financial statements (balance sheet and income statement) as of and for the twelve-month period ended _____, 20__ (the "**Financial Statements**"). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other, except that the Financial Statements may not contain all footnotes required by generally accepted accounting principles. The Financial Statements fairly present the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to _____, 20__ (the "**Financial Statement Date**"), and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. The Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

4.5. **Capitalization**. The capitalization of the Company (including all options, warrants, convertible securities and other equity instruments) before and after giving effect to the issuance of the Convertible Note is set forth in the Offering Disclosure Materials provided to Lender and available at www._____.

4.6. **Operating Company**. The Company is an "operating company" within the meaning of Section 22062(b)(2) of the California Financial Code. The Company (i) 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, (ii) is not an individual or sole proprietorship, and (iii) 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. The Company intends to use the proceeds of the Loans 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 Convertible Note based upon a reasonable belief that the Loans are appropriate for the Company after reasonable inquiry concerning the Company's financing objectives and financial situation. The Company, together with its advisers, has the capacity to protect its own interests in connection the transactions contemplated hereby. The Company does not own any real property, nor will it use the proceeds of the Loans for the purchase of real property, nor is it a real property holding company within the meaning of Section 897 of the Internal Revenue Code.[3]

4.7. **Intellectual Property**. To its knowledge, the Company owns or possesses sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, information and other proprietary rights (collectively "**Intellectual Property Rights**") necessary for its business as now conducted, without any known infringement of the rights of others. The Company is not bound by or a party to any options, licenses or agreements of any kind with respect to the Intellectual Property Rights of the Company or any other person or entity, other than licenses or agreements relating to the Company's use rights regarding "off the shelf" or standard products. The Company has received no written notice that it is infringing upon, violating or otherwise acting adversely to, or that by conducting its business as proposed it would infringe upon, violate or otherwise act adversely to, the right or claimed right of any person or entity under or with respect to any Intellectual Property Rights or licenses of third parties. The Company is not aware of any violation by a third party of any of the Company's Intellectual Property Rights. To its knowledge, the Company is not obligated or under any liability to make payments by way of royalties, fees or otherwise to any owner, licensor of, other claimant to, or party to any option, license or agreement of any kind with respect to, any Intellectual Property Rights except for commercially available software which the Company licenses on standard terms. The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with their duties to the Company or that would conflict with the Company's business as proposed to be conducted. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees (or people it currently intends to hire) made prior to their employment by the Company, except for inventions that have been assigned to the Company.

4.8. **No Bad Actor Disqualifications**. No "bad actor" disqualifying event described in Rule 506(d)(1)(i)-(viii) adopted by the Securities and Exchange Commission (the "**SEC**") under the Securities Act of 1933, as amended (the "**Securities Act**"), and the regulations thereunder (a "**Disqualification Event**") is applicable to the Company or, to the Company's knowledge, any Company Covered Person, except for a Disqualification Event as to which Rule 506(d)(2)(ii–iv) or (d)(3) is applicable. "**Company Covered Person**" means, with respect to the Company as an "issuer" for purposes of Rule 506

[3] This optional section should be considered if the company is subject to the provisions relating to "operating companies" in the California Financial Code.

promulgated by the SEC under the Securities Act, any person listed in the first paragraph of Rule 506(d)(1).

4.9. **Valid Issuance of Convertible Note and Conversion Securities**.

(a) The Convertible Note when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement and the Convertible Note, will be duly authorized, validly issued, fully paid and nonassessable, and will be free of restrictions on transfer or other assignment, other than (i) restrictions on transfer under this Agreement or the Convertible Note, or (ii) as may be generally imposed under applicable federal and other securities laws.

(b) Based in part on the accuracy of the representations and warranties of the Lender in Section 5 of this Agreement and subject to filings pursuant to Regulation D of the Securities Act, and applicable state securities laws, the offer, sale and issuance of the Convertible Note pursuant to the terms of this Agreement and the Convertible Note will be issued in compliance with all applicable federal and state securities laws.

(c) The issuance of the shares of Common Stock or Preferred Stock (as the case may be) to be issued upon conversion of the Convertible Note (collectively, "Conversion Securities") will be duly authorized, validly issued, fully paid and nonassessable, and will be free of restrictions on transfer, other than (i) restrictions on transfer under this Agreement or the Convertible Note, or (ii) as may be generally imposed under applicable federal and other securities laws. Based in part upon the representations of the Lender in Section 5 of this Agreement, and subject to filings pursuant to Regulation D of the Securities Act and applicable state securities laws, the Conversion Securities will be issued in compliance with all applicable federal and state securities laws.

4.10. **Litigation.** There is no pending action, suit, proceeding, arbitration, mediation, complaint, claim, charge or investigation before any court, arbitrator, mediator or governmental body, or to the Company's knowledge, currently threatened in writing (a) against the Company or (b) against any consultant, officer, director or key employee of the Company arising out of his or her consulting, employment or board relationship with the Company or that could otherwise materially impact the Company.

4.11. **Employee and Consultant Matters**. Each current and former employee, consultant and officer of the Company or any predecessor has executed an agreement with the Company regarding confidentiality and proprietary information, and no current or former employee or consultant has excluded works or inventions from his or her assignment of inventions pursuant to such agreement. To the Company's knowledge, no such employees or consultants is in violation thereof. To the Company's knowledge, none of its employees is obligated under any judgment, decree, contract, covenant or agreement that would materially interfere with such employee's ability to promote the interest of the Company or that would interfere with such employee's ability to promote the interests of the Company or that would conflict with the Company's business.

4.12. **Title to Property and Assets**. The Company owns its properties and assets free and clear of all mortgages, deeds of trust, liens, encumbrances and security interests except for statutory liens for the payment of current taxes that are not yet delinquent and liens, encumbrances and security interests which arise in the ordinary course of business and which do not affect material properties and assets of the Company. With respect to the property and assets it leases, the Company is in material compliance with each such lease.

4.13. **Agreements**. Except for this Agreement and the Convertible Note, , there are no agreements, understandings, instruments, contracts or proposed transactions to which the Company is a party that involve (a) obligations (contingent or otherwise) of, or payments to, the Company in excess of _____ Dollars (US $_____), (b) the license of any Intellectual Property to or from the Company other than licenses with respect to commercially available software products under standard end-user object code license agreements or standard customer terms of service and privacy policies for Internet sites, (c) the grant of rights to manufacture, produce, assemble, license, market, or sell its products or services to any other person, or that limit the Company's exclusive right to develop, manufacture, assemble, distribute, market or sell its products or services, or (d) indemnification by the Company with respect to infringements of proprietary rights other than standard customer agreements (each, a "**Material Agreement**"). The Company is not in material breach of any Material Agreement. Each Material Agreement is in full force and effect and is enforceable by the Company in accordance with its respective terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or others laws of general application relating to or affecting the enforcement of creditors' rights generally, or (ii) the effect of rules of law governing the availability of equitable remedies.

4.14. **Liabilities**. The Company has no liabilities or obligations, contingent or otherwise, in excess of _____ Dollars (US $_____) individually or _____ Dollars (US $_____) in the aggregate.

4.15. **No Brokers**. The Company has not retained any broker or finder or incurred any liability or obligation for any brokerage fees, commissions or finder's fees with respect to this Agreement or the Convertible Note or any transaction hereunder or thereunder.

4.16. **Disclosure.** The Company has exercised its best efforts to make available to the Lender all the information reasonably available to the Company that the Lender has requested in writing for deciding whether to acquire the Convertible Note and engage in the other transactions set forth in this Agreement and the Convertible Note. No representation or warranty of the Company contained in this Agreement or the Convertible Note, as qualified by the Disclosure Schedule attached to this Agreement[4], and no certificate (if any) furnished to Lender at the Closing contains any untrue

[4] If the company needs or wishes to take exceptions to the representations and warranties included in the body of the text of the agreement a disclosure schedule should be prepared and attached to the agreement unless it is possible to incorporate the exceptions into the representations and warranties themselves.

statement of a material fact or, to the Company's knowledge, omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. **Any projections provided by the Company to the Lender were prepared in good faith; however, the Company does not warrant that it will achieve any projected results.**

5. **Representations and Warranties of Lender.** In connection with the transactions provided for herein, Lender hereby represents and warrants to the Company that:

5.1. **Authorization.** This Agreement constitutes Lender's valid and legally binding obligation, enforceable in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, or similar laws relating to or affecting the enforcement of creditors' rights and (ii) laws relating to the availability of specific performance, injunctive relief or other equitable remedies. Lender has full power and authority to enter into this Agreement.

5.2. **Purchase Entirely for Own Account.** The Convertible Note, and the shares of the Company's capital stock to be issued in the event of the conversion of the Convertible Note (collectively, the "**Securities**") will be acquired for investment for Lender's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof. Lender has no present intention of selling, granting any participation in, or otherwise distributing the Securities. Lender does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to the Securities.

5.3. **Disclosure of Information.** Lender has received all the information it considers necessary or appropriate for deciding whether to acquire the Securities. Lender has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Securities.

5.4. **Investment Experience.** Lender acknowledges that Lender is able to fend for itself, can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Securities. Lender has not been organized solely for the purpose of acquiring the Securities.

5.5. **Accredited Investor.** Lender is an "accredited investor" within the meaning of Rule 501 of Regulation D adopted by the SEC under the Securities Act, as presently in effect. Lender acknowledges and agrees that the sale of the Securities to Lender shall not be deemed to have occurred unless and until Company has advised Lender that it has verified Lender's accredited investor status as required under Rule 506(c) of Regulation D under the Securities Act. Lender shall cooperate with any request made by the Company to verify such Lender's accredited investor status and hereby represents and warrants to the Company that any information provided to the Company in order to verify such status is true and correct. Lender also understand that acceptance of Lenders'

subscription for any Securities is conditioned upon Company's compliance with applicable state securities laws and Company may determine, in its sole discretion, not to sell the Securities in a particular state.

5.6. **Restricted Securities.** Lender understands that the Securities are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering, and that under such laws and applicable regulations such securities may be resold without registration under the Securities Act only in certain limited circumstances. Lender is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

5.7. **Further Limitations on Disposition.** Without in any way limiting the representations and warranties set forth above, Lender further agrees not to make any disposition of all or any portion of the Securities unless and until the transferee has agreed in writing for the benefit of the Company to be bound by this Section 5.7 and Section 7.10 and:

(a) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

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

5.8. **Legends.**[5] It is understood that the Securities may bear the following legend:

"THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT."

[5] Consideration should be given to the need to include additional legends to meet the requirements of state securities laws.

5.9 **Knowledge**. Lender is aware of Company's business affairs and financial condition and has acquired sufficient information about Company to reach an informed and knowledgeable decision to acquire the Securities. Without limiting the generality of the foregoing, Lender acknowledges that he/she/it has reviewed the information regarding the Company available on the Company's website and has been given an opportunity to ask questions of the management of the Company and has received any additional information that he/she/it has reasonably requested from the Company.

5.10 **Confidential and Proprietary Information**. Lender acknowledges and agrees that the financial information regarding the Company provided in the disclosures is proprietary and confidential and further agrees not to disclose such information other than to Lenders' professional and legal advisers for purposes of deciding whether to make an investment in the Securities. Lender further acknowledges and agrees that such financial information is not a guarantee of the future performance of the Company.

6. **Covenants**.[6] Company hereby covenants to Lender as follows:

6.1. **Information Rights**. While the Convertible Note is outstanding, Company shall deliver to Lender:

(a) as soon as practicable, but in any event within 90 days after the end of each fiscal year of the Company, an income statement for such fiscal year, a balance sheet of the Company and statement of stockholder's equity as of the end of such year, and a statement of cash flows for such year, such year-end financial reports to be in reasonable detail;

(b) as soon as practicable, but in any event within 45 days after the end of each fiscal quarter of the Company, an income statement, statement of cash flows for such fiscal quarter and a balance sheet as of the end of such fiscal quarter, each of the foregoing statements to be in reasonable detail;

(c) as soon as practicable, but in any event within 45 days after the end of each fiscal quarter of the Company, a quarterly narrative business report describing the Company's progress during the quarter in relation to the Company's plan; and

(d) as soon as practicable, but in any event within at least five business days after the occurrence thereof, notice of any Event of Default or any material default under any material agreement to which Company is a party or by which it is subject, or of any material litigation filed against Company.

[6] One of the distinguishing features of this template is the inclusion of the various covenants set forth in this section. Covenants are generally provided when the size of the offering exceeds $1,000,000, although some investors in smaller offerings may still require certain rights typically granted when the company closes its Series A Preferred round. Each of these covenants should be considered "optional" and companies may vary the terms of the covenants they elect to offer to investors at this stage.

6.2. **Use of Proceeds**. The Company will use the proceeds of the Loans for the following purposes: general working capital needs, hiring of additional employees, purchase of fixed assets or other capital expenditures, marketing/sales/promotional activities, inventory purchases, and the like. None of the proceeds of the Loan will be used to repay loans by any current stockholders or their affiliates.

6.3. **Employee Agreements**. The Company will cause (i) each person now or hereafter employed by it or by any subsidiary (or engaged by the Company or any subsidiary as a consultant/independent contractor) with access to confidential information and/or trade secrets to enter into a nondisclosure, nonsolicitation and proprietary rights assignment agreement, substantially in the form approved by the board of directors of the Company.

6.4. **Authorization and Issuance of Capital Stock**. The Company shall take all such action as is necessary or desirable to create and authorize sufficient shares of its capital stock to enable the conversion of the Convertible Note. The Company shall cause the stock issuable upon conversion of the Convertible Note, if and when issued, to be duly authorized, validly issued, fully paid and non-assessable, and to be issued, sold and delivered in full compliance with all applicable federal and state securities laws.

6.5. **Most Favored Nation.** In the event the Company sells or issues any convertible instruments (other than the issuance of stock options to service providers of the Company) at any time prior to the earlier of (i) the conversion of the principal amount and all accrued interest under the Convertible Note into shares of Preferred Stock under the Convertible Note, (ii) a Sale of the Company (as defined in the Convertible Note) or (iii) payment in full of all of the principal amount and accrued interest under the Convertible Note, the Company shall provide the Lender with written notice of such sale or issuance no later than five (5) days after the closing date thereof, including the price and terms of such convertible instruments (the "**Subsequent Instruments**"). In the event the Lender determines, in its sole and absolute discretion, that any Subsequent Instrument contains terms more favorable to the holders thereof than the terms set forth in this Agreement and in the Convertible Note, the Lender may elect to exchange this Agreement and the Convertible Note for a Subsequent Instrument.

6.6. **Termination of Covenants**. The covenants set forth in Section 6 shall terminate and be of no further force or effect (i) upon the consummation of the Company's initial public offering, (ii) at such time as the Company becomes subject to the reporting provisions of the Securities Exchange Act of 1934, as amended, (iii) at such time as the principal amount and all accrued interest under the Convertible Note converts into shares of Preferred Stock under the Convertible Note, or (iv) at such time as the principal amount and all accrued interest under the Convertible Note is repaid to Lender.

7. **Miscellaneous.**

7.1. **Successors and Assigns.** Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the

respective successors and assigns of the parties, provided, however, that the Company may not assign its obligations under this Agreement without the written consent of Lender. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

7.2. **Governing Law.** This Agreement and the Convertible Note shall be governed by and construed under the laws of the State of _____ as applied to agreements between _____ residents, made and to be performed entirely within the State of _____.

7.3. **Counterparts.** This Agreement may be executed electronically or otherwise in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

7.5. **Notices.** All notices and other communications given or made pursuant hereto or in connection with the Convertible Note shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not so confirmed, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses designated in writing by the parties.

If to the Company:

[Newco, Inc.]
_____
_____
Attn: CEO
Email: _____

If to the Lender, to the address set forth on the signature page below.

7.6. **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. Lender 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 Lender or any of its officers, partners, employees or representatives is responsible. The Company agrees to indemnify and hold harmless Lender 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.

7.7. **Expenses.** If any action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

7.8. **Entire Agreement; Amendments and Waivers.** This Agreement and the Convertible Note constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof. Any term of this Agreement or the Convertible Note may be amended and the observance of any term of this Agreement or the Convertible Note may be waived (either generally or in a particular instance and either retroactively or prospectively), with the written consent of the Company and Lender.

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

7.10. **"Market Stand-Off" Agreement.** Lender hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Company's Initial Public Offering (as defined below) and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days) (a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of the Company's Equity Securities held immediately prior to the effectiveness of the Registration Statement for such offering, or (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Company's Equity Securities acquired through the conversion of the Convertible Note, whether any such transaction described in clause (a) or (b) above is to be settled by delivery of securities, in cash or otherwise. The foregoing provisions of this Section 7.10 shall apply only to the Company's Initial Public Offering, shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement and shall only be applicable to Lender if all officers and directors and greater than five percent (5%) stockholders of the Company enter into similar agreements. The underwriters in connection with the Company's Initial Public Offering are intended third-party beneficiaries of this Section 7.10 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Lender further agrees to execute such agreements as may be reasonably requested by the underwriters in the Company's Initial Public Offering that are consistent with this Section 7.10 that are necessary to give further effect thereto. For purposes of this Agreement, "**Initial Public Offering**" shall mean the closing of the issuance and sale of shares of Equity Securities of the Company in the

Company's first underwritten public offering pursuant to an effective registration statement under the Securities Act.

7.11. **Stock Purchase Agreement.** The conversion of the Convertible Note may require Lender's execution of certain agreements relating to the purchase and sale of such securities as well as registration, co-sale, rights of first refusal, rights of first offer and voting rights, if any, relating to such securities.

7.12. **Acknowledgement.** To avoid doubt, it is acknowledged that Lender shall be entitled to the benefit of all adjustments in the number of shares of common stock of the Company issuable upon conversion of the preferred stock of the Company or as a result of any splits, recapitalizations, combinations or other similar transactions affecting the common stock or preferred stock that occur prior to the conversion of the Convertible Note.

7.13. **Further Assurances.** From time to time, the Company shall execute and deliver to Lender such additional documents and shall provide such additional information to Lender as Lender may reasonably require to carry out the terms of this Agreement, the Convertible Note, and any agreements executed in connection herewith or therewith, or to be informed of the financial and business conditions and prospects of the Company.

8. **Conditions of Effectiveness of Sale.** Lender acknowledges and agrees that it shall have no rights under the Convertible Note unless and until the Company accepts Lender's offer to purchase the Convertible Note by executing this Agreement, which acceptance will be conditioned upon, among other things, the matters described in Section 5.5 above. Company reserves the right to reject Lender's offer to purchase the Convertible Note for any reason in its sole discretion. In the event that Company determines that Lender does not qualify as an accredited investor at any time after the Convertible Note is issued, Company shall have the absolute right to rescind this transaction.

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

COMPANY:

[NEWCO, INC.]

By:_____
Name:_____
Title:_____

Address:
_____
_____
_____

IN WITNESS WHEREOF, the parties have executed this **NOTE PURCHASE AGREEMENT** as of the date first written above.

LENDER:

_____
(Entity name, if applicable)

By:_____
Name:_____
Title:_____

Address:
_____
_____
_____

EXHIBIT A

FORM OF CONVERTIBLE PROMISSORY NOTE

§4 Convertible promissory note[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

THIS CONVERTIBLE PROMISSORY NOTE AND ANY SECURITIES INTO WHICH THIS CONVERTIBLE PROMISSORY NOTE IS CONVERTIBLE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD, ASSIGNED, MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR QUALIFICATION OR AN EXEMPTION THEREFROM UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAWS. HOLDERS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE OF THESE SECURITIES IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

CONVERTIBLE PROMISSORY NOTE[2]

$_____ _____ __, 20__
[City], [State]

For value received [**NEWCO, INC.**], a _____ corporation (the "***Company***"), promises to pay to _____ or its assigns ("***Holder***") the principal sum of $_____ together with accrued and unpaid interest thereon, each due and payable on the date and in the manner set forth below.

This convertible promissory note (the "***Note***") is issued as part of a series of similar convertible promissory notes (collectively, the "***Notes***") pursuant to the terms of that certain Convertible Promissory Note Purchase Agreement (as amended, the "***Agreement***") dated as of _____ __, 20__ to the persons and entities listed on the Schedule of Purchasers attached to the Agreement (collectively, the "***Holders***"). This Note is unsecured and subject to the terms and conditions herein. Capitalized terms used herein without definition shall have the meanings given to such terms in the Agreement.

1. Repayment. All payments of interest and principal shall be in lawful money of the United States of America and shall be made pro rata among all Holders. All payments shall be applied first to accrued interest, and thereafter to principal. The outstanding principal amount of the Loan shall be due and payable on _____ __, 20__ (the "***Maturity Date***").

2. Interest Rate. The Company promises to pay simple interest on the outstanding principal amount hereof from the date hereof until payment in full, which interest shall be payable at the rate of _____% per annum or the maximum rate permissible by law, whichever is less. Interest shall be due and payable on the Maturity Date and shall be calculated on the basis of a 365-day year for the actual number of days elapsed.

3. Conversion; Repayment Premium Upon Sale of the Company.

(a) In the event that the Company issues and sells shares of its Equity Securities to investors (the "***Investors***") on or before the date of the repayment in full of this Note in an equity financing resulting in gross proceeds to the Company of at least $_____ (including the conversion of the Notes and other debt) (a "***Qualified Financing***")[3], then the

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[2] This document is a template for a convertible note which includes all of the basic terms and provisions generally seen in convertible note financings for early stage companies that have yet to complete a Series A Preferred Stock financing involving venture capital and other institutional investors. Highlighted items should be completed as required under the specific conditions under which the document is being used. Certain of the highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes. For additional guidance on filling in the blanks relating to the terms of the offering, see the notes included with the Summary of Proposed Terms for Convertible Promissory Note Financing available at § 1:28.

[3] In some cases, investors may insist that the calculation of "proceeds" for purposes of the minimum amount necessary for an offering to be a "Qualified Financing" not include the conversion of the convertible notes or any other indebtedness and that the expenses associated with the offering be taken into account. Investors may also want to be sure that the terms of the offering are consistent with industry standards as outlined in the model documents developed and published by the National Venture Capital Association. Alternative language may define a "Qualified Financing" as an offering: "(A) from which the Company receives net cash proceeds from such stock financing of at least Two Million Dollars (US $2,000,000), excluding for purposes of determining the amount of net

outstanding principal balance of this Note shall automatically convert in whole without any further action by the Holder into such Equity Securities at a conversion price equal to **[**the lesser of (i)**]** ____% of the per share price paid by the Investors **[**or (ii) the price equal to the quotient of $_____ divided by the aggregate number of outstanding shares of the Company's Common Stock as of immediately prior to the initial closing of the Qualified Financing (assuming full conversion or exercise of all convertible and exercisable securities then outstanding other than the Notes)**]**, and otherwise on the same terms and conditions as given to the Investors.[4] Any unpaid accrued interest on this Note shall be converted into Equity Securities on the same terms as the principal of the Notes.

(b) In the event that a Qualified Financing is not consummated prior to the Maturity Date, then, at the election of the Requisite Holders made at least five days prior to the Maturity Date, effective upon the Maturity Date, the outstanding principal balance and any unpaid accrued interest under this Note and each of the other Notes shall be converted into shares of Common Stock[5] of the Company at a conversion price equal to the quotient of $_____

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cash proceeds the aggregate amount of indebtedness converted into capital stock upon conversion of this Note and any and all other Notes and any and all other indebtedness of the Company, and (B) with all of the principal rights, preferences, powers and privileges of the Series A Preferred Stock in such financing being consistent with the standard and customary terms and conditions for a Series A Preferred Stock financing round as provided by the then current US National Venture Capital Association (NVCA) Model Venture Capital Financing Documents".

[4] The note will generally provide that investors will receive the same series of preferred shares, typically "Series A Preferred Stock", issued to the new investors participating in the Qualified Financing. Since all the shares in a series must have same per share liquidation preference, this means that the note investors would be entited to a larger share of any liquidating distribution to the holders of that series because of the impact of the discount on their conversion/purchase price. Several alternatives might be used to avoid this situation. For example, the company may have the right to issue the note investors a "Shadow Series", which means shares of a series of the company's preferred stock that is identical in all respects to the shares of preferred stock issued in the Qualified Financing (e.g., if the company sells Series A Preferred Stock in the Qualified Financing, the Shadow Series would be Series A-1 Preferred Stock), except that the liquidation preference per share of the Shadow Series would be equal to the conversion price used to determine the number of shares issued to the note investors. Another approach is to provide that the note will be converted into shares of the preferred stock issued in the Qualified Financing and shares of common stock. The terms of the note would provide that the total number combined number of shares of the preferred and common stock to be issued would equal (x) all principal, together with all accured and unpaid interest under the note, divided by (y) the applicable conversion price. Then, of those shares, the number of preferred shares would equal (x) all principal, together with all of the accrued and unpaid interest under the note, divided by (y) the price per share paid by the other investors in the Qualified Financing, and the remaining shares would be common stock.

[5] Optional conversion rights that come into effect if a Qualified Financing has not occurred by the Maturity Date generally allow investors to convert into common stock; however, investors will to convert their debt into equity may want some preferences over common shares and rights to vote on certain matters relating to the company. In that situation, the following language might be used: "If the event that the Company does not consummate a Qualified Financing prior to the Maturity Date, all principal and interest under the Note shall thereafter be convertible into shares of Alternative Preferred Stock at a conversion price determined based on dividing (i) $_____ by (ii) the Fully Diluted Capitalization. As used herein, the term "Alternative Preferred Stock" means a newly-created series of Company Preferred Stock having rights, preferences and privileges customary in early stage venture capital financing transactions (including a non-participating liquidation preference equal to the amount of the original issue price plus any accrued and unpaid dividends, conversion to common stock on customary terms, broad based average anti-dilution, customary voting and protective provisions and other terms), as reasonably and mutually determined by the Company and the Requisite Holders." A good example of an Alternative Preferred Stock is Series Seed Preferred Stock, which meets the conditions discussed in the previous sentence and contemplates that holders will have the opportunity to secure rights ultimately granted to venture capitalists when a full-blown Series A Preferred Stock round is closed.

divided by the aggregate number of outstanding shares of the Company's Common Stock as of the Maturity Date (assuming full conversion or exercise of all convertible and exercisable securities then outstanding other than the Notes)[6].

(c) If, after aggregation, the conversion of this Note would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying the then current fair market value of one share of the class and series of capital stock into which this Note has converted by such fraction.

(d) Notwithstanding any provision of this Note to the contrary, in the event that the Company consummates a Sale of the Company (as defined below) prior to the conversion or repayment in full of this Note, (i) the Company will give the Holder at least five days prior written notice of the anticipated closing date of such Sale of the Company and (ii) at the closing of such Sale of the Company, in lieu of the principal and interest that would otherwise be payable on the Maturity Date, the Company will pay the Holder an aggregate amount equal to _____ times the aggregate amount of principal and interest then outstanding under this Note in full satisfaction of the Company's obligations under this Note.[7]

(e) For purposes of this Note:

(i) "***Sale of the Company***" shall mean (i) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity in substantially the same proportions (or, if the surviving entity is a wholly owned subsidiary, its

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[6] Some investors may argue that the conversion rate should be determined by selecting the lesser of the amount agreed upon by the parties at the time the note was issued, which would be the amount included in the text of the note, and the fair market value of the company as of the Maturity Date as determined independently by a qualified valuation firm selected by mutual agreement of the company and the investors. Another scenario that is often built into the note is providing that if a Qualified Financing has not occurred by the Maturity Date and does not occur within a specified period following the Maturity Date, such as six months, then the conversion price for conversion of the notes into common thereafter would be the lesser of an amount per share stipulated in advance and the conversion price determined by using the formula in the text of the note.

[7] The default language in this form calls for holders of the notes to receive a pre-determined multiple of the then-outstanding principal and interest owing on the notes upon a sale of the company (notwithstanding the Maturity Date); however, variations allow note holders to retain the notes following the closing of the transaction or convert their notes into common stock of the company immediately prior to the closing of the transaction in order to share in the sale proceeds on par with other holders of common stock. Illustrative language for these alternatives would be: "If a Sale of the Company (as defined below) is consummated prior to full payment of this Note or earlier conversion of this Note upon consummation of a Qualified Financing, then the Holder of this Note may elect any of the following options in its sole discretion: (1) to not convert and to retain this Note in accordance with its terms, (2) to be paid by the Company an amount for this Note equal to _____ times the outstanding principal amount of this Note and all accrued but unpaid interest due and payable on the Sale of the Company closing date ("Closing Date"), or (3) to convert this Note into shares of the Common Stock of the Company as of the Closing Date." When conversion into shares of common stock upon a Sale of the Company is permitted, the investors may be given protection by a provision such as the following: "Upon a Sale of the Company, the Notes will be convertible into common stock at a conversion price queal to the lesser of (i) $__ per share and (ii) an amount obtained by dividing (x) $_____ (the valuation cap) by (y) the Company's fully-diluted capitalization."

parent) immediately after such consolidation, merger or reorganization; (ii) any transaction or series of related transactions to which the Company is a party in which in excess of 50% of the Company's voting power is transferred; *provided, however*, that a Sale of the Company shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; or (iii) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company.

(ii) "***Equity Securities***" shall mean the Company's Preferred Stock or any securities conferring the right to purchase the Company's Preferred Stock or securities convertible into, or exchangeable for (with or without additional consideration), the Company's Preferred Stock, except that such defined term shall not include any security (x) granted, issued and/or sold by the Company to any employee, director or consultant in such capacity or (y) issued upon the conversion or exercise of any option or warrant outstanding as of the date of this Note.

4. Maturity. Unless this Note has been previously converted in accordance with the terms of Sections 3(a) through (c) above or satisfied in accordance with the terms of Section 3(d) above, the entire outstanding principal balance and all unpaid accrued interest shall become fully due and payable on the Maturity Date.

5. Expenses. In the event of any default hereunder, the Company shall pay all reasonable attorneys' fees and court costs incurred by Holder in enforcing and collecting this Note.

6. Prepayment. The Company may not prepay this Note prior to the Maturity Date without the consent of the Requisite Holders.

7. Default. If there shall be any Event of Default hereunder, at the option and upon the declaration of the Requisite Holders and upon written notice to the Company (which election and notice shall not be required in the case of an Event of Default under Section 7(c) or 7(d)), this Note shall accelerate and all principal and unpaid accrued interest shall become due and payable. The occurrence of any one or more of the following shall constitute an Event of Default:

(a) The Company fails to pay timely any of the principal amount due under this Note on the date the same becomes due and payable or any accrued interest or other amounts due under this Note on the date the same becomes due and payable;

(b) The Company shall default in its performance of any covenant under the Agreement or any Note;

(c) The Company files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any corporate action in furtherance of any of the foregoing; or

(d) An involuntary petition is filed against the Company (unless such petition is dismissed or discharged within 60 days under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of the Company.

8. Waiver. The Company hereby waives demand, notice, presentment, protest and notice of dishonor.

9. Governing Law. This Note and all matters arising out of or relating to this Note shall be governed by and construed in accordance with the General Corporation Law of the State of _____ ("GCL") as to matters within the scope of the GCL, and as to all other matters shall be governed by and construed in accordance with the internal laws of the State of _____, USA, in each case without reference to conflict of laws principles. 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 _____, _____, USA, and each party hereto agrees to submit to the jurisdiction of said courts and agrees that venue shall lie exclusively with such courts.

10. Parity with Other Notes. The Company's repayment obligation to the Holder under this Note shall be on parity with the Company's obligation to repay all Notes issued pursuant to the Agreement. In the event that the Company is obligated to repay the Notes and does not have sufficient funds to repay all the Notes in full, payment shall be made to the Holders of the Notes on a *pro rata* basis. The preceding sentence shall not, however, relieve the Company of its obligations to the Holder hereunder.

11. Modification; Waiver. Any term of this Note may be amended or waived with the written consent of the Company and the Requisite Holders.

12. Assignment. The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Notwithstanding the foregoing, the Holder may not sell, convey, gift, assign, pledge, delegate or otherwise transfer (collectively "assign" or "assignment" or any variation thereof) this Note or any rights or obligations hereunder without the prior written consent of the Company, which may be withheld in its reasonable discretion, provided further that in all events this Note or any rights or obligations hereunder may not be assigned at any time in contravention of applicable federal and other securities laws. Any purported assignment in violation of this Section shall be null and void. For these purposes "assignment" or "assign" includes without limitation any sale or transfer of a controlling interest in the then Holder. Subject to the foregoing, this Note may be assigned if otherwise permissible only upon surrender of the original Note accompanied by a duly executed written instrument of transfer in form satisfactory to the Company; and thereupon, a new Note for the same principal amount and interest will be issued to the permitted assignee.

13. Conversion Procedures. No fractional shares of the capital stock of the Company will be issued upon conversion of this Note. In lieu of any fractional share to which the Holder would otherwise be entitled, the Company will pay to the Holder in cash the amount of the unconverted principal and interest balance of this Note that would otherwise be converted into such fractional share. Upon conversion of this Note hereunder, the Holder shall surrender this Note, duly endorsed, at the principal offices of the Company or any transfer agent of the

Company. Upon conversion of this Note hereunder, this Note shall be deemed to be paid in full and 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.

14. Notices. Any notice required or permitted by this Note shall be in writing and shall be delivered (and deemed delivered) in accordance with the Agreement.

15. Convertible Stock; Restrictions on Transfer. Any and all shares of stock into which this Note may be converted shall be subject to all restrictions applicable to the shares of the same series or class of stock generally. The conversion stock shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act.

16. 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.

17. No Stockholder Rights. Nothing contained in this Note shall be construed as conferring upon the Holder or any other person the right to vote or to consent or to receive notice as a stockholder 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; and no dividends or interest shall be payable or accrued in respect of this Note or the interest represented hereby or the Preferred Stock (or Common Stock issuable upon conversion thereof) or the Common Stock into which this Note may be converted hereunder, as applicable, obtainable hereunder until, and only to the extent that, this Note shall have been converted.

18. Usury. This Note is hereby expressly limited so that in no event whatsoever, whether by reason of acceleration of maturity of the loan evidenced hereby or thereby, or otherwise, shall the amount paid or agreed to be paid to the Holder hereunder for the loan, use, forbearance or detention of money exceed that permissible under applicable law. If at any time the performance of any provision hereof or of this Note or any other such agreement involves a payment exceeding the limit of the price that may be validly charged for the loan, use, forbearance or detention of money under applicable law, then automatically and retroactively, ipso facto, the obligation to be performed shall be reduced to such limit, it being the specific intent of the Company and the Holder that all payments under this Note are to be credited first to interest as permitted by law, but not in excess of the agreed rate of interest set forth herein or that permitted by law, whichever is the lesser, and the balance toward the reduction of principal. With respect to any limitations on interest, usury or other similar restrictions that may apply, if any, and in addition to and without limiting any provisions of the Agreement, the parties acknowledge and understand that this Note and the transactions referenced herein are made pursuant to the usury exemption set forth in Cal. Civ. Code Section 25118 (to the extent otherwise applicable) and further acknowledge and agree that this Note and the transactions

referenced herein fully meet and comply with all requirements for the usury exemption set forth in that statute.[8]

[signature page follows]

[8] Highlighted text should be inserted when counsel determines that the issuance of the note may fall within the scope of California usury laws. Counsel should confirm compliance with any other state usury laws that may be applicable to the issuance of the note.

[NEWCO, INC.]

By:_____
Name:_____
Title:_____

Holder: _____
Principal Amount of Note: _____
Date of Note: _____

§5 Straight (non-convertible) promissory note[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

[SECURED] PROMISSORY NOTE[2]

$_____ _____ __, 20__
[City], [State]

For value received [NEWCO, INC.], a _____ corporation (the "***Company***"), promises to pay to _____ or its assigns ("***Holder***"), having its principal business office at _____, the principal sum of $_____ together with accrued and unpaid interest thereon, each due and payable on the date and in the manner set forth below. This promissory note (the "***Note***") is [unsecured] and subject to the terms and conditions herein.[3]

1. Repayment. All payments of interest and principal shall be in lawful money of the United States of America. All payments shall be applied first to accrued interest, and thereafter to principal. The outstanding principal amount of the Loan shall be due and payable on _____ __, 20__ (the "***Maturity Date***").[4]

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[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] This document is a template for a non-convertible ("straight") promissory note which includes all of the basic terms and provisions generally seen in such a note when issued by an early stage company. Highlighted items should be completed as required under the specific conditions under which the document is being used. Certain of the highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes. If the company decides to grant note holders a security interest in certain of the company's assets, a topic discussed in a note below, the title of the note should be changed to "Secured Promissory Note".

[3] Optional language that can be used to make the note "secured" is included in one of the clauses appearing below.

[4] The default language in this form provides for payment of the entire principal amount and accrued interest to be deferred until the Maturity Date. While this would seem appropriate for a startup company, investors will often insist that their loans be repaid in installments over the agreed term of the note. A wide variety of repayment scenarios may be used based on the stage of the development of the company and its anticipated ability to make the payments while continuing to operate the business. Two alternatives that might be used are as follows:

Alternative 1

2. Interest Rate. The Company promises to pay simple interest on the outstanding principal amount hereof from the date hereof until payment in full, which interest shall be payable at the rate of _____% per annum or the maximum rate permissible by law, whichever is less. Interest shall be due and payable on the Maturity Date and shall be calculated on the basis of a 365-day year for the actual number of days elapsed.

3. Maturity. The entire outstanding principal balance and all unpaid accrued interest shall become fully due and payable on the Maturity Date.

4. Expenses. In the event of any default hereunder, the Company shall pay all reasonable attorneys' fees and court costs incurred by Holder in enforcing and collecting this Note.

5. Prepayment. The Company may not prepay this Note prior to the Maturity Date without the consent of the Holder.

6. Default. If there shall be any Event of Default hereunder, at the option and upon the declaration of the Holders and upon written notice to the Company (which election and notice shall not be required in the case of an Event of Default under Section 6(c) or 6(d)), this Note shall accelerate and all principal and unpaid accrued interest shall become due and payable. The occurrence of any one or more of the following shall constitute an Event of Default:

(a) The Company fails to pay timely any of the principal amount due under this Note on the date the same becomes due and payable or any accrued interest or other amounts due under this Note on the date the same becomes due and payable;

(b) The Company shall default in its performance of any covenant under this Note;

(c) The Company files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to,

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"Company shall pay the outstanding principal amount of the Loan (and all unpaid accrued interest through the date of each such payment) in [___] equal [annual/quarterly/monthly] payments until the Loan is repaid in full [; *provided, however*, that at any time the Company may defer up to [__] of such payments upon notice to Lender (each, a "***Permitted Deferral***")]". A Permitted Deferral provision allows the company to defer a scheduled payment a limited number of times, which deferral will hopefully only be used when the funds could be channeled toward an important business investment. If a Permitted Deferral provision is used, an exception should be included in the language pertaining to Events of Default.

Alternative 2

"Company shall pay the outstanding principal amount of the Loan and all unpaid accrued interest through the date of each such payment on the dates and in the amounts listed below:

Repayment Date	**Principal Repayment Amount**
_____	$_____
_____	$_____"

debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any corporate action in furtherance of any of the foregoing; or

(d) An involuntary petition is filed against the Company (unless such petition is dismissed or discharged within 60 days under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of the Company.

7. Waiver. The Company hereby waives demand, notice, presentment, protest and notice of dishonor.

8. Governing Law. This Note and all matters arising out of or relating to this Note shall be governed by and construed in accordance with the General Corporation Law of the State of _____ ("GCL") as to matters within the scope of the GCL, and as to all other matters shall be governed by and construed in accordance with the internal laws of the State of _____, USA, in each case without reference to conflict of laws principles. 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 _____, _____, USA, and each party hereto agrees to submit to the jurisdiction of said courts and agrees that venue shall lie exclusively with such courts.

9. Modification; Waiver. Any term of this Note may be amended or waived with the written consent of the Company and the Holder.

10. Assignment. The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Notwithstanding the foregoing, the Holder may not sell, convey, gift, assign, pledge, delegate or otherwise transfer (collectively "assign" or "assignment" or any variation thereof) this Note or any rights or obligations hereunder without the prior written consent of the Company, which may be withheld in its reasonable discretion. Any purported assignment in violation of this Section shall be null and void. For these purposes "assignment" or "assign" includes without limitation any sale or transfer of a controlling interest in the then Holder. Subject to the foregoing, this Note may be assigned if otherwise permissible only upon surrender of the original Note accompanied by a duly executed written instrument of transfer in form satisfactory to the Company; and thereupon, a new Note for the same principal amount and interest will be issued to the permitted assignee.

11. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company at the address on the signature page below, and to Holder at the address set forth above or at such other addresses as the Company or Holder may designate by 10 days advance written notice to the other parties hereto.

12. 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.

13. No Stockholder Rights. Nothing contained in this Note shall be construed as conferring upon the Holder or any other person the right to vote or to consent or to receive notice as a stockholder 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.

14. Usury. This Note is hereby expressly limited so that in no event whatsoever, whether by reason of acceleration of maturity of the loan evidenced hereby or thereby, or otherwise, shall the amount paid or agreed to be paid to the Holder hereunder for the loan, use, forbearance or detention of money exceed that permissible under applicable law. If at any time the performance of any provision hereof or of this Note or any other such agreement involves a payment exceeding the limit of the price that may be validly charged for the loan, use, forbearance or detention of money under applicable law, then automatically and retroactively, ipso facto, the obligation to be performed shall be reduced to such limit, it being the specific intent of the Company and the Holder that all payments under this Note are to be credited first to interest as permitted by law, but not in excess of the agreed rate of interest set forth herein or that permitted by law, whichever is the lesser, and the balance toward the reduction of principal. With respect to any limitations on interest, usury or other similar restrictions that may apply, if any, the parties acknowledge and understand that this Note and the transactions referenced herein are made pursuant to the usury exemption set forth in Cal. Civ. Code Section 25118 (to the extent otherwise applicable) and further acknowledge and agree that this Note and the transactions referenced herein fully meet and comply with all requirements for the usury exemption set forth in that statute. [5]

15. [**Secured Note.** To secure payment of all amounts due under this Note, Company grants Lender a security interest in all of its personal property, now existing or hereafter arising, including all accounts, inventory, equipment, general intangibles, financial assets, investment property, securities, deposit accounts, and the proceeds thereof. Company authorizes Lender to file a financing statement to perfect this security interest.][6]

16. [**Guarantee.** [___] ("***Guarantor***") absolutely, irrevocably and unconditionally guarantees for the benefit of Lender the full, faithful and punctual performance when due (whether at stated maturity, acceleration, demand or otherwise) of the indebtedness (including, without limitation, principal and interest), liabilities and other obligations of Company under this Note. The liability of Guarantor under this Section shall be irrevocable, absolute, independent and unconditional, and shall not be affected by any circumstance that might constitute a

[5] Highlighted text should be inserted when counsel determines that the issuance of the note may fall within the scope of California usury laws. Counsel should confirm compliance with any other state usury laws that may be applicable to the issuance of the note.

[6] This clause should be included if the company agrees to provide collateral to the investors to secure the company's obligations to repay the note. This is a short-form provision and the parties will typically negotiate a separate form of security agreement with extensive representations and covenants regarding the assets that are used as collateral. Offering a secured note is a serious decision for a startup company and should not be made without consultation with experienced legal counsel.

discharge of a surety or guarantor other than the indefeasible payment and performance in full of all indebtedness of Company hereunder. The guaranty of Guarantor under this Section is a guaranty of payment when due and not merely of collectability. Lender may enforce the guaranty provided by Guarantor under this Section during the existence of an Event of Default notwithstanding the existence of any dispute between Lender and Company with respect to the existence of such Event of Default. The obligation of Guarantor under this Section is separate and independent from the obligations of Company under this Note, and a separate action or actions may be brought and prosecuted against Guarantor whether or not an action is brought against Company and whether or not Company is joined in any such action or actions. Guarantor waives any right it may have to require Lender to (a) proceed against Company or any other person, (b) proceed against or exhaust any security or other monies held on behalf of Company, (c) marshall assets in favor of any person or (d) pursue any other remedy in the power of Lender whatsoever prior to enforcing the obligation of Guarantor under this Section. Guarantor also waives and agrees not to assert (x) the defense of the statute of limitations in any action hereunder or for the collection or performance of any indebtedness of Company due hereunder, (y) any defense arising by reason of any lack of corporate or other authority or any other defense of Company, Guarantor or any other person or entity and (z) any rights to set-offs and counterclaims. Guarantor's liability under this Section shall remain in full force and effect without regard to, and shall not be impaired or affected by, nor shall Guarantor be exonerated or discharged by, (i) any insolvency proceeding with respect to Company, Guarantor or any other person or entity or (ii) any claim, defense, counterclaim or setoff, other than that of prior performance, that Company, Guarantor or any other person or entity may have or assert, including any defense of incapacity or lack of corporate or other authority to execute this Note. Mere delay or failure to act shall not preclude the exercise or enforcement of any rights and remedies available to Lender. Guarantor expressly agrees that its obligation under this Section shall not in any way be impaired or otherwise affected by the institution by or against Company of any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or any other similar proceedings for relief under any bankruptcy law or similar law for the relief of debtors and that any discharge of any of Company obligations hereunder pursuant to any such bankruptcy or similar law or other law shall not diminish, discharge or otherwise affect in any way the obligations of Guarantor under this Section. To the fullest extent permitted by applicable law, Guarantor expressly waives any defenses or benefits that may be derived from California Civil Code Sections 2809, 2810, 2819, 2839, 2849, 2899 or 3433, or from comparable provisions of the laws of any other jurisdiction, and all other suretyship defenses it otherwise might or would have under California law or other applicable law.][7]

17. [**Subordination.** The indebtedness evidenced by this Note is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of the Senior Indebtedness. "***Senior Indebtedness***" shall mean, unless expressly subordinated to or made on a parity with the amounts due under this Note, the

[7] This clause should be included if the company agrees to provide investors with a guarantee from a third party, perhaps one or more of the founders of the company, that will cover repayment of the investors in the event that the company itself is unable to perform under the terms of the note. This is a short-form provision prepared on the basis of California and the parties will typically negotiate a separate form of guarantee agreement with extensive representations and covenants. The language should be modified with the assistance of counsel to take into account the requirements of surety statutes in the state law that will govern the agreement. Offering a guarantee is a serious decision for the guarantor and should not be made without consultation with experienced legal counsel.

principal of, unpaid interest on and amounts reimbursable, fees, expenses, costs of enforcement and other amounts due in connection with (a) indebtedness of Company to banks or commercial finance or other lending institutions regularly engaged in the business of lending money ([excluding/including] venture capital, investment banking or similar institutions and their affiliates which sometimes engage in lending activities but which are primarily engaged in investments in equity securities), whether or not secured, and (b) any such indebtedness or any debentures, notes or other evidence of indebtedness issued in exchange for such Senior Indebtedness, or any indebtedness arising from the satisfaction of such Senior Indebtedness by a guarantor.

17.1 Insolvency Proceedings. If there shall occur any receivership, insolvency, assignment for the benefit of creditors, bankruptcy, reorganization or arrangements with creditors (whether or not pursuant to bankruptcy or other insolvency laws), sale of all or substantially all of the assets, dissolution, liquidation or any other marshaling of the assets and liabilities of Company, (a) no amount shall be paid by Company in respect of the principal of, interest on or other amounts due with respect to this Note at the time outstanding, unless and until the principal of and interest on the Senior Indebtedness then outstanding shall be paid in full, and (b) no claim or proof of claim shall be filed by or on behalf of Lender which shall assert any right to receive any payments in respect of the principal of and interest on this Note except subject to the payment in full of the principal of and interest on all of the Senior Indebtedness then outstanding.

17.2 Default on Senior Indebtedness. If there shall occur an event of default that has been declared in writing with respect to any Senior Indebtedness, as defined therein, or in the instrument under which it is outstanding, permitting the holder to accelerate the maturity thereof and Lender shall have received written notice thereof from the holder of such Senior Indebtedness, then, unless and until such event of default shall have been cured or waived or shall have ceased to exist, or all Senior Indebtedness shall have been paid in full, no payment shall be made in respect of the principal of or interest on this Note unless within [180] days after the happening of such event of default the maturity of such Senior Indebtedness shall not have been accelerated. Not more than one notice may be given to Lender pursuant to the terms of this Section [8.2] during any 365-day period.

17.3 Further Assurances. By acceptance of this Note, Lender agrees to execute and deliver customary forms of subordination agreement requested from time to time by the holders of Senior Indebtedness and, as a condition to Lender's rights hereunder, Company may require that Lender execute such forms of subordination agreement; *provided* that such forms shall not impose on Lender terms less favorable than those provided herein.

17.4 Subrogation. Subject to the payment in full of all Senior Indebtedness, Lender shall be subrogated to the rights of the holder(s) of such Senior Indebtedness (to the extent of the payments or distributions made to the holder(s) of such Senior Indebtedness pursuant to the provisions of this Section [17]) to receive payments and distributions of assets of Company applicable to the Senior Indebtedness. No such payments or distributions applicable to the Senior Indebtedness shall, as between Company and its creditors, other than the holders of Senior Indebtedness and Lender, be deemed to be a payment by Company to or on account of this Note; and for purposes of such subrogation, no payments or distributions to the holders of Senior

Indebtedness to which Lender would be entitled except for the provisions of this Section [17] shall, as between Company and its creditors, other than the holders of Senior Indebtedness and Lender, be deemed to be a payment by Company to or on account of the Senior Indebtedness.

17.5 No Impairment. Subject to the rights, if any, of the holders of Senior Indebtedness under this Section [17] to receive cash, securities or other properties otherwise payable or deliverable to Lender, nothing contained in this Section [17] shall impair, as between Company and Lender, the obligation of Company, subject to the terms and conditions hereof, to pay to Lender the principal hereof and interest hereon as and when the same become due and payable, or shall prevent Lender, upon default hereunder, from exercising all rights, powers and remedies otherwise provided herein or by applicable law.

17.6 Lien Subordination. Any lien or security interest of Lender, whether now or hereafter existing in connection with the amounts due under this Note, on any assets or property of Company or any proceeds or revenues therefrom which Lender may have at any time as security for any amounts due and obligations under this Note, shall be subordinate to all liens or security interests now or hereafter granted to a holder of Senior Indebtedness by Company or by law notwithstanding the date, order or method of attachment or perfection of any such lien or security interest or the provisions of any applicable law.

17.7 Applicability of Priorities. The priority of the holder of the Senior Indebtedness provided for herein with respect to security interests and liens are applicable only to the extent that such security interests and liens are enforceable and perfected and have not been avoided; if a security interest or lien is judicially determined to be unenforceable or unperfected or is judicially avoided with respect to any claim of the holder of the Senior Indebtedness or any part thereof, the priority provided for herein shall not be available to such security interest or lien to the extent that it is avoided or determined to be unenforceable or unperfected. The foregoing notwithstanding, Lender covenants and agrees that it shall not challenge, attack or seek to avoid any security interest or lien to the extent that it secures any holder of the Senior Indebtedness. Nothing in this Section [17.7] affects the operation of any subordination of indebtedness or turnover of payment provisions hereof, or of any other agreements among any of the parties hereto.

17.8 Reliance of Holders of Senior Indebtedness. Lender, by its acceptance hereof, shall be deemed to acknowledge and agree that the foregoing subordination provisions are, and are intended to be, an inducement to and a consideration of each holder of Senior Indebtedness, whether such Senior Indebtedness was created or acquired before or after the creation of the indebtedness evidenced by this Note, and each such holder of Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and holding, or in continuing to hold, such Senior Indebtedness.]**[8]**

[8] This optional clause should be included when the company already has senior indebtedness outstanding the holder of such debt, which can include banks and other financial institutions, wants it made clear that its rights with respect to repayment and the company's assets are superior to those being granted to investors purchasing the notes.

[signature page follows]

[NEWCO, INC.]

By:_____
Name:_____
Title:_____

Holder: _____
Principal Amount of Note: _____
Date of Note: _____

§6 Board consent for convertible note financing[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

NEWCO, INC.
ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS[2]

In accordance with Section _____ of the _____ General Corporation Law and the Bylaws of Newco, Inc., a _____ corporation (the "Company"), the undersigned, constituting all of the members of the Company's Board of Directors (the "Board"), hereby take the following actions and adopt the following resolutions by unanimous written consent without a meeting effective as of _____ 20__:

RESOLVED: That the Board has determined that it is in the best interests of the Company to issue up to $_____ in aggregate principal amount of convertible promissory notes in substantially the form attached hereto as Exhibit A (the "Convertible Notes"), which shall be convertible into securities of the Company on the terms and conditions described in the Convertible Notes and in the Convertible Promissory Note Purchase Agreement in substantially the form attached hereto as Exhibit B (the "Note Purchase Agreement").

RESOLVED FURTHER: That the proper officers of the Company are hereby authorized and directed to execute any agreements, documents or instruments, or amendments thereto and to do all other acts which such officers deem necessary or appropriate to complete the offer, sale and issuance of the Convertible Notes, including

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[2] This document is a template for resolutions to be considered and approved by the board of directors of the company prior to commencement of the offering and sale of convertible notes and the execution and delivery of the convertible note purchase agreement. Highlighted items should be completed as required under the specific conditions under which the document is being used. Certain of the highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes.

execution of the Note Purchase Agreement, and that such officers may act without further authorization from the directors provided that the terms upon which Convertible Notes are offered, sold and issued do not differ in any material way from the forms attached hereto as Exhibits and provided further that such authorization shall continue only through the 180th day following the initial issuance of any of the Convertible Notes.

RESOLVED FURTHER: That the issuances of the Convertible Notes, and the securities of the Company issued upon conversion thereof as provided in the Convertible Notes and the Note Purchase Agreement, authorized in the above resolution shall be conducted in such a manner as to qualify for the exemption from applicable federal and state requirements regarding registration of the sale of securities.

RESOLVED FURTHER: That the Company set aside and reserve out of the authorized but unissued Common Stock of the Company a sufficient number of shares for issuance upon conversion of the Convertible Notes.

RESOLVED FURTHER: That each of the officers is authorized and empowered to take all such actions (including, without limitation, soliciting appropriate consents or waivers from stockholders) and to execute and deliver all such documents as may be necessary or advisable to carry out the intent and accomplish the purposes of the foregoing resolutions and to effect any transactions contemplated thereby and the performance of any such actions and the execution and delivery of any such documents shall be conclusive evidence of the approval of the Board thereof and all matters relating thereto.

[Signature Page Follows]

In accordance with the Company's Bylaws, this action may be executed in writing, or consented to by electronic transmission, in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same action.

Date: _____ 20__ _____

Date: _____ 20__ _____

EXHIBITS:

EXHIBIT A
FORM OF CONVERTIBLE PROMISSORY NOTE

EXHIBIT B
FORM OF CONVERTIBLE PROMISSORY NOTE PURCHASE AGREEMENT

§7 Term sheet for Series Seed preferred[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

TERMS FOR PRIVATE PLACEMENT OF SERIES SEED PREFERRED STOCK OF [*Insert Company Name*], INC.[2]

[Date]

The following is a summary of the principal terms with respect to the proposed Series Seed Preferred Stock financing of [_____], Inc., a [Delaware] corporation (the "***Company***"). Except for the section entitled "Binding Terms," this summary of terms does not constitute a legally binding obligation. The parties intend to enter into a legally binding obligation only pursuant to definitive agreements to be negotiated and executed by the parties.

Offering Terms

Securities to Issue: Shares of Series Seed Preferred Stock of the Company (the "***Series Seed***").

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[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] This document is a template for the term sheet to be used in conjunction with the investment agreement associated with the well-known "Series Seed Preferred Stock" financing alternative for startups. Highlighted items should be completed as required under the specific conditions under which the document is being used. Certain of the highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes. The Series Seed documents are based upon the model documents for venture capital financings developed by the National Venture Capital Association ("NVCA") and are intended for angel financing in the range of $500,000 to $1.5 million. Since they are a short-form version of the NVCA documents, proponents argue that they will already be familiar to experienced investors and that this will allow the contract phase to move quickly. A short time to close is also facilitated by the principle that the documents are suitable for use "as is", without further negotiations, and that the parties simply have to fill in a few key blanks in order to close. Investors are issued shares of "Series Seed Preferred Stock" with the following notable characteristics: dividends pro rata with common shares; 1x non-participating liquidation preference (i.e., investors get their money back first and any remaining amount goes solely to common shareholders); no anti-dilution protection; three person board (two common and one preferred); protective provisions similar to those found in a company-friendly venture capital financing; investors entitled to unaudited annual and quarterly financial statements; right of first offer on new financings; assignment of company right of first refusal on transfer of common shares to investors; "drag-along" obligations on both investors and founders triggered upon approval of board and approval of majority of both common and Series Seed Preferred Stock holders; future rights; and up to $10,000 in legal fees to investors' counsel. This form should be used in conjunction with the Investment Agreement and Restated Certificate of Incorporation included at §§ 1:36 and 1:37, respectively.

Aggregate Proceeds:	$[_____] in aggregate.
Purchasers:	[Accredited investors approved by the Company] (the "***Purchasers***").
Price Per Share:	Price per share (the "***Original Issue Price***"), based on a pre-money valuation of $[____], including an available option pool of [___]%.
Liquidation Preference:	One times the Original Issue Price plus declared but unpaid dividends on each share of Series Seed, balance of proceeds paid to Common. A merger, reorganization or similar transaction will be treated as a liquidation.
Conversion:	Convertible into one share of Common (subject to proportional adjustments for stock splits, stock dividends and the like) at any time at the option of the holder.
Voting Rights:	Votes together with the Common Stock on all matters on an as-converted basis. Approval of a majority of the Preferred Stock required to (i) adversely change rights of the Preferred Stock; (ii) change the authorized number of shares; (iii) authorize a new series of Preferred Stock having rights senior to or on parity with the Preferred Stock; (iv) redeem or repurchase any shares (other than pursuant to employee or consultant agreements); (v) declare or pay any dividend; (vi) change the number of directors; or (vii) liquidate or dissolve, including any change of control.
Documentation:	Documents will be identical to the Series Seed Preferred Stock documents published at www.seriesseed.com, except for the modifications set forth in this Term Sheet.
Financial Information:	Purchasers who have invested at least [$_____] ("***Major Purchasers***") will receive standard information and inspection rights and management rights letter.
Participation Right:	Major Purchasers will have the right to participate on a pro rata basis in subsequent issuances of equity securities.
Board of Directors:	[___] directors elected by holders of a majority of common stock, [__] elected by holders of a majority of Series Seed and [___] elected by mutual consent.
Expenses:	Company to reimburse counsel to Purchasers for a flat fee of $10,000.
Future Rights:	The Series Seed will be given the same rights as the next series of Preferred Stock (with appropriate adjustments for economic terms).
Key Holder Matters	Each Key Holder shall have four years vesting beginning [_____]. Full acceleration upon "Double Trigger." Each Key Holder shall have assigned all relevant IP to the Company before closing.
Binding Terms:	For a period of thirty days, the Company shall not solicit offers from other parties for any financing. Without the consent of Purchasers, the Company shall not disclose these terms to anyone other than officers, directors, key service providers, and other potential Purchasers in this financing.

COMPANY: [_____, INC.]

Name: _____

Title: _____

_____

Date: _____

PURCHASERS:

Name: _____

Title: _____

_____

Date: _____

§8 Series Seed stock investment agreement[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

SERIES SEED PREFERRED STOCK INVESTMENT AGREEMENT[2]

This Series Seed Preferred Stock Investment Agreement (this "**Agreement**") is dated as of the Agreement Date and is between the Company, the Purchasers and the Key Holders.

The parties agree as follows:

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[2] This document is a template for the investment agreement associated with the well-known "Series Seed Preferred Stock" financing alternative for startups. Highlighted items should be completed as required under the specific conditions under which the document is being used. Certain of the highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes. The Series Seed documents are based upon the model documents for venture capital financings developed by the National Venture Capital Association ("NVCA") and are intended for angel financing in the range of $500,000 to $1.5 million. Since they are a short-form version of the NVCA documents, proponents argue that they will already be familiar to experienced investors and that this will allow the contract phase to move quickly. A short time to close is also facilitated by the principle that the documents are suitable for use "as is", without further negotiations, and that the parties simply have to fill in a few key blanks in order to close. Investors are issued shares of "Series Seed Preferred Stock" with the following notable characteristics: dividends pro rata with common shares; 1x non-participating liquidation preference (i.e., investors get their money back first and any remaining amount goes solely to common shareholders); no anti-dilution protection; three person board (two common and one preferred); protective provisions similar to those found in a company-friendly venture capital financing; investors entitled to unaudited annual and quarterly financial statements; right of first offer on new financings; assignment of company right of first refusal on transfer of common shares to investors; "drag-along" obligations on both investors and founders triggered upon approval of board and approval of majority of both common and Series Seed Preferred Stock holders; future rights; and up to $10,000 in legal fees to investors' counsel. This form should be used in conjunction with the Restated Certificate of Incorporation included at § 1:37.

1. DEFINITIONS. Capitalized terms used and not otherwise defined in this Agreement or the Exhibit and Schedules thereto have the meanings set forth in Exhibit A.

2. INVESTMENT. Subject to the terms and conditions of this Agreement, including the Agreement Terms set forth in Exhibit B, (i) each Purchaser shall purchase at the applicable Closing and the Company shall sell and issue to each Purchaser at such Closing that number of shares of Series Seed Preferred Stock set forth opposite such Purchaser's name on Schedule 1, at a price per share equal to the Purchase Price (subject to any applicable discounts when all or a portion of such Purchase Price is being paid by cancellation of indebtedness of the Company to such Purchaser) and (ii) each Purchaser, the Company, and each Key Holder agrees to be bound by the obligations set forth in this Agreement and to grant to the other parties hereto the rights set forth in this Agreement.

3. ENTIRE AGREEMENT. This Agreement (including the Exhibits and Schedules hereto) together with the Restated Charter constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

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EXHIBIT A
DEFINITIONS

1. OVERVIEW DEFINITIONS.

"**Agreement Date**" means _____.

"**Company**" means _____.

"**Governing Law**" means the laws of the state of _____.

"**Dispute Resolution Jurisdiction**" means the federal or state courts located in _____.

"**State of Incorporation**" means _____.

"**Stock Plan**" means _____.

2. BOARD COMPOSITION DEFINITIONS.

"**Common Board Member Count**" means _____.

"**Mutual Consent Board Member Count**" means _____.

"**Series Seed Board Member Count**" means _____.

"**Common Control Holders**" means the Key Holders *[who are then providing services to the company as employees] [optional provision in italics]*.

3. TERM SHEET DEFINITIONS.

"**Major Purchaser Dollar Threshold**" means $_____.

"**Purchase Price**" means $_____ per share (subject to any discounts applicable where all or a portion of such Purchase Price is being paid by cancellation of indebtedness of the Company to such Purchaser).

"**Total Series Seed Investment Amount**" means $_____.

"**Unallocated Post-Money Option Pool Percent**" means _____%.

"**Purchaser Counsel Reimbursement Amount**" means $_____.

4. RESULTING CAP TABLE DEFINITIONS.

"**Common Shares Issued and Outstanding Pre-Money**" means _____.

"**Total Post-Money Shares Reserved for Option Pool**" means _____.

"**Number of Issued And Outstanding Options**" means _____.

"**Unallocated Post-Money Option Pool Shares**" means _____.

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SCHEDULE 1

SCHEDULE OF PURCHASERS & KEY HOLDERS

PURCHASERS:

Name, Address and E-Mail of Purchaser	Series Seed Preferred Stock Shares Purchased	Indebtedness Cancellation	Cash Payment	Total Purchase Amount

KEY HOLDERS:

Name, Address and E-Mail of Key Holder	Shares of Common Stock Held

EXHIBIT B

AGREEMENT TERMS

1. PURCHASE AND SALE OF SERIES SEED PREFERRED STOCK.

1.1 Sale and Issuance of Series Seed Preferred Stock.

1.1.1 The Company shall adopt and file the Company's restated organizational documents, as applicable (e.g. certificate of incorporation), in substantially the form of Exhibit C attached to this Agreement (as the same may be amended, restated, supplemented or otherwise modified from time to time) (the "**Restated Charter**") with the Secretary of State of the State of Incorporation on or before the Initial Closing.

1.1.2 Subject to the terms and conditions of this Agreement, each investor listed as a "Purchaser" on Schedule 1 (each, a "**Purchaser**") shall purchase at the applicable Closing and the Company agrees to sell and issue to each Purchaser at such Closing that number of shares of Series Seed Preferred Stock of the Company ("**Series Seed Preferred Stock**") set forth opposite such Purchaser's name on Schedule 1, at a purchase price per share equal to the Purchase Price.

1.2 Closing; Delivery.

1.2.1 The initial purchase and sale of the shares of Series Seed Preferred Stock hereunder shall take place remotely via the exchange of documents and signatures on the Agreement Date or the subsequent date on which one or more Purchasers execute counterpart signature pages to this Agreement and deliver the Purchase Price to the Company (which date is referred to herein as the "**Initial Closing**").

1.2.2 At any time and from time to time during the ninety (90) day period immediately following the Initial Closing (the "**Additional Closing Period**"), the Company may, at one or more additional closings (each an "**Additional Closing**" and together with the Initial Closing, each, a "**Closing**"), without obtaining the signature, consent or permission of any of the Purchasers in the Initial Closing or any prior Additional Closing, offer and sell to other investors (the "**New Purchasers**"), at a per share purchase price equal to the Purchase Price, up to that number of shares of Series Seed Preferred Stock that is equal to that number of shares of Series Seed Preferred Stock equal to the quotient of (x) Total Series Seed Investment Amount divided by (y) the Purchase Price, rounded up to the next whole share (the "**Total Shares Authorized for Sale**") less the number of shares of Series Seed Preferred Stock actually issued and sold by the Company at the Initial Closing and any prior Additional Closings. New Purchasers may include persons or entities who are already Purchasers under this Agreement. The Company and each of the New Purchasers purchasing shares of Series Seed Preferred Stock at each Additional Closing will execute counterpart signature pages to this Agreement and each New Purchaser will, upon delivery by such New Purchaser and acceptance by the Company of such New Purchaser's signature page and delivery of the Purchase Price by such New Purchaser to the Company, become a party to, and bound by, this Agreement to the same extent as if such New Purchaser had been a Purchaser at the Initial Closing and each such New Purchaser shall be deemed to be a Purchaser for all purposes under this Agreement as of the date of the applicable Additional Closing.

1.2.3 Promptly following each Closing, if required by the Company's governing documents, the Company shall deliver to each Purchaser participating in such Closing a certificate representing the shares of Series Seed Preferred Stock being purchased by such Purchaser at such Closing against payment of the Purchase Price therefor by check payable to the Company, by wire

transfer to a bank account designated by the Company, by cancellation or conversion of indebtedness of the Company to Purchaser or by any combination of such methods.

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company hereby represents and warrants to each Purchaser that, except as set forth on the Disclosure Schedule attached as Exhibit D to this Agreement (the "**Disclosure Schedule**"), if any, which exceptions shall be deemed to be part of the representations and warranties made hereunder, the following representations are true and complete as of the date of the Agreement Date, except as otherwise indicated.

2.1 Organization, Good Standing, Corporate Power and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Incorporation and has all corporate power and corporate authority required (a) to carry on its business as presently conducted and as presently proposed to be conducted and (b) to execute, deliver and perform its obligations under this Agreement. The Company is duly qualified to transact business as a foreign corporation and is in good standing under the laws of each jurisdiction in which the failure to so qualify or be in good standing would have a material adverse effect on the business, assets (including intangible assets), liabilities, financial condition, property, or results of operations of the Company.

2.2 Capitalization.

2.2.1 The authorized capital of the Company consists, immediately prior to the Agreement Date (unless otherwise noted), of the following:

(a) The common stock of the Company (the "**Common Stock**"), of which that number of shares of Common Stock equal to (a) the Common Shares Issued and Outstanding Pre-Money are issued and outstanding as of immediately prior to the Agreement Date, (b) the number of shares of Common Stock which are issuable on conversion of shares of the Series Seed Preferred Stock have been reserved for issuance upon conversion of the Series Seed Preferred Stock and (c) the Total Post-Money Shares Reserved for Option Pool have been reserved for issuance pursuant to the Stock Plan, and of such Total Post-Money Shares Reserved for Option Pool, that number of shares of Common Stock equal to the Number of Issued And Outstanding Options are currently subject to outstanding options and that number of shares of Common Stock equal to the Unallocated Post-Money Option Pool Shares remain available for future issuance to officers, directors, employees and consultants pursuant to the Stock Plan. The ratio determined by dividing (x) the Unallocated Post-Money Option Pool Shares by (y) the Fully-Diluted Share Number (as defined below) is equal to the Unallocated Post-Money Option Pool Percent. All of the outstanding shares of Common Stock are duly authorized, validly issued, fully paid and nonassessable and were issued in material compliance with all applicable federal and state securities laws. The Stock Plan has been duly adopted by the Board of Directors of the Company (the "**Board**") and approved by the Company's stockholders. For purposes of this Agreement, the term "**Fully-Diluted Share Number**" shall mean that number of shares of the Company's capital stock equal to the sum of (i) all shares of the Company's capital stock (on an as-converted basis) issued and outstanding, assuming exercise or conversion of all options, warrants and other convertible securities and (ii) all shares of the Company's capital stock reserved and available for future grant under any equity incentive or similar plan.

(b) The shares of the preferred stock of the Company (the "**Preferred Stock**"), all of which is designated as Series Seed Preferred Stock, none of which is issued and outstanding immediately prior to the Agreement Date.

2.2.2 There are no outstanding preemptive rights, options, warrants, conversion privileges or rights (including but not limited to rights of first refusal or similar rights), orally

or in writing, to purchase or acquire any securities from the Company including, without limitation, any shares of Common Stock, or Preferred Stock, or any securities convertible into or exchangeable or exercisable for shares of Common Stock or Preferred Stock, except for (a) the conversion privileges of the Series Seed Preferred Stock pursuant to the terms of the Restated Charter and (b) the securities and rights described in this Agreement.

2.2.3 The Key Holders set forth in Schedule 1 (each a "**Key Holder**") hold that number of shares of Common Stock set forth opposite each such Key Holder's name in Section 2.2.3 of the Disclosure Schedule (such shares, the "**Key Holders' Shares**") and such Key Holders' Shares are subject to vesting and/or the Company's repurchase right on the terms specified in Section 2.2.3 of the Disclosure Schedule (the "**Key Holders' Vesting Schedules**"). Except as specified in Section 2.2.3 of the Disclosure Schedule, the Key Holders do not own or have any other rights to any other securities of the Company. The Key Holders' Vesting Schedules set forth in Section 2.2.3 of the Disclosure Schedule specify for each Key Holder (i) the vesting commencement date for each issuance of shares to or options held by such Key Holder, (ii) the number of shares or options held by such Key Holder that are currently vested, (iii) the number of shares or options held by such Key Holder that remain subject to vesting and/or the Company's repurchase right and (iv) the terms and conditions, if any, under which the Key Holders' Vesting Schedules would be accelerated. Other than the Key Holders' Shares, which vest pursuant to the applicable Key Holders' Vesting Schedules, (x) all options granted and Common Stock outstanding vest as follows: twenty-five percent (25%) of the shares vest one (1) year following the vesting commencement date, with the remaining seventy-five percent (75%) vesting in equal installments over the next three (3) years and (y) no stock plan, stock purchase, stock option or other agreement or understanding between the Company and any holder of any equity securities or rights to purchase equity securities provides for acceleration or other changes in the vesting provisions or other terms of such agreement or understanding as the result of (i) termination of employment (whether actual or constructive), (ii) any merger, consolidated sale of stock or assets, change in control or any other transaction(s) by the Company, or (iii) the occurrence of any other event or combination of events.

2.3 Subsidiaries. The Company does not currently own or control, directly or indirectly, any interest in any other corporation, partnership, trust, joint venture, limited liability company, association, or other business entity. The Company is not a participant in any joint venture, partnership or similar arrangement.

2.4 Authorization. All corporate action has been taken, or will be taken prior to the applicable Closing, on the part of the Board and stockholders that is necessary for the authorization, execution and delivery of this Agreement by the Company and the performance by the Company of the obligations to be performed by the Company as of the date hereof under this Agreement. This Agreement, when executed and delivered by the Company, shall constitute the valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, or (b) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

2.5 Valid Issuance of Shares. The shares of Series Seed Preferred Stock, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, will be duly authorized, validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under this Agreement, applicable state and federal securities laws and liens or encumbrances created by or imposed by a Purchaser. Based in part on the accuracy of the representations of the Purchasers in Section 3 of this Agreement and subject to filings pursuant to Regulation D of the Securities Act of 1933, as amended (the "**Securities Act**"), and applicable state

securities laws, the offer, sale and issuance of the shares of Series Seed Preferred Stock to be issued pursuant to and in conformity with the terms of this Agreement and the issuance of the Common Stock, if any, to be issued upon conversion thereof for no additional consideration and pursuant to the Restated Charter, will be issued in compliance with all applicable federal and state securities laws. The Common Stock issuable upon conversion of the shares of Series Seed Preferred Stock has been duly reserved for issuance, and upon issuance in accordance with the terms of the Restated Charter, will be duly authorized, validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under this Agreement, applicable federal and state securities laws and liens or encumbrances created by or imposed by a Purchaser. Based in part upon the representations of the Purchasers in Section 3 of this Agreement, and subject to filings pursuant to Regulation D of the Securities Act and applicable state securities laws, the Common Stock issuable upon conversion of the shares of Series Seed Preferred Stock will be issued in compliance with all applicable federal and state securities laws.

2.6 Litigation. There is no pending action, suit, proceeding, arbitration, mediation, complaint, claim, charge or investigation before any court, arbitrator, mediator or governmental body or, to the Company's knowledge, currently threatened in writing (a) against the Company or (b) against any consultant, officer, director or key employee of the Company arising out of his or her consulting, employment or board relationship with the Company or that could otherwise materially impact the Company.

2.7 Intellectual Property. The Company owns or possesses sufficient legal rights to all Intellectual Property (as defined below) that is necessary to the conduct of the Company's business as now conducted and as presently proposed to be conducted (the "**Company Intellectual Property**") without any violation or infringement (or in the case of third-party patents, patent applications, trademarks, trademark applications, service marks, or service mark applications, without any violation or infringement known to the Company) of the rights of others. No product or service marketed or sold (or proposed to be marketed or sold) by the Company violates or will violate any license or infringes or will infringe any rights to any patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, trade secrets, licenses, domain names, mask works, information and proprietary rights and processes (collectively, "**Intellectual Property**") of any other party, except that with respect to third-party patents, patent applications, trademarks, trademark applications, service marks, or service mark applications the foregoing representation is made to the Company's knowledge only. Other than with respect to commercially available software products under standard end-user object code license agreements, there is no outstanding option, license, agreement, claim, encumbrance or shared ownership interest of any kind relating to the Company Intellectual Property, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the Intellectual Property of any other person. The Company has not received any written communications alleging that the Company has violated or, by conducting its business, would violate any of the Intellectual Property of any other person.

2.8 Employee and Consultant Matters. Each current and former employee, consultant and officer of the Company has executed an agreement with the Company regarding confidentiality and proprietary information substantially in the form or forms made available to the Purchasers or delivered to the counsel for the Purchasers. No current or former employee or consultant has excluded any work or invention from his or her assignment of inventions. To the Company's knowledge, no such employees or consultants is in violation thereof. To the Company's knowledge, none of its employees is obligated under any judgment, decree, contract, covenant or agreement that would materially interfere with such employee's ability to promote the interest of the Company or that would interfere with such employee's ability to promote the interests of the Company or that would conflict with the Company's business. To the Company's knowledge, all individuals who have purchased unvested shares of the Company's Common Stock have timely filed elections under Section 83(b) of the Internal Revenue Code of 1986, as amended.

2.9 Compliance with Other Instruments. The Company is not in violation or default (a) of any provisions of the Restated Charter or the Company's bylaws, (b) of any judgment, order, writ or decree of any court or governmental entity, (c) under any agreement, instrument, contract, lease, note, indenture, mortgage or purchase order to which it is a party that is required to be listed on the Disclosure Schedule, or, (d) to its knowledge, of any provision of federal or state statute, rule or regulation materially applicable to the Company. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any such violation or default, or constitute, with or without the passage of time and giving of notice, either (i) a default under any such judgment, order, writ, decree, agreement, instrument, contract, lease, note, indenture, mortgage or purchase order or (ii) an event which results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, forfeiture, or nonrenewal of any material permit or license applicable to the Company.

2.10 Title to Property and Assets. The Company owns its properties and assets free and clear of all mortgages, deeds of trust, liens, encumbrances and security interests except for statutory liens for the payment of current taxes that are not yet delinquent and liens, encumbrances and security interests which arise in the ordinary course of business and which do not affect material properties and assets of the Company. With respect to the property and assets it leases, the Company is in material compliance with each such lease.

2.11 Agreements. Except for this Agreement, there are no agreements, understandings, instruments, contracts or proposed transactions to which the Company is a party that involve (a) obligations (contingent or otherwise) of, or payments to, the Company in excess of $50,000, (b) the license of any Intellectual Property to or from the Company other than licenses with respect to commercially available software products under standard end-user object code license agreements or standard customer terms of service and privacy policies for Internet sites, (c) the grant of rights to manufacture, produce, assemble, license, market, or sell its products to any other person, or that limit the Company's exclusive right to develop, manufacture, assemble, distribute, market or sell its products, or (d) indemnification by the Company with respect to infringements of proprietary rights other than standard customer or channel agreements (each, a "**Material Agreement**"). The Company is not in material breach of any Material Agreement. Each Material Agreement is in full force and effect and is enforceable by the Company in accordance with its respective terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or others laws of general application relating to or affecting the enforcement of creditors' rights generally, or (ii) the effect of rules of law governing the availability of equitable remedies.

2.12 Liabilities. The Company has no liabilities or obligations, contingent or otherwise, in excess of $25,000 individually or $100,000 in the aggregate.

3. REPRESENTATIONS AND WARRANTIES AND COVENANTS OF THE PURCHASERS. Each Purchaser hereby represents and warrants to the Company, severally and not jointly, as follows.

3.1 Authorization. The Purchaser has full power and authority to enter into this Agreement. This Agreement, when executed and delivered by the Purchaser, will constitute a valid and legally binding obligation of the Purchaser, enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application relating to or affecting the enforcement of creditors' rights generally, or (b) the effect of rules of law governing the availability of equitable remedies.

3.2 Purchase Entirely for Own Account. This Agreement is made with the Purchaser in reliance upon the Purchaser's representation to the Company, which by the Purchaser's execution of this Agreement, the Purchaser hereby confirms, that the shares of Series Seed Preferred Stock to be acquired by the Purchaser will be acquired for investment for the Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, the Purchaser further represents that the Purchaser does not presently have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the shares of Series Seed Preferred Stock. The Purchaser has not been formed for the specific purpose of acquiring the shares of Series Seed Preferred Stock.

3.3 Disclosure of Information. The Purchaser has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the offering of the shares of Series Seed Preferred Stock with the Company's management. Nothing in this Section 3, including the foregoing sentence, limits or modifies the representations and warranties of the Company in Section 2 of this Agreement or the right of the Purchasers to rely thereon.

3.4 Restricted Securities. The Purchaser understands that the shares of Series Seed Preferred Stock 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, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations as expressed herein. The Purchaser understands that the shares of Series Seed Preferred Stock are "restricted securities" under applicable United States federal and state securities laws and that, pursuant to these laws, the Purchaser must hold the shares of Series Seed Preferred Stock 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 Purchaser acknowledges that the Company has no obligation to register or qualify the shares of Series Seed Preferred Stock, or the Common Stock into which it may be converted, for resale. The Purchaser 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 shares of Series Seed Preferred Stock, and on requirements relating to the Company which are outside of the Purchaser's control, and which the Company is under no obligation and may not be able to satisfy.

3.5 No Public Market. The Purchaser understands that no public market now exists for the shares of Series Seed Preferred Stock, and that the Company has made no assurances that a public market will ever exist for the shares of Series Seed Preferred Stock.

3.6 Legends. The Purchaser understands that the shares of Series Seed Preferred Stock and any securities issued in respect of or exchange for the shares of Series Seed Preferred Stock, may bear any one or more of the following legends: (a) any legend set forth in, or required by, this Agreement; (b) any legend required by the securities laws of any state to the extent such laws are applicable to the shares of Series Seed Preferred Stock represented by the certificate so legended; and (c) the following legend:

> "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM

REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED."

3.7 Accredited and Sophisticated Purchaser. The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act. The Purchaser is an investor in securities of companies in the development stage and acknowledges that Purchaser is able to fend for itself, can bear the economic risk of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the shares of Series Seed Preferred Stock. If other than an individual, Purchaser also represents it has not been organized for the purpose of acquiring the shares of Series Seed Preferred Stock.

3.8 No General Solicitation. Neither the Purchaser nor any of its officers, directors, employees, agents, stockholders or partners has either directly or indirectly, including through a broker or finder (a) engaged in any general solicitation with respect to the offer and sale of the shares of Series Seed Preferred Stock, or (b) published any advertisement in connection with the offer and sale of the shares of Series Seed Preferred Stock.

3.9 Exculpation Among Purchasers. The Purchaser acknowledges that it is not relying upon any person, other than the Company and its officers and directors, in making its investment or decision to invest in the Company. The Purchaser agrees that neither any Purchaser nor the respective controlling persons, officers, directors, partners, agents, or employees of any Purchaser shall be liable to any other Purchaser for any action heretofore taken or omitted to be taken by any of them in connection with the purchase of the shares of Series Seed Preferred Stock.

3.10 Residence. If the Purchaser is an individual, then the Purchaser resides in the state identified in the address of the Purchaser set forth on the signature page hereto and/or on Schedule 1; if the Purchaser is a partnership, corporation, limited liability company or other entity, then the office or offices of the Purchaser in which its principal place of business is identified in the address or addresses of the Purchaser set forth on the signature page hereto and/or on Schedule 1. In the event that the Purchaser is not a resident of the United States, such Purchaser hereby agrees to make such additional representations and warranties relating to such Purchaser's status as a non-United States resident as reasonably may be requested by the Company and to execute and deliver such documents or agreements as reasonably may be requested by the Company relating thereto as a condition to the purchase and sale of any shares of Series Seed Preferred Stock by such Purchaser.

4. COVENANTS OF THE COMPANY.

4.1 Information Rights.

4.1.1 Basic Financial Information. The Company shall furnish to each Purchaser holding that number of shares equal to or in excess of the quotient determined by dividing (x) the Major Purchaser Dollar Threshold by (y) the Purchase Price, rounded up to the next whole share (a "**Major Purchaser**") and any entity that requires such information pursuant to its organizational documents when available (1) annual unaudited financial statements for each fiscal year of the Company, including an unaudited balance sheet as of the end of such fiscal year, an unaudited income statement, and an unaudited statement of cash flows, all prepared in accordance with generally accepted accounting principles and practices; and (2) quarterly unaudited financial statements for each fiscal quarter of the Company (except the last quarter of the Company's fiscal year), including an unaudited balance sheet as of the end of such fiscal quarter, an unaudited income statement, and an unaudited statement of cash

flows, all prepared in accordance with generally accepted accounting principles and practices, subject to changes resulting from normal year-end audit adjustments. If the Company has audited records of any of the foregoing, it shall provide those in lieu of the unaudited versions.

4.1.2 Confidentiality. Anything in this Agreement to the contrary notwithstanding, no Purchaser by reason of this Agreement shall have access to any trade secrets or confidential information of the Company. The Company shall not be required to comply with any information rights of any Purchaser whom the Company reasonably determines to be a competitor or an officer, employee, director, or holder of ten percent (10%) or more of a competitor. Each Purchaser shall keep confidential and shall not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement other than to any of the Purchaser's attorneys, accountants, consultants, and other professionals, to the extent necessary to obtain their services in connection with monitoring the Purchaser's investment in the Company.

4.1.3 Inspection Rights. The Company shall permit each Major Purchaser to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by such Major Purchaser.

4.2 Additional Rights and Obligations. If the Company issues securities in its next equity financing after the date hereof (the "**Next Financing**") that (a) have rights, preferences or privileges that are more favorable than the terms of the shares of Series Seed Preferred Stock, such as price-based anti-dilution protection, or (b) provide all such future investors other contractual terms such as registration rights, the Company shall provide substantially equivalent rights to the Purchasers with respect to the shares of Series Seed Preferred Stock (with appropriate adjustment for economic terms or other contractual rights), subject to such Purchaser's execution of any documents, including, if applicable, investor rights, co-sale, voting, and other agreements, executed by the investors purchasing securities in the Next Financing (such documents, the "**Next Financing Documents**"). Any Major Purchaser will remain a Major Purchaser for all purposes in the Next Financing Documents to the extent such concept exists. The Company shall pay the reasonable fees and expenses, not to exceed $5,000 in the aggregate, of one counsel for the Purchasers in connection with the Purchasers' review, execution, and delivery of the Next Financing Documents. Notwithstanding anything herein to the contrary, subject to the provisions of Section 8.11, upon the execution and delivery of the Next Financing Documents by Purchasers holding a majority of the then-outstanding shares of Series Seed Preferred Stock held by all Purchasers, this Agreement (excluding any then-existing and outstanding obligations) shall be amended and restated by and into such Next Financing Documents and shall be terminated and of no further force or effect.

4.3 Assignment of Company's Preemptive Rights. The Company shall obtain at or prior to the Initial Closing, and shall maintain, a right of first refusal with respect to transfers of shares of Common Stock by each holder thereof, subject to certain standard exceptions. If the Company elects not to exercise its right of first refusal with respect to a proposed transfer of the Company's outstanding securities by any Key Holder, the Company shall assign such right of first refusal to the Major Purchasers. In the event of such assignment, each Major Purchaser shall have a right to purchase that portion of the securities proposed to be transferred by such Key Holder equal to the ratio of (a) the number of shares of the Company's Common Stock issued or issuable upon conversion of the shares of Series Seed Preferred Stock owned by such Major Purchaser, to (b) the number of shares of the Company's Common Stock issued or issuable upon conversion of the shares of Series Seed Preferred Stock owned by all Major Purchasers.

4.4 Reservation of Common Stock. The Company shall at all times reserve and keep available, solely for issuance and delivery upon the conversion of the Series Seed Preferred Stock, all Common Stock issuable from time to time upon conversion of that number of shares of Series Seed Preferred Stock equal to the Total Shares Authorized for Sale, regardless of whether or not all such shares have been issued at such time.

5. RESTRICTIONS ON TRANSFER; DRAG ALONG.

5.1 Limitations on Disposition. Each person owning of record shares of Common Stock of the Company issued or issuable pursuant to the conversion of the shares of Series Seed Preferred Stock and any shares of Common Stock of the Company issued as a dividend or other distribution with respect thereto or in exchange therefor or in replacement thereof (collectively, the "**Securities**") or any assignee of record of Securities (each such person, a "**Holder**") shall not make any disposition of all or any portion of any Securities unless:

(a) there is then in effect a registration statement under the Securities Act, covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(b) such Holder has notified the Company of the proposed disposition and has furnished the Company with a statement of the circumstances surrounding the proposed disposition, and, at the expense of such Holder or its transferee, with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such securities under the Securities Act.

Notwithstanding the provisions of Sections 5.1(a) and (b), no such registration statement or opinion of counsel will be required: (i) for any transfer of any Securities in compliance with the Securities and Exchange Commission's Rule 144 or Rule 144A, or (ii) for any transfer of any Securities by a Holder that is a partnership, limited liability company, a corporation, or a venture capital fund to (A) a partner of such partnership, a member of such limited liability company, or stockholder of such corporation, (B) an affiliate of such partnership, limited liability company or corporation (including, any affiliated investment fund of such Holder), (C) a retired partner of such partnership or a retired member of such limited liability company, (D) the estate of any such partner, member, or stockholder, or (iii) for the transfer without additional consideration or at no greater than cost by gift, will, or intestate succession by any Holder to the Holder's spouse or lineal descendants or ancestors or any trust for any of the foregoing; provided that, in the case of clauses (ii) and (iii), the transferee agrees in writing to be subject to the terms of this Agreement to the same extent as if the transferee were an original Purchaser under this Agreement.

5.2 "Market Stand-Off" Agreement. To the extent requested by the Company or an underwriter of securities of the Company, each Holder shall not sell or otherwise transfer or dispose of any Securities or other shares of stock of the Company then owned by such Holder (other than to donees or partners of the Holder who agree to be similarly bound) for up to 180 days following the effective date of any registration statement of the Company filed under the Securities Act; provided however that, if during the last 17 days of the restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs, or before the expiration of the restricted period the Company announces that it will release earnings results during the 16-day period beginning on the last day of the restricted period, and if the Company's securities are listed on the Nasdaq Stock Market and Rule 2711 thereof applies, then the restrictions imposed by this Section 5.2 will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event; provided, further, that such automatic extension will not apply to the

extent that the Financial Industry Regulatory Authority has amended or repealed NASD Rule 2711(f)(4), or has otherwise provided written interpretive guidance regarding such rule, in each case, so as to eliminate the prohibition of any broker, dealer, or member of a national securities association from publishing or distributing any research report, with respect to the securities of an "emerging growth company" (as defined in the Jumpstart Our Business Startups Act of 2012) before or after the expiration of any agreement between the broker, dealer, or member of a national securities association and the emerging growth company or its stockholders that restricts or prohibits the sale of securities held by the emerging growth company or its stockholders after the initial public offering date. In no event will the restricted period extend beyond 215 days after the effective date of the registration statement. For purposes of this Section 5.2, "Company" includes any wholly-owned subsidiary of the Company into which the Company merges or consolidates. The Company may place restrictive legends on the certificates representing the shares subject to this Section 5.2 and may impose stop transfer instructions with respect to the Securities and such other shares of stock of each Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period. Each Holder shall enter into any agreement reasonably required by the underwriters to implement the foregoing within any reasonable timeframe so requested.

5.3 Drag Along Right. If a Deemed Liquidation Event (as defined in the Restated Charter) is approved by each of (i) the holders of a majority of the shares of Common Stock then-outstanding (other than those issued or issuable upon conversion of the shares of Series Seed Preferred Stock), (ii) the holders of a majority of the shares of Common Stock then issued or issuable upon conversion of the shares of Series Seed Preferred Stock then-outstanding and (iii) the Board, then each Stockholder shall vote (in person, by proxy or by action by written consent, as applicable) all shares of capital stock of the Company now or hereafter directly or indirectly owned of record or beneficially by such Stockholder (collectively, the "**Shares**") in favor of, and adopt, such Deemed Liquidation Event and to execute and deliver all related documentation and take such other action in support of the Deemed Liquidation Event as may reasonably be requested by the Company to carry out the terms and provision of this Section 5.3, including executing and delivering instruments of conveyance and transfer, and any purchase agreement, merger agreement, indemnity agreement, escrow agreement, consent, waiver, governmental filing, share certificates duly endorsed for transfer (free and clear of impermissible liens, claims and encumbrances) and any similar or related documents. The obligation of any party to take the actions required by this Section 5.3 will not apply to a Deemed Liquidation Event if the other party involved in such Deemed Liquidation Event is an affiliate or stockholder of the Company holding more than 10% of the voting power of the Company. "**Stockholder**" means each Holder and Key Holder, and any transferee thereof.

5.4 Exceptions to Drag Along Right. Notwithstanding the foregoing, a Stockholder need not comply with Section 5.3 above in connection with any proposed Sale of the Company (the "**Proposed Sale**") unless:

(a) any representations and warranties to be made by the Stockholder in connection with the Proposed Sale are limited to representations and warranties related to authority, ownership and the ability to convey title to such Shares, including representations and warranties that (i) the Stockholder holds all right, title and interest in and to the Shares the Stockholder purports to hold, free and clear of all liens and encumbrances, (ii) the obligations of the Stockholder in connection with the transaction have been duly authorized, if applicable, (iii) the documents to be entered into by the Stockholder have been duly executed by the Stockholder and delivered to the acquirer and are enforceable against the Stockholder in accordance with their respective terms and, (iv) neither the execution and delivery of documents to be entered into in connection with the transaction, nor the performance of the Stockholder's obligations thereunder, will cause a

breach or violation of the terms of any agreement, law, or judgment, order, or decree of any court or governmental agency;

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

(c) the liability for indemnification, if any, of the Stockholder in the Proposed Sale and for the inaccuracy of any representations and warranties made by the Company or its Stockholders in connection with such Proposed Sale, is several and not joint with any other Person (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any stockholder of any identical representations, warranties, and covenants provided by all stockholders), and except as required to satisfy the liquidation preference of the Series Seed Preferred Stock, if any, is pro rata in proportion to, and does not exceed, the amount of consideration paid to such Stockholder in connection with such Proposed Sale;

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

(e) upon the consummation of the Proposed Sale, (i) each holder of each class or series of the Company's stock will receive the same form of consideration for their shares of such class or series as is received by other holders in respect of their shares of such same class or series of stock unless the holders of at least a majority of Series Seed Preferred Stock elect otherwise, (ii) each holder of a series of Series Seed Preferred Stock will receive the same amount of consideration per share of such series of Series Seed Preferred Stock as is received by other holders in respect of their shares of such same series, (iii) each holder of Common Stock will receive the same amount of consideration per share of Common Stock as is received by other holders in respect of their shares of Common Stock, and (iv) unless the holders of at least a majority of the Series Seed Preferred Stock elect to receive a lesser amount, the aggregate consideration receivable by all holders of the Preferred Stock and Common Stock shall be allocated among the holders of Preferred Stock and Common Stock on the basis of the relative liquidation preferences to which the holders of each respective series of Preferred Stock and the holders of Common Stock are entitled in a Deemed Liquidation Event (assuming for this purpose that the Proposed Sale is a Deemed Liquidation Event) in accordance with the Company's Restated Charter in effect immediately prior to the Proposed Sale.

6. PARTICIPATION RIGHT.

6.1 General. Each Major Purchaser has the right of first refusal to purchase the Major Purchaser's Pro Rata Share of any New Securities (as defined below) that the Company may from

time to time issue after the date of this Agreement, provided, however, the Major Purchaser will have no right to purchase any such New Securities if the Major Purchaser cannot demonstrate to the Company's reasonable satisfaction that such Major Purchaser is at the time of the proposed issuance of such New Securities an "accredited investor" as such term is defined in Regulation D under the Securities Act. A Major Purchaser's "**Pro Rata Share**" for means the ratio of (a) the number of shares of the Company's Common Stock issued or issuable upon conversion of the shares of Series Seed Preferred Stock owned by such Major Purchaser, to (b) the Fully-Diluted Share Number.

6.2 New Securities. "**New Securities**" means any Common Stock or Preferred Stock, whether now authorized or not, and rights, options or warrants to purchase Common Stock or Preferred Stock, and securities of any type whatsoever that are, or may become, convertible or exchangeable into Common Stock or Preferred Stock; provided, however, that "New Securities" does not include: (a) shares of Common Stock issued or issuable upon conversion of any outstanding shares of Preferred Stock; (b) shares of Common Stock or Preferred Stock issuable upon exercise of any options, warrants, or rights to purchase any securities of the Company outstanding as of the Agreement Date and any securities issuable upon the conversion thereof; (c) shares of Common Stock or Preferred Stock issued in connection with any stock split or stock dividend or recapitalization; (d) shares of Common Stock (or options, warrants or rights therefor) granted or issued after the Agreement Date to employees, officers, directors, contractors, consultants or advisers to, the Company or any subsidiary of the Company pursuant to incentive agreements, stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other arrangements that are approved by the Board; (e) shares of the Company's Series Seed Preferred Stock issued pursuant to this Agreement; (f) any other shares of Common Stock or Preferred Stock (and/or options or warrants therefor) issued or issuable primarily for other than equity financing purposes and approved by the Board; and (g) shares of Common Stock issued or issuable by the Company to the public pursuant to a registration statement filed under the Securities Act.

6.3 Procedures. If the Company proposes to undertake an issuance of New Securities, it shall give notice to each Major Purchaser of its intention to issue New Securities (the "**Notice**"), describing the type of New Securities and the price and the general terms upon which the Company proposes to issue the New Securities. Each Major Purchaser will have (10) days from the date of notice, to agree in writing to purchase such Major Purchaser's Pro Rata Share of such New Securities for the price and upon the general terms specified in the Notice by giving written notice to the Company and stating therein the quantity of New Securities to be purchased (not to exceed such Major Purchaser's Pro Rata Share).

6.4 Failure to Exercise. If the Major Purchasers fail to exercise in full the right of first refusal within the 10-day period, then the Company will have one hundred twenty (120) days thereafter to sell the New Securities with respect to which the Major Purchasers' rights of first refusal hereunder were not exercised, at a price and upon general terms not materially more favorable to the purchasers thereof than specified in the Company's Notice to the Major Purchasers. If the Company has not issued and sold the New Securities within the 120-day period, then the Company shall not thereafter issue or sell any New Securities without again first offering those New Securities to the Major Purchasers pursuant to this Section 6.

7. ELECTION OF BOARD OF DIRECTORS.

7.1 Voting; Board Composition. Subject to the rights of the stockholders to remove a director for cause in accordance with applicable law, during the term of this Agreement, each Stockholder shall vote (or consent pursuant to an action by written consent of the stockholders) all shares of capital stock of the Company now or hereafter directly or indirectly owned of record or beneficially by

the Stockholder (the "**Voting Shares**"), or to cause the Voting Shares to be voted, in such manner as may be necessary to elect (and maintain in office) as the members of the Board:

(a) that number of individuals, if any, equal to the Common Board Member Count (collectively, the "**Common Board Designees**") designated from time to time in a writing delivered to the Company and signed by Common Control Holders who then hold shares of issued and outstanding Common Stock of the Company representing a majority of the voting power of all issued and outstanding shares of Common Stock then held by all Common Control Holders;

(b) that number of individuals, if any, equal to the Series Seed Board Member Count (collectively, the "**Series Seed Board Designees**") designated from time to time in a writing delivered to the Company and signed by Purchasers who then hold a majority of the then-outstanding shares of Series Seed Preferred Stock issued pursuant to this Agreement;

(c) that number of individuals, if any, equal to the Mutual Consent Board Member Count (collectively, the "**Mutual Consent Board Designees**" and, together with any Common Board Designee and any Seed Board Designee, each a "**Board Designee**") designated from time to time in a writing delivered to the Company and signed by (a) Purchasers who then hold a majority of the then-outstanding shares of Series Seed Preferred Stock issued pursuant to this Agreement and (b) Common Control Holders who then hold shares of issued and outstanding Common Stock of the Company representing a majority of the voting power of all issued and outstanding shares of Common Stock of the Company then held by all Common Control Holders.

Subject to the rights of the stockholders of the Company to remove a director for cause in accordance with applicable law, during the term of this Agreement, a Stockholder shall not take any action to remove an incumbent Board Designee or to designate a new Board Designee unless such removal or designation of a Board Designee is approved in a writing signed by the parties entitled to designate the Board Designee. Each Stockholder hereby appoints, and shall appoint, the then-current Chief Executive Officer of the Company, as the Stockholder's true and lawful proxy and attorney, with the power to act alone and with full power of substitution, to vote all shares of the Company's capital stock held by the Stockholder as set forth in this Agreement and to execute all appropriate instruments consistent with this Agreement on behalf of the Stockholder if, and only if, the Stockholder (a) fails to vote or (b) attempts to vote (whether by proxy, in person or by written consent), in a manner which is inconsistent with the terms of this Agreement, all of the Stockholder's Voting Shares or execute such other instruments in accordance with the provisions of this Agreement within five days of the Company's or any other party's written request for the Stockholder's written consent or signature. The proxy and power granted by each Stockholder pursuant to this Section are coupled with an interest and are given to secure the performance of the Stockholder's duties under this Agreement. Each such proxy and power will be irrevocable for the term of this Agreement. The proxy and power, so long as any Stockholder is an individual, will survive the death, incompetency and disability of such Stockholder and, so long as any Stockholder is an entity, will survive the merger or reorganization of the Stockholder or any other entity holding Voting Shares.

8. GENERAL PROVISIONS.

8.1 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties to this Agreement or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. No Stockholder may transfer Shares unless each transferee agrees to be bound by the terms of this Agreement.

8.2 Governing Law. This Agreement is governed by the Governing Law, regardless of the laws that might otherwise govern under applicable principles of choice of law.

8.3 Counterparts; Facsimile or Electronic Signature. This Agreement may be executed and delivered by facsimile or electronic signature and in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

8.4 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. References to sections or subsections within this set of Agreement Terms shall be deemed to be references to the sections of this set of Agreement Terms contained in Exhibit B to the Agreement, unless otherwise specifically stated herein.

8.5 Notices. All notices and other communications given or made pursuant to this Agreement must be in writing and will be deemed to have been given upon the earlier of actual receipt or: (a) personal delivery to the party to be notified, (b) when sent, if sent by facsimile or electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications must be sent to the respective parties at their address as set forth on the signature page or Schedule 1, or to such address, facsimile number or electronic mail address as subsequently modified by written notice given in accordance with this Section 8.5.

8.6 No Finder's Fees. Each party severally represents to the other parties that it neither is nor will be obligated for any finder's fee or commission in connection with this transaction. Each Purchaser shall indemnify, defend, and hold harmless the Company from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of this transaction (and the costs and expenses of defending against such liability or asserted liability) for which the Purchaser or any of its officers, employees, or representatives is responsible. The Company shall indemnify, defend, and hold harmless each Purchaser from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of this transaction (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.

8.7 Attorneys' Fees. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which the party may be entitled. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery, and performance of the Agreement; provided, however, that the Company shall, at the Closing, reimburse the fees and expenses of one counsel for Purchasers, for a flat fee equal to the Purchaser Counsel Reimbursement Amount.

8.8 Amendments and Waivers. Except as specified in Section 1.2.2, any term of this Agreement may be amended, terminated or waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the Purchasers holding a majority of the then-outstanding shares of Series Seed Preferred Stock (or Common Stock issued on conversion thereof); provided, however, that any amendment to Section 7.1(a) or Section 7.1(c) will also require the additional written consent of the holders of a majority of the outstanding shares of the Company's Common Stock then held by all of the Common Control Holders. Notwithstanding the foregoing, the addition of a party to this Agreement pursuant to a transfer of Shares in accordance with

Section 8.1 will not require any further consent. Any amendment or waiver effected in accordance with this Section 8.8 will be binding upon the Purchasers, the Key Holders, each transferee of the shares of Series Seed Preferred Stock (or the Common Stock issuable upon conversion thereof) or Common Stock from a Purchaser or Key Holders, as applicable, and each future holder of all such securities, and the Company. It is specifically intended that entering into the Next Financing Agreements in a form substantially similar to the form agreements set as forth as Model Legal Documents on http://www.nvca.org shall be considered an amendment to this Agreement provided that it is done in accordance with this Section 8.8.

8.9 Severability. The invalidity or unenforceability of any provision of this Agreement will in no way affect the validity or enforceability of any other provision.

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

8.11 Termination. Unless terminated earlier pursuant to the terms of this Agreement, (x) the rights, duties and obligations under Sections 4, 6 and 7 will terminate immediately prior to the closing of the Company's initial public offering of Common Stock pursuant to an effective registration statement filed under the Securities Act, (y) notwithstanding anything to the contrary herein, this Agreement (excluding any then-existing obligations) will terminate upon the closing of a Deemed Liquidation Event as defined in the Company's Restated Charter, as amended from time to time and (z) notwithstanding anything to the contrary herein, Section 1, Section 2, Section 3, Section 4.1.2 and this Section 8 will survive any termination of this Agreement.

8.12 Dispute Resolution. Each party (a) hereby irrevocably and unconditionally submits to the personal jurisdiction of the Dispute Resolution Jurisdiction for the purpose of any suit, action, or other proceeding arising out of or based upon this Agreement; (b) shall not commence any suit, action or other proceeding arising out of or based upon this Agreement except in the Dispute Resolution Jurisdiction; and (c) hereby waives, and shall not assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject to the personal jurisdiction of the Dispute Resolution Jurisdiction, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement, or the subject matter hereof and thereof may not be enforced in or by the Dispute Resolution Jurisdiction.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

THE COMPANY:

Name: _____

By: _____

Title: _____

[SIGNATURE PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

KEY HOLDERS:

Name:	_____	Name:	_____
By:	_____	By:	_____

[SIGNATURE PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

PURCHASERS:

[FOR ENTITY INVESTOR USE FOLLOWING SIGNATURE BLOCK:]

Name: _____

By: _____

Title: _____

[FOR INDIVIDUAL INVESTOR USE FOLLOWING SIGNATURE BLOCK:]

Name: _____

[TYPE NAME ON LINE]

By: _____

[SIGN HERE]

[SIGNATURE PAGES]

EXHIBIT C

FORM OF RESTATED CHARTER

EXHIBIT D

DISCLOSURE SCHEDULE

See next page – if no next page, then there are no disclosures.

This Disclosure Schedule (this "**Disclosure Schedule**") is delivered by the Company in connection with the sale of shares of the Company's Series Seed Preferred Stock on or about the Agreement Date by the Company. This Disclosure Schedule is arranged in sections corresponding to the numbered and lettered sections contained in Exhibit B of the Agreement, and the disclosures in any section of this Disclosure Schedule qualify other sections in Exhibit B of the Agreement to the extent it is reasonably apparent from a reading of the disclosure that such disclosure is applicable to such other sections. Where any representation or warranty is limited or qualified by the materiality of the matters to which the representation or warranty are given, the inclusion of any matter in this Disclosure Schedule does not constitute an admission by the Company that such matter is material. Unless otherwise defined herein, any capitalized terms in this Disclosure Schedule have the same meanings assigned to those terms in the Agreement. Nothing in this Disclosure Schedule constitutes an admission of any liability or obligation of the Company to any third party, or an admission against the Company's interests.

§9 Series Seed certificate of incorporation[1]

[Corporation Name in All Caps]

RESTATED CERTIFICATE OF INCORPORATION[2]

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

[Corporation Name], a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "***General Corporation Law***"), does hereby certify as follows.

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[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] This document is a template for the restated certificate of incorporation associated with the well-known "Series Seed Preferred Stock" financing alternative for startups. Highlighted items should be completed as required under the specific conditions under which the document is being used. This template assumes that the issuer has been incorporated under the laws of the State of Delaware and is operating in California and thus subject to various provisions of the California corporations laws. If the issuer is incorporated in a state other than the State of Delaware, advice from local counsel should be obtained on the form and content of the amendment to the issuer's articles or certificate of incorporation; however, generally most of the provisions included in this template can be readily adopted to another jurisdiction. Highlighted items need to be completed for each situation and highlights have also been included for provisions that must be changed if the issuer is not incorporated in Delaware. Other highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes. The Series Seed documents are based upon the model documents for venture capital financings developed by the National Venture Capital Association ("NVCA") and are intended for angel financing in the range of $500,000 to $1.5 million. Since they are a short-form version of the NVCA documents, proponents argue that they will already be familiar to experienced investors and that this will allow the contract phase to move quickly. A short time to close is also facilitated by the principle that the documents are suitable for use "as is", without further negotiations, and that the parties simply have to fill in a few key blanks in order to close. Investors are issued shares of "Series Seed Preferred Stock" with the following notable rights, preferences and privileges: dividends pro rata with common shares; 1x non-participating liquidation preference (i.e., investors get their money back first and any remaining amount goes solely to common shareholders); no anti-dilution protection; three person board (two common and one preferred). This form should be used in conjunction with the Series Seed Preferred Investment Agreement included at § 1:36.

1. The name of this corporation is [Corporation Name] and that this corporation was originally incorporated pursuant to the General Corporation Law on [Date] under the name [Corporation Name].

2. The Board of Directors of this corporation duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows.

> RESOLVED, that the Certificate of Incorporation of this corporation be amended and restated in its entirety to read as set forth on Exhibit A attached hereto and incorporated herein by this reference.

3. Exhibit A referred to above is attached hereto as Exhibit A and is hereby incorporated herein by this reference. This Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the General Corporation Law.

4. This Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this [DAY day of MONTH, YEAR].

By:_____

[Officer Name], [Officer Title]

Exhibit A

[Corporation Name in All Caps]

RESTATED CERTIFICATE OF INCORPORATION

ARTICLE I: NAME.

The name of this corporation is [Corporation Name] (the **"*Corporation*"**).

ARTICLE II: REGISTERED OFFICE.

The address of the registered office of the Corporation in the State of Delaware is [Registered Office Address], in the City of [Registered Office City], County of [Registered Office County]. The name of its registered agent at such address is [Registered Agent Name].

ARTICLE III: DEFINITIONS.

As used in this Restated Certificate (the "Restated Certificate"), the following terms have the meanings set forth below:

"***Board Composition***" means that for so long as at least 25% percent of the initially issued shares of Preferred Stock remain outstanding, the holders of record of the shares of Series Seed Preferred Stock exclusively and as a separate class, are entitled to elect [__] director(s) of the Corporation (the "***Series Seed Director(s)***"), the holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect [__] director(s) of the Corporation, and any additional directors will be elected by the affirmative vote of a majority of the Preferred Stock and Common Stock, voting together as a single class on an as-converted basis. For administrative convenience, the initial Series Seed Director may also be appointed by the Board in connection with the approval of the initial issuance of Series Seed Preferred Stock without a separate action by the holders of a majority of Series Seed Preferred Stock.

"***Original Issue Price***" means $[Price] per share for the Series Seed Preferred Stock.

"***Requisite Holders***" means the holders of at least a majority of the outstanding shares of Preferred Stock (voting as a single class on an as-converted basis).

ARTICLE IV: PURPOSE.

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE V: AUTHORIZED SHARES.

The total number of shares of all classes of stock that the Corporation has authority to issue is [total authorized shares], consisting of (a) [authorized common shares] shares of Common Stock, $[par value] per share and (b) [authorized preferred shares] shares of Preferred Stock, $[par value] per share. The Preferred Stock may be issued from time to time in one or

more series, each of such series to consist of such number of shares and to have such terms, rights, powers and preferences, and the qualifications and limitations with respect thereto, as stated or expressed herein. As of the effective date of this Restated Certificate, all shares of the Preferred Stock of the Corporation are hereby designated "***Series Seed Preferred Stock***".

A. COMMON STOCK

The following rights, powers privileges and restrictions, qualifications, and limitations apply to the Common Stock.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and privileges of the holders of the Preferred Stock set forth in this Restated Certificate.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). Unless required by law, there shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Restated Certificate) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

The following rights, powers and privileges, and restrictions, qualifications and limitations, shall apply to the Preferred Stock. Unless otherwise indicated, references to "Sections" in this Part B of this Article V refer to sections of this Part B.

1. Liquidation, Dissolution, or Winding Up; Certain Mergers, Consolidations and Asset Sales.

1.1 Payments to Holders of Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Corporation or any Deemed Liquidation Event (as defined below), before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, the holders of shares of Preferred Stock then outstanding must be paid out of the funds and assets available for distribution to its stockholders, an amount per share equal to the greater of (a) the Original Issue Price for such share of Preferred Stock, plus any dividends declared but unpaid thereon, or (b) such amount per share as would have been payable had all shares of Preferred Stock been converted into Common Stock pursuant to Section 3 immediately prior to such liquidation, dissolution or winding up or Deemed Liquidation Event. If upon any such liquidation, dissolution, or winding up or Deemed Liquidation Event of the Corporation, the funds and assets available for distribution to the stockholders of the Corporation are insufficient to pay the holders of shares of Preferred Stock the full amount to which they are entitled under this Section 1.1, the holders of shares of Preferred Stock will share ratably in any distribution of the funds and assets available for distribution in proportion to the respective amounts that would otherwise be payable in respect of

the shares of Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

1.2 Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution, or winding up or Deemed Liquidation Event of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Preferred Stock as provided in Section 1.1, the remaining funds and assets available for distribution to the stockholders of the Corporation will be distributed among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder.

1.3 Deemed Liquidation Events.

1.3.1 Definition. Each of the following events is a "***Deemed Liquidation Event***" unless the Requisite Holders elect otherwise by written notice received by the Corporation at least five (5) days prior to the effective date of any such event:

(a) a merger or consolidation in which (i) the Corporation is a constituent party or (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for equity securities that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the equity securities of (1) the surviving or resulting party or (2) if the surviving or resulting party is a wholly owned subsidiary of another party immediately following such merger or consolidation, the parent of such surviving or resulting party; *provided* that, for the purpose of this Section 1.3.1, all shares of Common Stock issuable upon exercise of options outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, deemed to be converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or, if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation, except where such sale, lease, transfer or other disposition is to the Corporation or one or more wholly owned subsidiaries of the Corporation.

1.3.2 Amount Deemed Paid or Distributed. The funds and assets deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer or other disposition described in this Section 1.3 will be the

cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board.

2. Voting.

2.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock may cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Fractional votes shall not be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred stock held by each holder could be converted) will be rounded to the nearest whole number (with one-half being rounded upward). Except as provided by law or by the other provisions of this Restated Certificate, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class on an as-converted basis, shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision of this Restated Certificate, to notice of any stockholder meeting in accordance with the Bylaws of the Corporation.

2.2 Election of Directors. The holders of record of the Company's capital stock are entitled to elect directors as described in the Board Composition. Any director elected as provided in the preceding sentence may be removed without cause by the affirmative vote of the holders of the shares of the class, classes, or series of capital stock entitled to elect the director or directors, given either at a special meeting of the stockholders duly called for that purpose or pursuant to a written consent of stockholders. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class, classes, or series entitled to elect the director constitutes a quorum for the purpose of electing the director.

2.3 Preferred Stock Protective Provisions. At any time when at least 25% of the initially issued shares of Preferred Stock remain outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Restated Certificate) the written consent or affirmative vote of the Requisite Holders, given in writing or by vote at a meeting, consenting, or voting (as the case may be) separately as a single class:

(a) alter the rights, powers or privileges of the Preferred Stock set forth in the Restated Certificate or Bylaws, as then in effect, in a way that adversely affects the Preferred Stock;

(b) increase or decrease the authorized number of shares of any class or series of capital stock;

(c) authorize or create (by reclassification or otherwise) any new class or series of capital stock having rights, powers, or privileges set forth in the

certificate of incorporation of the Corporation, as then in effect, that are senior to or on a parity with any series of Preferred Stock;

(d) redeem or repurchase any shares of Common Stock or Preferred Stock (other than pursuant to employee or consultant agreements giving the Corporation the right to repurchase shares upon the termination of services pursuant to the terms of the applicable agreement);

(e) declare or pay any dividend or otherwise make a distribution to holders of Preferred Stock or Common Stock;

(f) increase or decrease the number of directors of the Corporation;

(g) liquidate, dissolve, or wind-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent, agree or commit to do any of the foregoing without conditioning such consent, agreement or commitment upon obtaining the approval required by this Section 2.3.

3. Conversion. The holders of the Preferred Stock have the following conversion rights (the "***Conversion Rights***"):

3.1 Right to Convert.

3.1.1 Conversion Ratio. Each share of Preferred Stock is convertible, at the option of the holder thereof, at any time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price for the series of Preferred Stock by the Conversion Price for that series of Preferred Stock in effect at the time of conversion. The "***Conversion Price***" for each series of Preferred Stock means the Original Issue Price for such series of Preferred Stock, which initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, is subject to adjustment as provided in this Restated Certificate.

3.1.2 Termination of Conversion Rights. Subject to Section 3.3.1 in the case of a Contingency Event herein, in the event of a liquidation, dissolution, or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights will terminate at the close of business on the last full day preceding the date fixed for the first payment of any funds and assets distributable on such event to the holders of Preferred Stock.

3.2 Fractional Shares. No fractional shares of Common Stock will be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board. Whether or not fractional shares would be issuable upon such conversion will be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

3.3 Mechanics of Conversion.

3.3.1 Notice of Conversion. To voluntarily convert shares of Preferred Stock into shares of Common Stock, a holder of Preferred Stock shall surrender the certificate or certificates for the shares of Preferred Stock (or, if such registered holder alleges that any such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that the holder elects to convert all or any number of the shares of the Preferred Stock represented by the certificate or certificates and, if applicable, any event on which the conversion is contingent (a "***Contingency Event***"). The conversion notice must state the holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the registered holder or such holder's attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of the certificates (or lost certificate affidavit and agreement) and notice (or, if later, the date on which all Contingency Events have occurred) will be the time of conversion (the "***Conversion Time***"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such time. The Corporation shall, as soon as practicable after the Conversion Time, (a) issue and deliver to the holder, or to the holder's nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion in accordance with the provisions of this Restated Certificate and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (b) pay in cash such amount as provided in Section 3.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (c) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

3.3.2 Reservation of Shares. For the purpose of effecting the conversion of the Preferred Stock, the Corporation shall at all times while any share of Preferred Stock is outstanding, reserve and keep available out of its authorized but unissued capital stock, , that number of its duly authorized shares of Common Stock as may from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock is not be sufficient to effect the conversion of all then-outstanding shares of the Preferred Stock, the Corporation shall use its best efforts to cause such corporate action to be taken as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate. Before taking any action that would cause an adjustment reducing the Conversion Price of a series of Preferred Stock below the then-par value of the shares of Common Stock issuable upon conversion of such series of Preferred Stock, the Corporation shall take any corporate action that may be necessary

so that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

3.3.3 Effect of Conversion. All shares of Preferred Stock that shall have been surrendered for conversion as provided in this Restated Certificate shall no longer be deemed to be outstanding and all rights with respect to such shares will immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Section 3.2, and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued.

3.3.4 No Further Adjustment. Upon any conversion of shares of Preferred Stock, no adjustment to the Conversion Price of the applicable series of Preferred Stock will be made with respect to the converted shares for any declared but unpaid dividends on such series of Preferred Stock or on the Common Stock delivered upon conversion.

3.4 Adjustment for Stock Splits and Combinations. If the Corporation at any time or from time to time after the date on which the first share of a series of Preferred Stock is issued by the Corporation (such date referred to herein as the "***Original Issue Date***" for such series of Preferred Stock) effects a subdivision of the outstanding Common Stock, the Conversion Price for each series of Preferred Stock in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of that series will be increased in proportion to the increase in the aggregate number of shares of Common Stock outstanding. If the Corporation at any time or from time to time after the Original Issue Date for a series of Preferred Stock combines the outstanding shares of Common Stock, the Conversion Price for each series of Preferred Stock in effect immediately before the combination will be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this Section 3.4 becomes effective at the close of business on the date the subdivision or combination becomes effective.

3.5 Adjustment for Certain Dividends and Distributions. If the Corporation at any time or from time to time after the Original Issue Date for a series of Preferred Stock makes or issues, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price for such series of Preferred Stock in effect immediately before the event will be decreased as of the time of such issuance or, in the event a a record date has been fixed, as of the close of business on such record date, by multiplying such Conversion Price then in effect by a fraction:

(a) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of the issuance or the close of business on the record date, and

(b) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately before the time of such issuance or the close of

business on the record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (i) if such record date has have been fixed and the dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, such Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter such Conversion Price shall be adjusted pursuant to this Section 3.5 as of the time of actual payment of such dividends or distributions; and (ii) no such adjustment shall be made if the holders of such series of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock that they would have received if all outstanding shares of such series of Preferred Stock had been converted into Common Stock on the date of the event.

3.6 Adjustments for Other Dividends and Distributions. If the Corporation at any time or from time to time after the Original Issue Date for a series of Preferred Stock shall makes or issues, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock), then and in each such event the Corporation shall make, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution to the holders of the series of Preferred Stock in an amount equal to the amount of securities as the holders would have received if all outstanding shares of such series of Preferred Stock had been converted into Common Stock on the date of such event.

3.7 Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date for a series of Preferred Stock the Common Stock issuable upon the conversion of such series of Preferred Stock is changed into the same or a different number of shares of any class or classes of stock of the Corporation, whether by recapitalization, reclassification, or otherwise (other than by a stock split or combination, dividend, distribution, merger or consolidation covered by Sections 3.4, 3.5, 3.6 or 3.8 or by Section 1.3 regarding a Deemed Liquidation Event), then in any such event each holder of such series of Preferred Stock may thereafter convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change.

3.8 Adjustment for Merger or Consolidation. Subject to the provisions of Section 1.3, if any consolidation or merger occurs involving the Corporation in which the Common Stock (but not a series of Preferred Stock) is converted into or exchanged for securities, cash, or other property (other than a transaction covered by Sections 3.5, 3.6 or 3.7), then, following any such consolidation or merger, the Corporation shall provide that each share of such series of Preferred Stock will thereafter be convertible, in lieu of the Common Stock into which it was convertible prior to the event, into the kind and amount of securities, cash, or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of such series of Preferred Stock immediately prior to the consolidation or merger would have been entitled to receive pursuant to the transaction; and, in such case, the Corporation shall make appropriate adjustment (as determined in good faith by the

Board) in the application of the provisions in this Section 3 with respect to the rights and interests thereafter of the holders of such series of Preferred Stock, to the end that the provisions set forth in this Section 3 (including provisions with respect to changes in and other adjustments of the Conversion Price of such series of Preferred Stock) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of such series of Preferred Stock.

3.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of a series of Preferred Stock pursuant to this Section 3, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 15 days thereafter, compute such adjustment or readjustment in accordance with the terms of this Restated Certificate and furnish to each holder of such series of Preferred Stock a certificate setting forth the adjustment or readjustment (including the kind and amount of securities, cash, or other property into which such series of Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of any series of Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (a) the Conversion Price of such series of Preferred Stock then in effect and (b) the number of shares of Common Stock and the amount, if any, of other securities, cash, or property which then would be received upon the conversion of such series of Preferred Stock.

3.10 Mandatory Conversion. Upon either (a) the closing of the sale of shares of Common Stock to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the Requisite Holders at the time of such vote or consent, voting as a single class on an as-converted basis (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent,the "***Mandatory Conversion Time***"), (i) all outstanding shares of Preferred Stock will automatically convert into shares of Common Stock, at the applicable ratio described in Section 3.1.1 as the same may be adjusted from time to time in accordance with Section 3 and (ii) such shares may not be reissued by the Corporation.

3.11 Procedural Requirements. The Corporation shall notify in writing all holders of record of shares of Preferred Stock of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to Section 3.10. Unless otherwise provided in this Restated Certificate, the notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of the notice, each holder of shares of Preferred Stock shall surrender such holder's certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 3. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the

registered holder or such holder's attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Section 3.10, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Section 3.11. As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall issue and deliver to such holder, or to such holder's nominee(s), a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Section 3.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock (and the applicable series thereof) accordingly.

4. Dividends. The Corporation shall declare all dividends pro rata on the Common Stock and the Preferred Stock on a pari passu basis according to the number of shares of Common Stock held by such holders. For this purpose each holder of shares of Preferred Stock will be treated as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Preferred Stock held by such holder pursuant to Section 3.

5. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries will be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following any such redemption.

6. Waiver. Any of the rights, powers, privileges and other terms of the Preferred Stock set forth herein may be waived prospectively or retrospectively on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the holders of the Requisite Holders.

7. Notice of Record Date. In the event:

(a) the Corporation takes a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation shall send or cause to be sent to the holders of the Preferred Stock a written notice specifying, as the case may be, (i) the record date for such dividend, distribution, or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) will be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. The Corporation shall send the notice at least 20 days before the earlier of the record date or effective date for the event specified in the notice.

8. Notices. Except as otherwise provided herein, any notice required or permitted by the provisions of this Article V to be given to a holder of shares of Preferred Stock must be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and will be deemed sent upon such mailing or electronic transmission.

ARTICLE VI: PREEMPTIVE RIGHTS.

No stockholder of the Corporation has a right to purchase shares of capital stock of the Corporation sold or issued by the Corporation except to the extent that such a right may from time to time be set forth in a written agreement between the Corporation and the stockholder.

ARTICLE VII: STOCK REPURCHASES.

In accordance with Section 500 of the California Corporations Code, a distribution can be made without regard to any preferential dividends arrears amount (as defined in Section 500 of the California Corporations Code) or any preferential rights amount (as defined in Section 500 of the California Corporations Code) in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors, or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchases of Common Stock or Preferred Stock in connection with the settlement of disputes with any stockholder, or (iv) any other repurchase or redemption of Common Stock or Preferred Stock approved by the holders of Preferred Stock of the Corporation.

ARTICLE VIII: BYLAW PROVISIONS.

A. AMENDMENT OF BYLAWS. Subject to any additional vote required by this Restated Certificate or bylaws of the Corporation (the "***Bylaws***"), in furtherance and not in limitation of

the powers conferred by statute, the Board is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws.

B. NUMBER OF DIRECTORS. Subject to any additional vote required by this Restated Certificate, the number of directors of the Corporation will be determined in the manner set forth in the Bylaws.

C. BALLOT. Elections of directors need not be by written ballot unless the Bylaws so provide.

D. MEETINGS AND BOOKS. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws.

ARTICLE IX: DIRECTOR LIABILITY.

A. LIMITATION. To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article IX by the stockholders will not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

B. INDEMNIFICATION. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

C. MODIFICATION. Any amendment, repeal, or modification of the foregoing provisions of this Article IX will not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

ARTICLE X: CORPORATE OPPORTUNITIES.

The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, or in being informed about, an Excluded Opportunity. "***Excluded Opportunity***" means any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries,

or (ii) any holder of Preferred Stock or any affiliate, partner, member, director, stockholder, employee, agent or other related person of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (a "***Covered Person***"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

* * * * *

§10 Subscription agreement for offer and sale of equity securities[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and

Subscription Agreement for Private Placement of Equity Securities Pursuant to Regulation D[2]

Subscription Agreement

THE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE OR ANY OTHER JURISDICTION. THERE ARE FURTHER RESTRICTIONS ON THE TRANSFERABILITY OF THE SECURITIES DESCRIBED HEREIN.

THE PURCHASE OF THE SECURITIES INVOLVES A HIGH DEGREE OF RISK AND SHOULD BE CONSIDERED ONLY BY PERSONS WHO CAN BEAR THE RISK OF THE LOSS OF THEIR ENTIRE INVESTMENT.

[ISSUER NAME]
[ADDRESS]
[ADDRESS]

Ladies and Gentlemen:

The undersigned understands that [NAME OF ISSUER], a corporation organized under the laws of Delaware (the "Company"), is offering an aggregate of [NUMBER] shares of its common stock, par value $[AMOUNT] per share (the "Securities") in a private placement. This offering is made pursuant to the Offering Memorandum, dated [DATE] [and any other relevant documents] (collectively, the "Offering Documents"), all as more particularly described and set forth in the Offering Documents. The undersigned further understands that the offering is being made without registration of the Securities under the Securities Act of 1933, as amended (the "Securities Act"), or any securities law of any state of the United States or of any other jurisdiction, and is being made only to "accredited investors" (as defined in Rule 501 of Regulation D under the Securities Act).

1. Subscription. Subject to the terms and conditions hereof and the provisions of the Offering Documents, the undersigned hereby irrevocably subscribes for the Securities set forth in Appendix A hereto for the aggregate purchase price set forth in Appendix A, which is payable as described in Section 4 hereof. The undersigned acknowledges that the Securities will be subject to restrictions on transfer as set forth in this subscription agreement (the "Subscription Agreement").

2. Acceptance of Subscription and Issuance of Securities. It is understood and agreed that the Company shall have the sole right, at its complete discretion, to accept or reject this subscription, in whole or in part, for any reason and that the same shall be deemed to be accepted by the Company only when it is signed by a duly authorized officer of the Company and delivered to the undersigned at the Closing referred to in Section 3 hereof. Subscriptions need not be accepted in the order received, and the Securities may be allocated among subscribers. Notwithstanding anything in this Subscription Agreement to the contrary, the Company shall have no obligation to issue any of the Securities to any person who is a resident of a jurisdiction in which the issuance of Securities to such person would constitute a violation of the securities, "blue sky" or other similar laws of such jurisdiction (collectively referred to as the "State Securities Laws").

3. The Closing. The closing of the purchase and sale of the Securities (the "**Closing**") shall take place at the offices of [NAME OF LAW FIRM OR COMPANY], at [TIME] a.m. on [DATE], or at such other time and place as the Company may designate by notice to the undersigned.

4. Payment for Securities. Payment for the Securities shall be received by the Company from the undersigned by wire transfer of immediately available funds or other means approved by the Company at or prior to the Closing, in the amount as set forth in Appendix A hereto. The Company shall deliver certificates representing the Securities to the undersigned at the Closing bearing an appropriate legend referring to the fact that the Securities were sold in reliance upon an exemption from registration under the Securities Act.

[2] This document is a template for a subscription agreement for a private placement of common equity securities to accredited investors in reliance on Rule 506(b) or Rule 506(c) of Regulation D. The agreement includes a form of cover sheet with subscription instructions for investors.

5. Representations and Warranties of the Company. As of the Closing, the Company represents and warrants that: 3

(a) The Company is duly formed and validly existing under the laws of Delaware, with full power and authority to conduct its business as it is currently being conducted and to own its assets; and has secured any other authorizations, approvals, permits and orders required by law for the conduct by the Company of its business as it is currently being conducted.

(b) [The Securities have been duly authorized and, when issued, delivered and paid for in the manner set forth in this Subscription Agreement, will be validly issued, fully paid and nonassessable, [and will conform in all material respects to the description thereof set forth in the Offering Memorandum.]]

6. Representations and Warranties of the Undersigned. The undersigned hereby represents and warrants to and covenants with the Company that:

(a) General.

(i) The undersigned has all requisite authority (and in the case of an individual, the capacity) to purchase the Securities, enter into this Subscription Agreement and to perform all the obligations required to be performed by the undersigned hereunder, and such purchase will not contravene any law, rule or regulation binding on the undersigned or any investment guideline or restriction applicable to the undersigned.

(ii) The undersigned is a resident of the state set forth on the signature page hereto and is not acquiring the Securities as a nominee or agent or otherwise for any other person.

(iii) The undersigned will comply with all applicable laws and regulations in effect in any jurisdiction in which the undersigned purchases or sells Securities and obtain any consent, approval or permission required for such purchases or sales under the laws and regulations of any jurisdiction to which the undersigned is subject or in which the undersigned makes such purchases or sales, and the Company shall have no responsibility therefor.

(b) Information Concerning the Company.

(i) The undersigned has received a copy of the Offering Documents. The undersigned has not been furnished any offering literature other than the Offering Documents and has relied only on the information contained therein.

(ii) The undersigned understands and accepts that the purchase of the Securities involves various risks, including the risks outlined in the Offering Documents and in this Subscription Agreement. The undersigned represents that it is able to bear any loss associated with an investment in the Securities.

(iii) The undersigned confirms that it is not relying on any communication (written or oral) of the Company or any of its affiliates, as investment or tax advice or as a recommendation to purchase the Securities. It is understood that information and explanations related to the terms and conditions of the Securities provided in the Offering Documents or otherwise by the Company or any of its affiliates shall not be considered investment or tax advice or a recommendation to purchase the Securities, and that neither the Company nor any of its affiliates is acting or has acted as an advisor to the undersigned in deciding to invest in the Securities. The undersigned acknowledges that neither the Company nor any of its affiliates has made any representation regarding the proper characterization of

the Securities for purposes of determining the undersigned's authority to invest in the Securities.

(iv) The undersigned is familiar with the business and financial condition and operations of the Company, all as generally described in the Offering Documents. The undersigned has had access to such information concerning the Company and the Securities as it deems necessary to enable it to make an informed investment decision concerning the purchase of the Securities.

(v) The undersigned understands that, unless the undersigned notifies the Company in writing to the contrary at or before the Closing, each of the undersigned's representations and warranties contained in this Subscription Agreement will be deemed to have been reaffirmed and confirmed as of the Closing, taking into account all information received by the undersigned.

(vi) The undersigned acknowledges that the Company has the right in its sole and absolute discretion to abandon this private placement at any time prior to the completion of the offering. This Subscription Agreement shall thereafter have no force or effect and the Company shall return the previously paid subscription price of the Securities, without interest thereon, to the undersigned.

(vii) The undersigned understands that no federal or state agency has passed upon the merits or risks of an investment in the Securities or made any finding or determination concerning the fairness or advisability of this investment.

(c) Non-reliance.

(i) The undersigned represents that it is not relying on (and will not at any time rely on) any communication (written or oral) of the Company, as investment advice or as a recommendation to purchase the Securities, it being understood that information and explanations related to the terms and conditions of the Securities and the other transaction documents that are described in the Offering Documents shall not be considered investment advice or a recommendation to purchase the Securities.

(ii) The undersigned confirms that the Company has not (A) given any guarantee or representation as to the potential success, return, effect or benefit (either legal, regulatory, tax, financial, accounting or otherwise) of an investment in the Securities or (B) made any representation to the undersigned regarding the legality of an investment in the Securities under applicable legal investment or similar laws or regulations. In deciding to purchase the Securities, the undersigned is not relying on the advice or recommendations of the Company and the undersigned has made its own independent decision that the investment in the Securities is suitable and appropriate for the undersigned.

(d) Status of Undersigned.

(i) The undersigned has such knowledge, skill and experience in business, financial and investment matters that the undersigned is capable of evaluating the merits and risks of an investment in the Securities. With the assistance of the undersigned's own professional advisors, to the extent that the undersigned has deemed appropriate, the undersigned has made its own legal, tax, accounting and financial evaluation of the merits and risks of an investment in the Securities and the consequences of this Subscription Agreement. The undersigned has considered the suitability of the Securities as an investment in light of its own circumstances and financial condition and the undersigned is able to bear the risks associated with an investment in the Securities and its authority to invest in the Securities.

(ii) The undersigned is an "accredited investor" as defined in Rule 501(a) under the Securities Act. The undersigned agrees to furnish any additional information requested by the Company or any of its affiliates to assure compliance with applicable U.S. federal and state securities laws in connection with the purchase and sale of the Securities. [The undersigned acknowledges that the undersigned has completed the Investor Questionnaire contained in Appendix B and that the information contained therein is complete and accurate as of the date thereof and is hereby affirmed as of the date hereof. Any information that has been furnished or that will be furnished by the undersigned to evidence its status as an accredited investor is accurate and complete, and does not contain any misrepresentation or material omission.]

(e) Restrictions on Transfer or Sale of Securities. As applies to the Purchaser:

(i) The undersigned is acquiring the Securities solely for the undersigned's own beneficial account, for investment purposes, and not with a view to, or for resale in connection with, any distribution of the Securities. The undersigned understands that the Securities have not been registered under the Securities Act or any State Securities Laws by reason of specific exemptions under the provisions thereof which depend in part upon the investment intent of the undersigned and of the other representations made by the undersigned in this Subscription Agreement. The undersigned understands that the Company is relying upon the representations and agreements contained in this Subscription Agreement (and any supplemental information) for the purpose of determining whether this transaction meets the requirements for such exemptions.

(ii) The undersigned understands that the Securities are "restricted securities" under applicable federal securities laws and that the Securities Act and the rules of the U.S. Securities and Exchange Commission (the "**Commission**") provide in substance that the undersigned may dispose of the Securities only pursuant to an effective registration statement under the Securities Act or an exemption therefrom, and the undersigned understands that the Company has no obligation or intention to register any of the Securities, or to take action so as to permit sales pursuant to the Securities Act (including Rule 144 thereunder). Accordingly, the undersigned understands that under the Commission's rules, the undersigned may dispose of the Securities principally only in "private placements" which are exempt from registration under the Securities Act, in which event the transferee will acquire "restricted securities" subject to the same limitations as in the hands of the undersigned. Consequently, the undersigned understands that the undersigned must bear the economic risks of the investment in the Securities for an indefinite period of time.

(iii) The undersigned agrees: (A) that the undersigned will not sell, assign, pledge, give, transfer or otherwise dispose of the Securities or any interest therein, or make any offer or attempt to do any of the foregoing, except pursuant to a registration of the Securities under the Securities Act and all applicable State Securities Laws, or in a transaction which is exempt from the registration provisions of the Securities Act and all applicable State Securities Laws; (B) that the certificates representing the Securities will bear a legend making reference to the foregoing restrictions; and (C) that the Company and it affiliates shall not be required to give effect to any purported transfer of such Securities except upon compliance with the foregoing restrictions.

(iv) [The undersigned acknowledges that neither the Company nor any other person offered to sell the Securities to it by means of any form of general solicitation or advertising, including but not limited to: (A) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio or (B) any seminar or meeting whose attendees were invited by any general solicitation or general advertising.]

7. Conditions to Obligations of the Undersigned and the Company. The obligations of the undersigned to purchase and pay for the Securities specified in Appendix A and of the Company to sell the Securities are subject to the satisfaction at or prior to the Closing of the following conditions precedent: the representations and warranties of the Company contained in Section 5 hereof and of the undersigned contained in Section 6 hereof shall be true and correct as of the Closing in all respects with

the same effect as though such representations and warranties had been made as of the Closing.

8. Obligations Irrevocable. The obligations of the undersigned shall be irrevocable.

9. Legend. The certificates representing the Securities sold pursuant to this Subscription Agreement will be imprinted with a legend in substantially the following form:

"THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THE SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF OTHER JURISDICTIONS, AND IN THE CASE OF A TRANSACTION EXEMPT FROM REGISTRATION, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT AND SUCH OTHER APPLICABLE LAWS."

10. Waiver, Amendment. Neither this Subscription Agreement nor any provisions hereof shall be modified, changed, discharged or terminated except by an instrument in writing, signed by the party against whom any waiver, change, discharge or termination is sought.

11. Assignability. Neither this Subscription Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by either the Company or the undersigned without the prior written consent of the other party.

12. Waiver of Jury Trial. THE UNDERSIGNED IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS SUBSCRIPTION AGREEMENT.

13. Submission to Jurisdiction. With respect to any suit, action or proceeding relating to any offers, purchases or sales of the Securities by the undersigned ("**Proceedings**"), the undersigned irrevocably submits to the jurisdiction of the federal or state courts located in the [CITY], which submission shall be exclusive unless none of such courts has lawful jurisdiction over such Proceedings.

14. Governing Law. This Subscription Agreement shall be governed by and construed in accordance with the laws of the State of [STATE].

15. Section and Other Headings. The section and other headings contained in this Subscription Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Subscription Agreement.

16. Counterparts. This Subscription Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement.

17. Notices. All notices and other communications provided for herein shall be in writing and shall be deemed to have been duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid to the

following addresses (or such other address as either party shall have specified by notice in writing to the other):

If to the Company:	[COMPANY ADDRESS] Facsimile: [FAX NUMBER] E-mail: [E-MAIL ADDRESS] Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]
with a copy to:	[COMPANY LAW FIRM] Facsimile: [FAX NUMBER] E-mail: [E-MAIL ADDRESS] Attention: [ATTORNEY NAME]
If to the Purchaser:	[PURCHASER ADDRESS] Facsimile: [FAX NUMBER] E-mail: [E-MAIL ADDRESS] Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]
with a copy to:	[PURCHASER LAW FIRM] Facsimile: [FAX NUMBER] E-mail: [E-MAIL ADDRESS] Attention: [ATTORNEY NAME]

18. Binding Effect. The provisions of this Subscription Agreement shall be binding upon and accrue to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

19. Survival. All representations, warranties and covenants contained in this Subscription Agreement shall survive (i) the acceptance of the subscription by the Company and the Closing, (ii) changes in the transactions, documents and instruments described in the Offering Documents which are not material or which are to the benefit of the undersigned and (iii) the death or disability of the undersigned.

20. Notification of Changes. The undersigned hereby covenants and agrees to notify the Company upon the occurrence of any event prior to the closing of the purchase of the Securities pursuant to this Subscription Agreement which would cause any representation, warranty, or covenant of the undersigned contained in this Subscription Agreement to be false or incorrect.

21. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

IN WITNESS WHEREOF, the undersigned has executed this Subscription Agreement this [DAY] OF [MONTH], [YEAR].

PURCHASER (if an individual):	PURCHASER (if an entity):
By_____	_____

Name:

Legal Name of Entity

By_____

Name:

Title:

State/Country of Domicile or Formation: _____

Aggregate Subscription Amount: US$_____

The offer to purchase Securities as set forth above is confirmed and accepted by the Company as to _____ shares of common stock.

[NAME OF COMPANY]

By_____

Name:

Title:

APPENDIX A

CONSIDERATION TO BE DELIVERED

Securities to Be Acquired	Aggregate Purchase Price to be Paid
_____ shares of common stock	US$ _____

COVER SHEET WITH SUBSCRIPTION INSTRUCTIONS

Enclosed herewith are the documents necessary to subscribe for [NUMBER] shares of common stock (the "**Securities**") of [NAME OF ISSUER], a corporation organized under the laws of Delaware (the "**Company**"). The Securities are being offered to qualified investors pursuant to the Offering Memorandum, dated [DATE] [and any other relevant documents] (collectively, the "**Offering Documents**"). Set forth herein are instructions for the execution of the enclosed documents.

A. Instructions.

Each person considering subscribing for Securities should review the following instructions:

- Subscription Agreement: Two copies of the Subscription Agreement must be completed, executed and delivered to the Company at the address set forth below. If your subscription is accepted, the Company will execute both copies of the

Subscription Agreement and return one copy to you for your records.

- [*To be added if the offering is being made under Rule 506(c)*: Back-up Documentation and Certification. If the investor is a natural person, please provide copies of the following relevant documents:
- (A) Income: If the investor is basing accredited investor status on income, please provide any Internal Revenue Service form that reports the investor's income for the two most recent years (including, but not limited to, Form W-2, Form 1099, Schedule K-1 to Form 1065, and Form 1040); the investor's signature on the [Subscription Agreement /[INVESTOR QUESTIONNAIRE]] constitutes the investor's written representation that he or she has a reasonable expectation of reaching the income level necessary to qualify as an accredited investor during the current year; **or**
- (B) Net Worth: If the investor is basing accredited investor status on net worth, please provide one or more of the following types of documentation dated within the prior three months, and the investor's signature on the [Subscription Agreement /[INVESTOR QUESTIONNAIRE]] constitutes the investor's written representation that all liabilities necessary to make a determination of net worth have been disclosed:
  - *With respect to assets*: Bank statements, brokerage statements and other statements of securities holdings, certificates of deposit, tax assessments, and appraisal reports issued by independent third parties; and
  - *With respect to liabilities*: A consumer report from at least one of the nationwide consumer reporting agencies; **or**

- (C) Third Party Verification: Please provide a written confirmation from one of the following persons or entities that such person or entity has taken reasonable steps to verify that the investor is an accredited investor within the prior three months and has determined that the investor is an accredited investor:
  - A registered broker-dealer;
  - An investment adviser registered with the Securities and Exchange Commission;
  - A licensed attorney who is in good standing under the laws of the jurisdictions in which he or she is admitted to practice law; or
  - A certified public accountant who is duly registered and in good standing under the laws of the place of his or her residence or principal office.]
- Payment: Payment of US$[AMOUNT] for the Securities subscribed for shall be made by delivery by Closing (as defined in Section [NUMBER] of the Subscription Agreement) of cash to the Company at the address set forth below or an account specified by the Company.
- Acceptance or Rejection of Subscription: The Company shall have the right to accept or reject any subscription, in whole or in part. An acknowledgment of the Company's acceptance of your subscription for the Securities subscribed for will be returned to you promptly after acceptance.

B. Communications.

All documents and checks should be forwarded to:

[CONTACT INFORMATION]

Attn: [NAME]

§11 Investor questionnaire[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

Investor Questionnaire[2]

To be completed by:_____ (Investor)

This Questionnaire is being distributed to _____ (the "Investor") by [COMPANY], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] (the "Issuer"), to enable the Issuer to determine whether the Investor is qualified to invest in the [CLASS OF SECURITY] (the "Securities") of the Issuer.

To be qualified to invest in the Securities, the Investor must either (i) be an "accredited investor" (as that term is defined in Rule 501(a) of Regulation D promulgated under Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act")), or (ii) have (and if applicable, its officers, employees, directors or equity owners have) either alone or with his, her or its purchaser representative or representatives, if any, such knowledge and experience in financial and business matters that he, she or it is capable of evaluating the merits and risks of an investment in the Securities.

The Issuer will rely upon the accuracy and completeness of the information provided in this Questionnaire in establishing that the issuance of the Securities is exempt from the registration requirements of the Securities Act.

ACCORDINGLY, THE INVESTOR IS OBLIGATED TO READ THIS QUESTIONNAIRE CAREFULLY AND TO ANSWER THE ITEMS CONTAINED HEREIN COMPLETELY AND ACCURATELY.

ALL INFORMATION CONTAINED IN THIS QUESTIONNAIRE WILL BE TREATED CONFIDENTIALLY. However, the Investor understands and agrees that the Issuer may present, upon giving prior notice to the Investor, this Questionnaire to such parties as the Issuer deems appropriate if called upon to establish that the issuance of the Securities (i) is exempt from the registration requirements of the Securities Act or (ii) meets the requirements of applicable state securities laws; provided

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[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] This document is a template for an Investor Questionnaire (also known as an Accredited Investor Questionnaire) for use in an unregistered offering that relies on any exemption from registration or related safe harbor other than Rule 506(c) of Regulation D. This questionnaire can be used in a company's private placement under Section 4(a)(2) or Rules 504 or 506(b) of Regulation D or other unregistered offering of securities to help collect and verify information relating to potential investors about which neither the company nor, if applicable, the placement agent has sufficient knowledge to determine on its own. In particular, this questionnaire can be used to determine whether a potential investor is an accredited investor as long as the company is not relying on the safe harbor in Rule 506(c) of Regulation D.

however that the Issuer need not give prior notice to the Investor of its presentation of this Questionnaire to the Issuer's 2 regularly employed legal, accounting and financial advisors.

The Investor understands that this Questionnaire is merely a request for information and is not an offer to sell, a solicitation of an offer to buy, or a sale of the Securities. The Investor also understands that the Investor may be required to furnish additional information.

PLEASE NOTE THE FOLLOWING INSTRUCTIONS BEFORE COMPLETING THIS INVESTOR QUESTIONNAIRE.

Unless instructed otherwise, the Investor should answer each question on the Questionnaire. If the answer to a particular question is "None" or "Not Applicable," please so state. If the Questionnaire does not provide sufficient space to answer a question, please attach a separate schedule to your executed Questionnaire that indicates which question is being answered thereon. Persons having questions concerning any of the information requested in this Questionnaire should consult with their purchaser representative or representatives, lawyer, accountant or broker or may call [NAME OF CONTACT PERSON AT COMPANY'S COUNSEL], Esq., [COMPANY COUNSEL], at [TELEPHONE NUMBER].

One signed and dated copy of the Questionnaire should be returned as soon as possible to [COMPANY] at:

c/o [NAME OF CONTACT PERSON]
[ADDRESS]
[ADDRESS]
Attn:

The other copy should be retained for the Investor's files.

PART I—FOR INDIVIDUALS

1. Personal Data

Name: _____

Residence Address: _____
_____
_____

Business Address: _____
_____
_____

State of residence, if different: _____

Telephone: Residence _____ Business _____

Age: _____ Citizenship: _____

Social Security or Taxpayer No.: _____

Send all correspondence to: Residence _____ Business _____

2. Employment and Business Experience

Present occupation: _____

Salary: _____

Do you own your own business or are you otherwise employed? _____

Name and type of business employed by or owned: _____

_____

Description of responsibilities: _____
_____
_____

Length of service with present employer or length of ownership of present business: _____
_____

Present title or position: _____

Length of service in present title or position: _____

Prior occupations, employment, and length of service during the past five (5) years:

Occupation	Name of Employer or Owned Business (and identify which)	Years of Service

Do you have any professional licenses or registrations, including bar admissions, accounting certificates, real estate brokerage licenses, investment adviser registrations and SEC or state broker-dealer registrations? Yes: _____ No: _____

If yes, please list such licenses or registrations, the date(s) you received the same, and whether they are in good standing:

3. Education (college and postgraduate)

Institution Attended	Degree	Dates of Attendance

4. Current Investment Objectives

My current investment objectives (indicate applicability and priority) are:

Current income: _____

Appreciation: _____

Tax Shelter: _____

Other: _____

5. Other Relevant Information

Please describe any additional information that reflects your knowledge and experience in business, financial, or investment matters and your ability to evaluate the merits and risks of this investment.

6. Investor Status

To be qualified to invest in the Securities, the Investor must either (i) be an Accredited Investor, or (ii) have, either alone or with your purchaser representative or representatives, such knowledge and experience in financial and business matters that you are capable of evaluating the merits and risks of such investment.

Please check the appropriate representation that applies to you.

Accredited Investors:

_____ I am an Accredited Investor (as defined in Rule 501 of Regulation D promulgated under the Securities Act) because I certify that (check all appropriate descriptions that apply):

- _____ I am a natural person whose individual net worth, or joint net worth with my spouse, exceeds $1,000,000. For purposes of this item 6, "net worth" means the excess of total assets at fair market value (including personal and real property, but excluding the estimated fair market value of a person's primary home) over total liabilities. Total liabilities excludes any mortgage on the primary home in an amount of up to the home's estimated fair market value as long as the mortgage was incurred more than 60 days before the Securities are purchased, but includes (i) any mortgage amount in excess of the home's fair market value and (ii) any mortgage amount that was borrowed during the 60-day period before the closing date for the sale of Securities for the purpose of investing in the Securities.
- _____I am a natural person who had individual income exceeding $200,000 in each of the last two calendar years and I have a reasonable expectation of reaching the same income level in the current calendar year. [For purposes of this Section 6, "income" means annual adjusted gross income, as reported for federal income tax purposes, plus (i) the amount of any tax-exempt interest income received; (ii) the amount of losses claimed as a limited partner in a limited partnership; (iii) any deduction claimed for depletion; (iv) amounts contributed to an IRA or Keogh retirement plan; [and] (v) alimony paid[; and (vi) any gains excluded from the calculation of adjusted gross income pursuant to [the provisions of Section 1202 of] the Internal Revenue Code of 1986, as amended].]
- _____ I am a natural person who had joint income with my spouse exceeding $300,000 in each of the last two calendar years and I have a reasonable expectation of reaching the same income level in the current calendar year, as defined above.
- _____ I am a director, executive officer or general partner of the Issuer, or a director, executive officer or general partner of a general partner of the Issuer. (For purposes of this Section 6, "executive officer" means the president; any vice president in charge of a principal business unit, division or function, such as sales, administration or finance; or any other person or persons who perform(s) similar policymaking functions for the Issuer.)

Other Investors:

_____ I am qualified to invest in the Securities because I have, either alone or with my purchaser representative or representatives, such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of such investment, as discussed in Section 7(a) below.

7. Representations

I represent that:

- I have sufficient knowledge and experience in similar investments to evaluate the merits and risks of an investment in [COMPANY], or I have retained an attorney, accountant, financial advisor or consultant as my purchaser representative. If applicable, the name, employer, address, and telephone number of my purchaser representative follows:
- I and, if applicable, my purchaser representative, have received the private placement memorandum relating to this offering (the "**Private Placement Memorandum**"); and I and, if applicable, my purchaser representative, understand the Private Placement Memorandum and the risks involved in this offering. I and, if applicable, my purchaser representative have been given the opportunity to ask questions and obtain material and relevant information from the Issuer enabling me to make an informed investment decision. All data that I and, if applicable, my purchaser

representative, have requested has been furnished to me.

- Any Securities I may acquire will be for my own account for investment and not with any view to the distribution thereof, and I will not sell, assign, transfer or otherwise dispose of any of the Securities, or any interest therein, in violation of the Securities Act or any applicable state securities law.
- I understand that (i) any Securities I may acquire will not be registered under the Securities Act or any applicable state securities law and may not be sold or otherwise disposed of unless it is registered or sold or otherwise disposed of in a transaction that is exempt from such registration and (ii) the certificates representing the Securities will bear appropriate legends restricting the transferability thereof.
- If applicable, I have not incurred any debt secured by my primary residence for the purpose of inflating my net worth to qualify as an accredited investor or for the purpose of raising funds to invest in the Securities. Between the date I complete this Questionnaire and the date the Securities are sold, I do not intend to, and will not, incur any debt to be secured by my primary residence for the purpose of either inflating my net worth to qualify as an accredited investor or raising funds to invest in the Securities.
- I understand that the Issuer will rely upon the completeness and accuracy of the Investor's responses to the questions in this Questionnaire in establishing that the contemplated transactions are exempt from the Securities Act and hereby affirm that all such responses are accurate and complete. I will notify the Issuer immediately of any changes in any of such information occurring prior to the acceptance of my subscription.

8. Manner of Solicitation

Please state the manner in which you became aware of the investment (i.e., by personal contact or acquaintance with an investment advisor or counselor, with [COMPANY] personnel, a broker-dealer, or otherwise), the name of the contact person, and the date such contact was made:]

PART II—PURCHASERS WHO ARE NOT INDIVIDUALS

1. General Information

Name of Entity: _____

Address of Principal Office: _____
_____
_____

Type of Organization: _____

Date and State of Organization: _____

2. Business

Major Segments of Operation: _____
_____
_____

Length of operation in each such segment: _____
_____
_____

Are you a reporting entity under the Securities Exchange Act of 1934, as amended?

_____ Yes _____ No

If you are not a reporting entity, please provide the following:

- The names and business experience of each of your officers and directors, partners, or other control persons for the past five years. If additional space is required to answer any question, please attach separate pages to the back of this Questionnaire and identify all questions answered in this fashion by their respective question numbers.

- The educational background of each of your officers and directors, partners, or other control persons, including the institutions attended, the dates of attendance, and the degrees obtained by each. If additional space is required to answer any question, please attach separate pages to the back of this Questionnaire and identify all questions answered in this fashion by their respective question numbers.
- Have each of your controlling persons complete Part I of this Questionnaire. Please attach these additional pages to the back of this Questionnaire.

3. Current Investment Objectives

The current investment objectives of the entity (indicate applicability and priority) are:

Current income: _____

Appreciation: _____

Tax Shelter: _____

Other (please state objectives): _____

4. Other Relevant Information

Please describe any additional information that reflects your knowledge and experience in business, financial, or investment matters and your ability to evaluate the merits and risks of this investment. If additional space is required to answer any question, please attach separate pages to the back of this Questionnaire and identify all questions answered in this fashion by their respective question numbers.

5. Accredited Investor Status

To be qualified to invest in the Securities, the Investor must either (i) be an Accredited Investor, or (ii) have, and if applicable, its officers, employees, directors or equity owners have, either alone or with its purchaser representative or representatives, such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of such investment.

Please check the appropriate description which applies to you.

- _____ A bank, as defined in Section 3(a)(2) of the Securities Act or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act, whether acting in an individual or a fiduciary capacity.
- _____ A broker or dealer registered under Section 15 of the Securities Exchange Act of 1934, as amended.
- _____ An insurance company, as defined in Section 2(13) of the Securities Act.
- _____ An investment company registered under the Investment Company Act of 1940 or a business development company, as defined in Section 2(a)(48) of that act.
- _____ A Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.
- _____ A plan established and maintained by a state, its political subdivisions or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if the plan has total assets in excess of $5 million.
- _____ An employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is being made by a plan fiduciary, as defined in Section 3(21) of such act, and the plan fiduciary is either a bank, an insurance company, or a registered investment adviser, or if the employee benefit plan has total assets in excess of $5 million.
- _____ A private business development company, as defined in Section 202(a)(22) of the Investment Advisers Act of 1940.
- _____ A corporation, Massachusetts or similar business trust, or partnership, or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that was not formed for the specific purpose of acquiring the Securities, and that has total assets in excess of $5 million.
- _____ A trust with total assets in excess of $5 million not formed for the specific purpose of acquiring the Securities, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) under the Securities

Act.

- _____ An entity in which all of the equity owners are accredited investors and meet the criteria listed in Part I, Section 6 of this Questionnaire. Please also see additional questions below.

Other Investors:

_____ The undersigned entity is qualified to invest in the Securities because it has, and if applicable, its officers, employees, directors or equity owners have, either alone or with its purchaser representative or representatives, such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of such investment, as discussed in Section 6(a) below.

If you checked (k), please complete the following part of this question:

(1) List all equity owners:

(2) What is the type of entity?

(3) Have each equity owner respond individually to Part I, Section 6 of this Questionnaire. Please attach these additional pages to the back of this Questionnaire.

6. Representations

The undersigned entity represents that:

- The entity has, and if applicable, its officers, employees, directors or equity owners have, sufficient knowledge and experience in similar investments to evaluate the merits and risks of an investment in [COMPANY], or the entity has retained an attorney, accountant, financial advisor or consultant as its purchaser representative. If applicable, the name, employer, address, and telephone number of the purchaser representative follows:
- The entity and, if applicable, its purchaser representative, has received the private placement memorandum relating to this offering (the "**Private Placement Memorandum**"); and the entity and, if applicable, its purchaser representative, understand the Private Placement Memorandum and the risks involved in this offering. The entity and, if applicable, its purchaser representative have been given the opportunity to ask questions and obtain material and relevant information from the Issuer enabling it to make an informed investment decision. All data that the entity and, if applicable, its purchaser representative, have requested has been furnished to it.
- Any Securities the entity may acquire will be for its own account for investment and not with any view to the distribution thereof, and it will not sell, assign, transfer or otherwise dispose of any of the Securities, or any interest therein, in violation of the Securities Act or any applicable state securities law.
- The entity understands that (i) any Securities it may acquire will not be registered under the Securities Act or any applicable state securities law and may not be sold or otherwise disposed of unless it is registered or sold or otherwise disposed of in a transaction that is exempt from such registration, and (ii) the certificates representing the Securities will bear appropriate legends restricting the transferability thereof.
- The entity understands that the Issuer will rely upon the completeness and accuracy of the Investor's responses to the questions in this Questionnaire in establishing that the contemplated transactions are exempt from the Securities Act, and hereby affirms that all such responses are accurate and complete. The entity will notify the Issuer immediately of any changes in any of such information occurring prior to the acceptance of its subscription.

7. Manner of Solicitation

Please state the manner in which you became aware of the investment (i.e., by personal contact or acquaintance with an investment advisor or counselor, with [COMPANY] personnel, a broker-dealer, or otherwise), the name of the contact person, and the date such contact was made:

_____

Name:

(Please type or print)

_____

Signature

Date:_____

Partnership, Corporation or Other Entity

_____

Print or Type Name

By:_____
Name:
Title:

Date:_____

§12 Board consent for Series Seed financing[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

[COMPANY NAME]

ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS[2]

In accordance with Sections _____ of the _____ General Corporation Law and the Bylaws of [Company name], a _____ corporation (the "**Company**"), the undersigned, constituting all of the members of the Company's Board of Directors (the "**Board**"), hereby adopt the following resolutions effective as of the last date of execution set forth below:

1. AUTHORIZATION OF AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

WHEREAS, the Board deems it advisable, and in the best interests of the Company, to amend and restate the Certificate of Incorporation of the Company in its entirety in connection with a Series Seed Preferred Stock financing.

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[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] This document is a template for an action by unanimous written consent of the board of directors authorizing the creation and issuance of Series Seed Preferred Stock as described in the Series Seed Preferred Investment Agreement included at § 1:36. Highlighted items should be completed as required under the specific conditions under which the document is being used. Certain of the highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes.

NOW, **THEREFORE**, **BE IT RESOLVED**: That the Company amend and restate its Certificate of Incorporation to (i) increase the authorized number of shares of Common Stock from [_____] shares to [_____] shares, (ii) create a new class of stock, designated Preferred Stock, consisting of [_____] shares, all of which are designated Series Seed Preferred Stock, (iii) establish the rights, preferences, privileges and restrictions of the Common Stock and the Series Seed Preferred Stock and (iv) make certain other changes.

RESOLVED FURTHER: That the Company's Amended and Restated Certificate of Incorporation, in substantially the form provided to the Board (the "**Restated Certificate**"), is hereby approved, adopted and confirmed.

RESOLVED FURTHER: That the proper officers of the Company are, and each hereby is, authorized and directed (i) to seek stockholder approval of the Restated Certificate, and once the requisite stockholder approval has been obtained, (ii) to execute, verify and file with the _____ Secretary of State such Restated Certificate.

RESOLVED FURTHER: That the proper officers of the Company are, and each hereby is, authorized and empowered to take such other actions and sign such other documents as may be necessary or advisable to carry out the purposes of the foregoing resolutions.

2. AUTHORIZATION OF SALE AND ISSUANCE OF SERIES SEED PREFERRED STOCK

WHEREAS, the Board deems it advisable, and in the best interests of the Company, to enter into a Series Seed Preferred Stock Purchase Agreement, in substantially the form provided to the Board (the "**Purchase Agreement**").

NOW, THEREFORE, BE IT RESOLVED: That the Company enter into the Purchase Agreement with the investors set forth on the Schedule of Investors attached as Exhibit A to the Purchase Agreement (the "**Schedule of Investors**") pursuant to which the Company will sell and issue up to [_____] shares of Series Seed Preferred Stock (the "**Series Seed Shares**").

RESOLVED FURTHER: That the form, terms and provisions of the Purchase Agreement are hereby approved, adopted and confirmed.

RESOLVED FURTHER: That the Series Seed Shares are hereby set aside and reserved for issuance pursuant to the Purchase Agreement, and the issuance of the Series Seed Shares to the investors set forth on the Schedule of Investors for the consideration set forth on the Schedule of Investors is hereby approved.

RESOLVED FURTHER: That the Series Seed Shares shall be validly issued, fully paid and nonassessable when issued in accordance with the terms of the Purchase Agreement.

RESOLVED FURTHER: That [_____] shares of the Company's Common Stock (and any additional shares of capital stock as may be necessary to issue pursuant to the terms of

the Series Seed Preferred) are hereby set aside and reserved for issuance upon conversion of the Series Seed Shares, and the issuance of such shares of Common Stock (and any additional shares of capital stock as may be necessary to issue pursuant to the terms of the Series Seed Preferred) upon conversion of the Series Seed Shares is hereby approved.

RESOLVED FURTHER: That the shares of Common Stock (and any additional shares of capital stock as may be necessary to issue pursuant to the terms of the Series Seed Preferred) issuable upon conversion of the Series Seed Shares shall be validly issued, fully paid and nonassessable when issued in accordance with the terms of the Restated Certificate.

RESOLVED FURTHER: That the officers of the Company are authorized and directed to execute and deliver all documents and take whatever actions are deemed necessary or advisable to comply with all applicable state and federal securities laws.

RESOLVED FURTHER: That the appropriate officers of the Company be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Company, to execute and deliver, to the appropriate parties, the Purchase Agreement, substantially in the form submitted to and reviewed by the Company's Board, with such changes therein or additions thereto as the officer executing the same shall approve with the advice of legal counsel, the execution and delivery of such agreement by such officer to be conclusive evidence of the approval of the Board thereof and all matters relating thereto.

3. OMNIBUS RESOLUTIONS

RESOLVED: That any of the appropriate officers of the Company be, and each of them hereby is, authorized (i) to prepare, execute, deliver and perform, as the case may be, such agreements, amendments, applications, approvals, certificates, communications, consents, demands, directions, documents, further assurances, instruments, notices, orders, requests, resolutions, supplements or undertakings, (ii) to pay or cause to be paid on behalf of the Company any related costs and expenses and (iii) to take such other actions, in the name and on behalf of the Company, as each such officer, in his discretion, shall deem necessary or advisable to complete and effect the foregoing transactions or to carry out the intent and purposes of the foregoing resolutions and the transactions contemplated thereby, the preparation, execution, delivery and performance of any such agreements, amendments, applications, approvals, certificates, communications, consents, demands, directions, documents, further assurances, instruments, notices, orders, requests, resolutions, supplements or undertakings, the payment of any such costs or expenses and the performance of any such other acts shall be conclusive evidence of the approval of the Board thereof and all matters relating thereto.

RESOLVED FURTHER: That all actions heretofore taken by the officers and directors of the Company with respect to the foregoing transactions and all other matters contemplated by the foregoing resolutions are hereby approved, adopted, ratified and confirmed.

(*Signature page follows*)

IN WITNESS WHEREOF, the undersigned have executed this Action by Unanimous Written Consent of the Board of Directors as of the date set forth below opposite his or her name, which may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. This action shall be filed with the minutes of the proceedings of this Board of Directors and shall be effective as of the last date of execution below. Any copy, facsimile or other reliable reproduction of this action may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction be a complete reproduction of the entire original writing.

_____

[Name of director]
Date:

_____

[Name of director]
Date:

(*Signature page to Board Consent*)

§13 Stockholder consent for Series Seed financing[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

[COMPANY NAME]

ACTION BY WRITTEN CONSENT OF STOCKHOLDERS[2]

In accordance with Section ___ of the _____ General Corporation Law and the Bylaws of [*Company name*], a _____ corporation (the "**Company**"), the undersigned stockholders of the Company hereby take the following actions and adopt the following resolutions:

1. AUTHORIZATION OF AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

RESOLVED: That the Certificate of Incorporation of the Company be amended and restated in its entirety to (i) increase the authorized number of shares of Common Stock from

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[2] This document is a template for an action by written consent of stockholders authorizing the filing of amendments to the corporation's certificate of incorporation to create and issue shares of Series Seed Preferred Stock as described in the Series Seed Preferred Investment Agreement included at § 1:36. Highlighted items should be completed as required under the specific conditions under which the document is being used. Certain of the highlighted items are provided as alternative and optional provisions and the issues relating to those provisions are discussed in the accompanying notes.

[_____] shares to [_____] shares, (ii) create a new class of stock, designated Preferred Stock, consisting of [_____] shares, all of which are to be designated Series Seed Preferred Stock, (iii) establish the rights, preferences, privileges and restrictions of the Common Stock and the Series Seed Preferred Stock and (iv) make certain other changes, as set forth in the Amended and Restated Certificate of Incorporation substantially in the form attached hereto as **Exhibit A** (the "**Amended Certificate**").

RESOLVED FURTHER: That the Company's Certificate of Incorporation as currently in effect be amended and restated to read as set forth in the Amended Certificate.

RESOLVED FURTHER: That the appropriate officers of the Company are hereby authorized and directed to execute the Amended Certificate and take all such action as such officers deem necessary or desirable to file the Amended Certificate with the _____ Secretary of State and to cause the Amended Certificate to become effective.

2. OMNIBUS RESOLUTIONS

RESOLVED: That the proper officers of the Company be, and each individually is, hereby authorized and directed to do and perform any and all such acts, including the execution, delivery and filing of any and all instruments, documents and certificates, as such officers deem necessary or advisable, to carry out and perform the purposes and intent of the foregoing resolutions.

RESOLVED FURTHER: That any actions taken by such officers prior to the date of the foregoing resolutions adopted hereby that are within the authority conferred thereby are hereby ratified, confirmed and approved as the acts and deeds of the Company.

IN WITNESS WHEREOF, by executing this Action by Written Consent of Stockholders, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This Action by Written Consent of Stockholders may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction be a complete reproduction of the entire original writing.

Dated: _____

_____
Print name of stockholder

_____
Signature

_____
Print name of signatory, if different

_____
Print title, if applicable

EXHIBIT A

Amended & Restated
Certificate of Incorporation

§14 Standard SAFE (Cap)[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

THIS INSTRUMENT AND ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM.

[COMPANY NAME]

SAFE
(Simple Agreement for Future Equity)[2]

THIS CERTIFIES THAT in exchange for the payment by [Investor Name] (the "**Investor**") of $[_____] (the "**Purchase Amount**") on or about [Date of Safe], [COMPANY NAME], a [State of Incorporation] corporation (the "**Company**"), hereby issues to the Investor the right to certain shares of the Company's capital stock, subject to the terms set forth below.

The "**Valuation Cap**" is $[_____]. See **Section 2** for certain additional defined terms.

1. ***Events***

[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] The "Simple Agreement for Future Equity", or "Safe", was developed by Y Combinator as an alternative to seed financings based on preferred shares or convertible notes and provides for investors to be issued a "right to certain shares of the company's capital stock", subject to terms outlined in the Safe. This form of Safe is referred to as a "Standard Safe", which operates with only a Valuation Cap. There are three alternatives to the Standard Safe that allow the parties to create Safes that correspond to the various types of convertible notes (e.g., Valuation Cap and a discount, a discount and no Valuation Cap, and a "most favored nation" provision with no Valuation Cap or discount). The notes in this form are adapted from materials relating to the Safe available at the website maintained by Y Combinator that can be accessed at http://www.ycombinator.com/documents/#safe. In particular, see the Safe Primer, which describes and compares each of the main types of Safe instruments and provides examples on how certain of the variable provisions work in practice. For further discussion of the Safe instrument, see §1:18.

(a) **Equity Financing**.[3] If there is an Equity Financing before the expiration or termination of this instrument, the Company will automatically issue to the Investor either: (1) a number of shares of Standard Preferred Stock equal to the Purchase Amount divided by the price per share of the Standard Preferred Stock, if the pre-money valuation is less than or equal to the Valuation Cap; or (2) a number of shares of Safe Preferred Stock equal to the Purchase Amount divided by the Safe Price, if the pre-money valuation is greater than the Valuation Cap.[4]

In connection with the issuance of Standard Preferred Stock or Safe Preferred Stock, as applicable, by the Company to the Investor pursuant to this Section 1(a)[5]:

(i) The Investor will execute and deliver to the Company all transaction documents related to the Equity Financing; *provided,* that such documents are the same documents to be entered into with the purchasers of Standard Preferred Stock, with appropriate variations for the Safe Preferred Stock if applicable, and *provided further,* that such documents have customary exceptions to any drag-along applicable to the Investor, including, without limitation, limited

[3] In the event of an "equity financing", defined as a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the company issues and sells preferred stock at a fixed pre-money valuation, the company would automatically issue shares of preferred stock to the investors; however, the rights and preferences of those preferred shares would depend on the pre-money valuation of the equity financing. If the pre-money valuation is less than or equal to the Valuation Cap, the investors would receive shares of the same series of preferred stock issued to the investors investing new money in the company in connection with the initial closing of the equity financing ("Standard Preferred Stock"), with the number of such shares being determined by dividing the amount that the investor originally paid for the Safe ("Purchase Amount") by the price per share of the Standard Preferred Stock. On the other hand, if the pre-money valuation is greater than the Valuation Cap, the investors would receive shares of a different series of preferred stock ("Safe Preferred Stock") having the identical rights, privileges, preferences and restrictions as the shares of Standard Preferred Stock issued to the new investors in the equity financing, other than with respect to: (i) the per share liquidation preference and the conversion price for purposes of price-based anti-dilution protection, which would equal the price per share equal to the Valuation Cap divided by the "Company Capitalization" (as defined below) (such price per share is referred to as the "Safe Price"); and (ii) the basis for any dividend rights, which will be based on the Safe Price, with the number of such shares of Safe Preferred Stock being determined by dividing the Purchase Amount by the Safe Price. The Company Capitalization used to determine the per share liquidation preference and the conversion price for shares of Safe Preferred Stock would be the sum, as of immediately prior to the equity financing, of: (1) all shares of the company's capital stock (on an as-converted basis) issued and outstanding, assuming exercise or conversion of all outstanding vested and unvested options, warrants and other convertible securities, but excluding all Safes and convertible promissory notes; and (2) all shares of common Stock reserved and available for future grant under any equity incentive or similar plan of the company, and/or any equity incentive or similar plan to be created or increased in connection with the equity financing.

[4] Example 1 in Appendix II of the Safe Primer illustrates how this provision would work. In that Example, the investor has purchased a Safe for $100,000, the parties have agreed on a $5,000,000 Valuation Cap, the company has negotiated with new investors to sell them $1,000,000 of Series A Preferred Stock at a $10,000,000 pre-money valuation and the company's fully-diluted outstanding capital stock immediately prior to the financing is 11,000,000 shares (including a 1,000,000 share option pool to be adopted in connection with the financing). In that situation, the company would issue and sell 1,100,110 shares of Series A Preferred Stock at $0.909 per share to the new investors and 220,022 shares of Series A-1 Preferred Stock (the "Safe Preferred Stock") to the Safe investor at $0.4545 per share.

[5] The Safe provides that in connection with the issuance of Standard Preferred Stock or Safe Preferred Stock, as applicable, by the company to the investor: (i) the investor would execute and deliver to the company all transaction documents related to the equity financing; provided, that such documents are the same documents to be entered into with the purchasers of Standard Preferred Stock, with appropriate variations for the Safe Preferred Stock if applicable, and provided further, that such documents would have customary exceptions to any drag-along applicable to the investor, including, without limitation, limited representations and warranties and limited liability and indemnification obligations on the part of the investor; and (ii) the investor and the company would execute an agreement with the company and holders of other Safes, as appropriate, giving the investor a right to purchase its pro rata share of private placements of securities by the company occurring after the equity financing (subject to customary exceptions), unless the investor is already included in such rights in the transaction documents related to the equity financing.

representations and warranties and limited liability and indemnification obligations on the part of the Investor; and

(ii) The Investor and the Company will execute a Pro Rata Rights Agreement, unless the Investor is already included in such rights in the transaction documents related to the Equity Financing.

(b) **Liquidity Event**.[6] If there is a Liquidity Event before the expiration or termination of this instrument, the Investor will, at its option, either (i) receive a cash payment equal to the Purchase Amount (subject to the following paragraph) or (ii) automatically receive from the Company a number of shares of Common Stock equal to the Purchase Amount divided by the Liquidity Price, if the Investor fails to select the cash option.

In connection with Section (b)(i), the Purchase Amount will be due and payable by the Company to the Investor immediately prior to, or concurrent with, the consummation of the Liquidity Event. If there are not enough funds to pay the Investor and holders of other Safes (collectively, the "**Cash-Out Investors**") in full, then all of the Company's available funds will be distributed with equal priority and *pro rata* among the Cash-Out Investors in proportion to their Purchase Amounts, and the Cash-Out Investors will automatically receive the number of shares of Common Stock equal to the remaining unpaid Purchase Amount divided by the Liquidity Price. In connection with a Change of Control intended to qualify as a tax-free reorganization, the Company may reduce, *pro rata*, the Purchase Amounts payable to the Cash-Out Investors by the amount determined by its board of directors in good faith to be advisable for such Change of Control to qualify as a tax-free reorganization for U.S. federal income tax purposes, and in such case, the Cash-Out Investors will automatically receive the number of shares of Common Stock equal to the remaining unpaid Purchase Amount divided by the Liquidity Price.

(c) **Dissolution Event**.[7] If there is a Dissolution Event before this instrument expires or terminates, the Company will pay an amount equal to the Purchase Amount, due and payable to the Investor immediately prior to, or concurrent with, the consummation of the Dissolution Event. The Purchase Amount will be paid prior and in preference to any Distribution of any of the assets of the Company to holders of outstanding Capital Stock by reason of their ownership thereof. If immediately prior to the consummation of the Dissolution Event, the assets of the Company legally available

[6] In the event of a "liquidity event", defined as a change of control (e.g., sale or merger of the company that results in a change in controlling ownership) or an initial public offering, the investor would have the option to either (i) receive a cash payment equal to the Purchase Amount (subject to the limitations described below) or (ii) if the investor fails to select the cash option, automatically receive from the company a number of shares of common stock equal to the Purchase Amount divided by the Liquidity Price, which would be the price per share equal to the Valuation Cap divided by the "Liquidity Capitalization" (i.e., the number, as of immediately prior to the Liquidity Event, of shares of capital stock (on an as-converted basis) outstanding, assuming exercise or conversion of all outstanding vested and unvested options, warrants and other convertible securities, but excluding: (i) shares of common stock reserved and available for future grant under any equity incentive or similar plan; (ii) any Safes; and (iii) convertible promissory notes). If there are not enough funds to pay the investor and holders of other Safes (collectively, the "Cash-Out Investors") opting for a cash payment in full, then all of the company's available funds will be distributed with equal priority and pro rata among the Cash-Out Investors in proportion to their Purchase Amounts, and the Cash-Out Investors will automatically receive the number of shares of common stock equal to the remaining unpaid Purchase Amount divided by the Liquidity Price.

[7] In the event of a "dissolution event", defined as (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (excluding a liquidity event), whether voluntary or involuntary, the company would pay an amount equal to the Purchase Amount, due and payable to the Investor immediately prior to, or concurrent with, the consummation of the dissolution event. The Purchase Amount will be paid prior and in preference to any distribution of any of the assets of the company to holders of outstanding capital stock by reason of their ownership thereof. If immediately prior to the consummation of the dissolution event, the assets of the company legally available for distribution to the holders of all of the Safes (the "Dissolving Investors"), as determined in good faith by the company's board of directors, are insufficient to permit the payment to the Dissolving Investors of their respective Purchase Amounts, then the entire assets of the company legally available for distribution will be distributed with equal priority and pro rata among the Dissolving Investors in proportion to the Purchase Amounts they would otherwise be entitled to receive.

for distribution to the Investor and all holders of all other Safes (the "**Dissolving Investors**"), as determined in good faith by the Company's board of directors, are insufficient to permit the payment to the Dissolving Investors of their respective Purchase Amounts, then the entire assets of the Company legally available for distribution will be distributed with equal priority and *pro rata* among the Dissolving Investors in proportion to the Purchase Amounts they would otherwise be entitled to receive pursuant to this Section 1(c).

(d) **Termination**. This instrument will expire and terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this instrument) upon either (i) the issuance of stock to the Investor pursuant to Section 1(a) or Section 1(b)(ii); or (ii) the payment, or setting aside for payment, of amounts due the Investor pursuant to Section 1(b)(i) or Section 1(c).

2. ***Definitions***

"**Capital Stock**" means the capital stock of the Company, including, without limitation, the "**Common Stock**" and the "**Preferred Stock**."

"**Change of Control**" means (i) a transaction or series of related transactions in which any "person" or "group" (within the meaning of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company's board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

"**Company Capitalization**" means the **sum**, as of immediately prior to the Equity Financing, of: (**1**) all shares of Capital Stock (on an as-converted basis) issued and outstanding, assuming exercise or conversion of all outstanding vested and unvested options, warrants and other convertible securities, but excluding (A) this instrument, (B) all other Safes, and (C) convertible promissory notes; **and** (**2**) all shares of Common Stock reserved and available for future grant under any equity incentive or similar plan of the Company, and/or any equity incentive or similar plan to be created or increased in connection with the Equity Financing.

"**Distribution**" means the transfer to holders of Capital Stock by reason of their ownership thereof of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of Capital Stock by the Company or its subsidiaries for cash or property other than: (i) repurchases of Common Stock held by employees, officers, directors or consultants of the Company or its subsidiaries pursuant to an agreement providing, as applicable, a right of first refusal or a right to repurchase shares upon termination of such service provider's employment or services; or (ii) repurchases of Capital Stock in connection with the settlement of disputes with any stockholder.

"**Dissolution Event**" means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (**excluding** a Liquidity Event), whether voluntary or involuntary.

"**Equity Financing**" means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the Company issues and sells Preferred Stock at a fixed pre-money valuation.

"**Initial Public Offering**" means the closing of the Company's first firm commitment underwritten initial

public offering of Common Stock pursuant to a registration statement filed under the Securities Act.

"**Liquidity Capitalization**" means the number, as of immediately prior to the Liquidity Event, of shares of Capital Stock (on an as-converted basis) outstanding, assuming exercise or conversion of all outstanding vested and unvested options, warrants and other convertible securities, but **excluding**: (i) shares of Common Stock reserved and available for future grant under any equity incentive or similar plan; (ii) this instrument; (iii) other Safes; and (iv) convertible promissory notes.

"**Liquidity Event**" means a Change of Control or an Initial Public Offering.

"**Liquidity Price**" means the price per share equal to the Valuation Cap divided by the Liquidity Capitalization.

"**Pro Rata Rights Agreement**" means a written agreement between the Company and the Investor (and holders of other Safes, as appropriate) giving the Investor a right to purchase its *pro rata* share of private placements of securities by the Company **occurring after the Equity Financing**, subject to customary exceptions.[8] *Pro rata* for purposes of the Pro Rata Rights Agreement will be calculated based on the ratio of (1) the number of shares of Capital Stock owned by the Investor immediately prior to the issuance of the securities to (2) the total number of shares of outstanding Capital Stock on a fully diluted basis, calculated as of immediately prior to the issuance of the securities.

"**Safe**" means an instrument containing a future right to shares of Capital Stock, similar in form and content to this instrument, purchased by investors for the purpose of funding the Company's business operations.

"**Safe Preferred Stock**" means the shares of a series of Preferred Stock issued to the Investor in an Equity Financing, having the identical rights, privileges, preferences and restrictions as the shares of Standard Preferred Stock, other than with respect to: (i) the per share liquidation preference and the conversion price for purposes of price-based anti-dilution protection, which will equal the Safe Price; and (ii) the basis for any dividend rights, which will be based on the Safe Price.

"**Safe Price**" means the price per share equal to the Valuation Cap divided by the Company Capitalization.

"S**tandard Preferred Stock**" means the shares of a series of Preferred Stock issued to the investors investing new money in the Company in connection with the initial closing of the Equity Financing.

3. ***Company Representations***

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, and has the power and authority to own, lease and operate its properties and carry on its business as now conducted.

(b) The execution, delivery and performance by the Company of this instrument is within the power of the Company and, other than with respect to the actions to be taken when equity is to be issued to the Investor, has been duly authorized by all necessary actions on the part of the Company. This instrument constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity. To the knowledge of the Company, it is not in violation of (i) its current certificate of incorporation or bylaws, (ii) any material statute, rule or regulation applicable to the Company or (iii) any

[8] A company may decide to restrict pro rata rights to certain investors, such as only investors that purchase a Safe for a purchase price that is equal to or greater than a specified minimum dollar amount.

material indenture or contract to which the Company is a party or by which it is bound, where, in each case, such violation or default, individually, or together with all such violations or defaults, could reasonably be expected to have a material adverse effect on the Company.

(c) The performance and consummation of the transactions contemplated by this instrument do not and will not: (i) violate any material judgment, statute, rule or regulation applicable to the Company; (ii) result in the acceleration of any material indenture or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any lien upon any property, asset or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license or authorization applicable to the Company, its business or operations.

(d) No consents or approvals are required in connection with the performance of this instrument, other than: (i) the Company's corporate approvals; (ii) any qualifications or filings under applicable securities laws; and (iii) necessary corporate approvals for the authorization of Capital Stock issuable pursuant to Section 1.

(e) To its knowledge, the Company owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes and other intellectual property rights necessary for its business as now conducted and as currently proposed to be conducted, without any conflict with, or infringement of the rights of, others.

4. ***Investor Representations***

(a) The Investor has full legal capacity, power and authority to execute and deliver this instrument and to perform its obligations hereunder. This instrument constitutes valid and binding obligation of the Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) The Investor is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act. The Investor has been advised that this instrument and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Investor is purchasing this instrument and the securities to be acquired by the Investor hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. The Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing the Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time.

5. ***Miscellaneous***

(a) Any provision of this instrument may be amended, waived or modified only upon the written consent of the Company and the Investor.

(b) Any notice required or permitted by this instrument will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address listed on the signature page, as subsequently modified by written notice.

(c) The Investor is not entitled, as a holder of this instrument, to vote or receive dividends or be deemed the holder of Capital Stock for any purpose, nor will anything contained herein be construed to confer on the Investor, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any

matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action or to receive notice of meetings, or to receive subscription rights or otherwise until shares have been issued upon the terms described herein.

(d) Neither this instrument nor the rights contained herein may be assigned, by operation of law or otherwise, by either party without the prior written consent of the other; *provided, however*, that this instrument and/or the rights contained herein may be assigned without the Company's consent by the Investor to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Investor, including, without limitation, any general partner, managing member, officer or director of the Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, the Investor; and *provided, further*, that the Company may assign this instrument in whole, without the consent of the Investor, in connection with a reincorporation to change the Company's domicile.

(e) In the event any one or more of the provisions of this instrument is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this instrument operate or would prospectively operate to invalidate this instrument, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this instrument and the remaining provisions of this instrument will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(f) All rights and obligations hereunder will be governed by the laws of the State of [Governing Law Jurisdiction], without regard to the conflicts of law provisions of such jurisdiction.

(*Signature page follows*)

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and delivered.

[COMPANY NAME]

By:_____
[*name*]
[*title*]

Address:_____

_____

Email:_____

INVESTOR:

By: _____

Name:_____

Title:_____

Address:_____

Email:_____

§15 Standard SAFE (Cap and Discount)[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

THIS INSTRUMENT AND ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM.

[COMPANY NAME]

SAFE
(Simple Agreement for Future Equity)[2]

THIS CERTIFIES THAT in exchange for the payment by [Investor Name] (the "**Investor**") of $[_____] (the "**Purchase Amount**") on or about [Date of Safe], [COMPANY NAME], a [State of Incorporation] corporation (the "**Company**"), hereby issues to the Investor the right to certain shares of the Company's capital stock, subject to the terms set forth below.

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[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] The "Simple Agreement for Future Equity", or "Safe", was developed by Y Combinator as an alternative to seed financings based on preferred shares or convertible notes and provides for investors to be issued a "right to certain shares of the company's capital stock", subject to terms outlined in the Safe. This form of Safe is referred to as a "Cap and Discount", which operates with both a negotiated Valuation Cap and Discount Rate. There are three alternatives to the Cap and Discount that allow the parties to create Safes that correspond to the various types of convertible notes (e.g., Valuation Cap and no discount (the "Standard Safe"), a discount and no Valuation Cap, and a "most favored nation" provision with no Valuation Cap or discount). The notes in this form are adapted from materials relating to the Safe available at the website maintained by Y Combinator that can be accessed at http://www.ycombinator.com/documents/#safe. In particular, see the Safe Primer, which describes and compares each of the main types of Safe instruments and provides examples on how certain of the variable provisions work in practice. For further discussion of the Safe instrument, see §1:18. The notes included with the form of Standard Safe (see § 1:43) should also be reviewed as they pertain to provisions that are also in this form.

The "**Valuation Cap**" is $[_____].

The "**Discount Rate**" is [*100 minus the discount*]%.

See **Section 2** for certain additional defined terms.

1. ***Events***

(a) **Equity Financing**.[3] If there is an Equity Financing before the expiration or termination of this instrument, the Company will automatically issue to the Investor a number of shares of Safe Preferred Stock equal to the Purchase Amount divided by the Conversion Price.

In connection with the issuance of Safe Preferred Stock by the Company to the Investor pursuant to this Section 1(a):

(i) The Investor will execute and deliver to the Company all transaction documents related to the Equity Financing; *provided,* that such documents are the same documents to be entered into with the purchasers of Standard Preferred Stock, with appropriate variations for the Safe Preferred Stock if applicable, and *provided further,* that such documents have customary exceptions to any drag-along applicable to the Investor, including, without limitation, limited representations and warranties and limited liability and indemnification obligations on the part of the Investor; and

(ii) The Investor and the Company will execute a Pro Rata Rights Agreement, unless the Investor is already included in such rights in the transaction documents related to the Equity Financing.

(b) **Liquidity Event**.[4] If there is a Liquidity Event before the expiration or termination of this instrument, the Investor will, at its option, either (i) receive a cash payment equal to the Purchase Amount (subject to the following paragraph) or (ii) automatically receive from the Company a number of shares of Common Stock equal to the Purchase Amount divided by the Liquidity Price, if the Investor fails to select the cash option.

In connection with Section (b)(i), the Purchase Amount will be due and payable by the Company to the Investor immediately prior to, or concurrent with, the consummation of the Liquidity Event. If there are not enough funds to pay the Investor and holders of other Safes (collectively, the "**Cash-Out Investors**") in full, then all of the Company's available funds will be distributed with equal priority and *pro rata* among the Cash-Out Investors in proportion to their Purchase Amounts, and the Cash-Out Investors will automatically receive the number of shares of Common Stock equal

[3] This is a safe with a negotiated Valuation Cap and Discount Rate. Either the Valuation Cap or the Discount Rate applies when determining the Conversion Price to be used when converting this form of Safe into shares of Safe Preferred Stock. The Discount Rate applies to the price per share of the Standard Preferred Stock sold in the Equity Financing. If this calculation results in a greater number of shares of Safe Preferred Stock for the investor, the price per share based on the Valuation Cap is disregarded (and vice versa). The following example of the operation of this provision is provided in Appendix II of the Safe Primer. Assume that Investor has purchased a safe for $100,000; the Valuation Cap is $8,000,000 and the Discount Rate is 85%; the company has negotiated with investors to sell $1,000,000 worth of Series A Preferred Stock at a $10,000,000 pre-money valuation; and the company's fully-diluted outstanding capital stock immediately prior to the financing, including a 1,000,000 share option pool to be adopted in connection with the financing, is 11,000,000 shares. In this situation, the company will issue and sell 1,100,110 shares of Series A Preferred at $0.909 per share to the new investors. The company will issue Series A-1 Preferred to the safe holder, based on the Valuation Cap or the Discount Rate, whichever results in a lower price per share. The 15% discount applied to the per share price of the Series A Preferred is $0.77265. The Valuation Cap results in a price per share of $0.72727. Accordingly, the company will issue 137,500 shares of Series A-1 Preferred to the safe holder, at $0.72727 per share. The Discount Rate does not apply in this case.

[4] The conversion of this Safe in a Liquidity Event is the same as a Standard Safe.

to the remaining unpaid Purchase Amount divided by the Liquidity Price. In connection with a Change of Control intended to qualify as a tax-free reorganization, the Company may reduce, *pro rata*, the Purchase Amounts payable to the Cash-Out Investors by the amount determined by its board of directors in good faith to be advisable for such Change of Control to qualify as a tax-free reorganization for U.S. federal income tax purposes, and in such case, the Cash-Out Investors will automatically receive the number of shares of Common Stock equal to the remaining unpaid Purchase Amount divided by the Liquidity Price.

(c) **Dissolution Event**. If there is a Dissolution Event before this instrument expires or terminates, the Company will pay an amount equal to the Purchase Amount, due and payable to the Investor immediately prior to, or concurrent with, the consummation of the Dissolution Event. The Purchase Amount will be paid prior and in preference to any Distribution of any of the assets of the Company to holders of outstanding Capital Stock by reason of their ownership thereof. If immediately prior to the consummation of the Dissolution Event, the assets of the Company legally available for distribution to the Investor and all holders of all other Safes (the "**Dissolving Investors**"), as determined in good faith by the Company's board of directors, are insufficient to permit the payment to the Dissolving Investors of their respective Purchase Amounts, then the entire assets of the Company legally available for distribution will be distributed with equal priority and *pro rata* among the Dissolving Investors in proportion to the Purchase Amounts they would otherwise be entitled to receive pursuant to this Section 1(c).

(d) **Termination**. This instrument will expire and terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this instrument) upon either (i) the issuance of stock to the Investor pursuant to Section 1(a) or Section 1(b)(ii); or (ii) the payment, or setting aside for payment, of amounts due the Investor pursuant to Section 1(b)(i) or Section 1(c).

2. ***Definitions***

"**Capital Stock**" means the capital stock of the Company, including, without limitation, the "**Common Stock**" and the "**Preferred Stock**."

"**Change of Control**" means (i) a transaction or series of related transactions in which any "person" or "group" (within the meaning of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company's board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

"**Company Capitalization**" means the **sum**, as of immediately prior to the Equity Financing, of: (**1**) all shares of Capital Stock (on an as-converted basis) issued and outstanding, assuming exercise or conversion of all outstanding vested and unvested options, warrants and other convertible securities, but excluding (A) this instrument, (B) all other Safes, and (C) convertible promissory notes; **and** (**2**) all shares of Common Stock reserved and available for future grant under any equity incentive or similar plan of the Company, and/or any equity incentive or similar plan to be created or increased in connection with the Equity Financing.

"**Conversion Price**" means the either: (1) the Safe Price or (2) the Discount Price, whichever calculation results in a greater number of shares of Safe Preferred Stock.

"**Discount Price**" means the price per share of the Standard Preferred Stock sold in the Equity Financing multiplied by the Discount Rate.

"**Distribution**" means the transfer to holders of Capital Stock by reason of their ownership thereof of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of Capital Stock by the Company or its subsidiaries for cash or property other than: (i) repurchases of Common Stock held by employees, officers, directors or consultants of the Company or its subsidiaries pursuant to an agreement providing, as applicable, a right of first refusal or a right to repurchase shares upon termination of such service provider's employment or services; or (ii) repurchases of Capital Stock in connection with the settlement of disputes with any stockholder.

"**Dissolution Event**" means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (**excluding** a Liquidity Event), whether voluntary or involuntary.

"**Equity Financing**" means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the Company issues and sells Preferred Stock at a fixed pre-money valuation.

"**Initial Public Offering**" means the closing of the Company's first firm commitment underwritten initial public offering of Common Stock pursuant to a registration statement filed under the Securities Act.

"**Liquidity Capitalization**" means the number, as of immediately prior to the Liquidity Event, of shares of Capital Stock (on an as-converted basis) outstanding, assuming exercise or conversion of all outstanding vested and unvested options, warrants and other convertible securities, but **excluding**: (i) shares of Common Stock reserved and available for future grant under any equity incentive or similar plan; (ii) this instrument; (iii) other Safes; and (iv) convertible promissory notes.

"**Liquidity Event**" means a Change of Control or an Initial Public Offering.

"**Liquidity Price**" means the price per share equal to the Valuation Cap divided by the Liquidity Capitalization.

"**Pro Rata Rights Agreement**" means a written agreement between the Company and the Investor (and holders of other Safes, as appropriate) giving the Investor a right to purchase its *pro rata* share of private placements of securities by the Company **occurring after the Equity Financing**, subject to customary exceptions.[5] *Pro rata* for purposes of the Pro Rata Rights Agreement will be calculated based on the ratio of (1) the number of shares of Capital Stock owned by the Investor immediately prior to the issuance of the securities to (2) the total number of shares of outstanding Capital Stock on a fully diluted basis, calculated as of immediately prior to the issuance of the securities.

"**Safe**" means an instrument containing a future right to shares of Capital Stock, similar in form and content to this instrument, purchased by investors for the purpose of funding the Company's business operations.

"**Safe Preferred Stock**" means the shares of a series of Preferred Stock issued to the Investor in an Equity Financing, having the identical rights, privileges, preferences and restrictions as the shares of Standard Preferred Stock, other than with respect to: (i) the per share liquidation preference and the conversion price for purposes of price-based

[5] A company may decide to restrict pro rata rights to certain investors, such as only investors that purchase a Safe for a purchase price that is equal to or greater than a specified minimum dollar amount.

anti-dilution protection, which will equal the Conversion Price; and (ii) the basis for any dividend rights, which will be based on the Conversion Price.

"**Safe Price**" means the price per share equal to the Valuation Cap divided by the Company Capitalization.

"S**tandard Preferred Stock**" means the shares of a series of Preferred Stock issued to the investors investing new money in the Company in connection with the initial closing of the Equity Financing.

3. ***Company Representations***

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, and has the power and authority to own, lease and operate its properties and carry on its business as now conducted.

(b) The execution, delivery and performance by the Company of this instrument is within the power of the Company and, other than with respect to the actions to be taken when equity is to be issued to the Investor, has been duly authorized by all necessary actions on the part of the Company. This instrument constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity. To the knowledge of the Company, it is not in violation of (i) its current certificate of incorporation or bylaws, (ii) any material statute, rule or regulation applicable to the Company or (iii) any material indenture or contract to which the Company is a party or by which it is bound, where, in each case, such violation or default, individually, or together with all such violations or defaults, could reasonably be expected to have a material adverse effect on the Company.

(c) The performance and consummation of the transactions contemplated by this instrument do not and will not: (i) violate any material judgment, statute, rule or regulation applicable to the Company; (ii) result in the acceleration of any material indenture or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any lien upon any property, asset or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license or authorization applicable to the Company, its business or operations.

(d) No consents or approvals are required in connection with the performance of this instrument, other than: (i) the Company's corporate approvals; (ii) any qualifications or filings under applicable securities laws; and (iii) necessary corporate approvals for the authorization of Capital Stock issuable pursuant to Section 1.

(e) To its knowledge, the Company owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes and other intellectual property rights necessary for its business as now conducted and as currently proposed to be conducted, without any conflict with, or infringement of the rights of, others.

4. ***Investor Representations***

(a) The Investor has full legal capacity, power and authority to execute and deliver this instrument and to perform its obligations hereunder. This instrument constitutes valid and binding obligation of the Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) The Investor is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act. The Investor has been advised that this instrument and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the

Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Investor is purchasing this instrument and the securities to be acquired by the Investor hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. The Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing the Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time.

5. ***Miscellaneous***

(a) Any provision of this instrument may be amended, waived or modified only upon the written consent of the Company and the Investor.

(b) Any notice required or permitted by this instrument will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address listed on the signature page, as subsequently modified by written notice.

(c) The Investor is not entitled, as a holder of this instrument, to vote or receive dividends or be deemed the holder of Capital Stock for any purpose, nor will anything contained herein be construed to confer on the Investor, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action or to receive notice of meetings, or to receive subscription rights or otherwise until shares have been issued upon the terms described herein.

(d) Neither this instrument nor the rights contained herein may be assigned, by operation of law or otherwise, by either party without the prior written consent of the other; *provided, however*, that this instrument and/or the rights contained herein may be assigned without the Company's consent by the Investor to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Investor, including, without limitation, any general partner, managing member, officer or director of the Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, the Investor; and *provided, further*, that the Company may assign this instrument in whole, without the consent of the Investor, in connection with a reincorporation to change the Company's domicile.

(e) In the event any one or more of the provisions of this instrument is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this instrument operate or would prospectively operate to invalidate this instrument, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this instrument and the remaining provisions of this instrument will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(f) All rights and obligations hereunder will be governed by the laws of the State of [Governing Law Jurisdiction], without regard to the conflicts of law provisions of such jurisdiction.

(*Signature page follows*)

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and delivered.

[COMPANY NAME]

By:_____
[*name*]
[*title*]

Address:_____

_____

Email:_____

INVESTOR:

By: _____

Name:_____

Title:_____

Address:_____

_____

Email:_____

§16 Standard SAFE (Discount)[1]

THIS DOCUMENT WAS CREATED TO PROVIDE READERS WITH ACCURATE AND AUTHORITATIVE INFORMATION CONCERNING THE SUBJECT MATTER COVERED; HOWEVER, THIS DOCUMENT IS INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE LEGAL OR OTHER PROFESSIONAL ADVICE. BECAUSE OF THE GENERALITY OF THE INFORMATION IN THIS DOCUMENT, NOTHING CONTAIN HEREIN IS TO BE CONSIDERED AS THE RENDERING OF LEGAL OR PROFESSIONAL ADVICE FOR SPECIFIC CASES. THIS DOCUMENT IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY AND READERS ARE RESPONSIBLE FOR OBTAINING SUCH ADVICE FROM THEIR OWN LEGAL COUNSEL.

THIS INSTRUMENT AND ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM.

[COMPANY NAME]

SAFE
(Simple Agreement for Future Equity)[2]

THIS CERTIFIES THAT in exchange for the payment by [Investor Name] (the "**Investor**") of $[_____] (the "**Purchase Amount**") on or about [Date of Safe], [COMPANY NAME], a [State of Incorporation] corporation (the

[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] The "Simple Agreement for Future Equity", or "Safe", was developed by Y Combinator as an alternative to seed financings based on preferred shares or convertible notes and provides for investors to be issued a "right to certain shares of the company's capital stock", subject to terms outlined in the Safe. This form of Safe is referred to as a "Discount, No Cap", which operates with a negotiated discount and no Valuation Cap. There are three alternatives to the Discount, No Cap that allow the parties to create Safes that correspond to the various types of convertible notes (e.g., Valuation Cap and no discount (the "Standard Safe"), a discount and a Valuation Cap, and a "most favored nation" provision with no Valuation Cap or discount). The notes in this form are adapted from materials relating to the Safe available at the website maintained by Y Combinator that can be accessed at http://www.ycombinator.com/documents/#safe. In particular, see the Safe Primer, which describes and compares each of the main types of Safe instruments and provides examples on how certain of the variable provisions work in practice. For further discussion of the Safe instrument, see §1:18. The notes included with the form of Standard Safe (see § 1:43) should also be reviewed as they pertain to provisions that are also in this form.

"**Company**"), hereby issues to the Investor the right to certain shares of the Company's capital stock, subject to the terms set forth below.

The "**Discount Rate**" is [*100 minus the discount*]%.

See **Section 2** for certain additional defined terms.

1. ***Events***

(a) **Equity Financing**.[3] If there is an Equity Financing before the expiration or termination of this instrument, the Company will automatically issue to the Investor a number of shares of Safe Preferred Stock equal to the Purchase Amount divided by the Discount Price.

In connection with the issuance of Safe Preferred Stock by the Company to the Investor pursuant to this Section 1(a):

(i) The Investor will execute and deliver to the Company all transaction documents related to the Equity Financing; *provided,* that such documents are the same documents to be entered into with the purchasers of Standard Preferred Stock, with appropriate variations for the Safe Preferred Stock if applicable, and *provided further,* that such documents have customary exceptions to any drag-along applicable to the Investor, including, without limitation, limited representations and warranties and limited liability and indemnification obligations on the part of the Investor; and

(ii) The Investor and the Company will execute a Pro Rata Rights Agreement, unless the Investor is already included in such rights in the transaction documents related to the Equity Financing.

(b) **Liquidity Event**.[4] If there is a Liquidity Event before the expiration or termination of this instrument, the Investor will, at its option, either (i) receive a cash payment equal to the Purchase Amount (subject to the following paragraph) or (ii) automatically receive from the Company a number of shares of Common Stock equal to the Purchase Amount divided by the Liquidity Price, if the Investor fails to select the cash option.

In connection with Section (b)(i), the Purchase Amount will be due and payable by the Company to the Investor immediately prior to, or concurrent with, the consummation of the Liquidity Event. If there are not enough funds to pay the Investor and holders of other Safes (collectively, the "**Cash-Out Investors**") in full, then all of the Company's available funds will be distributed with equal priority and *pro rata* among the Cash-Out Investors in proportion to their Purchase Amounts, and the Cash-Out Investors will automatically receive the number of shares of Common Stock equal to the remaining unpaid Purchase Amount divided by the Liquidity Price. In connection with a Change of Control intended to qualify as a tax-free reorganization, the Company may reduce, *pro rata*, the Purchase Amounts payable to the Cash-Out Investors by the amount determined by its board of directors in good faith to be advisable for such Change of

[3] This is a safe with a negotiated Discount Rate, e.g., a 20% discount off the price per share of the Standard Preferred Stock, applied to the conversion of this safe into shares of Safe Preferred Stock. The following example of the operation of this provision is provided in Appendix II of the Safe Primer. Assume that Investor has purchased a safe for $20,000; the Discount Rate is 80%; the company has negotiated with investors to sell $400,000 worth of Series AA Preferred Stock at a $2,000,000 pre-money valuation; and the company's fully-diluted outstanding capital stock immediately prior to the financing is 10,500,000 shares. The company will issue and sell 2,105,263 shares of Series AA Preferred at $0.19 per share to the new investors. The 20% discount applied to the per share price of the Series AA Preferred is $0.152. Accordingly, the company will issue 131,578 shares of Series AA-1 Preferred to the safe holder, at $0.152 per share.

[4] If the safe is converting in a Liquidity Event, the investor could elect to have the Purchase Amount repaid, or to convert the safe into shares of common stock, based on the fair market value of the common stock at the time of the Liquidity Event with the Discount Rate applied to the common stock price.

Control to qualify as a tax-free reorganization for U.S. federal income tax purposes, and in such case, the Cash-Out Investors will automatically receive the number of shares of Common Stock equal to the remaining unpaid Purchase Amount divided by the Liquidity Price.

(c) **Dissolution Event**. If there is a Dissolution Event before this instrument expires or terminates, the Company will pay an amount equal to the Purchase Amount, due and payable to the Investor immediately prior to, or concurrent with, the consummation of the Dissolution Event. The Purchase Amount will be paid prior and in preference to any Distribution of any of the assets of the Company to holders of outstanding Capital Stock by reason of their ownership thereof. If immediately prior to the consummation of the Dissolution Event, the assets of the Company legally available for distribution to the Investor and all holders of all other Safes (the "**Dissolving Investors**"), as determined in good faith by the Company's board of directors, are insufficient to permit the payment to the Dissolving Investors of their respective Purchase Amounts, then the entire assets of the Company legally available for distribution will be distributed with equal priority and *pro rata* among the Dissolving Investors in proportion to the Purchase Amounts they would otherwise be entitled to receive pursuant to this Section 1(c).

(d) **Termination**. This instrument will expire and terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this instrument) upon either (i) the issuance of stock to the Investor pursuant to Section 1(a) or Section 1(b)(ii); or (ii) the payment, or setting aside for payment, of amounts due the Investor pursuant to Section 1(b)(i) or Section 1(c).

2. ***Definitions***

"**Capital Stock**" means the capital stock of the Company, including, without limitation, the "**Common Stock**" and the "**Preferred Stock**."

"**Change of Control**" means (i) a transaction or series of related transactions in which any "person" or "group" (within the meaning of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company's board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

"**Discount Price**" means the price per share of the Standard Preferred Stock sold in the Equity Financing multiplied by the Discount Rate.

"**Distribution**" means the transfer to holders of Capital Stock by reason of their ownership thereof of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of Capital Stock by the Company or its subsidiaries for cash or property other than: (i) repurchases of Common Stock held by employees, officers, directors or consultants of the Company or its subsidiaries pursuant to an agreement providing, as applicable, a right of first refusal or a right to repurchase shares upon termination of such service provider's employment or services; or (ii) repurchases of Capital Stock in connection with the settlement of disputes with any stockholder.

"**Dissolution Event**" means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (**excluding** a Liquidity Event), whether voluntary or involuntary.

"**Equity Financing**" means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the Company issues and sells Preferred Stock at a fixed pre-money valuation.

"**Initial Public Offering**" means the closing of the Company's first firm commitment underwritten initial public offering of Common Stock pursuant to a registration statement filed under the Securities Act.

"**Liquidity Event**" means a Change of Control or an Initial Public Offering.

"**Liquidity Price**" means the price per share equal to: the fair market value of the Common Stock at the time of the Liquidity Event, as determined by reference to the purchase price payable in connection with such Liquidity Event, multiplied by the Discount Rate.

"**Pro Rata Rights Agreement**" means a written agreement between the Company and the Investor (and holders of other Safes, as appropriate) giving the Investor a right to purchase its *pro rata* share of private placements of securities by the Company **occurring after the Equity Financing**, subject to customary exceptions.[5] *Pro rata* for purposes of the Pro Rata Rights Agreement will be calculated based on the ratio of (1) the number of shares of Capital Stock owned by the Investor immediately prior to the issuance of the securities to (2) the total number of shares of outstanding Capital Stock on a fully diluted basis, calculated as of immediately prior to the issuance of the securities.

"**Safe**" means an instrument containing a future right to shares of Capital Stock, similar in form and content to this instrument, purchased by investors for the purpose of funding the Company's business operations.

"**Safe Preferred Stock**" means the shares of a series of Preferred Stock issued to the Investor in an Equity Financing, having the identical rights, privileges, preferences and restrictions as the shares of Standard Preferred Stock, other than with respect to: (i) the per share liquidation preference and the conversion price for purposes of price-based anti-dilution protection, which will equal the Discount Price; and (ii) the basis for any dividend rights, which will be based on the Discount Price.

"S**tandard Preferred Stock**" means the shares of a series of Preferred Stock issued to the investors investing new money in the Company in connection with the initial closing of the Equity Financing.

3. ***Company Representations***

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, and has the power and authority to own, lease and operate its properties and carry on its business as now conducted.

(b) The execution, delivery and performance by the Company of this instrument is within the power of the Company and, other than with respect to the actions to be taken when equity is to be issued to the Investor, has been duly authorized by all necessary actions on the part of the Company. This instrument constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity. To the knowledge of the Company, it is not in violation of (i) its current certificate of incorporation or bylaws, (ii) any material statute, rule or regulation applicable to the Company or (iii) any material indenture or contract to which the Company is a party or by which it is bound, where, in each case, such

[5] A company may decide to restrict pro rata rights to certain investors, such as only investors that purchase a Safe for a purchase price that is equal to or greater than a specified minimum dollar amount.

violation or default, individually, or together with all such violations or defaults, could reasonably be expected to have a material adverse effect on the Company.

(c) The performance and consummation of the transactions contemplated by this instrument do not and will not: (i) violate any material judgment, statute, rule or regulation applicable to the Company; (ii) result in the acceleration of any material indenture or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any lien upon any property, asset or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license or authorization applicable to the Company, its business or operations.

(d) No consents or approvals are required in connection with the performance of this instrument, other than: (i) the Company's corporate approvals; (ii) any qualifications or filings under applicable securities laws; and (iii) necessary corporate approvals for the authorization of Capital Stock issuable pursuant to Section 1.

(e) To its knowledge, the Company owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes and other intellectual property rights necessary for its business as now conducted and as currently proposed to be conducted, without any conflict with, or infringement of the rights of, others.

4. ***Investor Representations***

(a) The Investor has full legal capacity, power and authority to execute and deliver this instrument and to perform its obligations hereunder. This instrument constitutes valid and binding obligation of the Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) The Investor is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act. The Investor has been advised that this instrument and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Investor is purchasing this instrument and the securities to be acquired by the Investor hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. The Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing the Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time.

5. ***Miscellaneous***

(a) Any provision of this instrument may be amended, waived or modified only upon the written consent of the Company and the Investor.

(b) Any notice required or permitted by this instrument will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address listed on the signature page, as subsequently modified by written notice.

(c) The Investor is not entitled, as a holder of this instrument, to vote or receive dividends or be deemed the holder of Capital Stock for any purpose, nor will anything contained herein be construed to confer on the Investor, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action or to

receive notice of meetings, or to receive subscription rights or otherwise until shares have been issued upon the terms described herein.

(d) Neither this instrument nor the rights contained herein may be assigned, by operation of law or otherwise, by either party without the prior written consent of the other; *provided, however*, that this instrument and/or the rights contained herein may be assigned without the Company's consent by the Investor to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Investor, including, without limitation, any general partner, managing member, officer or director of the Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, the Investor; and *provided, further*, that the Company may assign this instrument in whole, without the consent of the Investor, in connection with a reincorporation to change the Company's domicile.

(e) In the event any one or more of the provisions of this instrument is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this instrument operate or would prospectively operate to invalidate this instrument, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this instrument and the remaining provisions of this instrument will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(f) All rights and obligations hereunder will be governed by the laws of the State of [Governing Law Jurisdiction], without regard to the conflicts of law provisions of such jurisdiction.

(*Signature page follows*)

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and delivered.

[COMPANY NAME]

By:_____
[*name*]
[*title*]

Address:_____

_____

Email:_____

INVESTOR:

By: _____

Name:_____

Title:_____

Address:_____

_____

Email:_____

§17 Standard SAFE (MFN)[1]

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[COMPANY NAME]

SAFE
(Simple Agreement for Future Equity)[2]

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[2] The "Simple Agreement for Future Equity", or "Safe", was developed by Y Combinator as an alternative to seed financings based on preferred shares or convertible notes and provides for investors to be issued a "right to certain shares of the company's capital stock", subject to terms outlined in the Safe. This form of Safe is referred to as a "No Cap or Discount, MFN Provision", which operates without a negotiated Valuation Cap or discount but which provides that if the company subsequently issues safes with provisions that are advantageous to the investors holding this safe (such as a valuation cap and/or a discount rate), this safe can be amended to reflect the terms of the later-issued safes. The amendment term is the so-called "MFN Provision". There are three alternatives to the No Cap or Discount, MFN Provisions that allow the parties to create Safes that correspond to the various types of convertible notes (e.g., Valuation Cap and no discount (the "Standard Safe"), a discount and a Valuation Cap, and a discount with no Valuation Cap. The notes in this form are adapted from materials relating to the Safe available at the website maintained by Y Combinator that can be accessed at http://www.ycombinator.com/documents/#safe. In particular, see the Safe Primer, which describes and compares each of the main types of Safe instruments and provides examples on how certain of the variable provisions work in practice. For further discussion of the Safe instrument, see §1:18. The notes included with the form of Standard Safe (see § 1:43) should also be reviewed as they pertain to provisions that are also in this form.

THIS CERTIFIES THAT in exchange for the payment by [Investor Name] (the "**Investor**") of $[_____] (the "**Purchase Amount**") on or about [Date of Safe], [COMPANY NAME], a [State of Incorporation] corporation (the "**Company**"), hereby issues to the Investor the right to certain shares of the Company's capital stock, subject to the terms set forth below.

1. ***Events***

(a) **Equity Financing**.[3] If there is an Equity Financing before the expiration or termination of this instrument, the Company will automatically issue to the Investor a number of shares of Preferred Stock sold in the Equity Financing equal to the Purchase Amount divided by the price per share of the Preferred Stock.

In connection with the issuance of such shares of Preferred Stock to the Investor pursuant to this Section 1(a):

(i) The Investor will execute and deliver to the Company all transaction documents related to the Equity Financing; *provided,* that such documents are the same documents to be entered into with the purchasers of Preferred Stock, and *provided further,* that such documents have customary exceptions to any drag-along applicable to the Investor, including, without limitation, limited representations and warranties and limited liability and indemnification obligations on the part of the Investor; and

(ii) The Investor and the Company will execute a Pro Rata Rights Agreement, unless the Investor is already included in such rights in the transaction documents related to the Equity Financing.

(b) **Liquidity Event**.[4] If there is a Liquidity Event before the expiration or termination of this instrument, the Investor will, at its option, either (i) receive a cash payment equal to the Purchase Amount (subject to the following paragraph) or (ii) automatically receive from the Company a number of shares of Common Stock equal to the Purchase Amount divided by the fair market value of the Common Stock at the time of the Liquidity Event (determined by reference to the purchase price payable in connection with such Liquidity Event) (the "**Liquidity Price**"), if the Investor fails to select the cash option.

In connection with Section (b)(i), the Purchase Amount will be due and payable by the Company to the Investor immediately prior to, or concurrent with, the consummation of the Liquidity Event. If there are not enough funds to pay the Investor and holders of other Safes (collectively, the "**Cash-Out Investors**") in full, then all of the Company's available funds will be distributed with equal priority and *pro rata* among the Cash-Out Investors in proportion to their Purchase Amounts, and the Cash-Out Investors will automatically receive the number of shares of Common Stock equal to the remaining unpaid Purchase Amount divided by the Liquidity Price. In connection with a Change of Control intended to qualify as a tax-free reorganization, the Company may reduce, *pro rata*, the Purchase Amounts payable to the Cash-Out Investors by the amount determined by its board of directors in good faith to be advisable for such Change of Control to qualify as a tax-free reorganization for U.S. federal income tax purposes, and in such case, the Cash-Out Investors will automatically receive the number of shares of Common Stock equal to the remaining unpaid Purchase Amount divided by the Liquidity Price.

[3] If there is an Equity Financing before this safe is amended pursuant to the MFN Provision described below, the investor would receive the same shares of preferred stock as the investors of new money in the Equity Financing, at the same price. However, this safe does not automatically convert into shares of preferred stock unless the amount of new money raised in the Equity Financing is at least $250,000 (a suggested amount which can be changed by the parties). This threshold amount provides the investor with some protection against an insignificant equity round raised at an artificially high valuation.

[4] If there is a Liquidity Event before this safe is amended by the MFN Provision described below, the investor could elect to have the Purchase Amount repaid, or to convert the safe into shares of common stock, based on the fair market value of the common stock at the time of the Liquidity Event.

(c) **Dissolution Event**. If there is a Dissolution Event before this instrument expires or terminates, the Company will pay an amount equal to the Purchase Amount, due and payable to the Investor immediately prior to, or concurrent with, the consummation of the Dissolution Event. The Purchase Amount will be paid prior and in preference to any Distribution of any of the assets of the Company to holders of outstanding Capital Stock by reason of their ownership thereof. If immediately prior to the consummation of the Dissolution Event, the assets of the Company legally available for distribution to the Investor and all holders of all other Safes (the "**Dissolving Investors**"), as determined in good faith by the Company's board of directors, are insufficient to permit the payment to the Dissolving Investors of their respective Purchase Amounts, then the entire assets of the Company legally available for distribution will be distributed with equal priority and *pro rata* among the Dissolving Investors in proportion to the Purchase Amounts they would otherwise be entitled to receive pursuant to this Section 1(c).

(d) **Termination**. This instrument will expire and terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this instrument) upon either (i) the issuance of stock to the Investor pursuant to Section 1(a) or Section 1(b)(ii); or (ii) the payment, or setting aside for payment, of amounts due the Investor pursuant to Section 1(b)(i) or Section 1(c).

2. ***Definitions***

"**Capital Stock**" means the capital stock of the Company, including, without limitation, the "**Common Stock**" and the "**Preferred Stock**."

"**Change of Control**" means (i) a transaction or series of related transactions in which any "person" or "group" (within the meaning of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company's board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

"**Distribution**" means the transfer to holders of Capital Stock by reason of their ownership thereof of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of Capital Stock by the Company or its subsidiaries for cash or property other than: (i) repurchases of Common Stock held by employees, officers, directors or consultants of the Company or its subsidiaries pursuant to an agreement providing, as applicable, a right of first refusal or a right to repurchase shares upon termination of such service provider's employment or services; or (ii) repurchases of Capital Stock in connection with the settlement of disputes with any stockholder.

"**Dissolution Event**" means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (**excluding** a Liquidity Event), whether voluntary or involuntary.

"**Equity Financing**" means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the Company issues and sells shares of Preferred Stock at a fixed pre-money valuation with an aggregate sales price of not less than $250,000 (excluding all Subsequent Convertible Securities).

"**Initial Public Offering**" means the closing of the Company's first firm commitment underwritten initial public offering of Common Stock pursuant to a registration statement filed under the Securities Act.

"**Liquidity Event**" means a Change of Control or an Initial Public Offering.

"**Pro Rata Rights Agreement** means a written agreement between the Company and the Investor (and holders of other Safes, as appropriate) giving the Investor a right to purchase its *pro rata* share of private placements of securities by the Company **occurring after the Equity Financing**, subject to customary exceptions.[5] *Pro rata* for purposes of the Pro Rata Rights Agreement will be calculated based on the ratio of (1) the number of shares of Capital Stock owned by the Investor immediately prior to the issuance of the securities to (2) the total number of shares of outstanding Capital Stock on a fully diluted basis, calculated as of immediately prior to the issuance of the securities.

"**Safe**" means an instrument containing a future right to shares of Capital Stock, similar in form and content to this instrument, purchased by investors for the purpose of funding the Company's business operations.

"**Subsequent Convertible Securities**" means convertible securities that the Company may issue after the issuance of this instrument with the principal purpose of raising capital, including but not limited to, other Safes, convertible debt instruments and other convertible securities. Converting Securities excludes: (i) options issued pursuant to any equity incentive or similar plan of the Company; (ii) convertible securities issued or issuable to (A) banks, equipment lessors, financial institutions or other persons engaged in the business of making loans pursuant to a debt financing or commercial leasing or (B) suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions; and (iii) convertible securities issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships.

3. "***MFN*** ***Amendment Provision***.[6] If the Company issues any Subsequent Convertible Securities prior to termination of this instrument, the Company will promptly provide the Investor with written notice thereof, together with a copy of all documentation relating to such Subsequent Convertible Securities and, upon written request of the Investor, any additional information related to such Subsequent Convertible Securities as may be reasonably requested by the Investor. In the event the Investor determines that the terms of the Subsequent Convertible Securities are preferable to the terms of this instrument, the Investor will notify the Company in writing. Promptly after receipt of such written notice from the Investor, the Company agrees to amend and restate this instrument to be identical to the instrument(s) evidencing the Subsequent Convertible Securities.

4. ***Company Representations***

[5] A company may decide to restrict pro rata rights to certain investors, such as only investors that purchase a Safe for a purchase price that is equal to or greater than a specified minimum dollar amount.

[6] When originally issued, this safe will have no Valuation Cap and no Discount Rate and, as described above, if there is an Equity Financing meeting certain minimum condition as to the amount of funds raised before this safe is amended pursuant to this MFN Amendment Provision, the investor would receive the same shares of preferred stock as the investors of new money in the Equity Financing, at the same price. However, under the terms of this instrument until there is an Equity Financing if the company subsequently issues Safes with provisions that are advantageous to the investors holding the original version of the Safe (such as a valuation cap and/or a discount rate), the original version of the Safe can be amended to reflect the terms of the later-issued safes. Investors relying on an MFN Provision should understand that, unless the later Safes include an MFN, the MFN of the original version of the Safe is amended away once the safe holder decides the MFN is triggered (i.e., the investors will typically only have one opportunity to amend their original version of the Safe and take advantage of better terms that might offered if the company continues to issue additional Safes.

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, and has the power and authority to own, lease and operate its properties and carry on its business as now conducted.

(b) The execution, delivery and performance by the Company of this instrument is within the power of the Company and, other than with respect to the actions to be taken when equity is to be issued to the Investor, has been duly authorized by all necessary actions on the part of the Company. This instrument constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity. To the knowledge of the Company, it is not in violation of (i) its current certificate of incorporation or bylaws, (ii) any material statute, rule or regulation applicable to the Company or (iii) any material indenture or contract to which the Company is a party or by which it is bound, where, in each case, such violation or default, individually, or together with all such violations or defaults, could reasonably be expected to have a material adverse effect on the Company.

(c) The performance and consummation of the transactions contemplated by this instrument do not and will not: (i) violate any material judgment, statute, rule or regulation applicable to the Company; (ii) result in the acceleration of any material indenture or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any lien upon any property, asset or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license or authorization applicable to the Company, its business or operations.

(d) No consents or approvals are required in connection with the performance of this instrument, other than: (i) the Company's corporate approvals; (ii) any qualifications or filings under applicable securities laws; and (iii) necessary corporate approvals for the authorization of Capital Stock issuable pursuant to Section 1.

(e) To its knowledge, the Company owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes and other intellectual property rights necessary for its business as now conducted and as currently proposed to be conducted, without any conflict with, or infringement of the rights of, others.

5. ***Investor Representations***

(a) The Investor has full legal capacity, power and authority to execute and deliver this instrument and to perform its obligations hereunder. This instrument constitutes valid and binding obligation of the Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) The Investor is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act. The Investor has been advised that this instrument and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Investor is purchasing this instrument and the securities to be acquired by the Investor hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. The Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing the Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time.

6. ***Miscellaneous***

(a) Any provision of this instrument may be amended, waived or modified only upon the written consent of the Company and the Investor.

(b) Any notice required or permitted by this instrument will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address listed on the signature page, as subsequently modified by written notice.

(c) The Investor is not entitled, as a holder of this instrument, to vote or receive dividends or be deemed the holder of Capital Stock for any purpose, nor will anything contained herein be construed to confer on the Investor, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action or to receive notice of meetings, or to receive subscription rights or otherwise until shares have been issued upon the terms described herein.

(d) Neither this instrument nor the rights contained herein may be assigned, by operation of law or otherwise, by either party without the prior written consent of the other; *provided, however*, that this instrument and/or the rights contained herein may be assigned without the Company's consent by the Investor to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Investor, including, without limitation, any general partner, managing member, officer or director of the Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, the Investor; and *provided, further*, that the Company may assign this instrument in whole, without the consent of the Investor, in connection with a reincorporation to change the Company's domicile.

(e) In the event any one or more of the provisions of this instrument is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this instrument operate or would prospectively operate to invalidate this instrument, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this instrument and the remaining provisions of this instrument will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(f) All rights and obligations hereunder will be governed by the laws of the State of [Governing Law Jurisdiction], without regard to the conflicts of law provisions of such jurisdiction.

(*Signature page follows*)

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and delivered.

[COMPANY NAME]

By:_____
[*name*]
[*title*]

Address:_____

_____

Email:_____

INVESTOR:

By: _____

Name:_____

Title:_____

Address:_____

_____

Email:_____

§18 SAFE side letter[1]

[COMPANY LETTERHEAD]

[DATE]

[METHOD OF DELIVERY]

[INVESTOR NAME]
RE: SAFE financing[2]

Dear [INVESTOR NAME]:

This letter confirms the agreement (the "**Agreement**") between [INVESTOR NAME] (the "**Investor**") and [COMPANY NAME], a [STATE] corporation (the "**Company**"), in consideration of the Investor's investment in the Company pursuant to that certain Simple Agreement for Future Equity dated [DATE] (the "**SAFE**").

Capitalized terms that are not defined herein will be defined as set forth in the SAFE. Upon execution by all parties hereto, this Agreement will constitute a binding agreement among the parties hereto that may not be amended without such parties' written consent.

1. [Most Favored Nation. While the SAFE is outstanding, if the Company sells or issues any convertible notes or other simple agreements for future equity ("**Subsequent Convertible Instruments**") on terms that differ from the SAFE, the Company will provide the Investor with written notice of such sale or issuance, including the terms of the Subsequent Convertible Instruments, no later than five (5) days after the closing date thereof. In the event the Investor determines, in its sole discretion, that any Subsequent Convertible Instrument contains terms more favorable to the holder(s) thereof than the terms set forth in the SAFE, the Investor may elect to exchange the SAFE for such Subsequent Convertible Instrument. If the Investor elects to exchange the SAFE for a Subsequent Convertible Instrument, the Company agrees to enter into a side letter with the Investor relating to such Subsequent Convertible Instrument, which side letter will have substantially the same terms as those set forth in this Agreement.]

2. [Right of First Offer. Each time the Company proposes to offer Equity Securities at any time following the date hereof, up to and including the closing of the Next Equity Financing, the Company will provide the Investor with at least five (5) business days' prior written notice of such offering, including the price and terms thereof. The Investor will have the right, but not the obligation, to invest an amount (in the aggregate across all such offerings) up to but not greater than [one times (1x)/[OTHER MULTIPLE]] the amount of the SAFEs held by the Investor at the time of such offering. Such investments by the Investor will be on the same terms and at the same price as the Company offers to the other investors purchasing Equity Securities in such offerings. The Company will have no obligation to offer Equity Securities to the Investor under this Section [2] in any offering of Equity Securities if (a) at the time of such offering, the Investor is not an "accredited investor," as that term is then defined in Rule 501(a) of Regulation D of the Securities Act and (b) such offering of Equity Securities is otherwise being offered only to accredited investors.]

3. ["Major Investor" Rights. In connection with the conversion of the SAFE upon a Next Equity Financing, to the extent the Financing Agreements include the concept of a "Major Investor" (or a similar concept), the Company will ensure that the Investor is included within the definition of "Major Investor" for all purposes under the Financing Agreements (including, without limitation, with respect to rights of first offer and information rights).]

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[1] This document is included in "Seed Capital: A Guide for Sustainable Entrepreneurs", which is part of "Finance: A Library for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org) and copyrighted © August 2017 by Alan S. Gutterman.

[2] This form is a template for a side letter that may be used in connection with the issuance of simple agreements for future equity (SAFEs). The letter agreement includes language for certain rights that are sometimes granted to SAFE investors, such as most favored nation (MFN) rights, rights of first offer (or preemptive rights), "Major Investor" rights, expense reimbursement rights, information rights, and observer rights.

4. [Expenses. Promptly following the Closing in which the Investor purchases the SAFE, the Company will reimburse the reasonable fees and out-of-pocket expenses of [FIRM NAME], special counsel for the Investor[, not to exceed $[AMOUNT]].]

5. [Information Rights. [To the extent that the Company prepares financial statements, the/The] Company will deliver to the Investor:

(a) as soon as practicable, but in any event within [ninety (90)/[NUMBER]] days after the end of each fiscal year of the Company, an income statement and statement of cash flows for such fiscal year, and a balance sheet [and statement of stockholders' equity] as of the end of such fiscal year, such unaudited annual financial reports to be in reasonable detail and prepared [on a consistent basis/in accordance with generally accepted accounting principles ("**GAAP**")];

(b) as soon as practicable, but in any event within [forty-five (45)/[NUMBER]] days after the end of each of the first three (3) quarters of each fiscal year of the Company, an income statement and statement of cash flows for such fiscal quarter, and a balance sheet [and statement of stockholders' equity] as of the end of such fiscal quarter, such unaudited quarterly financial reports to be in reasonable detail and prepared [on a consistent basis/in accordance with GAAP].

Additionally, the Company will deliver to the Investor such information relating to the financial condition, business or corporate affairs of the Company as the Investor may from time to time reasonably request. Notwithstanding anything herein to the contrary, the Company will not be obligated to provide information (A) that it deems in good faith to be a trade secret or similar confidential information or (B) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.]

6. [Observer Rights. The Company will invite a representative of the Investor (an "**Observer**") to attend all meetings of its Board of Directors in a nonvoting observer capacity and, in this respect, will give such Observer copies of all notices, minutes, consents and other materials that it provides to its directors; provided, however, that such Observer will agree to hold in confidence and trust all information so provided; and, provided further, that the Company reserves the right to withhold any information and to exclude such Observer from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or would result in disclosure of trade secrets to such Observer or if the Investor or its Observer is, or is affiliated with, a direct competitor of the Company. Any Observer will be required to enter into a confidentiality agreement [containing terms substantially similar to those set forth in Section [7] of this Agreement] with the Company prior to the exercise of the rights contained in this Section [6].]

7. [Confidentiality. The Investor agrees to use the same degree of care as it uses to protect its own confidential information for any information obtained by the Investor pursuant to this Agreement [which the Company identifies in writing as being proprietary or confidential]. The Investor agrees that it will not, unless otherwise required by law or the rules of any national securities exchange, association or marketplace, disclose such information without the prior written consent of the Company except such information that: (a) was in the public domain prior to the time it was obtained by the Investor; (b) is or becomes (through no willful improper action or inaction by the Investor) generally available to the public; (c) was in the Investor's possession or known by it without restriction prior to obtaining the information from the Company; (d) was rightfully disclosed to the Investor by a third party without restriction; or (e) was independently developed without any use of the Company's confidential information. Notwithstanding the foregoing, the Investor may disclose such proprietary or confidential information to its legal counsel or accountants, and if the Investor is a limited partnership or limited liability company, to any former partners or members who retained an economic interest in the Investor, any current or prospective partner of the partnership or any subsequent partnership under common investment management, any limited partner, any general partner, any member or management company of the Investor (or any employee or representative of any of the foregoing) (each of the foregoing persons, a "**Permitted Disclosee**"). Furthermore, nothing contained herein will prevent the Investor or any Permitted Disclosee from: (i) entering into any business, entering into any agreement with a third party, or investing in or engaging in investment discussions with any other company (whether or not competitive with the Company), provided that the Investor or Permitted Disclosee does not, except as permitted in accordance with this Section [7], disclose or otherwise make use of any proprietary or confidential information of the Company in connection with such activities; or (ii) making any disclosures required by law, rule, regulation or court or other governmental order.]

8. Assignment. The rights provided in this Agreement may not be assigned or transferred by the Investor without the Company's written consent; provided that, an Investor that is not an individual may assign or transfer such rights to an affiliate of the Investor without the Company's consent in connection with the transfer of the SAFE to such affiliate. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9. Termination. This Agreement and the rights and obligations described herein will terminate and be of no further force or effect upon the earliest to occur of: (a) the conversion or cancellation of the SAFE; (b) the transfer of the SAFE without the written consent of the Company to a third party that is not an affiliate of the Investor; (c) the consummation of a sale of the Company's securities pursuant to a registration statement filed by the Company under the Securities Act, in connection with a firm commitment underwritten offering of its securities to the general public; and (d) the consummation of a merger or consolidation of the Company that is effected (i) for independent business reasons unrelated to extinguishing such rights; and (ii) for purposes other than (A) the reincorporation of the Company in a different state; or (B) the formation of a holding company that will be owned exclusively by the Company's stockholders and will hold all of the outstanding shares of capital stock of the Company or its successor. The confidentiality obligations of the Investor referenced herein will survive any such termination.

10. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method, and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this letter agreement as of the date first above written.

Very truly yours,
[COMPANY]

By:_____
Name:
Title:

Agreed to and accepted:
[INVESTOR]

By:_____
[Name:]
[Title:]