IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
ANGEL MEDICAL SYSTEMS, INC.,	)	
a Delaware corporation,	)	Case No. 18-12903 (KG)
	)	
Debtor.[1]	)	
	)	

NOTICE OF FILING OF BLACKLINE OF AMENDED PLAN EXHIBITS

PLEASE TAKE NOTICE that on December 31, 2018, Angel Medical Systems, Inc. (the "Debtor") filed its *Amended Prepackaged Plan of Reorganization for Angel Medical Systems, Inc.,* dated December 26, 2018 [Docket No. 4].

PLEASE TAKE FURTHER NOTICE THAT on February 4, 2019, the Debtor filed its Notice of Filing of Plan Exhibits [Docket No. 63] (the "Initial Plan Exhibits"), pursuant to which the Debtor filed the exhibits to the Plan.

PLEASE TAKE FURTHER NOTICE THAT on February 7, 2019, the Debtor filed *Modified Amended Plan of Angel Medical Systems, Inc.* [Docket No. 74] (the "Plan")[2]

PLEASE TAKE FURTHER NOTICE THAT substantially contemporaneously herewith, the Debtor filed following documents, which constitute amended and restated forms of certain exhibits to the Plan (the "Modified Plan Exhibits"):

EXHIBIT D – Amended and Restated Articles of Incorporation

EXHIBIT E – New Series A Preferred Stock Purchase Agreement

EXHIBIT F – New Investors' Rights Agreement

EXHIBIT G – New Voting Agreement

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[1] The Debtor's address is 40 Christopher Way, Suite 201, Eatontown, NJ 07724. Its EIN is 52-2360129.

[2] Capitalized terms used, but not defined herein, have the meaning set forth in the Plan.

EXHIBIT H – New Right of First Refusal and Co-Sale Agreement

Attached are blackline copies reflecting the changes between the Initial Plan Exhibits and the Modified Plan Exhibits.

Dated: February 10, 2019

MORRIS JAMES LLP

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EXHIBIT D

Amended and Restated Articles of Incorporation

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ANGEL MEDICAL SYSTEMS, INC.

The undersigned, for the purpose of amending and restating the Certificate of Incorporation of **ANGEL MEDICAL SYSTEMS, INC.**, a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the ***"Corporation"***), hereby certifies that:

ONE: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of Delaware (the ***"Delaware Secretary"***) on November 29, 2001 under the name Angel Medical Systems, Inc.

TWO: On December 31, 2018, the Corporation filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the ***"Bankruptcy Court"***) under Case No. 18-12903(KG). On December 31, 2018, the Corporation filed that certain Amended Plan of Reorganization (as amended or supplemented from time to time, the ***"Plan"***), which was confirmed on [ ]February ____, 2019 by order (the ***"Order"***) of the Bankruptcy Court. The Plan, as confirmed by the Order, provides for the amendment and restatement of the Certificate of Incorporation of the Corporation, in its entirety to read as set forth in this Amended and Restated Certificate of Incorporation.

THREE: He is the duly elected and acting Chief Executive Officer of the Corporation.

FOUR: The Certificate of Incorporation of the Corporation is hereby amended and restated to read as follows:

ARTICLE I
NAME

The name of the corporation (the ***"Corporation"***) is ANGEL MEDICAL SYSTEMS, INC.

ARTICLE II
REGISTERED OFFICE AND REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, 19801 and the name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

ARTICLE III
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 Delaware General

Corporation Law (the ***"DGCL"***).

ARTICLE IV
AUTHORIZED STOCK AND RELATIVE RIGHTS

A. Upon the filing of this Amended and Restated Certificate of Incorporation (this ***"Restated Certificate"***) with the Delaware Secretary (the ***"Effective Time"***), the Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Fifty~~ Million (50,000,000) shares, Thirty Three Million Five Hundred Thousand (33,500,000~~-Five Million Three Hundred Ninety-Three Thousand Seven Hundred Fifty-Four (55,393,754) shares, Thirty-Six Million One Hundred Ninety-Six Thousand Eight Hundred Seventy-Seven (36,196,877) shares of which shall be Common Stock (the ***"Common Stock"***), each having a par value of one-tenth of one cent ($0.001) and ~~Sixteen Million Five Hundred Thousand (16,500,000~~Nineteen Million One Hundred Ninety-Six Thousand Eight Hundred Seventy-Seven (19,196,877) shares of which shall be Preferred Stock (the ***"Preferred Stock"***), each having a par value of one-tenth of one cent ($0.001), all of which are designated as "Series A Convertible Preferred Stock" (the ***"Series A Preferred"***).

B. To the extent prohibited by Section 1123 of Title 11 of the United States Bankruptcy Code (as amended, the ***"Bankruptcy Code"***), the Corporation shall not issue any class or series of nonvoting equity securities as in effect on the date of filing of this Restated Certificate with the Delaware Secretary; provided, however, that the foregoing (1) will have such force and effect only for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Corporation; (2) will have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code; and (3) may be amended or eliminated in accordance with applicable law as from time to time in effect.

C. Unless otherwise indicated, each reference to a "Section" or "Subsection" in this Article IV shall be deemed to refer to a Section in Part D of this Article IV.

D. The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred are as follows:

1. DIVIDEND RIGHTS.

(a) Series A Dividend.

(i) From and after the date of the issuance of any shares of the Series A Preferred, holders of the Series A Preferred, in preference to the holders of the Common Stock, shall be entitled to receive cumulative accruing dividends at a rate of eight percent (8%) per annum of the Series A Original Issue Price, as defined below, compounded annually, on each outstanding share of the Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) (the ***"Series A Accruing Dividends"***). The Series A Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative. The Series A Accruing Dividends shall be payable upon the earliest to occur of (A) the date determined by the Corporation's Board of

Directors (the ***"Board"***), (B) the liquidation, dissolution or winding up of the Corporation, or (C) a Deemed Liquidation Event (as defined below). In the event of the conversion of shares of the Series A Preferred to Common Stock pursuant to the provisions of Section 4 hereof (including in connection with Section 4(m) hereof), the Series A Accruing Dividends shall be paid on the converting shares of the Series A Preferred in shares of Common Stock at the Series A Preferred Conversion Price (as hereinafter defined). The ***"Series A Original Issue Price"*** means One Dollar ($1.00) per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof).

(ii) The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of the Common Stock payable in shares of the Common Stock) unless (in addition to the obtaining of any consents required elsewhere in this Restated Certificate) the holders of the Series A Preferred then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of the Series A Preferred in an amount at least equal to the amount of the aggregate Series A Accruing Dividends then accrued on such share of the Series A Preferred and not previously paid.

(b) Participation in Common Stock Dividends. If the Board shall declare a dividend payable upon the then-outstanding shares of the Common Stock (other than a dividend payable entirely in shares of the Common Stock of the Corporation), in addition to any dividend payable pursuant to subsection (a) of Article IV, Section D(1) above, the Board shall declare at the same time a dividend upon the then-outstanding shares of the Series A Preferred, payable at the same time as the dividend paid on the Common Stock, in an amount equal to the amount of dividends per share of the Series A Preferred as would have been payable on the number of shares of the Common Stock into which each share of the Series A Preferred held by each holder thereof had been converted if such shares of the Series A Preferred had been converted into shares of the Common Stock pursuant to the provisions of Section 4 hereof as of the record date for the determination of holders of the Common Stock entitled to receive such dividends.

2. VOTING RIGHTS.

(a) General Rights. Except as otherwise provided herein or by law, the Series A Preferred shall vote together with the Common Stock and all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation including, but not limited to, actions amending the certificate of incorporation of the Corporation to increase or decrease the number of authorized shares of the Common Stock. Each holder of shares of the Series A Preferred shall be entitled to the number of votes equal to the whole number of shares of the Common Stock into which such shares of the Series A Preferred are then convertible pursuant to Section 4 hereof.

(b) Separate Vote of Series A Preferred. At any time when shares of the Series A Preferred are 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 this Restated Certificate) the vote or written consent of the holders of at least a majority of the outstanding shares of the Series A Preferred, voting or

consenting together as a separate class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(i) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing;

(ii) amend, alter or repeal any provision of this Restated Certificate or Bylaws of the Corporation;

(iii) create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock unless the same ranks junior to the Series A Preferred with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of Series A Preferred or increase the authorized number of shares of any additional class or series of capital stock of the Corporation unless the same ranks junior to the Series A Preferred with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;

(iv) (A) reclassify, alter or amend any existing security of the Corporation~~ that is pari passu with the Series A Preferred in respect of the distribution of assets on the liquidation~~, ~~dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series A Preferred in respect of any such right, preference, or privilege or (B) reclassify, alter or amend any existing security of the Corporation that is junior to the Series A Preferred in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, ~~if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Series A Preferred in respect of any ~~such ~~right, preference or privilege;

(v) enter into any agreement to do any of the foregoing or permit any subsidiary to affect any of the foregoing; or

(vi) amend this Subsection 2(b).

(c) **Election of Board of Directors.** The Board shall consist of no more than five (5) directors, to be elected as follows:

(i) The holders of record of the shares of Series A Preferred, voting as a separate class, shall be entitled to elect two (2) members of the Board (collectively, the ***"Series A Directors"*** each a ***"Series A Director"***) at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancies caused by the resignation, death or removal of such directors.

(ii) The holders of the Common Stock and the Series A Preferred, voting together as a single class (with holders of the Series A Preferred voting on an as converted to Common Stock basis), shall be entitled to elect the three (3) remaining members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancies caused by the resignation, death or removal of such directors.

(iii) This Subsection 2(c) shall have no further force or effect upon the occurrence of a Qualified Initial Public Offering (as hereinafter defined).

3. LIQUIDATION RIGHTS.

(a) Preferential Payments to the Holders of the Series A Preferred. In the event of any Deemed Liquidation Event, voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Series A Preferred then-outstanding shall be entitled to be paid out of the remaining assets of the Corporation legally available for distribution to its stockholders, before any payment shall be made to the holders of the Common Stock or any other class or series of capital stock ranking on liquidation junior to the Series A Preferred by reason of their ownership thereof, an amount per share of the Series A Preferred equal to the sum of the Series A Original Issue Price plus the Series A Accruing Dividends and any dividends declared but unpaid on each such share of the Series A Preferred (the ***"Series A Liquidation Preference"***). If, upon any such Deemed Liquidation Event, liquidation, dissolution, or winding up, the assets of the Corporation (or the consideration received in such transaction), shall be insufficient to make payment in full to all holders of the Series A Preferred of the Series A Liquidation Preference, then such assets (or consideration) shall be distributed among the holders of the Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled with respect to Series A Preferred.

(b) Distribution of Remaining Assets.

(i) In the event of any Deemed Liquidation Event, voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of the Series A Liquidation Preference, the remaining assets of the Corporation available for distribution to its stockholders (or consideration received in such transaction) shall be distributed among the holders of the shares of the Common Stock, pro rata based on the number of shares held by each such holder.

(ii) Notwithstanding the above, for purposes of determining the amount each holder of shares of the Series A Preferred is entitled to receive with respect to any Deemed Liquidation Event, voluntary or involuntary liquidation, dissolution or winding up of the Corporation, each such holder of shares of the Series A Preferred shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of the Series A Preferred into shares of the Common Stock immediately prior to any Deemed Liquidation Event, voluntary or involuntary liquidation, dissolution or winding up of the Corporation if, as a result of an actual conversion of ~~such~~ all shares of the Series A Preferred, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such shares of the Series A Preferred

into shares of the Common Stock. If any such holder shall be deemed to have converted shares of the Series A Preferred into shares of the Common Stock pursuant to this Subsection 3(b)(ii), then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of shares of the Series A Preferred that have not converted (or have not been deemed to have converted) into shares of the Common Stock.

(iii) The aggregate amount which a holder of a share of the Series A Preferred is entitled to receive under Subsections 3(a) and (b) is hereinafter referred to as the ***"Series A Preferred Liquidation Amount"***.

(c) Deemed Liquidation Events.

(i) Definition. Each of the following events shall be considered a ***"Deemed Liquidation Event"***, unless the holders of at least a majority of the issued and outstanding shares of the Series A Preferred elect otherwise by written notice given to the Corporation at least ten (10) days prior to the effective date of any such event:

(A) any merger or consolidation (i) of the Corporation or (ii) any subsidiary of the Corporation, with or into any other corporation or other entity or person, in which the stockholders of the Corporation of record immediately prior to such merger or consolidation own less than a majority of the voting power of (i) the surviving entity or (ii) if the surviving entity is a wholly owned subsidiary of another entity, the parent entity of such surviving entity, in each case, immediately after such merger or consolidation; 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 the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly-owned subsidiary of the Corporation.

(ii) Effecting a Deemed Liquidation Event.

(A) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 3(c)(i)(A)(i) unless the definitive agreement for such transaction (the ***"Transaction Agreement"***) provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 3(a) and 3(b) above.

(B) In the event of a Deemed Liquidation Event referred to in Subsection 3(c)(i)(A)(ii) or 3(c)(i)(B) above, if the Corporation does not effect a dissolution of the Corporation under the DGCL within sixty (60) days after such Deemed Liquidation Event, then (1) the Corporation shall send a written notice to each holder of the Series A Preferred no later than the sixtieth (60th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the

following clause (2) to require the redemption of such shares of the Series A Preferred, and (2) if the holders of at least a majority of the then-outstanding shares of the Series A Preferred so request in a written instrument delivered to the Corporation not later than ninety (90) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board) together with any other assets of the Corporation available for distribution to its stockholders (the ***"Available Proceeds"***), to the extent legally available therefor, on the one hundred twentieth (120th) day after such Deemed Liquidation Event, to redeem all outstanding shares of the Series A Preferred at a price per share equal to the Series A Preferred Liquidation Amount.

(C) Notwithstanding the foregoing, in the event of a redemption pursuant to the Subsection 3(c)(ii)(B) above, if the Available Proceeds are not sufficient to redeem all outstanding shares of the Series A Preferred, or if the Corporation does not have sufficient lawfully available funds to effect such redemption, the Corporation shall redeem a pro rata portion of each holder's shares of the Series A Preferred to the fullest extent of such Available Proceeds or such lawfully available funds, as the case may be, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares of the Series A Preferred to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Prior to the distribution or redemption provided for in this Subsection 3(c)(ii), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

(iii) Amount Deemed Paid or Distributed. If the amount deemed paid or distributed under this Subsection 3(c)(iii) is made in property other than in cash, the value of such distribution shall be the fair market value of such property, determined as follows:

(A) For securities not subject to investment letters or other similar restrictions on free marketability,

(1) if traded on a securities exchange or the NASDAQ Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the thirty (30) trading day period ending three (3) days prior to the closing of such transaction;

(2) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) trading day period ending three (3) days prior to the closing of such transaction; or

(3) if there is no active public market, the value shall be the fair market value thereof, as determined by the Board acting in good faith (including the affirmative vote of at least one (1) of the Series A Directors). In any such case, the Board shall notify each holder of shares of the Series A Preferred of its determination of the fair market value or allocation, as the case may be, of such consideration prior to payment or accepting

receipt thereof. If, within ten (10) days after receipt of such notice, the holders of not less than a majority of the shares of the Series A Preferred then outstanding shall notify the Board in writing of their objection to such determination, a determination of the fair market value of such consideration or allocation, as the case may be, shall be made by a nationally recognized independent investment banking firm acceptable to the Corporation and the holders of at least a majority of the shares of the Series A Preferred then outstanding. If the parties are unable to agree on such an investment banking firm, one shall be chosen by two nationally recognized independent investment banking firms, one of which shall be designated by the Corporation and one of which shall be designated by the holders of at least a majority of the shares of the Series A Preferred then outstanding. The Corporation shall bear the entire cost of the fees and expenses borne by the parties in such determination of such fair market value.

(B) The method of valuation of securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall take into account an appropriate discount (as mutually determined by the Board and holders of at least a majority of the then outstanding shares of the Series A Preferred) from the market value as determined pursuant to clause (1) above so as to reflect the approximate fair market value thereof.

(iv) Allocation of Escrow. In the event of a Deemed Liquidation Event pursuant to Subsection 3(c)(i) above, if any portion of the consideration payable to the Corporation or stockholders of the Corporation is placed into escrow and/or is payable to the Corporation or stockholders of the Corporation subject to contingencies (the ***"Additional Consideration"***), the Transaction Agreement shall provide that (1) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the ***"Initial Consideration"***) shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 3(a) and 3(b) above as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (2) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 3(a) and 3(b) above after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 3(c)(iv), consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

4. CONVERSION RIGHTS. The holders of the Series A Preferred shall have the following rights with respect to conversion into shares of the Common Stock (the ***"Conversion Rights"***):

(a) Optional Conversion. Subject to and in compliance with the provisions of this Subsection 4, shares of the Series A Preferred may, at the option of the holder thereof (and without payment of any additional consideration in any form), be converted by the holder thereof at any time into fully-paid and nonassessable shares of the Common Stock. The number of shares of the Common Stock to which a holder of the Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the Series A Preferred

Conversion Rate (as hereinafter defined) then in effect by the number of shares of the Series A Preferred being converted.

(b) Conversion Rate. The conversion rate in effect at any time for conversion of the Series A Preferred (the ***"Series A Preferred Conversion Rate"***) shall be the quotient obtained by dividing the Series A Original Issue Price by the "Series A Preferred Conversion Price," calculated as provided in Subsection 4(c).

(c) Conversion Price. The conversion price for the Series A Preferred (the ***"Series A Preferred Conversion Price"***) shall initially be the Series A Original Issue Price. The Series A Preferred Conversion Price shall be adjusted from time to time in accordance with this Subsection 4. All references to the Series A Preferred Conversion Price herein shall mean the Series A Preferred Conversion Price as adjusted.

(d) Mechanics of Conversion. Each holder of the Series A Preferred who desires to convert the same into shares of the Common Stock pursuant to this Subsection 4 shall surrender the certificate or certificates therefore, duly endorsed, at the office of the Corporation or any transfer agent for the Series A Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of the Series A Preferred being converted. Thereupon, the Corporation shall promptly (but in no event more than three (3) business days after delivery of the notice required by the first sentence of this Subsection 4(d)) issue and deliver at such office to such holder a certificate or certificates for the number of shares of the Common Stock to which such holder is entitled and shall promptly pay (i) in shares of the Common Stock (at the Series A Preferred Conversion Price) the sum of the Series A Accruing Dividends plus any declared and unpaid dividends on the shares of such Series A Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined in good faith by the Board as of the date of conversion) the value of any fractional share of the Common Stock otherwise issuable to any holder of the Series A Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of the Series A Preferred to be converted, and the person entitled to receive the shares of the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of the Common Stock on such date.

(e) Adjustment for Stock Splits and Combinations. If at any time or from time to time on or after the date that the first share of the Series A Preferred is issued (the ***"Original Issue Date"***), the Corporation effects a subdivision of the outstanding Common Stock, the Series A Preferred Conversion Price 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 such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. Conversely, if at any time or from time to time after the Original Issue Date, the Corporation combines the outstanding shares of Common Stock into a smaller number of shares, the Series A Preferred Conversion Price in effect immediately before the combination shall 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 Subsection 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Common Stock Dividends and Distributions. If at any time or from time to time on or after the Original Issue Date, the Corporation makes or issues, or fixes a record date for the determination of holders of shares of the Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of the Common Stock, the Series A Preferred Conversion Price that is then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, as provided below:

(i) The Series A Preferred Conversion Price shall be adjusted by multiplying such Series A Preferred Conversion Price then in effect by a fraction:

(A) the numerator of which is the total number of shares of the Common Stock issued and outstanding immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of the Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of the Common Stock issuable in payment of such dividend or distribution.

(ii) If the Corporation fixes a record date to determine which holders of the Common Stock are entitled to receive such dividend or other distribution, the Series A Preferred Conversion Price shall be fixed as of the close of business on such record date and the number of shares of the Common Stock shall be calculated immediately prior to the close of business on such record date.

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefore, the Series A Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Preferred Conversion Price shall be adjusted pursuant to this Subsection 4(f) to reflect the actual payment of such dividend or distribution.

(g) Adjustment for Other Dividends and Distributions. If the Corporation at any time or from time to time after the Original Issue Date 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 or assets 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 A Preferred in an amount equal to the amount of securities as the holders would have received if all outstanding shares of such Series A Preferred had been converted into Common Stock on the date of such event.

(h) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time on or after the Original Issue Date, the Common Stock issuable

upon the conversion of the Series A Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a Deemed Liquidation Event or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Subsection 4), in any such event, each holder of the Series A Preferred shall then have the right to 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 maximum number of shares of the Common Stock into which such shares of the Series A Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other stock, securities or property by the terms thereof.

(i) Reorganizations, Mergers or Consolidations. If at any time or from time to time on or after the Original Issue Date, there is a capital reorganization of the Common Stock or a merger or consolidation of the Corporation with or into another corporation or another entity or person (other than a Deemed Liquidation Event or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Subsection 4), as a part of such capital reorganization, merger or consolidation, provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive, upon conversion of the Series A Preferred, the number of shares of stock or other securities or property of the Corporation to which a holder of the number of shares of the Common Stock deliverable upon conversion would have been entitled upon such capital reorganization, merger or consolidation, subject to adjustment in respect of such stock, securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Subsection 4 with respect to the rights of the holders of the Series A Preferred after the capital reorganization, merger or consolidation to the end that the provisions of this Subsection 4 (including adjustment of the Series A Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(j) Sale of Shares Below Series A Preferred Conversion Price.

(i) If at any time or from time to time on or after the Original Issue Date, the Corporation issues or sells, or is deemed by the express provisions of this Subsection 4(j) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than as a dividend or other distribution on the Common Stock in Additional Shares of the Common Stock, as provided in Subsection 4(f) above, and other than a subdivision or combination of shares of the Common Stock (as provided in Subsection 4(e) above), for an Effective Price (as hereinafter defined) less than the then-effective Series A Preferred Conversion Price, then the Series A Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A Preferred Conversion Price in effect immediately prior to such issuance or sale by a fraction:

(A) the numerator of which shall be (i) the number of shares of the Common Stock Deemed Outstanding (as hereinafter defined) immediately prior to such issue or sale, *plus* (ii) the number of shares of the Common Stock which the Aggregate

Consideration (as hereinafter defined) received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the then-effective Series A Preferred Conversion Price, and

(B) the denominator of which shall be (i) the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, *plus* (ii) the total number of Additional Shares of Common Stock so issued or deemed to be issued.

For purposes of the foregoing sentence ***"Common Stock Deemed Outstanding"*** means, as of any given date, the sum of (x) the number of shares of the Common Stock outstanding, (y) the number of shares of the Common Stock into which the then-outstanding shares of the Series A Preferred could be converted if fully converted on the day immediately preceding the given date, and (z) the number of shares of the Common Stock which could be obtained through the exercise or conversion of all other rights, warrants, options and convertible securities outstanding on the day immediately preceding the given date.

Notwithstanding the provisions of this Subsection 4(j), no adjustment to the Series A Preferred Conversion Price shall be made pursuant to this Subsection 4(j) if, on or before the date of an issuance or sale, or deemed issuance or sale, of Additional Shares of Common Stock for an Effective Price less than the Series A Preferred Conversion Price then in effect, the holders of at least a majority of the outstanding shares of the Series A Preferred, voting or consenting as a separate class, waive the application of this Subsection 4(j) to the Series A Preferred Conversion Price in connection with any such issuance or sale, or deemed issuance or sale.

(ii) No adjustment shall be made to the Series A Preferred Conversion Price under this Subsection 4(j) in an amount less than one tenth of a cent ($0.001) per share. Any adjustment otherwise required by this Subsection 4(j) that is not required to be made due to the preceding sentence shall be included in any subsequent adjustment to the Series A Preferred Conversion Price.

(iii) For the purpose of the adjustment required under this Section 4(j), if (1) the Corporation issues or sells (x) Convertible Securities or (y) rights or Options for the purchase of Additional Shares of Common Stock or Convertible Securities and (2) the Effective Price (as defined below) of such Additional Shares of Common Stock is less than the Series A Preferred Conversion Price, in each case, the Corporation shall be deemed to have issued at the time of the issuance of such rights or Options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or Options or Convertible Securities plus:

(A) in the case of such rights or Options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options; and

(B) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); *provided* that if the minimum amounts of such consideration cannot be ascertained, but are a function of anti-dilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(C) If the minimum amount of consideration payable to the Corporation upon the exercise or conversion of rights, Options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of anti-dilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided, however,* that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, Options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, Options or Convertible Securities.

(D) No further adjustment of the Series A Preferred Conversion Price, as adjusted upon the issuance of such rights, Options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or Options or the conversion of any such Convertible Securities. If any such rights or Options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A Preferred Conversion Price as adjusted upon the issuance of such rights, Options or Convertible Securities shall be readjusted to the Series A Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or Options or conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of any shares of the Series A Preferred.

(E) No readjustment pursuant to Section 4(j)(iii)(C) and Section 4(j)(iii)(D) shall have the effect of increasing the Series A Preferred Conversion Price to an amount which exceeds the lower of (1) the Series A Preferred Conversion Price on the original adjustment date or (2) the Series A Preferred Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) As used in this Subsection 4(j) and elsewhere in this Certificate, capitalized terms shall have the following meanings:

(A) ***"Additional Shares of Common Stock"*** shall mean all shares of the Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 4(j) (including shares of the Common Stock subsequently reacquired or retired by the Corporation), other than:

(1) shares of the Common Stock issued or issuable upon conversion of any shares of the Series A Preferred or as a dividend or distribution on the Series A Preferred;

(2) shares of the Common Stock or the Series A Preferred issued or issuable pursuant to the exercise of Options, warrants or Convertible Securities outstanding as of the Original Issue Date;

(3) shares of the Common Stock issued or issuable in connection with any stock split, stock dividend or subdivision of the Common Stock that is covered by Sections 4(e), 4(f), 4(g), 4(h) and 4(i).

(4) shares of the Common Stock, including options, warrants or other rights to purchase up to such number of shares of the Common Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the Original Issue Date), issued, sold or granted after the Original Issue Date to employees, officers or directors of, or consultants or advisors to, the Corporation or any subsidiary pursuant to stock purchase or stock option plans or other similar arrangements-, in each case, that are approved by the Board, including at least one (1) Series A Director;

(5) shares of the Common Stock issued or issuable pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution or equipment lessor-, in each case, approved by the Board, including at least one (1) Series A Director;

(6) shares of the Common Stock issued or issuable for consideration other than cash pursuant to a technology license, business combination, strategic partnership or joint venture transaction-, in each case, approved by the Board, including at least one (1) Series A Director; and

(7) shares of the Common Stock issued in connection with a Qualified Initial Public Offering, as defined herein.

(B) ***"Aggregate Consideration"*** shall: (1) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale but without deduction of any expenses payable by the Corporation; (2) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board; and (3) if Additional Shares of Common Stock, Convertible Securities or rights or Options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers

both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or Options.

(C) ***"Convertible Securities"*** means any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for shares of the Common Stock, but excluding Options.

(D) ***"Effective Price"*** means the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this Subsection 4(i), into the Aggregate Consideration received, or deemed to have been received by the Corporation for such issue under Subsection 4(i), for such Additional Shares of Common Stock.

(E) ***"Option"*** means outstanding rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(k) **Multiple Closing Dates.** In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Series A Preferred Conversion Price pursuant to the terms of Subsection 4(j) above, then, upon the final such issuance, the Series A Preferred Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(l) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series A Preferred Conversion Price for the number of shares of the Common Stock or other securities issuable upon conversion of the Series A Preferred, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Series A Preferred at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Effective Price of any such Additional Shares of Common Stock, (iii) the Series A Preferred Conversion Price for the Series A Preferred, at the time in effect, (iv) the number of Additional Shares of Common Stock and (v) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred.

(m) **Notices of Record Date.** Upon (i) any determination by the Corporation of a record of the holders of any class of securities for the purpose of confirming the holders thereof who are entitled to receive any dividend or other distribution, (ii) any Deemed Liquidation Event, (iii) any stock dividend, stock split, combination of shares, reverse stock split, reorganization, recapitalization, or other reclassification affecting the Corporation's equity

securities (each a ***"Recapitalization Event"***), or (iv) any merger or consolidation of the Corporation with or into any other corporation, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of the Series A Preferred at least ten (10) days prior to the record date specified therein (or such shorter period approved by the holders of at least a majority of the outstanding shares of the Series A Preferred) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Deemed Liquidation Event, Recapitalization Event, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of the Common Stock (or other securities) shall be entitled to exchange their shares of the Common Stock (or other securities) for securities or other property deliverable upon such Deemed Liquidation Event, Recapitalization Event, transfer, consolidation, merger, dissolution, liquidation or winding up.

(n) Automatic Conversion.

(i) Upon either (A) the affirmative vote or consent of the holders of at least a majority of the outstanding shares of the Series A Preferred; or (B) at the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the ***"Act"***), covering the offer and sale of the Common Stock for the account of the Corporation at a per share price of at least three (3) times the Series A Original Issue Price in which the net proceeds to the Corporation are at least twenty-five million dollars ($25,000,000) (the ***"Qualified Initial Public Offering"***) (the time of such closing or the date and time of the event specified in such vote or written consent is referred to herein as the ***"Automatic Conversion Time"***), (1) all outstanding shares of the Series A Preferred shall automatically be converted into shares of the Common Stock, at the then-effective Series A Preferred Conversion Rate, and (2) such shares may not be reissued by the Corporation. Upon such automatic conversion and any other accrued and unpaid dividends on the Series A Preferred shall be paid in accordance with the provisions of Subsection 4(d).

(ii) The Corporation shall send to all holders of record of shares of the Series A Preferred written notice of the Automatic Conversion Time and the place designated for mandatory conversion of all such shares of the Series A Preferred pursuant to this Subsection 4(n). The Corporation need not send such notice in advance of the occurrence of the Automatic Conversion Time. Upon receipt of such notice, each holder of shares of the Series A Preferred shall surrender his, her or its 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 a certificate or certificates for the number of shares of the Common Stock to which such holder is entitled pursuant to this Subsection 4(n). At the Automatic Conversion Time, all outstanding shares of the Series A Preferred shall be deemed to have been converted into shares of the Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Series A Preferred so converted, including the rights, if any, to receive notices and vote (other than as a holder of the Common Stock), will terminate, 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 last sentence of this clause (ii). If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Automatic Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for the Series A Preferred, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of the Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided below in lieu of any fraction of a share of the Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares converted.

(iii) All shares of the Series A Preferred shall, from and after the Automatic Conversion Time, no longer be deemed to be outstanding and, notwithstanding the failure of the holder or holders thereof to surrender the certificates for such shares on or prior to such time, all rights with respect to such shares shall immediately cease and terminate at the Automatic Conversion Time, except only the right of the holders thereof to receive shares of the Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Such converted shares of the Series A Preferred 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 the Series A Preferred accordingly.

(o) **Fractional Shares.** No fractional shares of the Common Stock shall be issued upon conversion of the Series A Preferred. All shares of the Common Stock (including fractions thereof) issuable upon conversion of more than one share of the Series A Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined in good faith by the Board) on the date of conversion.

(p) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of the Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred, such number of the Corporation's shares of the Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred. If at any time the number of authorized but unissued shares of the Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of the Series A Preferred, the Corporation will take such corporate action as may, in the opinion of its legal counsel, be necessary to increase its authorized but unissued shares of the Common Stock to such number of shares as shall be sufficient for such purpose.

(q) **Payment of Taxes.** The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of the Common Stock upon conversion of shares of the Series A

Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of the Common Stock in a name other than that in which the shares of the Series A Preferred so converted were registered.

5. NOTICES. Any notice required by the provisions of this Article IV 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, 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) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

6. WAIVER. Any of the rights, powers, preferences and other terms of the Series A Preferred set forth herein may be waived on behalf of all holders of the Series A Preferred by the affirmative written consent or vote of the holders of at least a majority of the shares of the Series A Preferred then outstanding.

E. The rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

1. RELATIVE RIGHTS OF SERIES A PREFERRED AND COMMON STOCK. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions of the Common Stock are expressly made subject to and subordinate to those that may be fixed with respect to any shares of the Series A Preferred.

2. VOTING RIGHTS. Except as otherwise required by law or the certificate of incorporation of the Corporation, each holder of the Common Stock shall have one vote in respect of each share of stock held by such holder of record on the books of the Corporation for the election of directors and all matters submitted to a vote of stockholders of the Corporation. Except as otherwise provided herein or in the Corporation's Bylaws, the Series A Preferred shall vote together with the Common Stock and all other classes and series of stock of the Corporation as a single class and on an as-converted basis on all actions to be taken by the stockholders of the Corporation including, without limitation, actions amending the certificate of incorporation of the Corporation to increase the number of authorized shares of the Common Stock.

Notwithstanding the provisions of Section 242(b)(2) of the DGCL, but without limitation of and subject to the provisions of Article IV, Subsection D.2 hereof, the number of authorized shares of the Common Stock may be increased or decreased (but not below the number of shares of the Common Stock then outstanding) by the affirmative vote of the holders of at least a majority of the Common Stock and the Series A Preferred (voting together as a single class on an as converted to Common Stock basis), and the holders of the Common Stock shall not be entitled to a separate class vote with respect thereto.

ARTICLE V
DURATION

The Corporation is to have perpetual existence.

ARTICLE VI
BYLAWS

In furtherance and not in limitation of the powers conferred by statute, and subject to the provisions of Article IV, Subsection D.2, the Board is expressly authorized to make, alter or repeal the Bylaws of the Corporation.

ARTICLE VII
ELECTION OF DIRECTORS

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII
AMENDMENT

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate, in the manner now or hereafter prescribed by statute, subject to any restrictions or voting requirements set forth in this Restated Certificate.

ARTICLE IX
PERSONAL LIABILITY FOR DIRECTORS

A. A director of the Corporation shall, to the fullest extent permitted by the DGCL as it now exists or as it may hereafter be amended, not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL 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 DGCL as so amended.

B. Any amendment, repeal or modification of the foregoing provisions of this Article IX, or the adoption of any provision in an amended or restated certificate of incorporation of the Corporation inconsistent with this Article IX, by the stockholders of the Corporation shall not apply to or adversely affect any right or protection of a director of the Corporation existing at the time of such amendment, repeal, modification or adoption.

ARTICLE X
INDEMNIFICATION

The following indemnification provisions shall apply to the persons enumerated below.

A. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an ***"Indemnified Person"***) who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a ***"Proceeding"***), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section C of this Article X, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board.

B. The Corporation shall pay the expenses (including attorneys' fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article X or otherwise.

C. If a claim for indemnification or advancement of expenses under this Article X is not paid in full within thirty (30) days after a written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

D. The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorney's fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board.

E. The Corporation may pay the expenses (including attorneys' fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board.

F. The rights conferred on any person by this Article X shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Bylaws of the Corporation, other agreement, vote of stockholders or disinterested directors or otherwise.

G. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.

H. The Board may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (1) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this Article X; and (2) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article X.

I. Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

ARTICLE XI
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 Series A Preferred 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.

* * * *

FIVE: This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 242, 245 and 303 of the DGCL, pursuant to the authority granted to the Corporation under Section 303 of the DGCL to put into effect and carry out the Plan, as confirmed by the Order.

SIX: This Amended and Restated Certificate of Incorporation has been duly executed and acknowledged by an officer of the Corporation designated by the Order in accordance with the provisions of Sections 242, 245 and 303 of the DGCL.

SIGNATURE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by the Corporation's Chief Executive Officer this _____ day of February, 2019.

ANGEL MEDICAL SYSTEMS, INC.

By:_________________________________
Name: David R Fischell
Title: Chief Executive Officer

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Comparison Details	
Title	**pdfDocs compareDocs Comparison Results**
Date & Time	2/8/2019 1:38:14 PM
Comparison Time	0.71 seconds
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Sources	
Original Document	[WS01][#10741212] [v1] AMENDED AND RESTATED CERTIFICATE OF INCORPORATION - ANGEL MEDICAL SYSTEMS INC.(29744160_3).docx
Modified Document	[WS01][#10754805] [v1] [AMENDED] AMENDED AND RESTATED CERTIFICATE OF INCORPORATION - ANGEL MEDICAL SYSTEMS INC.(29744160_6).docx

Comparison Statistics	
Insertions	3
Deletions	9
Changes	7
Moves	0
Font Changes	0
Paragraph Style Changes	0
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~~Deletions~~	
Moves / ~~Moves~~	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
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Character Level	Word	False
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Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True

EXHIBIT E

New Series A Preferred Stock Purchase Agreement

SERIES A PREFERRED STOCK PURCHASE AGREEMENT

By and among:

ANGEL MEDICAL SYSTEMS, INC.,
a Delaware corporation;

and

THE PURCHASERS NAMED HEREIN.

Dated as of _______________, 2019

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ANGEL MEDICAL SYSTEMS, INC.

SERIES A PREFERRED STOCK PURCHASE AGREEMENT

This **SERIES A PREFERRED STOCK PURCHASE AGREEMENT** (this ***"Agreement"***) is made and entered into as of ___________, 2019, by and among **ANGEL MEDICAL SYSTEMS, INC.**, a Delaware corporation (the ***"Company"***), and each of those persons and entities, severally and not jointly, whose names are set forth on the Schedule of Purchasers (the ***"Schedule of Purchasers"***) attached hereto as EXHIBIT A (collectively, the ***"Purchasers"*** and each, without distinction, a ***"Purchaser"***).

RECITALS

WHEREAS, on December 31, 2018, the Company filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the ***"Bankruptcy Court"***) under Case No. 18-12903(KG) (the ***"Case"***);

WHEREAS, on December 31, 2018, the Corporation filed that certain Amended Plan of Reorganization (as amended or supplemented from time to time, the ***"Plan"***), which will be confirmed and approved by an order (the ***"Order"***) of the Bankruptcy Court;

WHEREAS, the Plan, as confirmed by the Order, will provide for the amendment and restatement of the Company's Certificate of Incorporation, as amended from time to time, in its entirety to read as set forth in the Amended and Restated Certificate of Incorporation in the form attached hereto as EXHIBIT B (the ***"Charter"***).

WHEREAS, upon the filing of the Charter with the Secretary of State of the State of Delaware on or prior to the Initial Closing, the Company will authorize a new series of preferred stock in the Charter designated as the "Series A Convertible Preferred Stock";

WHEREAS, the Company has authorized the sale and issuance of up to an aggregate of ~~Sixteen Million Five Hundred Thousand (16,500,000~~Nineteen Million One Hundred Ninety-Six Thousand Eight Hundred Seventy-Seven (19,196,877) shares of the Company's Series A Convertible Preferred Stock (the ***"Series A Preferred Shares"***);

WHEREAS, the Purchasers desire to purchase the Series A Preferred Shares on the terms and conditions set forth herein; and

WHEREAS, the Company desires to issue and sell the Series A Preferred Shares to the Purchasers on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. AGREEMENT TO SELL AND PURCHASE.

1.1 AUTHORIZATION OF SERIES A PREFERRED SHARES. The Company has authorized (a) the issuance and sale to the Purchasers of the Series A Preferred Shares and (b) the issuance of such shares of the Common Stock (as hereinafter defined) to be issued upon conversion of the Series A Preferred Shares (the ***"Conversion Shares"***; together with the Series A Preferred Shares, the ***"Shares"***). The Shares have the rights, preferences, privileges and restrictions set forth in the Charter.

1.2 SALE AND PURCHASE. Subject to the terms and conditions hereof, the Company hereby agrees to issue and sell to each Purchaser, and each Purchaser agrees to purchase from the Company, severally and not jointly: (i) at the Initial Closing (as defined below), the number of the Series A Preferred Shares set forth opposite such Purchaser's name on EXHIBIT A hereto under the heading "Initial Closing" (collectively, the ***"Initial Closing Shares"***) and (ii) at a Subsequent Closing (as defined below), the number of the Series A Preferred Shares set forth opposite such Purchaser's name on EXHIBIT A hereto under the heading "Subsequent Closing", in each case, at the purchase price of One Dollar ($1.00) per share (the ***"Per Share Purchase Price"***).

2. CLOSING, DELIVERY AND PAYMENT.

2.1 CLOSINGS.

(a) Closings. The purchase, sale and issuance of the Series A Preferred Shares may occur in one or more closings (each, a ***"Closing"*** and collectively, the ***"Closings"***). Each Closing shall be held at the offices of Honigman ~~Miller Schwartz and Cohn~~ LLP at 650 Trade Centre Way, Suite 200, Kalamazoo, Michigan 49002 at 10:00 a.m., local time, or at such other time and place upon which the Company and the Purchasers purchasing the Series A Preferred Shares at such Closing shall mutually agree.

(b) Initial Closing. Subject to satisfaction or written waiver from the Company and all of the Purchasers of the conditions set forth in Section 5 hereof, the first closing of the sale and purchase of the Initial Closing Shares under this Agreement (the ***"Initial Closing"***) shall take place within three (3) days after the Company has received commitments for the purchase of the Series A Preferred Shares having an aggregate purchase price of at least Eight Million Dollars ($8,000,000) (including new money and conversion of the aggregate principal amount of the Notes, as defined below). Each Purchaser participating in the Initial Closing shall purchase that number of Initial Closing Shares equal to that which is set forth opposite such Purchaser's name on EXHIBIT A attached hereto.

(c) Subsequent Closings. At any time after the Initial Closing, to the extent that (i) Purchasers participating in the Initial Closing (the ***"Initial Purchasers"***) and/or (ii) additional Purchasers reasonably acceptable to the Company (each an ***"Additional Purchaser"***), agree by execution of a counterpart of this Agreement to purchase Twenty Five Thousand Dollars ($25,000) or any greater amount in aggregate value (unless such minimum amount is waived by the Company) of Series A Preferred Shares at the Per Share Purchase Price, the Company may hold additional Closings with respect to the purchase of such Series A Preferred

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Shares (each a ***"Subsequent Closing"***); provided, however, that the aggregate purchase price of the Series A Preferred Shares issued at the Initial Closing, all Subsequent Closings ~~and the Second Tranche Closing~~ may not exceed Fifteen Million Dollars ($15,000,000), and provided further, that all Subsequent Closings shall occur on or before the sixty (60) day anniversary of the Initial Closing, and only for so long as all of the conditions precedent to such Subsequent Closing set forth in Section 5 have been satisfied or waived. The terms of the transactions consummated at each Subsequent Closing shall be identical to the terms consummated at the Initial Closing, excepting the closing date and the number of Series A Preferred Shares issued and sold. In connection with a Subsequent Closing, the Company shall amend the Schedule of Purchasers to reflect any additional purchase by an Initial Purchaser and to add any Additional Purchaser. Each Initial Purchaser shall be granted a right to purchase its pro-rata share (calculated in accordance with principles set forth in Section 4.1 of the Investor Rights Agreement) of the Series A Preferred Shares sold in any Subsequent Closing; provided that, for the avoidance of doubt, no Initial Purchaser shall be required to purchase Series A Preferred Shares in any Subsequent Closing.

2.2 USE OF PROCEEDS. The Company shall use the proceeds from the sale of the Series A Preferred Shares for working capital and general corporate purposes.

2.3 PAYMENT. The Purchasers shall pay for the Series A Preferred Shares by (a) check for immediately available funds made payable to the Company and/or (b) wire transfer in accordance with instructions provided by the Company to any Purchaser desiring to make payment in such form. Each Purchaser shall pay an amount equal to the Per Share Purchase Price multiplied by the number of the Series A Preferred Shares purchased at the relevant Closing.

2.4 DELIVERY. At each Closing, subject to the terms and conditions hereof and upon payment of the purchase price therefor, the Company will deliver certificates to the Purchasers, duly signed by the President and Secretary of the Company, representing the number of the Series A Preferred Shares purchased at such Closing by each Purchaser as indicated on the Schedule of Purchasers.

2.5 CONVERSION OF DIP NOTES.

(a) Each Purchaser holding a Note (as defined below, and each such Purchaser, a ***"Noteholder"***) acknowledges that: (i) those certain the Senior Secured Super-Priority Convertible Promissory Notes in an aggregate principal amount of $~~2,500,000.00~~ 2,000,000.00 (collectively, the ***"Notes"***) issued by the Company pursuant to that certain Note Purchase and Debtor-In-Possession Loan Agreement dated as of December 21, 2018, as supplemented from time to time by various joinder agreements (the ***"Note Purchase Agreement'***, and together with the Notes, the ***"Note Agreements"***), by and among the Company and the Noteholders, will convert at the Initial Closing (the ***"Note Conversion"***) into that number of the Series A Preferred Shares determined by dividing (A) the sum of all outstanding principal under the Notes by (B) $0.78 per share (i.e., 78% of the Per Share Purchase Price), rounded down to the nearest whole share (and such number of shares of Series A Preferred Shares is set forth opposite such Purchaser's name on the Schedule of Purchasers); provided, that, in order to facilitate the Initial Closing and the financing contemplated by this Agreement, any and all

accrued and unpaid interest on the Notes is hereby irrevocably waived by the Noteholders; and (ii) upon satisfaction of the conditions set forth in Section 5 of this Agreement, as applicable, the Company will deliver certificates for the Series A Preferred Shares to the Noteholders whose Notes are then being converted, duly signed by the Company, representing the number of Series A Preferred Shares determined pursuant to the foregoing clause (i).

(b) Upon issuance of the Series A Preferred Shares to the Noteholders as provided in Section 2.5(a) above, each Noteholder hereby agrees that each Note and all rights, title and interest arising from each such Note shall be deemed cancelled and extinguished, without need for surrender to the Company of the Notes or any other further action by any of the parties to the Notes, and all of the Notes shall thereupon be null and void and have no further force or effect. The Noteholders agree that, as of the Initial Closing, except for the right of the Noteholders to receive the Series A Preferred Shares, all rights and obligations of the Noteholders with respect to such Noteholder's Note, the Note Agreements and any related agreement shall terminate in their entirety.

(c) To the extent necessary or required to effectuate the Note Conversion and the transactions contemplated hereby, the Company and each Noteholder agree that this Agreement constitutes an amendment to the Note Agreements and shall supersede all terms of the Note Agreements that are inconsistent with the terms of this Agreement, and specifically, upon the consent of Noteholders representing a majority in interest of the Notes, shall be subject to the Note Conversion on the terms stated herein in accordance with the terms of such Notes as amended hereby, whether or not all Noteholders execute this Agreement.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. Except as set forth on a Schedule of Exceptions delivered by the Company to the Purchasers prior to the Initial Closing and attached hereto as EXHIBIT C (the ***"Schedule of Exceptions"***), the Company hereby makes the following representations and warranties to each Purchaser as of the date of this Agreement. The section numbers in the Schedule of Exceptions correspond to the subsection numbers in this Section 3; provided, however, nothing in the Schedule of Exceptions shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the section or subsection, or the description of the information contained in the Schedule of Exceptions, identifies the exception with reasonable particularity in reasonable detail. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself). If and to the extent any information required to be furnished in any particular section or subsection is contained in any other section or subsection, such information shall not be deemed to be included in such particular section or subsection unless such furnished information can reasonably be interpreted on its face as having application to such other section or subsection. The parties intend that each representation, warranty, and covenant contained herein shall have independent significance. For purposes of this Section 3, the phrase "to the Company's knowledge" means the actual knowledge of the executive officers of the Company after reasonable investigation. The disclosure of any particular fact or item in the Schedule of Exceptions shall not be deemed an admission as to whether the fact or item disclosed is "material" or would constitute a Material Adverse Effect (as hereinafter defined).

3.1 ORGANIZATION, GOOD STANDING AND QUALIFICATION. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Company has all requisite corporate power and authority to (i) own and operate its properties and assets, (ii) execute and deliver this Agreement, the Investor Rights Agreement in the form attached hereto as EXHIBIT D (the ***"Investor Rights Agreement"***), the Right of First Refusal and Co-Sale Agreement in the form attached hereto as EXHIBIT E (the ***"Right of First Refusal and Co-Sale Agreement"***), and the Voting Agreement in the form attached hereto as EXHIBIT F (the ***"Voting Agreement"***, together with the Investor Rights Agreement and the Right of First Refusal and Co-Sale Agreement, the ***"Related Agreements"***), (iii) issue and sell the Series A Preferred Shares and the Conversion Shares, (iv) carry out the provisions of this Agreement, the Related Agreements and the Charter and (v) carry on its business as presently conducted and as presently 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 assets, liabilities, financial condition, property or operations of the Company (a ***"Material Adverse Effect"***).

3.2 SUBSIDIARIES. Section 3.2 of the Schedule of Exceptions lists the Subsidiaries of the Company. Except as provided in Section 3.2 of the Schedule of Exceptions, the Company does not have a strategic partnership or similar relationship with or own or have any direct or indirect interest in or control over any corporation, partnership, joint venture or other entity of any kind. The term ***"Subsidiary"*** means any entity of which securities or other

ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are owned directly or indirectly by the Company.

3.3 CAPITALIZATION; VOTING RIGHTS.

(a) The authorized capital stock of the Company, immediately prior to the Initial Closing, consists of (i) Thirty~~ Three ~~-Six Million ~~Five ~~One Hundred Ninety-Six Thousand ~~(33,500,000~~Eight Hundred Seventy-Seven (36,196,877) shares of which are Common Stock (the ***"Common Stock"***), ______________ shares of which are issued and outstanding immediately prior to the Initial Closing, and (ii) ~~Sixteen Million Five Hundred Thousand (16,500,000~~Nineteen Million One Hundred Ninety-Six Thousand Eight Hundred Seventy-Seven (19,196,877) shares of which are Preferred Stock (the ***"Preferred Stock"***), each having a par value of one-tenth of one cent ($0.001), all of which are designated as "Series A Convertible Preferred Stock", ~~none~~ ______________ of which are issued and outstanding immediately prior to the Initial Closing. Section 3.3(a) of the Schedule of Exceptions sets forth the capitalization of the Company immediately prior to the Initial Closing, including the name, type and number of shares of each holder.

(b) Under the "Angel Medical Systems, Inc. 2019 Equity Incentive Plan", as amended from time to time (the ***"Plan"***), the Company has reserved Two Million One Hundred Thirty Two Thousand Nine Hundred Eighty Six (2,132,986) shares of the Common Stock (the ***"Plan Stock"***) for future issuance to officers, directors, employees and consultants of the Company, of which Two Million One Hundred Thirty Two Thousand Nine Hundred Eighty Six (2,132,986) shares of the Common Stock remain available for future issuance to officers, directors, employees and consultants of the Company. Except as disclosed in Section 3.3(b) of the Schedule of Exceptions, the Company has not made any representations regarding equity incentives to any officer, employee, director or consultant that are inconsistent with the share amounts and terms set forth in the Board meeting minutes and written consents.

(c) Other than the Plan Stock and except as may otherwise be granted pursuant to this Agreement and the Related Agreements or as set forth in Section 3.3(c) of the Schedule of Exceptions, there are no outstanding options, warrants, rights (including conversion or preemptive rights and rights of first refusal), proxy or stockholder agreements, or agreements of any kind for the purchase or acquisition from the Company of any of its securities.

(d) All issued and outstanding shares of the Common Stock (i) have been duly authorized and validly issued and are fully paid and nonassessable, (ii) were issued in compliance with all applicable state and federal laws concerning the issuance of securities and (iii) are held of record by the persons listed on Section 3.3(a) of the Schedule of Exceptions. As used in this Agreement, the term "person" means an individual, a corporation, a partnership, an association, a trust, a limited liability company or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

(e) The rights, preferences, privileges and restrictions applicable to the Shares are as stated in the Charter. The Conversion Shares have been duly and validly reserved for issuance. When issued in compliance with the provisions of this Agreement and the Charter, the Series A Preferred Shares and the Conversion Shares will be validly issued, fully paid and

nonassessable, and will be free of any liens or encumbrances other than liens and encumbrances created by or imposed upon Purchasers; provided, however, that the Series A Preferred Shares and the Conversion Shares may be subject to restrictions on transfer under the Related Agreements, the Company's Bylaws, as amended from time to time (the ***"Bylaws"***), and state and/or federal securities laws as set forth herein or as otherwise required by such laws at the time a transfer is proposed.

3.4 AUTHORIZATION; BINDING OBLIGATIONS.

(a) All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization of this Agreement and the Related Agreements, the performance of all obligations of the Company hereunder and thereunder at the Closings, the authorization, sale, issuance and delivery of the Series A Preferred Shares pursuant hereto and the issuance and delivery of the Conversion Shares upon conversion of the Series A Preferred Shares has been taken prior to the Closing.

(b) This Agreement and the Related Agreements, when executed and delivered by the Company, will (assuming the due authorization, execution and delivery hereof by the Purchasers and other parties thereto) be legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (ii) general principles of equity that restrict the availability of equitable remedies, and (ii) to the extent that the enforceability of the indemnification provisions of the Investor Rights Agreement and the Indemnification Agreements (as defined below) may be limited by applicable laws.

3.5 LIABILITIES. Except as disclosed in Section 3.5 of the Schedule of Exceptions, the Company does not have any liability or obligation (whether known or unknown and whether absolute or contingent) having, in the aggregate, a value equal to or in excess of Twenty Five Thousand Dollars ($25,000), except for (a) liabilities shown in the Company's financial statements, (b) liabilities which are not material and have arisen since the date of the Order in the ordinary course of business and (c) performance obligations under agreements, contracts and instruments that are either disclosed in the Schedule of Exceptions as required by this Agreement or not required to be disclosed in the Schedule of Exceptions by this Agreement, but have been entered into in the ordinary course of the Company's business.

3.6 NO INSOLVENCY. No insolvency proceeding of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting the Company or any of its assets or properties, is pending or, to the Company's knowledge, threatened. The Company has not taken any action in contemplation of, or that would constitute the basis for, the institution of any such insolvency proceeding.

3.7 ERISA. Except as disclosed in Section 3.7 of the Schedule of Exceptions, the Company has not maintained, sponsored, adopted, made contributions to or obligated itself to make contributions to or to pay any benefits or grant rights under or with respect to any "Employee Pension Benefit Plan" as defined in Section 3(2) of the Employee Retirement Income

Security Act of 1974, as amended (***"ERISA"***), "Employee Welfare Benefit Plan" (as defined in Section 3(1) of ERISA), "multi-employer plan" (as defined in Section 3(37) of ERISA), plan of deferred compensation, medical plan, life insurance plan, long-term disability plan, dental plan or other plan providing for the welfare of any of the Company's or any Affiliate's (as defined in Section 3.8 hereof) employees or former employees or beneficiaries thereof, personnel policy, excess benefit plan, bonus or incentive plan (including but not limited to stock options, restricted stock, stock bonus and deferred bonus plans), salary reduction agreement, change-of-control agreement, consulting agreement, worker's compensation law, unemployment compensation law, social security law or any other benefit program or contract, except as required by law. The Company has made all required contributions and has no liability to any such employee benefit plan, other than liability for health plan continuation coverage described in Part 6 of Title I(B) of ERISA, and all employee benefit plans have been operated in all material respects in accordance with their terms and applicable law (including, without limitation, ERISA).

3.8 AGREEMENTS; ACTION.

(a) Except as disclosed in Section 3.8(a) of the Schedule of Exceptions, and except for agreements explicitly contemplated hereby and agreements between the Company and its employees with respect to the sale of the Common Stock, there are no agreements, understandings or proposed transactions between the Company and any of its officers, directors, Affiliates or any Affiliate thereof. For purposes of this Agreement, an ***"Affiliate"*** means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person.

(b) Except as disclosed in Section 3.8(b) of the Schedule of Exceptions, there are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party or by which it is bound which may involve (i) obligations (contingent or otherwise) of, or payments to, the Company in excess of $25,000 (other than obligations of, or payments to, the Company arising from purchase, sale or non-exclusive license agreements entered into in the ordinary course of business), (ii) the transfer or license of any patent, copyright, trade secret or other proprietary right to or from the Company (other than licenses arising from the purchase of "off the shelf" or other standard products), (iii) provisions restricting the development, manufacture or distribution of the Company's products or services, (iv) indemnification by the Company with respect to infringements of proprietary rights (other than indemnification obligations arising from purchase, sale or license agreements entered into in the ordinary course of business) or (v) any other material agreements.

(c) Except as disclosed in Section 3.8(c) of the Schedule of Exceptions, the Company has not (i) declared or paid any dividends, or authorized or made any distribution upon or with respect to any class or series of its capital stock, (ii) incurred or guaranteed any indebtedness for money borrowed or any other liabilities (other than with respect to dividend obligations, distributions, indebtedness and other obligations incurred in the ordinary course of business or as disclosed in the Company's financial statements) individually in excess

of $25,000 or, in the case of indebtedness and/or liabilities individually less than $25,000, in excess of $50,000 in the aggregate, (iii) made any loans or advances to any person, other than ordinary advances for travel expenses or in accordance with the Company's employee reimbursement policy or (iv) sold, exchanged or otherwise disposed of any of its assets or rights, other than the sale of its inventory in the ordinary course of business.

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

3.9 OBLIGATIONS TO RELATED PARTIES.

(a) Except as disclosed in Section 3.9 of the Schedule of Exceptions, there are no obligations of the Company to officers, directors, stockholders or employees of the Company other than (a) for payment of salary for services rendered, (b) reimbursement for reasonable expenses incurred on behalf of the Company in accordance with Company policies, (c) standard director and officer indemnification agreements (the ***"Indemnification Agreements"***) approved by the Board of Directors of the Company (the ***"Board"***), and (d) for other standard employee benefits made generally available to all employees (including stock option agreements outstanding under any stock option plan approved by the Board).

(b) Except as disclosed in Section 3.9 of the Schedule of Exceptions, the Company is not indebted, directly or indirectly, to any of its directors, officers or employees or to their respective spouses or children or to any Affiliate of any of the foregoing, other than in connection with expenses or advances of expenses incurred in the ordinary course of business or employee relocation expenses and for other customary employee benefits made generally available to all employees. None of the officers, directors or stockholders of the Company, or any members of their immediate families, are indebted to the Company. Except as disclosed in Section 3.9 of the Schedule of Exceptions, none of (i) the officers or directors of the Company or any members of their immediate families or (ii) to the Company's knowledge, the key employees of the Company or any members of their immediate families, are indebted to the Company or have any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation which competes with the Company, other than passive investments in publicly traded companies (representing less than one percent (1%) of such company) which may compete with the Company. No officer, director or stockholder, or any member of their immediate families, is, directly or indirectly, interested in any material contract with the Company (other than such contracts as relate to any such person's ownership of capital stock or other securities of the Company). Except as disclosed in the Company's financial statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person.

3.10 CHANGES. Except as set forth in Section 3.10 of the Schedule of Exceptions or as contemplated by the Case, since the date of the Order, there has not been any:

(a) change in the assets, liabilities, financial condition, prospects or operations of the Company from that reflected in the Company's financial statements, other than changes in the ordinary course of business, none of which individually or in the aggregate has had a Material Adverse Effect;

(b) resignation or termination of any officer, key employee or group of employees of the Company; and the Company, to its knowledge, does not know of the impending resignation or termination of employment of any such officer, key employee or group of employees;

(c) change, except immaterial change in the ordinary course of business, in the contingent obligations of the Company by way of guaranty, endorsement, indemnity, warranty or otherwise;

(d) damage, destruction or loss, whether or not covered by insurance, except as would not have a Material Adverse Effect;

(e) waiver by the Company of a material contractual or legal right or of a material debt owed to the Company;

(f) change, except immaterial change in the ordinary course of business, in any compensation arrangement or agreement with any employee, officer, director or stockholder;

(g) to the knowledge of the Company, labor organization activity related to the Company;

(h) sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets, or grant of any license with respect thereto;

(i) change in any agreement to which the Company is a party or by which it is bound except as would not have a Material Adverse Effect;

(j) other event or condition of any character that, either individually or cumulatively, has or has had a Material Adverse Effect; or

(k) arrangement or commitment by the Company to do any of the acts described in subsections (a) through (j) above.

3.11 TITLE TO PROPERTIES AND ASSETS; LIENS, ETC. The Company has good and marketable title to its properties and assets, including the properties and assets reflected in the balance sheet included in the Company's financial statements, and good title to its leasehold estates, in each case, except as provided in Section 3.11 of the Schedule of Exceptions, subject to no mortgage, pledge, lien, lease, encumbrance or charge, other than (i) those resulting from taxes which have not yet become delinquent, (ii) minor liens and encumbrances which do not materially detract from the value of the property subject thereto or materially impair the operations of the Company, and (iii) those that have otherwise arisen in the ordinary course of business and are not material. All facilities, machinery, equipment, fixtures, vehicles and other

properties owned, leased or used by the Company are in good operating condition and repair (ordinary wear and tear excepted) and are reasonably fit and usable for the purposes for which they are being used. The Company is in compliance with all material terms of each lease to which it is a party or is otherwise bound.

3.12 INTELLECTUAL PROPERTY.

(a) Ownership. The Company owns or possesses or can acquire on commercially reasonable terms sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses (software or otherwise), information, processes, and similar proprietary rights (the ***"Intellectual Property"***) necessary to conduct the business of the Company as currently conducted or presently proposed to be conducted without any conflict with or infringement of the rights of others. To the Company's knowledge, 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 intellectual property rights of any other party. Other than with respect to commercially available software products under standard end-user object code license agreements or disclosed in Section 3.12 of the Schedule of Exceptions, there are no outstanding options, licenses, agreements, claims, encumbrances or shared ownership interests 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 patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, proprietary rights and processes of any other Person. The Company has not received any communications alleging that the Company has violated or, by conducting its business, would violate any of the patents, trademarks, service marks, tradenames, copyrights, trade secrets, mask works or other proprietary rights or processes of any other Person. Section 3.12(a) of the Schedule of Exceptions contains a complete list of the Company's patents, trademarks, copyrights and domain names and pending patent, trademark and copyright applications. Except for agreements with its own employees or consultants executed on the Company's standard form agreement, copies of which have been delivered to the Purchasers, and standard end-user license agreements or as disclosed on Section 3.12(a) of the Schedule of Exceptions, there are no agreements relating to the Company's Intellectual Property, and the Company is neither bound by nor a party to any agreements with respect to the Intellectual Property of any other person. The Company has not received any written communication alleging that the Company has violated or, by conducting its business as currently conducted or as proposed to be conducted, would violate any of the Intellectual Property of any other person, nor does the Company have knowledge of any reasonable basis therefor.

(b) No Breach by Employees. The Company has no knowledge 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 materially interfere with the use of his or her efforts to promote the interests of the Company or that would conflict with the Company's business as presently conducted or presently proposed to be conducted. Neither the execution nor delivery of this Agreement and the Related Agreements, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as presently conducted or presently proposed to be conducted, will, to the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or

constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated.

(c) Employee Proprietary Information, Inventions Assignment and Non-Competition Agreements. Except as disclosed in Section 3.12(c) of the Schedule of Exceptions, each employee of the Company has executed a proprietary information and invention assignment agreement. Except as disclosed in Section 3.12(c) of the Schedule of Exceptions, no such employee has excluded works or inventions from his or her assignment of inventions pursuant to such employee's proprietary information and invention assignment agreement. Each consultant to the Company that has had access to the Company's Intellectual Property has entered into an agreement containing appropriate confidentiality and invention assignment provisions. The Company is not aware that any of its officers, employees or consultants is in violation thereof.

3.13 COMPLIANCE WITH OTHER INSTRUMENTS. The Company is not in violation or default of any term of the Charter or the Bylaws, or, except as disclosed in Section 3.13 of the Schedule of Exceptions, of any provision of any mortgage, indenture, contract, agreement, instrument or contract to which it is party or by which it is bound or of any judgment, decree, order or writ other than any such violation that would not have a Material Adverse Effect. The execution, delivery, and performance of and compliance with this Agreement and the Related Agreements, and the authorization, sale, issuance and delivery of the Series A Preferred Shares pursuant hereto and the issuance and delivery of the Conversion Shares upon conversion of the Series A Preferred Shares, will not, with or without the passage of time or giving of notice, result in any such violation, or be in conflict with or constitute a default under any such term, or result in the creation of any mortgage, pledge, lien, encumbrance or charge upon any of the properties or 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.

3.14 LITIGATION. Except as disclosed in Section 3.14 of the Schedule of Exceptions, there is no (a) action, suit, proceeding, arbitration, complaint, charge or investigation pending or, to the Company's knowledge, currently threatened against the Company before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (b) governmental inquiry pending or, to the Company's knowledge, currently threatened against the Company (including without limitation any inquiry as to the qualification of the Company to hold or receive any license or permit), nor is the Company aware that there is any basis for any of the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or which the Company intends to initiate.

3.15 TAX RETURNS AND PAYMENTS. For purposes of this Section 3.15, (i) the term ***"Taxes"*** shall mean (a) all federal, state, provincial, district, municipal, county, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, registration, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any

interest and any penalties, additions to tax or additional amounts with respect thereto; (b) any liability for payment of amounts described in clause (a) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise through operation of law; and (c) any liability for the payment of amounts described in clauses (a) or (b) as a result of any tax sharing, tax indemnity or tax allocation agreement, (ii) the term ***"Tax Returns"*** shall mean any federal, state, provincial, district, municipal, county, local and foreign return, declaration, report, statement, information statement and other document required to be filed or filed with respect to Taxes, including any claims for refunds of Taxes and any amendments or supplements of any of the foregoing and (iii) the term ***"Code"*** shall mean the Internal Revenue Code of 1986, as amended. Except as disclosed in Section 3.15 of the Schedule of Exceptions, the Company has duly and timely filed all Tax Returns as required by applicable law and all such Tax Returns are true and correct and complete in all material respects and there are in effect no waivers of applicable statutes of limitations with respect to taxes for any year. The Company has paid all Taxes due, except those contested by it in good faith as described in Section 3.15 of the Schedule of Exceptions. The provision for Taxes of the Company as shown in the Company's financial statements is adequate for taxes due or accrued as of the date thereof. The Company has not elected pursuant to the Code, to be treated as a Subchapter "S" corporation pursuant to Section 1362(a) of the Code. The Company has never had any Tax deficiency proposed or assessed against it and has not executed any waiver of any statute of limitations on the assessment or collection of any Tax. None of the Company's Tax Returns has ever been audited by any governmental authority. All Taxes not yet due and payable by the Company have been properly accrued on the books of account of the Company in accordance with GAAP. The Company has withheld or collected from each payment made to each of its employees the amount of all Taxes, including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes required to be withheld or collected therefrom, and has paid the same to the proper governmental authority. The Company has not engaged in a transaction that constitutes a "reportable transaction" as defined in Treasury Regulation Section 1.6011-4(b).

3.16 EMPLOYEES.

(a) The Company has no collective bargaining agreements with any of its employees. There is no labor union organizing activity pending or, to the Company's knowledge, threatened with respect to the Company. Except as disclosed in Section 3.16 of the Schedule of Exceptions, the Company is not a party to or bound by any currently effective employment contract, deferred compensation arrangement, bonus plan, incentive plan, profit sharing plan, retirement agreement or other employee compensation plan or agreement. Except as disclosed in Section 3.16 of the Schedule of Exceptions, no employee of the Company has been granted the right to continued employment by the Company or to any compensation following termination of employment with the Company. Except as disclosed in Section 3.16 of the Schedule of Exceptions, no officer or employee of the Company has an employment agreement or understanding, whether oral or written, with the Company which is not terminable on notice by the Company without cost or other liability to the Company. The Company is not aware that any officer, key employee or group of employees intends to terminate his, her or their employment with the Company, nor does the Company have a present intention to terminate the employment of any officer, key employee or group of employees.

(b) Except as disclosed in Section 3.16 of the Schedule of Exceptions, the Company is not delinquent in payments to any of its employees, consultants, or independent contractors for any wages, salaries, commissions, bonuses, or other direct compensation for any service performed for it to the date hereof or amounts required to be reimbursed to such employees, consultants, or independent contractors. The Company has complied in all material respects with all applicable state and federal equal employment opportunity laws and with other laws related to employment, including those related to wages, hours, worker classification, and collective bargaining. The Company has withheld and paid to the appropriate governmental entity or is holding for payment not yet due to such governmental entity all amounts required to be withheld from employees of the Company and is not liable for any arrears of wages, taxes, penalties, or other sums for failure to comply with any of the foregoing.

(c) Except as disclosed in Section 3.16 of the Schedule of Exceptions, the Company has not made any representations regarding equity incentives to any officer, employees, director or consultant that are inconsistent with the share amounts and terms set forth in the minutes of meetings of the Company's board of directors.

(d) Except as disclosed in Section 3.16 of the Schedule of Exceptions, each former key employee whose employment was terminated by the Company has entered into an agreement with the Company providing for the full release of any claims against the Company or any related party arising out of such employment.

3.17 OBLIGATIONS OF MANAGEMENT. Each officer and key employee of the Company is currently devoting substantially all of his or her business time to the conduct of the business of the Company. The Company is not aware of any officer or key employee of the Company who is planning to work less than full time at the Company in the future. No officer or key employee is currently working or, to the Company's knowledge, plans to work for a competitive enterprise, whether or not such officer or key employee is or will be compensated by such enterprise.

3.18 REGISTRATION AND VOTING RIGHTS AND RESTRICTIONS ON TRANSFER AND ISSUANCE. Except as contemplated by the Investor Rights Agreement, the Company is not presently and shall not be under any obligation, and no person or entity has any existing rights, to register any of the Company's presently outstanding securities or any of its securities that may hereafter be issued. To the Company's knowledge, except as contemplated in the Voting Agreement, no stockholder of the Company has entered or will enter into any agreement with respect to the voting of equity securities of the Company. Except as contemplated by the Related Agreements, the Company is not presently and shall not be under any obligation, and has not granted, any rights of first refusal, preemptive or co-sale rights with respect to its capital stock.

3.19 COMPLIANCE WITH LAWS; PERMITS. The Company is not in material 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 have a Material Adverse Effect. No governmental orders, permissions, consents, approvals or authorizations are required to be obtained and no registrations, designations, qualification or declarations are required to be filed in connection with the execution and delivery of this Agreement and the issuance of the

Series A Preferred Shares or the Conversion Shares, except such as has been duly and validly obtained or filed, or with respect to any filings that must be made after each Closing, as will be filed in a timely manner. The Company has all material franchises, permits, licenses and any similar authority necessary for the conduct of its business as now being conducted, and believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as currently planned to be conducted.

3.20 Environmental, Safety and Health Laws. The Company is not in material violation of any applicable statute, law or regulation relating to the environment or occupational health and safety, and no material expenditures currently are, or to the Company's knowledge will be, required in order to comply with any such statute, law or regulation.

3.21 Offering Valid. Assuming the accuracy of the representations and warranties of Purchasers contained in Section 4.2 hereof, the offer, sale and issuance of the Series A Preferred Shares pursuant hereto and the issuance and delivery of the Conversion Shares upon conversion of the Series A Preferred Shares will be exempt from the registration requirements of the Securities Act of 1933, as amended (the ***"Securities Act"***), and will be or 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. Neither the Company nor any agent on its behalf has solicited or will solicit any offers to sell or has offered to sell or will offer to sell all or any part of the Series A Preferred Shares to any person or persons so as to bring the sale of such Series A Preferred Shares by the Company within the registration provisions of the Securities Act or any state securities laws.

3.22 Necessary Properties. The Company owns or possesses sufficient legal rights to any and all properties reasonably necessary for the conduct of its business as now conducted.

3.23 Real Property Holding Corporation. The Company is not a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code and any regulations promulgated thereunder. The Company has no current plans or intentions which would cause the Company to become a "United States real property holding corporation," and the Company has filed with the IRS all statements, if any, with its United States income tax returns which are required under Section 1.897-2(h) of the Treasury Regulations.

3.24 Preclinical Development and Clinical Trials. The studies, tests, preclinical development and clinical trials, if any, conducted by or on behalf of the Company are being conducted in all material respects in accordance with experimental protocols, procedures and controls pursuant to accepted professional and scientific standards for products or product candidates comparable to those being developed by the Company and all applicable laws and regulations, including the Federal Food, Drug, and Cosmetic Act and 21 C.F.R. parts 50, 54, 56, 58, 312, and 812. The descriptions of, protocols for, and data and other results of, the studies, tests, development and trials conducted by or on behalf of the Company that have been furnished or made available to the Purchasers are accurate and complete. The Company is not aware of any studies, tests, development or trials the results of which reasonably call into question the results of the studies, tests, development and trials conducted by or on behalf of the Company, and the

Company has not received any notices or correspondence from the U.S. Food and Drug Administration (the ***"FDA"***) or any other governmental entity or any institutional review board or comparable authority requiring the termination, suspension or material modification of any studies, tests, preclinical development or clinical trials conducted by or on behalf of the Company.

3.25 FDA APPROVALS. The Company possesses all permits, licenses, registrations, certificates, authorizations, orders and approvals from the appropriate federal, state or foreign regulatory authorities necessary to conduct its business as now conducted, including all such permits, licenses, registrations, certificates, authorizations, orders and approvals required by the FDA or any other federal, state or foreign agencies or bodies engaged in the regulation of drugs, pharmaceuticals, medical devices or biohazardous materials. The Company has not received any notice of proceedings relating to the suspension, modification, revocation or cancellation of any such permit, license, registration, certificate, authorization, order or approval. Neither the Company nor, to the Company's knowledge, any officer, employee or agent of the Company has been convicted of any crime or engaged in any conduct that has previously caused or would reasonably be expected to result in (a) disqualification or debarment by the FDA under 21 U.S.C. Sections 335(a) or (b), or any similar law, rule or regulation of any other governmental entities, (b) debarment, suspension, or exclusion under any Federal Healthcare Programs or by the General Services Administration, or (c) exclusion under 42 U.S.C. Section 1320a-7 or any similar law, rule or regulation of any governmental entities. Neither the Company nor any of its officers, employees, or to the knowledge of the Company, any of its contractors or agents is the subject of any pending or threatened investigation by FDA pursuant to its "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" policy as stated at 56 Fed. Reg. 46191 (September 10, 1991) (the ***"FDA Application Integrity Policy"***) and any amendments thereto, or by any other similar governmental entity pursuant to any similar policy. Neither the Company nor any of its officers, employees, contractors, and agents has committed any act, made any statement or failed to make any statement that would reasonably be expected to provide a basis for FDA to invoke the FDA Application Integrity Policy or for any similar governmental entity to invoke a similar policy. Neither the Company nor any of its officers, employees, or to the Company's knowledge, any of its contractors or agents has made any materially false statements on, or material omissions from, any notifications, applications, approvals, reports and other submissions to FDA or any similar governmental entity.

3.26 Rule 506(d). Neither the Company nor any of the Company's Rule 506(d) Related Parties is a "bad actor" within the meaning of Rule 506(d) of the Securities Act. For purposes of this Agreement, a "Rule 506(d) Related Party" shall mean a person or entity covered by the "Bad Actor disqualification" provision of Rule 506(d) of the Securities Act.

4. REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS. Each Purchaser hereby represents and warrants to the Company, severally and not jointly, as follows (such representations and warranties do not lessen or obviate the representations and warranties of the Company set forth in this Agreement):

4.1 REQUISITE POWER AND AUTHORITY. Such Purchaser has all necessary power and authority under all applicable provisions of law to execute and deliver this Agreement and the Related Agreements and to carry out their provisions. All action on such Purchaser's

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part required for the lawful execution and delivery of this Agreement and the Related Agreements have been or will be effectively taken prior to the Closing at which such Purchaser is purchasing the Series A Preferred Shares. Upon their execution and delivery, this Agreement and the Related Agreements will be valid and binding obligations of such Purchaser, enforceable in accordance with their respective terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (b) as limited by general principles of equity that restrict the availability of equitable remedies, and (c) to the extent that the enforceability of the indemnification provisions of Section 2.9 of the Investor Rights Agreement may be limited by applicable laws.

4.2 INVESTMENT REPRESENTATIONS. Such Purchaser understands that none of the Shares have been registered under the Securities Act. Such Purchaser also understands that the Series A Preferred Shares and the Conversion Shares are being offered and sold pursuant to an exemption from registration contained in the Securities Act based in part upon such Purchaser's representations contained in this Agreement. Such Purchaser hereby represents and warrants as follows:

(a) Purchaser Bears Economic Risk. Such Purchaser has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company so that it is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests. Such Purchaser must bear the economic risk of this investment indefinitely unless the Shares are registered pursuant to the Securities Act, or an exemption from registration is available. Such Purchaser understands that the Company has no present intention of registering the Shares or any shares of the Common Stock. Such Purchaser also understands that there is no assurance that any exemption from registration under the Securities Act will be available and that, even if available, such exemption may not allow such Purchaser to transfer all or any portion of the Shares under the circumstances, in the amounts or at the times that such Purchaser might propose or desire.

(b) Acquisition for Own Account. Such Purchaser is acquiring the Shares for such Purchaser's own account for investment only, and not with a view to distribution, assignment or resale of the Shares to others or to fractionalization of the Shares in whole or in part.

(c) Purchaser Can Protect Its Interest. Such Purchaser represents that by reason of its, or of its management's, business or financial experience, such Purchaser has the capacity to protect its own interests in connection with the transactions contemplated in this Agreement and the Related Agreements. Further, such Purchaser is aware of no publication of any advertisement in connection with the transactions contemplated in this Agreement.

(d) Accredited Investor. Such Purchaser represents and warrants that it is an "accredited investor" within the meaning of Rule 501 of Regulation D, as promulgated under the Securities Act. Each Purchaser that is an entity formed for the specific purpose of purchasing the Series A Preferred Shares under this Agreement represents and warrants that, to the best of such Purchaser's knowledge (after due inquiry), each equity owner of such Purchaser

is also an "accredited investor" within the meaning of Regulation D, as promulgated under the Securities Act.

(e) Company Information. Such Purchaser has received and read the Company's financial statements and has had an opportunity to discuss the Company's business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company's operations and facilities. Such Purchaser has also had the opportunity to ask questions of, and receive answers from, the Company and its management regarding the terms and conditions of this investment.

(f) Rule 144. Such Purchaser acknowledges and agrees that in addition to any requirements under state securities laws, the Series A Preferred Shares, and, if issued, the Conversion Shares, are "restricted securities" as defined in Rule 144 promulgated under the Securities Act as in effect from time to time and must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Such Purchaser has been advised or is aware of the provisions of Rule 144 as promulgated under the Securities Act as in effect from time to time (***"Rule 144"***), which permits limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions. Purchaser will be able to rely on Rule 144 only under the limited circumstances described in that rule.

(g) Residence. If such Purchaser is an individual, then such Purchaser resides in the state or province identified in the address of such Purchaser set forth on the Schedule of Purchasers; if such Purchaser is a partnership, corporation, limited liability company or other entity, then the office or offices of such Purchaser in which its investment decision was made is located at the address or addresses of Purchaser set forth on the Schedule of Purchasers.

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

(i) No General Solicitation. To the knowledge of such Purchaser, the Series A Preferred Shares have not been offered to such Purchaser by any form of general solicitation or general advertising, including, without limitation, (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media, or broadcast over television or radio, or (ii) any seminar or meeting whose attendees (including the Purchaser) have been invited by any general solicitation or general advertising.

(j) Rule 506(d). Neither such Purchaser nor any of such Purchaser's Rule 506(d) Related Parties is a "bad actor" within the meaning of Rule 506(d) of the Securities

Act. For purposes of this Agreement, a "Rule 506(d) Related Party" shall mean a person or entity covered by the "Bad Actor disqualification" provision of Rule 506(d) of the Securities Act.

4.3 TRANSFER RESTRICTIONS. Such Purchaser acknowledges and agrees that the Shares are subject to restrictions on transfer as set forth in the Investor Rights Agreement.

4.4 LEGENDS. Such Purchaser understands and agrees that the certificates evidencing the Series A Preferred Shares or the Conversion Shares, or any other securities issued in respect of the Series A Preferred Shares or the Conversion Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall bear the following legend (in addition to any legend required by the Related Agreements or under applicable state securities laws):

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAW. NEITHER THIS SECURITY NOR ANY PORTION HEREOF OR INTEREST HEREIN MAY BE SOLD, ASSIGNED, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF UNLESS THE SAME IS REGISTERED UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAW, OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE AND THE COMPANY SHALL HAVE RECEIVED, AT THE EXPENSE OF THE HOLDER HEREOF, EVIDENCE OF SUCH EXEMPTION REASONABLY SATISFACTORY TO THE COMPANY (WHICH MAY INCLUDE, AMONG OTHER THINGS, AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY).

4.5 REGULATION S. Each Purchaser with an address outside the United States further represents and warrants that:

(i) Each Purchaser that is not a "U.S. Person" within the meaning of Regulation S, as promulgated under the Securities Act, is not a resident of the United States and is an entity validly existing under the laws of its jurisdiction of organization. Such Purchaser represents that the transactions contemplated by this Agreement, including, but not limited to such Purchaser's acquisition of the Shares, will not violate any statute, ordinance or law or any rule, regulation, order, writ, injunction or decree of any governmental entity relating to foreign securities laws applicable to such Purchaser as a result of such Purchaser's place of organization and principal place of business set forth in EXHIBIT A or otherwise. Such Purchaser will not directly or indirectly offer, sell, transfer, assign, pledge, hypothecate, hedge or otherwise dispose of, or solicit any offers to purchase or otherwise acquire or take a pledge of, any of the Shares, except in accordance with Regulation S, the Securities Act and all applicable foreign securities laws.

(b) Such Purchaser is not a U.S. Person, as defined in SEC Rule 902 and is not acquiring the Shares for the account or benefit of a U.S. Person.

(c) Such Purchaser acknowledges its understanding that the offer and sale of the Shares is intended to be exempt from the registration requirements of the Securities Act, by virtue of the exemption from registration provided by Regulation S promulgated thereunder. Such Purchaser is aware and understands that the Shares may be resold, pledged, assigned or otherwise disposed of to a U.S. Person or for the account or benefit of a U.S. Person prior to the expiration of the one-year Distribution Compliance Period, as defined in Regulation S, which shall be for one year following the date after sale pursuant to this Agreement, and thereafter only if the Shares are subsequently registered under the Securities Act or an exemption from such registration is available pursuant to Regulation S promulgated under the Securities Act or pursuant to another available exemption from registration. Such Purchaser further agrees not to engage in any hedging transactions with regard to the Shares prior to the expiration of the Distribution Compliance Period unless in compliance with the Securities Act. Upon request of such Purchaser, upon receipt by the Company of an opinion of counsel reasonably satisfactory to the Company to the effect that such legend is no longer required under the Securities Act or applicable state laws, as the case may be, the Company shall promptly cause the legend to be removed from any certificate for any Shares to be so transferred.

(d) Such Purchaser understands that the certificates or other instruments representing the Shares shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS AND NEITHER SUCH SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR OTHERWISE TRANSFERRED EXCEPT (1) IN ACCORDANCE WITH THE PROVISIONS OF REGULATION S PROMULGATED UNDER THE SECURITIES ACT, AND BASED ON AN OPINION OF COUNSEL, WHICH COUNSEL AND OPINION ARE REASONABLY SATISFACTORY TO THE COMPANY, THAT THE PROVISIONS OF REGULATION S HAVE BEEN SATISFIED, (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR (3) PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, IN WHICH CASE THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE COMPANY AN OPINION OF COUNSEL, WHICH COUNSEL AND OPINION ARE REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR OTHERWISE TRANSFERRED IN THE MANNER CONTEMPLATED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. HEDGING TRANSACTIONS INVOLVING THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT.

4.6 Satisfaction of Notes; Title to Notes. The Noteholders hereby severally waive any notice provisions set forth in the Notes and agree that upon and subject to the Initial Closing and the transactions contemplated hereby, (a) all obligations represented by the Notes (including any discount provisions set forth therein) shall automatically be satisfied in full and cancelled, without any further action required, and this Section 4.6 shall constitute an instrument of cancellation for such obligations, and (b) the Note Agreement and each other agreement and instrument entered into by the Company and/or any Noteholder in connection with the Notes be, and hereby is, terminated in their entirety, without any further action required, and this Section 4.6 shall constitute an instrument of termination for such agreements and instruments. In the case of a Purchaser paying any portion of the aggregate purchase price by surrendering any Note held by such Purchaser, such Purchaser severally represents that it is the legal and beneficial owner of the Note(s) that such Purchaser surrenders to the Company and has good and marketable title to such Note(s), free and clear of all liens, claims, mortgages, encumbrances, pledges, security interests, equities or charges of any kind or other defects in title.

5. CONDITIONS TO CLOSING.

5.1 Conditions to Purchasers' Obligations at each Closing. The obligation of each Purchaser to purchase the Series A Preferred Shares to be purchased by it at a Closing is, unless waived in writing by such Purchaser, subject to the fulfillment on or before such Closing of each of the following conditions:

(a) Representations and Warranties True. The representations and warranties made by the Company in Section 3 (as modified by the disclosures contained in the Schedule of Exceptions then in effect as of the date of this Agreement), shall be true and correct in all material respects as of the date of this Agreement and as of such Closing; provided, however, that those representations and warranties that are qualified by materiality shall be true and correct in all respects as of the date of this Agreement and as of such Closing.

(b) Performance of Obligations. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to such Closing shall have been performed or complied with in all material respects.

(c) Qualifications. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required prior to the lawful issuance and sale of the Series A Preferred Shares and the Conversion Shares pursuant to this Agreement shall be obtained and effective as of such Closing. All consents under any agreements, contracts, indentures and instruments under which the Company may be bound shall have been obtained.

(d) Filing of Charter. The Charter shall have been filed with the Secretary of State of the State of Delaware as of the Initial Closing and shall continue to be in full force and effect as of each such Closing.

(e) Bankruptcy Court Order Approving Plan. Prior to the Initial Closing, the Bankruptcy Court shall have entered the Order confirming the Plan.

(f) Reservation of Conversion Shares. The Conversion Shares shall have been duly authorized and reserved for issuance.

(g) Certificates. The Company shall have delivered to counsel to the Purchasers the following:

(i) a certificate executed by the Chief Executive Officer, President or Chief Financial Officer of the Company on behalf of the Company, certifying the satisfaction of the conditions to closing listed in Sections 5.1(a) and (b);

(ii) a certificate of the Secretary of State of the State of Delaware, dated as of a date within five business days of the date of such Closing, with respect to the good standing of the Company; and

(iii) a certificate of the Company executed by the Company's Chairman of the Board, attaching and certifying to the truth, correctness, validity and effectiveness of each of (1) the Charter, (2) the Bylaws and (3) the Board and stockholder resolutions adopted in connection with the transactions contemplated by this Agreement.

(h) Investor Rights Agreement. The parties (other than the Purchaser relying upon this condition to excuse such Purchaser's performance hereunder) thereto shall have executed and delivered the Investor Rights Agreement.

(i) Right of First Refusal and Co-Sale Agreement. The parties thereto (other than the Purchaser relying upon this condition to excuse such Purchaser's performance hereunder) shall have executed and delivered the Right of First Refusal and Co-Sale Agreement.

(j) Voting Agreement. The parties thereto (other than the Purchaser relying upon this condition to excuse such Purchaser's performance hereunder) shall have executed and delivered the Voting Agreement.

(k) Board of Directors. Upon the date of the Initial Closing, the members of the Board shall consist of the persons named in the Voting Agreement.

5.2 CONDITIONS TO OBLIGATIONS OF THE COMPANY AT EACH CLOSING. The Company's obligation to issue and sell the Series A Preferred Shares at a Closing is subject to the satisfaction, on or prior to such Closing, of the following conditions:

(a) Representations and Warranties True. The representations and warranties in Section 4 made by such Purchaser shall be true and correct in all respects as of such Closing, with the same force and effect as if they had been made on and as of such Closing.

(b) Performance of Obligations. Each Purchaser shall have performed and complied with all agreements and conditions herein required to be performed or complied with by such Purchaser on or before such Closing in all material respects.

(c) Execution of Counterpart. Each Purchaser shall have executed a counterpart of this Agreement and each of the Related Agreements.

6. COVENANTS.

6.1 COMMERCIALLY REASONABLE EFFORTS. Each of the parties shall use all commercially reasonable efforts to take, or cause to be taken, all appropriate action to do, or cause to be done, all things necessary, proper or advisable under applicable law or otherwise to consummate and make effective the transactions contemplated by this Agreement, including to (a) obtain all consents, approvals, authorizations, qualifications and orders as are necessary for the consummation of the transactions contemplated by this Agreement, (b) ensure that the representations and warranties of the Company as set forth in Section 3 remain true and accurate, (c) promptly make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement required under applicable law and (d) have vacated, lifted, reversed or overturned any order, decree, ruling, judgment, injunction or other action (whether temporary, preliminary or permanent) that is in effect and that enjoins, restrains, conditions, makes illegal or otherwise restricts or prohibits the consummation of the transactions contemplated by this Agreement.

6.2 FURTHER ASSURANCES. The Company shall from time to time do such further acts and execute and deliver such further documents regarding its obligations hereunder as may be required solely for the purpose of (a) accomplishing the purposes of this Agreement or (b) assuring and confirming unto the Purchasers the validity of any documents to be delivered at a Closing.

7. MISCELLANEOUS.

7.1 GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. This Agreement shall be governed by and construed in accordance with the General Corporation Law of the State of Delaware as to matters within the scope thereof, and as to all other matters shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to its principles of conflicts of laws. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the state and federal courts of the State of Delaware for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

7.2 SURVIVAL. The representations, warranties, covenants and agreements made herein shall survive the Initial Closing for a period of one (1) year.

7.3 SUCCESSORS AND ASSIGNS. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto and shall inure to the benefit of and be enforceable by each person who shall be a holder of the Series A Preferred Shares from time to time. Notwithstanding anything to the contrary, this Agreement, the rights and obligations provided for herein and all or any portion of the Shares held by a Purchaser may be assigned and transferred by such Purchaser to an Affiliate, provided that the Affiliate shall agree in writing to be subject to the terms of the Related Agreements to the same extent as if such Affiliate were an original Purchaser hereunder and thereunder.

7.4 ENTIRE AGREEMENT. This Agreement, the exhibits and schedules hereto, the Related Agreements and the other documents delivered pursuant 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 in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

7.5 SEVERABILITY. In case any provision of the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

7.6 AMENDMENT AND WAIVER.

(a) This Agreement may be amended or modified only upon the written consent of the Company and holders of at least a majority of the Series A Preferred Shares then outstanding (treated as if converted and including any Conversion Shares into which

the Series A Preferred Shares have been converted that have not been sold to the public). Any such amendment or modification effected in accordance with this Section 7.6(a) shall be binding on all parties hereto, even if they do not execute such consent.

(b) Subject to Section 7.6(c) below, any party hereto may waive compliance with any agreements, covenants or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

(c) The obligations of the Company and the rights of the holders of the Series A Preferred Shares and the Conversion Shares under this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the holders of at least a majority of the Series A Preferred Shares then outstanding (treated as if converted and including any Conversion Shares into which the Series A Preferred Shares have been converted that have not been sold to the public). Any such waiver effected in accordance with this Section 7.6(c) shall be binding on all parties hereto, even if they do not execute such consent.

7.7 DELAYS OR OMISSIONS. No delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, the Related Agreements or the Charter, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any Purchaser's part of any breach, default or noncompliance under this Agreement, the Related Agreements or under the Charter or any waiver on such party's part of any provisions or conditions of the Agreement, the Related Agreements or the Charter must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, the Related Agreements, the Charter, afforded by law, or otherwise to any party, shall be cumulative and not alternative.

7.8 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 telex, email or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company at 40 Christopher Way, Suite 201, Eatontown, New Jersey 07724, Facsimile: (732) 758-6579, Attention: David Fischell, and to the Purchasers at the address as set forth for each on the Schedule of Purchasers attached hereto or at such other address as the Company or any Purchaser may designate by ten (10) days advance written notice to the other parties hereto. If notice is given to the Company, a copy shall also be sent to Honigman ~~Miller Schwartz and Cohn~~ LLP, Attention: Phillip D. Torrence, Esq., 650 Trade Centre Way, Suite 200, Kalamazoo, Michigan 49002, Telephone: 269-337-7702, Fax: 269-337-7703.

7.9 EXPENSES. Irrespective of whether the Initial Closing is effected, the Company shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement. If the Initial Closing is effected, the Company shall, at the Initial Closing, reimburse the reasonable fees and out-of-pocket expenses of one legal counsel to the Purchasers in an amount not to exceed $40,000.

7.10 ATTORNEYS' FEES. In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

7.11 TITLES AND SUBTITLES. The titles of the sections and subsections of the Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

7.12 EXCULPATION AMONG PURCHASERS. Each Purchaser acknowledges that it is not relying upon any person, firm, or corporation, other than the Company and its officers and directors, in making its investment or decision to invest in the Company. Each Purchaser agrees that no Purchaser nor the respective controlling persons, officers, directors, partners, agents, or employees of any Purchaser that is not affiliated with the Company shall be liable to any other Purchaser for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the Series A Preferred Shares and the Conversion Shares.

7.13 PRONOUNS. All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neutral, singular or plural, as the identity of the parties hereto may require.

7.14 COUNTERPARTS; ELECTRONIC TRANSMISSION. This Agreement may be executed in one or more counterparts and by facsimile, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Signatures of the parties transmitted by facsimile or via .pdf format shall be deemed to be their original signatures for all purposes. The words "execution," "signed," "signature," and words of like import shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the Delaware Electronic Transactions Act, or any other similar state laws based on the Uniform Electronic Transactions Act. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent delivered by means of a facsimile machine or electronic mail (any such delivery, an ***"Electronic Delivery"***), will be treated in all manner and respects as an original agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto will re-execute original forms thereof and deliver them to the other party. No party hereto or to any such agreement or

instrument will raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense related to lack of authenticity.

7.15 Waiver of Conflicts. Each party to this Agreement acknowledges that Honigman LLP (***"Honigman"***), outside general counsel to the Company, has in the past performed and is or may now or in the future represent one or more Purchasers or their affiliates in matters unrelated to the transactions contemplated by this Agreement (the ***"Series A Financing"***), including representation of such Purchasers or their Affiliates in matters of a similar nature to the Series A Financing. The applicable rules of professional conduct require that Honigman inform the parties hereunder of this representation and obtain their consent. Honigman has served as outside general counsel to the Company and has negotiated the terms of the Series A Financing solely on behalf of the Company. The Company and each Purchaser hereby: (a) acknowledge that they have had an opportunity to ask for and have obtained information relevant to such representation, including disclosure of the reasonably foreseeable adverse consequences of such representation; (b) acknowledge that with respect to the Series A Financing, Honigman has represented solely the Company, and not any Purchaser or any stockholder, director or employee of the Company or of any Purchaser; and (c) gives its informed consent to Honigman's representation of the Company in the Series A Financing.

7.16 Consent to Electronic Notice under Section 232 of the DGCL. Effective upon the issuance of the Series A Preferred Shares by the Company to each Purchaser, such Purchaser hereby consents to the delivery of stockholder notices by electronic transmission for all purposes and to the fullest extent permitted by law, including the fullest extent set forth in Section 232 of the Delaware General Corporation Law, as amended (the ***"DGCL"***). Notices by electronic transmission shall be delivered to the Purchasers as follows: (a) if by electronic mail, such notices shall be sent to the electronic mail address previously provided by such Stockholder to the Company or to such other electronic mail address as shall be designated by such Stockholder in a written notice sent to Phillip D. Torrence, Honigman LLP, 650 Trade Centre Way, Suite 200, Kalamazoo, Michigan 49002, Email: ptorrence@honigman.com; and (b) if by posting on an electronic network, such notices shall be posted for at least five (5) business days on the Company's website and such Purchaser shall be notified of such posting at least three (3) business days' in advance either (i) by electronic mail complying as to delivery with the terms of Section 7.8 above or (ii) by written notice to such Purchaser at the address set forth in the Company's records. The consent provided by such Purchaser pursuant to this Section 7.16 applies to any and all notices required to be given to such Purchaser for any purpose, including under the DGCL and/or the Charter, as amended from time to time, the Bylaws or otherwise. The consent provided by each Purchaser pursuant to this Section 7.16 also applies to any and all notices required to be given to such Purchaser pursuant to this Agreement, the Voting Agreement, the Right of First Refusal and Co-Sale Agreement and the Investor Rights Agreement, each of even date herewith. All notices sent by electronic mail will be considered given and received as of and on the date of electronic transmission thereof. The consent provided by each Purchaser pursuant to this Section 7.16 shall survive the termination or amendment of this Agreement.

SIGNATURES ON THE FOLLOWING PAGE

This **SERIES A PREFERRED STOCK PURCHASE AGREEMENT** is hereby executed as of the date first above written.

THE COMPANY:

ANGEL MEDICAL SYSTEMS, INC.

By: ________________________________
Name: David R. Fischell
Title: Chief Executive Officer

This **SERIES A PREFERRED STOCK PURCHASE AGREEMENT** is hereby executed as of the date first above written.

THE PURCHASERS:

[INSERT NAME]

By:________________________________
Name: ______________________________
Title: ______________________________

This **SERIES A PREFERRED STOCK PURCHASE AGREEMENT** is hereby executed as of the date first above written.

THE PURCHASERS:

[INSERT NAME]

By:________________________________
Name: ______________________________
Title: ______________________________

EXHIBIT A
SCHEDULE OF PURCHASERS

Initial Closing

Name	Address	Aggregate New Money Investment	Initial Closing Shares	Series A Shares Issuable upon Conversion of Note(s)
INITIAL CLOSING – ____________, 2019				
	Total			

Subsequent Closings

Name	Address	Subsequent Closing Amount	Subsequent Closing Shares
SUBSEQUENT CLOSING – [________________], 2019			
	Subsequent Closings Total:	$	

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EXHIBIT B

CERTIFICATE OF INCORPORATION

[See attached]

EXHIBIT C

SCHEDULE OF EXCEPTIONS
TO
SERIES A PREFERRED STOCK PURCHASE AGREEMENT

This Schedule of Exceptions is made and given pursuant to Section 3 of the Series A Preferred Stock Purchase Agreement, dated as of ___________, 2019 (the ***"Agreement"***), by and among ANGEL MEDICAL SYSTEMS, INC., a Delaware corporation (the ***"Company"***), and the Purchasers listed on EXHIBIT A thereto. All capitalized terms used but not defined herein shall have the meanings as defined in the Agreement, unless otherwise provided. The section numbers below correspond to the section numbers of the representations and warranties in the Agreement; provided, however, that no information disclosed in the Schedule of Exceptions under any such subsection shall be deemed to be disclosed and incorporated in any other section of this Agreement unless it is reasonably apparent on its face that such disclosure would be appropriate and responsive to such other representation.

Nothing in this Schedule of Exceptions is intended to broaden the scope of any representation or warranty contained in the Agreement or to create any covenant. Inclusion of any item in this Schedule of Exceptions (1) does not represent a determination that such item is material, constitutes a Material Adverse Effect or establishes a standard of materiality, (2) does not represent a determination that such item did not arise in the ordinary course of business, (3) does not represent a determination that the transactions contemplated by the Agreement require the consent of third parties, and (4) shall not constitute, or be deemed to be, an admission to any third party concerning such item. This Schedule of Exceptions includes brief descriptions or summaries of certain agreements and instruments, copies of which are available upon reasonable request. Such descriptions do not purport to be comprehensive, and are qualified in their entirety by reference to the text of the documents described.

EXHIBIT D

INVESTOR RIGHTS AGREEMENT

[See attached]

EXHIBIT E

RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT

[See attached]

EXHIBIT F

VOTING AGREEMENT

[See attached]

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Comparison Details	
Title	**pdfDocs compareDocs Comparison Results**
Date & Time	2/8/2019 1:36:53 PM
Comparison Time	5.75 seconds
compareDocs version	v4.3.200.37

Sources	
Original Document	[WS01][#10741210] [v1] Series A Preferred Stock Purchase Agreement - Angel Medical Systems Inc. 2019(29860381_2).doc
Modified Document	[WS01][#10754801] [v1] [AMENDED] Series A Preferred Stock Purchase Agreement - Angel Medical Systems Inc. 2019(29860381_4).doc

Comparison Statistics	
Insertions	40
Deletions	52
Changes	7
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	99

Word Rendering Set Markup Options	
Name	Standard
Insertions	
~~Deletions~~	
Moves / ~~Moves~~	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True

EXHIBIT F

New Investors' Rights Agreement

INVESTOR RIGHTS AGREEMENT

By and among:

ANGEL MEDICAL SYSTEMS, INC.,
a Delaware corporation;

and

THE INVESTORS NAMED HEREIN.

Dated as of ____________, 2019

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ANGEL MEDICAL SYSTEMS, INC.

INVESTOR RIGHTS AGREEMENT

This **INVESTOR RIGHTS AGREEMENT** (this ***"Agreement"***) is entered into as of _________, 2019 by and among **ANGEL MEDICAL SYSTEMS, INC.**, a Delaware corporation (the ***"Company"***), and the Investors listed on EXHIBIT A attached to this Agreement (collectively, the ***"Investors"*** and each, without distinction among them, an ***"Investor"***).

RECITALS

WHEREAS, the Investors are holders of the Company's Series A Convertible Preferred Stock, par value $0.001 per share (the ***"Series A Preferred"***), pursuant to that certain Series A Preferred Stock Purchase Agreement of even date herewith (the ***"Purchase Agreement"***);

WHEREAS, the obligations in the Purchase Agreement are conditioned upon the execution and delivery of this Agreement; and

WHEREAS, the Company and the Investors desire to enter into this Agreement in order to grant information rights and other rights to the Investors as set forth below.

AGREEMENT

NOW, **THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. GENERAL.

1.1 DEFINITIONS. As used in this Agreement the following terms shall have the following respective meanings:

(a) ***"Affiliate"*** means, with respect to any specified person or party, any other person or party who or which, directly or indirectly, controls, is controlled by, or is under common control with such specified person or party, including without limitation any partner, officer, director, manager or employee of such person or party and any venture capital fund now or hereafter existing that is controlled by or under common control with one or more general partners or managing members of, or shares the same management company with, such person or party.

(b) ***"Board"*** means the Company's Board of Directors.

(c) ***"Certificate of Incorporation"*** means the Company's Amended and Restated Certificate of Incorporation, as it may be amended or further restated from time to time as permitted by the terms thereof and this Agreement.

(d) ***"Change in Control"*** means a Deemed Liquidation Event (as defined in the Certificate of Incorporation.

(e) ***"Code"*** means the Internal Revenue Code of 1986, as amended.

(f) ***"Common Stock"*** means the Company's common stock, par value $0.001 per share.

(g) ***"Equity Securities"*** means (i) any Common Stock, the Series A Preferred or other security of the Company, (ii) any security convertible, with or without consideration, into any Common Stock, the Series A Preferred or other security of the Company (including any option to purchase such a convertible security), (iii) any security carrying any warrant or right to subscribe to or purchase any Common Stock, the Series A Preferred or other security of the Company, or (iv) any such warrant or right.

(h) ***"Exchange Act"*** means the Securities Exchange Act of 1934, as amended.

(i) ***"Form S-3"*** means such form under the Securities Act as in effect on the date hereof or any successor or similar registration form under the Securities Act subsequently adopted by the SEC.

(j) ***"Holder"*** means any person of record owning Registrable Securities or any assignee of record of such Registrable Securities in accordance with Section 2.10 hereof.

(k) ***"Initial Offering"*** means the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act.

(l) ***"Non-Registrable Securities"*** means Common Stock held by any other party hereto that is not an Investor.

(m) ***"Person"*** means any individual, corporation, partnership, trust, limited liability company, association or other entity.

(n) ***"Preferred Stock"*** means the Company's preferred stock, par value $0.001 per share.

(o) ***"Qualified Public Offering"*** means a firmly underwritten public offering of Common Stock pursuant to a registration statement filed with the SEC and declared effective under the Securities Act covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least $3.00 (as adjusted for stock splits, dividends, combinations, recapitalizations and the like after the date hereof) and (ii) the net cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least Twenty-Five Million Dollars ($25,000,000).

(p) ***"Register," "registered,"*** and ***"registration"*** refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document.

(q) ***"Registrable Securities"*** means (i) Common Stock, (ii) Common Stock issued or issuable upon conversion of the Series A Preferred, now owned or hereafter acquired by the Investors and their permitted assigns, (iii) Common Stock issued or issuable (directly or

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indirectly) upon conversion and/or exercise of any other securities of the Company acquired by the Investors after the date hereof, (iv) Common Stock issued as (or issuance upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clauses (ii) above. Notwithstanding the foregoing, Registrable Securities shall not include any securities for which registration rights have terminated under Section 2.7 of this Agreement or sold by a person to the public either pursuant to a registration statement or in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

(r) ***"Registrable Securities then outstanding"*** means the shares of the Company's Common Stock that are Registrable Securities and that are either: (a) then issued and outstanding or (b) issuable upon the exercise or conversion of exercisable or convertible securities.

(s) ***"Registration Expenses"*** means all expenses incurred by the Company in complying with Sections 2.2, 2.3 and 2.4 hereof, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, reasonable fees and disbursements not to exceed Twenty-Five Thousand Dollars ($25,000) for a single special counsel for the Holders, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration (but excluding the compensation of any employees of the Company which shall be paid in any event by the Company).

(t) ***"Rule 144"*** means Rule 144, as promulgated under the Securities Act, or any similar or analogous rule promulgated under the Securities Act.

(u) ***"SEC"*** means the Securities and Exchange Commission.

(v) ***"Securities Act"*** means the Securities Act of 1933, as amended.

(w) ***"Selling Expenses"*** means all underwriting discounts and selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities.

(x) ***"Shares"*** means the Series A Preferred and the Common Stock held by the Investors and their permitted assigns.

(y) ***"Special Registration Statement"*** means (i) a registration statement relating to any employee benefit plan, (ii) with respect to any corporate reorganization or transaction under Rule 145 of the Securities Act, any registration statements related to the resale of securities issued in such a transaction, or (iii) a registration related to stock issued upon conversion of debt securities.

(z) ***"State Securities Laws"*** means all applicable state securities laws and regulations, including, without limitation, the registration, permit or qualification requirements thereunder.

(aa) ***"Subsidiary"*** means, with respect to any entity, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are owned directly or indirectly by

such entity or any Subsidiary of such entity or by such entity and one or more Subsidiaries of such entity.

SECTION 2. RESTRICTIONS ON TRANSFER.

2.1 RESTRICTIONS ON TRANSFER.

(a) Each party hereto agrees not to make any disposition of all or any portion of the Shares, Registrable Securities or Non-Registrable Securities unless and until:

(i) 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

(ii) (A) The transferee has agreed in writing to be bound by the terms of this Agreement, (B) such party 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 (C) if reasonably requested by the Company, such party 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 or applicable state or foreign securities law. Notwithstanding the foregoing, no such opinion of counsel shall be required in connection with any transfer of shares of Registrable Securities or Non-Registrable Securities made in compliance with Rule 144. After its Initial Offering, the Company shall not require the transferee to be bound by the terms of this Agreement.

Notwithstanding the provisions of clauses (i) and (ii) above, no such registration statement or opinion of counsel shall be necessary for a transfer by a party hereto to any of its Affiliates, including transfers involving (A) a partnership transferring to its partners or former partners in accordance with partnership interests, (B) a corporation transferring to a wholly-owned Subsidiary or a parent corporation that owns all of the capital stock of such corporation, (C) a limited liability company transferring to its members or former members in accordance with their interests in the limited liability company, or (D) an individual transferring to such individual's family member or trust for the benefit of such individual; provided that in each case the transferee shall be subject to the terms of this Agreement to the same extent as if he, she or it were an original party hereto.

(b) Each certificate representing Shares, Registrable Securities or Non-Registrable Securities shall (unless otherwise permitted by the provisions of this Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable State Securities Laws):

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAW. NEITHER THIS SECURITY NOR ANY PORTION HEREOF OR INTEREST HEREIN MAY BE SOLD, ASSIGNED, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF UNLESS THE SAME IS REGISTERED UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAW, OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE AND THE COMPANY SHALL

HAVE RECEIVED, AT THE EXPENSE OF THE HOLDER HEREOF, EVIDENCE OF SUCH EXEMPTION REASONABLY SATISFACTORY TO THE COMPANY (WHICH MAY INCLUDE, AMONG OTHER THINGS, AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY).

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN INVESTOR RIGHTS AGREEMENT BY AND BETWEEN THE STOCKHOLDER AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

(c) The Company shall be obligated to reissue promptly un-legended certificates at the request of any holder thereof if such holder shall have obtained an opinion of counsel (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be so disposed of without registration, qualification or legend.

(d) Any legend endorsed on an instrument pursuant to applicable State Securities Laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate blue sky authority authorizing such removal.

(e) The restrictions set forth in this Section 2.1 shall terminate upon completion of the Initial Offering.

2.2 DEMAND REGISTRATION.

(a) Subject to the conditions of this Section 2.2, if the Company shall receive a written request from the Holders of not less than an aggregate of fifty percent (50%) of the Registrable Securities (the ***"Initiating Holders"***) that the Company file a registration statement under the Securities Act covering the registration of all or a portion of the Registrable Securities held by such Initiating Holders, then the Company shall, within thirty (30) days of the receipt thereof, give written notice of such request to all of the Holders, and subject to the limitations of this Section 2.2, the Company shall use its commercially reasonable efforts to effect the registration under the Securities Act of all Registrable Securities that the Holders request to be registered.

(b) If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 2.2(a) or any request pursuant to Section 2.4 and the Company shall include such information in the written notice referred to in Section 2.2(a) or Section 2.4(a), as applicable. In such event, the right of any Holder to include its Registrable Securities in a registration pursuant to this Section 2.2 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their Registrable

Securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders (which underwriter or underwriters shall be reasonably acceptable to the Company). Notwithstanding any other provision of this Agreement, if the managing underwriter or underwriters determine that the proposed number of securities to be underwritten would adversely affect the marketing of such securities, then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares that may be included in such underwriting shall be allocated to the Holders of such Registrable Securities on a *pro rata* basis based on the number of Registrable Securities held by all such Holders (including the Initiating Holders); provided, however, that the number of shares of Registrable Securities to be included in such underwriting and registration shall not be reduced unless all securities of the Company are first entirely excluded from such underwriting and registration. Any Registrable Securities excluded or withdrawn from such underwriting shall be excluded and withdrawn from the registration.

(c) The Company shall not be required to effect a registration pursuant to this Section 2.2:

(i) prior to the earlier of (a) the third anniversary of the date of this Agreement, or (b) one hundred eighty (180) days following the effective date of the registration statement pertaining to the Initial Offering;

(ii) after the Company has effected two (2) registrations pursuant to this Section 2.2, and such registrations have been declared or ordered effective;

(iii) if the aggregate offering price, net of underwriting expenses and discounts, is less than ten million dollars ($10,000,000);

(iv) during the period starting with the date of filing of, and ending on the date ninety (90) days following the effective date of a Company initiated registration statement pertaining to a public offering, other than pursuant to a Special Registration Statement; provided that the Company makes a reasonable good faith effort to effect such registration as soon thereafter as practicable;

(v) if within thirty (30) days of receipt of a written request from the Initiating Holders pursuant to Section 2.2(a), the Company gives notice to the Holders of the Company's intention to file a registration statement for a public offering, other than pursuant to a Special Registration Statement, within sixty (60) days of the time of request; provided, that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; or

(vi) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 2.2 a certificate signed by the Chairman of the Board stating that, in the good faith judgment of the Board, it would be materially detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than ninety (90) days

after receipt of the request of the Initiating Holders; provided, however, that such right to delay a request shall be exercised by the Company not more than once in any twelve (12) month period.

(vii) A registration statement shall be counted for purposes of Section 2.2(c)(ii) of this Agreement at such time as such registration statement has been declared effective by the SEC (or if the Initiating Holders withdraw their request for such registration (other than as a result of material adverse information concerning the Company of which the Initiating Holders were not aware at the time such registration was requested). A registration statement shall not be counted for purposes of Section 2.2(c)(ii) of this Agreement if, as a result of an exercise of the underwriter's cut-back provisions, fewer than seventy five percent (75%) of the total number of Registrable Securities that the Holders have requested to be included in such registration statement are actually included.

2.3 PIGGYBACK REGISTRATIONS. The Company shall notify all Holders of Registrable Securities in writing at least thirty (30) days prior to the filing of any registration statement under the Securities Act covering the sale of the Company's securities to the public, whether for its own account or for the account of other security holders or both (but excluding Special Registration Statements) and will afford each such Holder an opportunity to include in such registration statement all or part of such Registrable Securities held by such Holder. Each Holder desiring to include in any such registration statement all or any part of the Registrable Securities held by it shall, within twenty (20) days after such Holder receives the above-described notice from the Company, so notify the Company in writing, and the Company shall use its commercially reasonable efforts to cause the Registrable Securities so requested by such Holder to be included in such registration statement. Such notice shall state the intended method of disposition of the Registrable Securities by such Holder. If a Holder decides not to include all of its Registrable Securities in any registration statement thereafter filed by the Company, such Holder shall nevertheless continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth herein.

(a) Underwriting. If the registration statement under which the Company gives notice under this Section 2.3 is for an underwritten offering, the Company shall so advise the Holders of Registrable Securities. In such event, the right of any such Holder to include its Registrable Securities in a registration pursuant to this Section 2.3 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. Notwithstanding any other provision of this Agreement, if the managing underwriter or underwriters determine in good faith that the proposed number of securities to be underwritten would adversely affect the marketing of such securities, then the number of shares that may be included in the underwriting shall be allocated, first, to the Company; second, to the Holders on a *pro rata* basis based on the total number of Registrable Securities held by the Holders; and third, to any stockholder of the Company (other than a Holder) on a *pro rata* basis. Except in the case of an Initial Offering, no such reduction shall reduce the amount of Registrable Securities of the selling Holders included in the registration below thirty percent (30%) of the total amount of securities included in such registration. In no event will shares of any other selling stockholder be included

in such registration that would reduce the number of shares which may be included by the Holders without the written consent of the Holders of not less than majority of the Registrable Securities proposed to be sold in the offering. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter, delivered at least ten (10) business days prior to the effective date of the registration statement. Any Registrable Securities excluded or withdrawn from such underwriting shall be excluded and withdrawn from the registration. For any Holder which is a partnership or corporation, the partners, retired partners, members, retired members and stockholders of such Holder, or the estates and family members of any such partners, retired partners, members, retired members and stockholders and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single ***"Holder"***, and any *pro rata* reduction with respect to such ***"Holder"*** shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such ***"Holder"***, as defined in this sentence.

(b) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 2.5 hereof.

2.4 FORM S-3 REGISTRATION. If at any time the Company shall receive from any Holder or Holders of not less than twenty percent (20%) of the Registrable Securities a written request or requests that the Company file a registration on Form S-3 or any similar short-form registration statement and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders of Registrable Securities; and

(b) as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company; provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance pursuant to this Section 2.4 if any of the following apply:

(i) if Form S-3 is not available for such offering by the Holders;

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public of less than one million dollars ($1,000,000);

(iii) if within thirty (30) days of receipt of a written request from any Holder or Holders pursuant to this Section 2.4, the Company gives notice to such Holder or

Holders of the Company's intention to make a public offering within sixty (60) days, other than pursuant to a Special Registration Statement; provided, that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective;

(iv) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 2.4 a certificate signed by the Chairman of the Board stating that, in the good faith judgment of the Board, it would be seriously detrimental to the Company and its stockholders for such Form S-3 registration to be effected at such time, in which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than ninety (90) days after receipt of the request of the Holder or Holders under this Section 2.4; provided, however, that such right to delay a request shall be exercised by the Company not more than once in any twelve (12) month period; or

(v) if less than six (6) months have expired since the effectiveness of the immediately preceding registration requested pursuant to this Section 2.4.

(c) Subject to the foregoing, the Company shall file a registration statement on Form S-3 to register the Registrable Securities so requested to be registered as soon as practicable after receipt of the requests of the Holders. Whenever the Company is required by this Section 2.4 to effect the registration of Registrable Securities, each of the procedures and requirements of Section 2.2 shall apply to such registration provided, however, that the requirements of Section 2.2 shall not apply to any registration on Form S-3 which may be requested and obtained under this Section 2.4. Registrations effected pursuant to this Section 2.4 shall not be counted as demands for registration or registrations effected pursuant to Section 2.2 or 2.3, respectively.

2.5 Expenses of Registration. Except as specifically provided herein, all Registration Expenses incurred in connection with any registration, qualification or compliance pursuant to Section 2.2, 2.3 or 2.4 hereof shall be borne by the Company. All Selling Expenses incurred in connection with any registrations hereunder, shall be borne by the Holders of the securities so registered *pro rata* on the basis of the number of shares so registered. The Company shall not, however, be required to pay for expenses of any registration proceeding begun pursuant to Section 2.2 or 2.4, the request of which has been subsequently withdrawn by the Initiating Holders or the requesting Holder or Holders under Section 2.4, as the case may be, unless (a) the withdrawal is based upon material adverse information concerning the Company of which the Initiating Holders or the requesting Holder or Holders under Section 2.4, as the case may be, were not aware at the time of such request or (b) the Holders of at least seventy percent (70%) of Registrable Securities then outstanding agree to forfeit their right to one requested registration pursuant to Section 2.2, in which event such right shall be forfeited by all Holders. If the Holders are required to pay the Registration Expenses, such expenses shall be borne by the Holders of securities (including Registrable Securities) requesting such registration in proportion to the number of shares for which registration was requested. If the Company is required to pay the Registration Expenses of a withdrawn offering pursuant to clause (a) above, then the Holders shall not forfeit their rights pursuant to Section 2.2 or to a demand registration.

2.6 Obligations of the Company. Whenever required to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use all reasonable efforts to cause such registration statement to become effective, and keep such registration statement effective until the earlier of one-hundred eighty (180) days after the effective date of such registration statement or until the Holder or Holders have completed the distribution or sale of such Registrable Securities; provided, however, that at any time, upon written notice to the participating Holders and for a period not to exceed thirty (30) days thereafter (the ***"Suspension Period"***), the Company may delay the filing or effectiveness of any registration statement or suspend the use or effectiveness of any registration statement (and the Initiating Holders hereby agree not to offer or sell any Registrable Securities pursuant to such registration statement during the Suspension Period) if the Company reasonably believes that the Company may, in the absence of such delay or suspension hereunder, be required under state or federal securities laws to disclose any corporate development the disclosure of which could reasonably be expected to have a material adverse effect upon the Company, its stockholders, a potentially significant transaction or event involving the Company, or any negotiations, discussions or proposals directly relating thereto. No more than two (2) such Suspension Periods shall occur in any twelve (12) month period. In the event that the Company shall exercise its suspension rights hereunder, the applicable time period during which the registration statement is to remain effective shall be extended by a period of time equal to the duration of the Suspension Period. The Company may extend the Suspension Period for an additional consecutive sixty (60) days with the consent of the holders of at least a majority in interest of the Registrable Securities proposed to be sold by the Initiating Holders, which consent shall not be unreasonably withheld. If so directed by the Company, the Initiating Holders shall use their reasonable efforts to deliver to the Company (at the Company's expense) or destroy all copies, other than permanent file copies then in such Initiating Holders' possession, of the prospectus relating to such Registrable Securities current at the time of receipt of such notice. The Company shall not be required to file, cause to become effective or maintain the effectiveness of any registration statement that contemplates a distribution of securities on a delayed or continuous basis pursuant to Rule 415 under the Securities Act.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period set forth in subsection (a) above.

(c) Furnish to each seller of Registrable Securities and to each underwriter such number of copies of the registration statement and the prospectus included therein, including each preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities covered by such registration statement.

(d) Register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as the sellers of Registrable Securities, or in the case of an underwritten public offering, the managing underwriter, reasonably shall request; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

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(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter(s) of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing. The Company will use commercially reasonable efforts to amend or supplement such prospectus in order to cause such prospectus not to include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.

(g) Furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) a letter, dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering addressed to the underwriters.

(h) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed; provided that in the case of a registration effected pursuant to Section 2.2 above, which registration constitutes the Initial Offering, the Registrable Securities shall be listed on a national securities exchange or the NASDAQ National Market System.

(i) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(j) Make available to each Holder of Registrable Securities covered by such registration statement, any underwriter participating in any distribution pursuant to such registration statement, and any attorney, accountant or other agent retained by such Holder or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such Holder, underwriter, attorney, accountant or agent in connection with such registration statement.

(k) Advise each Holder of Registrable Securities covered by such registration statement, promptly after the Company shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the SEC suspending the effectiveness of such registration statement or the initiation or threatening of any proceeding for such purpose and promptly use all reasonable

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efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued.

(l) Cooperate with the Holders of Registrable Securities covered by such registration statement and the managing underwriters, if any, to facilitate the timely preparation and delivery of certificates representing such Registrable Securities to be sold, such certificates to be in such denominations and registered in such names as such Holders or the managing underwriters may request at least two (2) business days prior to any sale of Registrable Securities.

(m) Permit any Holder which Holder, in the sole and exclusive judgment, exercised in good faith of such Holder, might be deemed to be a controlling Person of the Company, to participate in good faith in the preparation of such registration or comparable statement and to require the insertion therein of material furnished to the Company in writing, which in the reasonable judgment of such Holder should be included, subject to review by the Company and its counsel after consultation with such Holder.

2.7 TERMINATION OF REGISTRATION RIGHTS. All registration rights granted under this Section 2 shall terminate and be of no further force and effect upon the earlier of: (i) two (2) years after the Company has completed its Initial Offering; (ii) a Deemed Liquidation Event, as such term is defined in the Charter; or (iii) when all Registrable Securities held by and issuable to such Holder (and its Affiliates) may be sold under Rule 144 during any ninety (90) day period.

2.8 FURNISHING INFORMATION.

(a) No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

(b) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 2.2, 2.3 or 2.4 that the selling Holders shall furnish to the Company in writing such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be reasonably necessary in order to assure compliance with federal and applicable State Securities Laws.

2.9 INDEMNIFICATION. In the event any Registrable Securities are included in a registration statement under Section 2.2, 2.3 or 2.4:

(a) To the extent permitted by law, the Company shall indemnify and hold harmless each Holder, the partners, members, officers, directors and stockholders of each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a ***"Violation"***) by the Company: (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a

material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other federal or state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any other federal or state securities law in connection with the offering covered by such registration statement; and the Company shall pay as incurred to each such Holder, partner, member, officer, director, stockholder, underwriter or controlling Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided however, that the indemnity agreement contained in this Section 2.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld or delayed, nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished by such Holder, partner, member, officer, director, stockholder, underwriter or controlling person to the Company expressly for use in connection with such registration.

(b) To the extent permitted by law, each Holder shall, if Registrable Securities held by such Holder are included in the securities as to which such registration qualifications or compliance is being effected, severally and not jointly, indemnify and hold harmless the Company, each of its directors, its officers and each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter and any other Holder selling securities under such registration statement or any of such other Holder's partners, directors or officers or any person who controls such Holder, against any losses, claims, damages or liabilities (joint or several) to which the Company or any such director, officer, controlling person, underwriter or other such Holder, or partner, director, officer or controlling person of such other Holder may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case, to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder to the Company expressly for use in connection with such registration; and each such Holder shall pay as incurred any legal or other expenses reasonably incurred by the Company or any such director, officer, controlling person, underwriter or other Holder, or partner, officer, director or controlling person of such other Holder in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this Section 2.9(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of such Holder, which consent shall not be unreasonably withheld or delayed; provided further, that in no event shall any indemnity under this Section 2.9(b) exceed the net proceeds from the offering received by such Holder, except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.9, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense

thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.9, but the omission so to deliver written notice to the indemnifying party shall not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.9.

(d) If the indemnification provided for in this Section 2.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the Violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder, except in the case of fraud or willful misconduct by such Holder.

(e) The obligations of the Company and Holders under this Section 2.9 shall survive completion of any offering of Registrable Securities in a registration statement and the termination of this Agreement. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

2.10 ASSIGNMENT OF REGISTRATION RIGHTS. The rights to cause the Company to register Registrable Securities pursuant to this Section 2 may be assigned by a Holder to a transferee or assignee of Registrable Securities that (a) is a Subsidiary, parent, general partner, limited partner, retired partner, member or retired member or stockholder of a Holder; (b) is a Holder's family member or trust for the benefit of an individual Holder; (c) acquires at least ten percent (10%) of the Preferred Stock owned by the applicable Holder or (d) is an entity that is an Affiliate of such Holder; provided, however, (y) the transferor shall, within ten (10) days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned and (z) such transferee shall agree to be subject to all restrictions set forth in this Agreement.

2.11 AMENDMENT OF REGISTRATION RIGHTS. Any provision of this Section 2 may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Holders of more than fifty percent (50%) of the Preferred Stock then outstanding, consenting as a single class; provided, however, any amendment or waiver that would adversely impact the holders of any class or series of shares in a manner that is disproportionate to the holders of other classes or series of shares shall require the written consent of the holders of a majority of the outstanding shares of such adversely impacted class or series. Any amendment or waiver effected in accordance with this Section 2.11 shall be binding upon each Holder and the Company. By acceptance of any benefits under this Section 2, Holders of Registrable Securities hereby agree to be bound by the provisions hereunder.

2.12 "MARKET STAND-OFF" AGREEMENT. Each Holder hereby agrees, if so requested by the Company and the representative of the underwriters of the Common Stock (or other securities) of the Company (the ***"Underwriter Representative"***), that such Holder 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 with respect to any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company not to exceed one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act relating to the Initial Offering; provided that all officers and directors of the Company are subject to the same restrictions (collectively, the ***"Similar Restrictions"***), and provided, further, that if the Underwriter Representative shortens or waives these restrictions set forth in any of the Similar Restrictions, the restrictions on the Holders shall be similarly shortened or waived on a *pro rata* basis.

2.13 AGREEMENT TO FURNISH INFORMATION. Each Holder and each holder of Non-Registrable Securities agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the managing underwriter that are consistent with such Holder's obligations under Section 2.12 or that are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, each Holder and each holder of Non-Registrable Securities shall provide, within ten (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 Securities Act. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of the period determined pursuant to Section 2.12. Each Holder agrees that any transferee of any shares of Registrable Securities shall be bound by Section 2.12 and this Section 2.13. The lead managing underwriters of the Company's stock are intended third party beneficiaries of Section 2.12 and this Section 2.13 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

2.14 RULE 144 REPORTING. With a view to making available to the Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its best efforts to:

(a) Make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the effective date of the first registration filed by the Company for an offering of its securities to the general public;

(b) File with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act; and

(c) So long as a Holder owns any Registrable Securities, furnish to such Holder forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144, the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements); a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as a Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities without registration.

2.15 CHANGES IN COMMON STOCK OR PREFERRED STOCK. If, and as often as, there is any change in the Common Stock or the Series A Preferred by way of a stock split, stock dividend, combination, recapitalization, reclassification and the like, or through a merger, consolidation, reorganization or recapitalization, or by any other means, appropriate adjustment shall be made in the provisions hereof so that the rights and privileges granted hereby shall continue with respect to the Common Stock and the Series A Preferred as so changed.

SECTION 3. COVENANTS OF THE COMPANY.

3.1 BASIC FINANCIAL INFORMATION AND REPORTING.

(a) The Company shall maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently applied. Within the Company's financial statements, the Company shall properly accrue and reserve for transactions and other items as required by generally accepted accounting principles. The Company shall maintain complete records of its corporate affairs, including meeting minutes of each meeting of its directors or stockholders.

(b) The Company shall furnish to each Investor:

(i) as soon as practicable after the end of each calendar quarter, and in any event within thirty (30) days thereafter, management prepared financial statements of the Company as of the end of each such quarter; and

(ii) at least thirty (30) days prior to the end of each fiscal year of the Company, the Operating Budget (as defined below).

3.2 OPERATING BUDGET. The Company will cause its management to prepare and submit to the Board for its approval no later than thirty (30) days prior to the commencement of each fiscal year, an annual budget and plan for such fiscal year forecasting the Company's revenues, expenses and cash position on a month-to-month basis, together with management's written discussion and analysis of such budget and plan (the ***"Operating Budget"***). The budget

shall be accepted as the budget for such fiscal year when it has been approved by the Board, including at least one (1) of the directors of the Company elected by the holders of a majority in interest of the Series A Preferred (each, a ***"Series A Director"***). The Company shall review the budget periodically and shall promptly advise the Board of any reasonably anticipated deviations from the Operating Budget and all such changes must be approved by the Board, including at least one (1) Series A Director.

3.3 INSPECTION. The Company shall permit each Investor, at such Investor's expense, to visit and inspect the Company's properties; examine its books of account and records; and discuss the Company's affairs, finances, and accounts with its officers, during normal business hours of the Company as may be reasonably requested by the Investor; provided, however, that the Company shall not be obligated pursuant to this Section 3.3 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

3.4 CONFIDENTIALITY OF RECORDS. Each Investor agrees to use, and to use its best efforts to insure that its representatives use the same degree of care as such Investor uses to protect its own confidential information to keep confidential any information furnished by the Company to such Investor and identified as being confidential or proprietary unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 3.4 by such Investor), (b) is or has been independently developed or conceived by the Investor without use of the Company's confidential information, or (c) is or has been made known or disclosed to the Investor by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser agrees to be bound by the provisions of this Section 3.4, (iii) to any Affiliate, partner, member, stockholder, or wholly owned subsidiary of such Investor in the ordinary course of business, provided that such Investor informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law.

3.5 PROHIBITION ON PAY-TO-PLAY PROVISION IMPACTING THE SERIES A PREFERRED.

(a) The Company will not, without Required Series A Approval, amend or permit the amendment of the Company's certificate of incorporation, bylaws or other contract, agreement or arrangement binding on the holders of shares of the Series A Preferred to contain any Prohibited Pay-to-Play. The Company will not undertake, and will not act or omit to act in any way to support or facilitate a Prohibited Pay-to-Play.

(b) The Company will not, without Required Series A Approval: (i) use the drag-along provisions of Section 2 of the Voting Agreement (defined below) or any other so-called drag-along or similar provision, (ii) use any amendment provision of any agreement or

arrangement binding on holders of the Series A Preferred, or (iii) use any other mechanism to require the holders of the Series A Preferred to vote in favor of or to otherwise force consent of the holders of the Series A Preferred to the implementation of a Prohibited Pay-to-Play, and the Company will not otherwise circumvent the special protections in favor of the Series A Preferred against a Prohibited Pay-to-Play.

(c) The Series A Preferred may be diluted through: (i) bona fide debt or equity financings of the Company priced at fair market value as negotiated at arms-length between the Company and third-party investors (including the issuance of equity securities of the Company that rank on parity with or are senior to the Series A Preferred); provided that if debt is convertible or converted into equity securities of the Company, such conversion must likewise be at fair market value; and provided, however, that highly dilutive financings that do not reflect the fair market value of the Company as an enterprise, whether or not coupled with options, warrants, synthetic equity or other mechanisms for enhanced dilution of existing stockholders, will be considered a Prohibited Pay-to-Play; (ii) sales of up to ~~16,500,000~~ 19,196,877 shares of the Series A Preferred (as adjusted for stock splits, dividends, combinations, recapitalizations and the like after the date hereof) (the ***"Original Authorized Series A Number"***) pursuant to the terms and conditions of the Original Purchase Agreement on or before the date of the last Subsequent Closing (as defined in the Original Purchase Agreement) for $1.00 per share (as adjusted for stock splits, dividends, combinations, recapitalizations and the like after the date hereof); provided, however, that each Investor acknowledges and agrees that pursuant to Section 2.5 of the Original Purchase Agreement, the Notes (as defined in the Original Purchase Agreement) will convert at the Initial Closing (as defined in the Original Purchase Agreement) into shares of the Series A Preferred at a price of $0.78 per share; (iii) shares of the Common Stock issued or issuable or deemed issued or issuable upon conversion (or deemed conversion) of any shares of the Series A Preferred or any future series of the Preferred Stock (***"Future Preferred"***) or as a dividend or distribution on the Series A Preferred or any Future Preferred, so long (A) as no such dividend is made upon any class of the Common Stock and so long as each other class or series of the Preferred Stock receives a dividend or distribution that is no more favorable to such class or series than proportional (when compared with the dividend or distribution on the Series A Preferred) determined on an as-converted to Common Stock basis, (B) the conversion rights, privileges and preferences of such Future Preferred (the ***"Future Preferred Conversion Rights"***) are fairly reflected in the purchase price of such Future Preferred and (C) such Future Preferred Conversion Rights are not amended after issuance of such Future Preferred in a manner that, if such amended provisions had been present upon such issuance, would have caused the purchase price of such Future Preferred to fail to reflect the fair value of Future Preferred, (iv) shares of the Common Stock or the Series A Preferred issued or issuable pursuant to the exercise of options, warrants or Convertible Securities (as such term is defined in the Certificate of Incorporation) outstanding as of the Original Issue Date (as such term is defined in the Certificate of Incorporation), but only if such options, warrants or Convertible Securities are disclosed on the Schedule of Exceptions to the Original Purchase Agreement and only if such options, warrants or Convertible Securities (as defined Certificate of Incorporation) are not amended after the date hereof in a manner that results in additional dilution to the Series A Preferred as compared to the dilution that would have occurred in the absence of such amendment, (v) shares of the Common Stock issued or issuable in connection with any stock split, stock dividend or subdivision of the Common Stock, but only if a proportional adjustment is made to the Series A Conversion Price (as such term is defined in the Certificate of Incorporation); (vi) fair, reasonable and customary issuances of shares of the Common Stock, including options,

warrants or other rights to purchase Common Stock to bona fide employees, directors and other natural person service providers to the Company, but only if such issuances are approved by the Board; (vii) shares of the Common Stock issued or issuable pursuant to any bona fide equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution or equipment lessor, but only if such issuance is for fair value and is approved by the Board; or (viii) shares of the Common Stock issued or issuable for consideration other than cash pursuant to a technology license, business combination, strategic partnership or joint venture transaction, but only if such issuance is for fair value and is approved by the Board; and (ix) shares of the Common Stock issued in connection with a Specified Public Offering.

(d) Notwithstanding the foregoing, nothing in this Section 3.5 shall restrict or limit the applicable provisions of Section 2.2 of that certain Voting Agreement dated as of the date hereof entered into by and among the Company and the other parties named therein (as amended from time to time, the ***"Voting Agreement"***) in connection with a Sale of the Company as restricted by the exceptions set forth in Section 2.3 of the Voting Agreement. Each of the Investors acknowledges and agrees that the application of the terms and conditions of Article IV. D. Section 3 of the Certificate of Incorporation filed on __________ _____, 2019 (the "***Original Liquidation Preference Provisions***") (subject to the liquidation rights, preferences and privileges of any Future Preferred (the "***Future Preferred Liquidation Preference***")) in connection with a Sale of the Company shall not be restricted by this Section 3.5 or be considered to be a Prohibited Pay-to-Play; so long as (A) such Future Preferred Liquidation Preference of such Future Preferred is fairly reflected in the purchase price of such Future Preferred and (B) such Future Series Liquidation Preference is not amended after issuance in a manner that, if such amended provisions had been present upon such issuance, would have caused the purchase price of such Future Preferred to fail to reflect the fair value of such Future Preferred.

(e) As used in this Agreement the following terms shall have the following respective meanings:

(i) ***"Original Purchase Agreement"*** means the Purchase Agreement as in effect on __________ _____, 2019. (the ***"Original Agreement Date"***).

(ii) ***"Prohibited Pay-to-Play***" means (1) any so-called pay-to-play financing, provision or feature or any governing document, agreement, provision or feature of similar effect that does or would materially adversely alter the terms or rights of the Series A Preferred if, or to the extent, holders of the Series A Preferred refrain from making further investment in the Company or (ii) a transaction, contract, agreement or arrangement that would result in treatment of certain holders of the Series A Preferred differently from other holders of the Series A Preferred, in the absence of further investment in the Company or to the extent such further investment from the holders of the Series A Preferred is less than a specified target participation amount or percentage, from other existing holders of the Preferred Stock outstanding immediately prior to the effectiveness of such transaction, contract agreement or arrangement.

(iii) ***"Required Series A Approval"*** means the affirmative vote or advance written consent of at least: (1) ninety percent (90%) of the then outstanding shares of the Series A Preferred during the twelve (12) months following the date of this Agreement; (2) eight-five percent (85%) of the then outstanding shares of the Series A Preferred during the period

beginning on one year anniversary of the this Agreement through the eighteen (18) month anniversary of the date of this Agreement; and (3) eighty percent (80%) of the then outstanding shares of the Series A Preferred after eighteen (18) month anniversary of the date of this Agreement.

(iv) ***"Sale of the Company"*** has the meaning established for it in the Voting Agreement; provided, however, that for the purposes of this Section 3.5, Sale of the Company shall not include any Prohibited Pay-to-Play.

(v) ***"Specified Public Offering"*** means a firmly underwritten public offering of Common Stock pursuant to a registration statement filed with the SEC and declared effective under the Securities Act covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least $3.00 (as adjusted for stock splits, dividends, combinations, recapitalizations and the like after the date hereof) and (ii) the net cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least Twenty-Five Million Dollars ($25,000,000).

(f) Reference is made to section 2.3 of that certain Voting Agreement dated the Original Agreement Date by and among the parties hereto and the other parties thereto (the ***"Original Voting Agreement"***) containing certain exceptions (the ***"Existing Limitations"***) to the drag-along provisions contained in section 2 of the Original Voting Agreement. The Investors shall have the benefit of the Existing Limitations. The rights of the Investors under this Section 3.5(f) are in addition to the rights of the Investors under section 2.3 of the Voting Agreement. In the event the Voting Agreement is amended to reduce or have the effect of reducing any protection afforded to the Investors under the Existing Limitations, the rights of the Investors in this Section 3.5(f) will be supplemental protections to any exclusions or protections against the exercise of any drag-along or similar provisions contained in the Voting Agreement or any other agreement among parties hereto, and the Company will not use, attempt to use or permit the use of such drag-along or similar provision if either the Existing Limitations or the Existing Limitations as amended (or both) would permit any stockholder of the Company to choose not to vote in favor of or support a transaction to which such drag-along or similar provision would otherwise apply.

(g) The Company will not permit and the parties hereto will not vote in favor of any increase in the number of authorized Series A Preferred in excess of the Original Authorized Series A Preferred Number without the Required Series A Approval.

(h) ~~**(f)**The~~ Notwithstanding anything to the contrary in this Agreement or any other agreement between or among parties hereto, the provisions of this Section 3.5 may not, without the Required Series A Approval, be modified, amended or waived, whether directly or through any modification, amendment or waiver effected under another governing document or agreement.

SECTION 4. PARTICIPATION RIGHTS.

4.1 SUBSEQUENT OFFERINGS. Each Investor shall have a right to purchase up to such Investor's *pro rata* share of all Equity Securities that the Company may, from time to time, propose to sell and issue after the date of this Agreement, other than the Equity Securities excluded

by Section 4.7 hereof. Each Investor's *pro rata* share is equal to the ratio of (a) the number of shares of the Company's outstanding Common Stock (treating all shares of convertible Preferred Stock or warrants to acquire convertible Preferred Stock on an as-converted to common stock basis and including all shares of Common Stock issuable upon the exercise of outstanding options or warrants issued pursuant to the Company's equity incentive plan) which such Investor holds of record immediately prior to the issuance of such Equity Securities to (b) the total number of shares of the Company's outstanding Common Stock (treating all shares of convertible Preferred Stock or warrants to acquire convertible Preferred Stock on an as-converted to common stock basis and including all shares of Common Stock issuable upon the exercise of outstanding options or warrants issued pursuant to the Company's equity incentive plan) immediately prior to the issuance of such Equity Securities.

4.2 EXERCISE OF RIGHTS. If the Company proposes to issue any Equity Securities, it shall give each Investor written notice of its intention, describing the Equity Securities, the price and the terms and conditions upon which the Company proposes to issue the same. Each Investor shall have fifteen (15) business days from the giving of such notice to agree to purchase up to its *pro rata* share of the Equity Securities for the price and upon the terms and conditions specified in the notice by giving written notice to the Company and stating therein the quantity of Equity Securities to be purchased. Notwithstanding the foregoing, the Company shall not be required to offer or sell such Equity Securities to any Investor that would cause the Company to be in violation of applicable federal or State Securities Laws by virtue of such offer or sale.

4.3 ISSUANCE OF EQUITY SECURITIES TO OTHER PERSONS. If not all of the Investors elect to purchase their *pro rata* share of the Equity Securities, then the Company shall promptly notify in writing the Investors that have so elected (the ***"Participating Investors"***) and offer the Participating Investors the right to acquire such unsubscribed shares. Each Participating Investor shall have five (5) business days after receipt of such notice to notify the Company of such Participating Investor's election to purchase all or a portion thereof of the unsubscribed shares. If the Investors fail to exercise in full the participation rights set forth in Section 4.2 hereof and this Section 4.3, the Company shall have ninety (90) days thereafter to sell the Equity Securities in respect of which the Investors' rights were not exercised, at a price and upon terms and conditions no more favorable to the purchasers thereof than specified in the Company's original notice of the sale of such Equity Securities to the Investors pursuant to Section 4.2 hereof. If the Company has not sold such Equity Securities within ninety (90) days of such notice, the Company shall not thereafter issue or sell any Equity Securities, without first offering such securities to the Investors in the manner provided above.

4.4 TERMINATION AND WAIVER OF PARTICIPATION RIGHTS. The participation rights established by this Section 4 shall not apply to, and shall terminate and shall terminate upon the earlier of (a) the closing of a Qualified Public Offering, (b) the closing of an Initial Offering which results in the Preferred Stock being converted into Common Stock and (c) upon the occurrence of a Change in Control. The participation rights set forth in this Section 4 may be amended, or any provision waived, with the written consent of Investors holding at a majority of the shares of Common Stock held by such Investors (treating all shares of convertible Preferred Stock or warrants to acquire convertible Preferred Stock on an as-converted to common stock basis).

4.5 TRANSFER OF PARTICIPATION RIGHTS. The participation rights set forth in this Section 4 are transferable, subject to the same limitations on transferability set forth in Section 2.1.

4.6 SALE WITHOUT NOTICE. Notwithstanding the forgoing, in lieu of giving notice to the Investors prior to the issuance of Equity Securities as provided in Section 4.2, the Company may elect to give notice to the Investors within thirty (30) days after the issuance of Equity Securities. Such notice shall describe the type, price and terms of the Equity Securities. Each Investor shall have twenty (20) days from the date of receipt of such notice to elect to purchase up to the number of shares that would, if purchased by such Investor, maintain such Investor's *pro rata* share (as set forth in Section 4.1) of the Company's Equity Securities. Such purchase shall be on the same terms and conditions and at the same price as the issuance of the Equity Securities. The closing of such sale shall occur within sixty (60) days of the date of notice to the Investors.

4.7 EXCLUDED SECURITIES. The participation rights set forth in this Section 4 shall not apply to the following Equity Securities:

(c) any Equity Securities issued pursuant to the Purchase Agreement;

(d) shares of the Common Stock issued or issuable upon conversion of any shares of the Series A Preferred or as a dividend or distribution on the Series A Preferred;

(e) shares of the Common Stock or the Series A Preferred issued or issuable pursuant to the exercise of options, warrants or Convertible Securities (as defined in the Certificate of Incorporation) outstanding as of the Original Issue Date (as such term is defined in the Certificate of Incorporation);

(f) shares of the Common Stock issued or issuable in connection with any stock split, stock dividend or subdivision of the Common Stock;

(g) shares of the Common Stock, including options, warrants or other rights to purchase up to such number of shares of the Common Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the Original Issue Date), issued, sold or granted after the Original Issue Date to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary pursuant to stock purchase or stock option plans or other similar arrangements that are approved by the Board, including at least one (1) Series A Director;

(h) shares of the Common Stock issued or issuable pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution or equipment lessor approved by the Board, including at least one (1) Series A Director;

(i) shares of the Common Stock issued or issuable for consideration other than cash pursuant to a technology license, business combination, strategic partnership or joint venture transaction approved by the Board, including at least one (1) Series A Director; and

(j) shares of the Common Stock issued in connection with a Qualified Public Offering.

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SECTION 5. ADDITIONAL COVENANTS.

5.1 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 and proprietary rights assignment agreement.

5.2 EMPLOYEE STOCK. Unless otherwise approved by the Board, including at least one (1) Series A Director, all future employees and consultants of the Company who receive options to purchase, or receive awards of shares of the Company's capital stock after the date hereof shall be required to execute restricted stock or option agreements, as applicable, providing for (i) vesting of shares over a four (4) year period, with the first twenty five percent (25%) of such shares vesting following twelve (12) months of continued employment or service, and the remaining shares vesting in equal quarterly installments over the following thirty-six (36) months; provided, however, that notwithstanding the above, the Board may provide for the acceleration of such vesting period in the event of a Deemed Liquidation Event, as defined in the Certificate of Incorporation, or such other event as determined by the Board.

5.3 MATTERS REQUIRING SERIES A DIRECTOR APPROVAL. So long as the holders of the Series A Preferred are entitled to elect a Series A Director, the Company hereby covenants and agrees with each of the Investors that it shall not, without approval of the Board, which approval must include the affirmative vote of at least one (1) of the Series A Directors:

(i) adopt an annual operating budget;

(ii) create or authorize the creation of any debt in excess of One Hundred Thousand Dollars ($100,000) individually or Two Hundred Thousand Dollars ($200,000) in the aggregate;

(iii) make any capital expenditure in excess of Two Hundred Thousand Dollars ($200,000) individually or Five Hundred Thousand Dollars ($500,000) in the aggregate that is not contemplated by the then-approved budget;

(iv) hire or terminate any senior executive;

(v) purchase or redeem or pay any dividend on any capital stock prior to the Series A Preferred, other than stock repurchased from former employees or consultants in connection with the cessation of their employment/services or other than as approved by the Board (including at least one (1) of the Series A Directors);

(vi) increase or decrease the size of the Board;

(vii) make any loan or advance to any person, including any employee or director, except advances and similar expenditures in the ordinary course of the business or under the terms of an employee stock or option plan approved by the Board; or

(viii) guarantee, directly or indirectly, any indebtedness except for trade accounts of the Company arising in the ordinary course of business.

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SECTION 6. MISCELLANEOUS.

6.1 GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. This Agreement shall be governed by and construed in accordance with the General Corporation Law of the State of Delaware as to matters within the scope thereof, and as to all other matters shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to its principles of conflicts of laws. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the state and federal courts located in the State of Delaware for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

6.2 SUCCESSORS AND ASSIGNS. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto and shall inure to the benefit of and be enforceable by each person who shall be a holder of Registrable Securities from time to time; provided, however, that prior to the receipt by the Company of adequate written notice of the transfer of any Registrable Securities specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such shares in its records as the absolute owner and holder of such shares for all purposes, including the payment of dividends or any redemption price.

6.3 ENTIRE AGREEMENT. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subjects hereof.

6.4 SEVERABILITY. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.5 AMENDMENT AND WAIVER.

(k) Except as otherwise expressly provided herein, this Agreement may be amended or modified only upon the written consent of the Company and the holders of at least a majority of the Registrable Securities. Any such amendment or modification effected in accordance with this Section 6.5(a) shall be binding on all parties hereto, even if they do not execute such consent.

(l) Subject to Section 6.5(c) below, any party hereto may waive compliance with any agreements, covenants or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

(m) Except as otherwise expressly provided, the obligations of the Company and the rights of the Investors under this Agreement may be waived with respect to all parties to this Agreement (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the holders of at least a majority of the Registrable Securities. Any such waiver effected in accordance with this Section 6.5(c) shall be binding on all parties hereto, even if they do not execute such consent.

(n) ~~Section~~ Sections 3.5 and 4.7 of this Agreement may not be modified, amended or waived with the Required Series A Approval.

(o) For the purposes of determining the number of Investors entitled to vote or exercise any rights hereunder, the Company shall be entitled to rely solely on the list of record holders of its stock as maintained by or on behalf of the Company.

6.6 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any person or entity hereunder (including, without limitation, any Investor), upon any breach, default or noncompliance of the Company under this Agreement shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. Any waiver, permit, consent, or approval of any kind or character on any such person's or entity's part of any breach, default or noncompliance under this Agreement or any waiver on such person or entity's part 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, by law, or otherwise afforded to any such person or entity, shall be cumulative and not alternative.

6.7 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, and if not, then on the next business day; (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the party to be notified at the address as set forth herein or at such other address as such party may designate by ten (10) days advance written notice to the other parties hereto.

6.8 Attorneys' Fees. In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

6.9 TITLES AND SUBTITLES. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

6.10 ADDITIONAL INVESTORS. Notwithstanding anything to the contrary contained herein, if the Company shall issue additional shares of the Series A Preferred, any purchaser of such shares of the Series A Preferred shall become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed an "Investor," and a party hereunder. Notwithstanding anything to the contrary contained herein, if the Company shall issue Equity Securities in accordance with Section 4 of this Agreement, any purchaser of such Equity Securities may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed an "Investor," and a party hereunder.

6.11 AGGREGATION OF STOCK. All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated person may apportion such rights as among themselves in any manner they deem appropriate.

6.12 COUNTERPARTS; ELECTRONIC EXECUTION AND DELIVERY. This Agreement may be executed in one or more counterparts and by facsimile, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Signatures of the parties transmitted by facsimile or via .pdf format shall be deemed to be their original signatures for all purposes. The words "execution," "signed," "signature," and words of like import shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the Delaware Uniform Electronic Transactions Act, or any other similar state laws based on the Uniform Electronic Transactions Act. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent delivered by means of a facsimile machine or electronic mail (any such delivery, an ***"Electronic Delivery"***), will be treated in all manner and respects as an original agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument will raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense related to lack of authenticity.

SIGNATURES ON THE FOLLOWING PAGES

This **INVESTOR RIGHTS AGREEMENT** is hereby executed as of the date first above written.

THE COMPANY:

ANGEL MEDICAL SYSTEMS, INC.

By:________________________________
Name: David R. Fischell
Title: CEO and President

This **INVESTOR RIGHTS AGREEMENT** is hereby executed as of the date first above written.

THE INVESTORS:

[INSERT NAME]

By:________________________________
Name: ________________________________
Title:________________________________

This **INVESTOR RIGHTS AGREEMENT** is hereby executed as of the date first above written.

THE INVESTORS:

____

[INSERT NAME]

This **INVESTOR RIGHTS AGREEMENT** is hereby executed as of the date first above written.

THE INVESTORS:

____

[INSERT NAME]

EXHIBIT A

INVESTORS

Name	Address	Number of Series A Preferred Shares (Initial Closing)

~~29879340.7~~
29879340.10

~~9546407~~
~~10741218/1~~
10754791/1

Comparison Details	
Title	**pdfDocs compareDocs Comparison Results**
Date & Time	2/8/2019 1:34:42 PM
Comparison Time	1.15 seconds
compareDocs version	v4.3.200.37

Sources	
Original Document	[WS01][#10741218] [v1] Investor Rights Agreement - Angel Medical Systems Inc. - Series A Preferred Financing - 2019(29879340_7).docx
Modified Document	[WS01][#10754791] [v1] [AMENDED] Investor Rights Agreement - Angel Medical Systems Inc. - Series A Preferred Financing - 2019(29879340_10).docx

Comparison Statistics	
Insertions	34
Deletions	26
Changes	4
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	64

Word Rendering Set Markup Options	
Name	Standard
Insertions	
~~Deletions~~	
Moves / ~~Moves~~	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True

EXHIBIT G

New Voting Agreement

ANGEL MEDICAL SYSTEMS, INC.

VOTING AGREEMENT

This **VOTING AGREEMENT** (this ***"Agreement"***) is made and entered into as of ____________, 2019, by and among **ANGEL MEDICAL SYSTEMS, INC.**, a Delaware corporation (the ***"Company"***), those certain holders of the Company's common stock listed on EXHIBIT A attached hereto (the ***"Key Holders"***), and the Persons and entities listed on EXHIBIT B attached hereto (the ***"Investors"***; together with the Key Holders, the ***"Stockholders"***).

RECITALS

WHEREAS, the Key Holders are the beneficial holders of an aggregate of [TBD] shares[1] of the Company's Common Stock, $0.001 par value per share (the ***"Common Stock"***);

WHEREAS, pursuant to that certain Series A Preferred Stock Purchase Agreement dated as of ________, 2019 (the ***"Purchase Agreement"***), certain of the Investors are purchasing shares of the Company's Series A Preferred Stock (the ***"Series A Preferred"***); and

WHEREAS, the execution and delivery of this Agreement is a condition precedent to the obligations of the Investors to consummate the transactions contemplated by the Purchase Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. VOTING.

1.1 KEY HOLDER SHARES; INVESTOR SHARES.

(a) The Key Holders each agree to hold all shares of voting capital stock of the Company registered in their respective names or beneficially owned by them as of the date hereof and any and all other securities of the Company legally or beneficially acquired by each of the Key Holders after the date hereof (collectively, the ***"Key Holder Shares"***) subject to, and to vote the Key Holder Shares in accordance with, the provisions of this Agreement.

(b) The Investors each agree to hold all shares of voting capital stock of the Company (including but not limited to all shares of the Common Stock now held or issuable upon conversion of the Series A Preferred) registered in their respective names or beneficially owned by them as of the date hereof and any and all other securities of the Company legally or beneficially acquired by each of the Investors after the date hereof (collectively, the ***"Investor***

[1] **Note to Draft:** To be confirmed based on parties who receive shares of common stock in the reorganization and who are willing to execute this Agreement

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Shares"; together with the Key Holder Shares, the ***"Shares"***) subject to, and to vote the Investor Shares in accordance with, the provisions of this Agreement.

1.2 MANNER OF VOTING. The voting of shares pursuant to this Agreement may be effected in Person, by proxy, by written consent, or in any other manner permitted by applicable law. All of the Stockholders agree to execute any written consents required to perform the obligations of this Agreement, and the Company agrees at the request of any party entitled to designate Directors (as defined below) to call a special meeting of stockholders for the purpose of electing Directors as provided herein.

1.3 BOARD SIZE. At all regular or special meetings of the stockholders of the Company following the date hereof, each of the Stockholders shall vote all of their respective Shares held by them (or the holders thereof shall consent pursuant to an action by written consent of the holders of capital stock of the Company) so as to ensure that the size of the Company's Board of Directors (the ***"Board"***) shall be five (5) directors (each a ***"Director"*** and, collectively, the ***"Directors"***).

1.4 ELECTION OF DIRECTORS. Each Stockholder agrees to vote, or cause to be voted, all of the Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that at each annual or special meeting of stockholders at which an election of directors is held or pursuant to any written consent of the stockholders, the following Persons shall be elected to the Board:

(a) Two (2) Persons designated from time to time by the holders of at least a majority of the issued and outstanding shares of the Series A Preferred, voting as a separate class (the ***"Series A Directors"***), who shall initially be Victor Whitman and [Insert Name];

(b) One (1) Person who shall be the Company's Chief Executive Officer, who shall initially be David R. Fischell (the ***"CEO Director"***), provided that if for any reason the CEO Director shall cease to serve as the Chief Executive Officer of the Company, each of the Stockholders shall promptly vote their respective Shares to (i) remove the former Chief Executive Officer from the Board if such Person has not resigned as a member of the Board, and (ii) elect such Person's replacement as Chief Executive Officer of the Company as the new CEO Director;

(c) One (1) Person designated from time to time by the holders of at least a majority of the issued and outstanding shares of the Series A Preferred and the Common Stock, voting together as a single class on an as converted to shares of the Common Stock basis (the ***"Capital Stock Director"***), who shall initially be [Insert Name]; provided however, in the event David R. Fischell is not serving as the CEO Director, David R. Fischell or his designee shall serve as the Capital Stock Director; and

(d) One (1) Person who shall be the Person mutually designated by the Series A Directors and the CEO Director, who shall initially be Andrew Taylor.

For purposes of this Agreement, an individual, firm, corporation, partnership, association, limited liability company, trust or any other entity (collectively, a ***"Person"***) shall be deemed an

"Affiliate" of another Person who, directly or indirectly, controls, is controlled by or is under common control with such Person, including, without limitation, any partner, officer, director, member or employee of such Person and any venture capital fund now or hereafter existing that is controlled by or under common control with one or more general partners of or shares the same management company with such Person.

1.5 FAILURE TO DESIGNATE A BOARD MEMBER; REMOVAL.

(a) In the absence of any designation from the Persons or groups with the right to designate a Director as specified above, the Director previously designated by them and then serving shall be reelected if still eligible to serve as provided herein.

(b) Each Stockholder also agrees to vote, or cause to be voted, all Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that:

(i) no Director elected pursuant to Section 1.4 or Section 1.5(a) of this Agreement may be removed from office other than for cause unless (i) such removal is directed or approved by the affirmative vote of the Person(s), or of the holders of at least the required number of shares of stock, entitled under Section 1.4 to designate that Director; or (ii) the Person(s) originally entitled to designate or approve such Director or occupy such Board seat pursuant to Section 1.4 is no longer so entitled to designate or approve such Director or occupy such Board seat;

(ii) any vacancies created by the resignation, removal or death of a Director elected pursuant to Section 1.4 or Section 1.5(a) shall be filled pursuant to the provisions of Section 1.4 and this Section 1.5; and

(iii) upon the request of any party entitled to designate a director as provided in Section 1.4(a) and Section 1.4(b) to remove such Director, such Director shall be removed.

All Stockholders agree to execute any written consents required to perform the obligations of this Agreement, and the Company agrees at the request of any party entitled to designate directors to call a special meeting of stockholders for the purpose of electing directors.

1.6 NO LIABILITY FOR ELECTION OF RECOMMENDED DIRECTOR; "BAD ACTOR MATTERS".

(a) No party, nor any Affiliate of any such party, shall have any liability as a result of nominating or designating a Person for election as a Director for any act or omission by such Person in his or her capacity as a Director, nor shall any party have any liability as a result of voting for any such Person in accordance with the provisions of this Agreement. None of the parties hereto and no officer, director, stockholder, partner, employee or agent of any party makes any representation or warranty as to the fitness or competence of the nominee or designee of any party to serve on the Board by virtue of such party's execution of this Agreement or by the act of such party in voting for such Person pursuant to this Agreement.

(b) Each Person with the right to designate or participate in the designation of a Director pursuant to this Agreement hereby represents and warrants to the Company that, to such Person's knowledge, none of the "bad actor" disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act of 1933, as amended (the ***"Securities Act"***) (each, a ***"Disqualification Event"***), is applicable to such Person's initial designee named above except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. Any Director designee to whom any Disqualification Event is applicable, except for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable, is hereinafter referred to as a ***"Disqualified Designee"***. Each Person with the right to designate or participate in the designation of a Director pursuant to this Agreement hereby covenants and agrees (i) not to designate or participate in the designation of any director designee who, to such Person's knowledge, is a Disqualified Designee and (ii) that in the event such Person becomes aware that any individual previously designated by any such Person is or has become a Disqualified Designee, such Person shall as promptly as practicable take such actions as are necessary to remove such Disqualified Designee from the Board and designate a replacement designee who is not a Disqualified Designee.

(c) Each Person with the right to designate or participate in the designation of a Director pursuant to this Agreement hereby represents that no Disqualification Event is applicable to such Person or any of its Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. For purposes of this Agreement, ***"Rule 506(d) Related Party"*** shall mean with respect to any Person any other Person that is a beneficial owner of such first Person's securities for purposes of Rule 506(d) promulgated under the Securities Act.

(d) Each Person with the right to designate or participate in the designation of a Director pursuant to this Agreement hereby agrees that it shall notify the Company promptly in writing in the event a Disqualification Event becomes applicable to such Person or any of its Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3), each promulgated under the Securities Act, is applicable.

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

1.8 LEGEND.

(a) Each certificate representing Shares shall be stamped or otherwise imprinted with a legend substantially similar to the following restrictive legend (the ***"Legend"***):

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A VOTING AGREEMENT WHICH PLACES CERTAIN RESTRICTIONS ON THE VOTING OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN

SUCH SHARES SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH AGREEMENT. A COPY OF SUCH VOTING AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

(b) During the term of this Agreement, the Company shall not remove, and shall not permit to be removed (upon registration of transfer, re-issuance of otherwise), the Legend from any such certificate and shall place or cause to be placed the Legend on any new certificate issued to represent Key Holder Shares or Investor Shares theretofore represented by a certificate carrying the Legend. The Stockholders agree that the Company shall instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the Legend to enforce the provisions of this Agreement and the Company agrees to promptly do so. The Legend shall be removed upon termination of this Agreement.

(c) In the event of any issuance of Shares of the Company's voting securities hereafter to any of the Stockholders (including, without limitation, in connection with any stock split, stock dividend, recapitalization, reorganization, or the like), such Shares shall become subject to this Agreement and shall be endorsed with the Legend.

1.9 SUCCESSORS. The provisions of this Agreement shall be binding upon the successors in interest to any of the Key Holder Shares or Investor Shares. The Company shall not permit the transfer of any of the Key Holder Shares or Investor Shares on its books or issue a new certificate representing any of the Key Holder Shares or Investor Shares unless and until the Person to whom such security is to be transferred shall have executed a written agreement, substantially in the form of this Agreement, pursuant to which such Person becomes a party to this Agreement and agrees to be bound by all the provisions hereof as if such Person were a Key Holder or Investor, as applicable.

1.10 OTHER RIGHTS. Except as provided by this Agreement or any other agreement entered into in connection with the transactions contemplated by the Purchase Agreement, each Key Holder and Investor shall exercise the full rights of a holder of capital stock of the Company with respect to the Key Holder Shares and the Investor Shares, respectively.

2. DRAG-ALONG RIGHT.

2.1 DEFINITIONS. A ***"Sale of the Company"*** shall mean either: (a) a transaction or series of related transactions in which a Person, or a group of related Persons, acquires from stockholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company (a ***"Stock Sale"***); or (b) a transaction that qualifies as a ***"Deemed Liquidation Event"*** as defined in the Company's Amended and Restated Certificate of Incorporation, as it may be amended and restated from time to time as permitted thereby (the ***"Certificate"***).

2.2 ACTIONS TO BE TAKEN. In the event that (i) the holders of at least a majority of the Series A Preferred and Common Stock then outstanding, voting together as a single class on

an as if converted to Common Stock basis (the ***"Selling Investors"***), and (ii) the Board approve a Sale of the Company in writing, then each Stockholder and the Company hereby agree:

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

(b) if such transaction is a Stock Sale, to sell the same proportion of shares of capital stock of the Company beneficially held by such Stockholder as is being sold by the Selling Investors to the Person to whom the Selling Investors propose to sell their Shares, and, except as permitted in Section 2.3 below, on the same terms and conditions as the Selling Investors;

(c) to execute and deliver all related documentation and take such other action in support of the Sale of the Company as shall reasonably be requested by the Company or the Selling Investors in order to carry out the terms and provisions of this Section 2, including without limitation 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;

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

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

(f) if the consideration to be paid in exchange for the Shares pursuant to this Section 2 includes any securities and due receipt thereof by any Stockholder would require under applicable law (x) the registration or qualification of such securities or of any Person as a broker or dealer or agent with respect to such securities or (y) the provision to any Stockholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the Company may cause to be paid to any such Stockholder in lieu thereof, against surrender of the Shares, which would have otherwise been sold by such Stockholder, an

amount in cash equal to the fair value (as determined in good faith by the Company) of the securities which such Stockholder would otherwise receive as of the date of the issuance of such securities in exchange for the Shares; and

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

2.3 EXCEPTIONS. Notwithstanding the foregoing, a Stockholder will not be required to comply with Section 2.2 above in connection with any proposed Sale of the Company (the "***Proposed Sale***") unless:

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

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

(c) such Stockholder and its affiliates are not required to amend, extend or terminate any contractual or other relationship with the Company, the acquirer or their respective affiliates, except that the Stockholder may be required to agree to terminate the investment-

related documents between or among such Stockholder, the Company and/or other stockholders of the Company;

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

(e) ~~**(c)**the liability for indemnification, if any, of such 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 of identical representations, warranties and covenants provided by all stockholders), and subject to the provisions of the Certificate related to the allocation of the escrow, is pro rata in proportion to, and does not exceed,~~ liability shall be limited to such Stockholder's applicable share (determined based on the respective proceeds payable to each Stockholder in connection with such Proposed Sale in accordance with the provisions of the Certificate) of a negotiated aggregate indemnification amount that applies equally to all Stockholders but that in no event exceeds the amount of consideration ~~paid~~ otherwise payable to such Stockholder in connection with such Proposed Sale, except with respect to claims related to fraud by such Stockholder, the liability for which need not be limited as to such Stockholder;

(f) ~~**(d)**~~upon the consummation of the Proposed Sale~~,~~ (i) each holder of each class or series of the ~~Company's~~ capital stock of the Company will receive the same form of consideration for their shares of such class or series as is received by other holders in respect of their shares of such same class or series of stock, and if any holders of any capital stock of the Company are given a choice as to the form of consideration to be received as a result of the Proposed Sale, all holders of such capital stock will be given the same option, (ii) each holder of ~~the Series A~~ a series of the preferred stock of the Company (the ***"Preferred Stock"***) will receive the same amount of consideration per share of such series of the ~~Series A~~ Preferred Stock as is received by other holders in respect of their shares of such ~~Series A Preferred~~same series, (iii) each holder of the Common Stock will receive the same amount of consideration per share of the Common Stock as is received by other holders in respect of their shares of the Common Stock, and (iv) unless ~~the holders of at least a majority of the shares of the Series A Preferred then outstanding elect to receive a lesser amount by written notice given to the Company at least fifteen (15) days prior to the effective date of any such Proposed Sale~~waived pursuant to the terms of the Certificate and as may be required by law, the aggregate consideration receivable by all holders of the ~~Series A~~ Preferred Stock and the Common Stock shall be allocated among the holders of ~~Series A~~ the Preferred Stock and the Common Stock on the basis of the relative liquidation preferences to which the holders of each respective series of the ~~Series A~~ Preferred Stock and the holders of the 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 Certificate of Incorporation in effect immediately prior to the Proposed Sale; provided, however, that, notwithstanding the foregoing provisions of this Section 2.3(f), if

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the consideration to be paid in exchange for the Key Holder Shares or the Investor Shares, as applicable, pursuant to this Section ~~2.3(d~~2.3(f) includes any securities and due receipt thereof by any Key Holder or Investor would require under applicable law (x) the registration or qualification of such securities or of any ~~Person~~ person as a broker or dealer or agent with respect to such securities~~,~~; or (y) the provision to any Key Holder or Investor of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the Company may~~, at such Key Holder's or Investor's election,~~ cause to be paid to any such Key Holder or Investor in lieu thereof, against surrender of the Key Holder Shares or the Investor Shares, as applicable, which would have otherwise been sold by such Key Holder or Investor, an amount in cash equal to the fair value (as determined in good faith by the ~~Company~~Board) of the securities which such Key Holder or Investor would otherwise receive as of the date of the issuance of such securities in exchange for the Key Holder Shares or Investor Shares, as applicable; and

(g) ~~**(e)**~~subject to clause (~~d~~f) above, requiring the same form of consideration to be available to the holders of any single class or series of capital stock, if any holders of any capital stock of the Company are given an option as to the form and amount of consideration to be received as a result of the Proposed Sale, all holders of such capital stock will be given the same option; provided, however, that nothing in this Section ~~2.3(e~~2.3(g) shall entitle any holder to receive any form of consideration that such holder would be ineligible to receive as a result of such holder's failure to satisfy any condition, requirement or limitation that is generally applicable to the Company's stockholders.

3. REMEDIES; TERMINATION.

3.1 COVENANTS OF THE COMPANY. The Company agrees to use its best efforts, within the requirements of applicable law, to ensure that the rights granted under this Agreement are effective and that the parties enjoy the benefits of this Agreement. Such actions include, without limitation, the use of the Company's best efforts to cause the nomination and election of the Directors as provided in this Agreement.

3.2 IRREVOCABLE PROXY AND POWER OF ATTORNEY. Each party to this Agreement hereby constitutes and appoints as the proxies of the party and hereby grants a power of attorney to any officer designated for such purposes by the Board, and each of them, with full power of substitution, with respect to the matters set forth herein, including, without limitation, election of Persons as members of the Board in accordance with Section 1.4 hereto, votes to increase authorized shares pursuant to Section 1.7 hereof and votes regarding any Sale of the Company pursuant to Section 2 hereof, and hereby authorizes each of them to represent and vote, if and only if the party (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 such party's Shares in favor of the election of Persons as members of the Board determined pursuant to and in accordance with the terms and provisions of this Agreement or the increase of authorized shares or approval of any Sale of the Company pursuant to and in accordance with the terms and provisions of Section 1.7 and Section 2, respectively, of this Agreement or to take any action necessary to effect Section 1.7 and Section 2, respectively, of this Agreement. The power of attorney granted hereunder shall authorize the officer designated for such purposes by the

Board to execute and deliver the documentation referred to in Section 2.2(c) on behalf of any party failing to do so within five (5) business days of a request by the Company. Each of the proxy and power of attorney granted pursuant to this Section 3.2 is given in consideration of the agreements and covenants of the Company and the parties in connection with the transactions contemplated by this Agreement and, as such, each is coupled with an interest and shall be irrevocable unless and until this Agreement terminates or expires pursuant to Section 3.4 hereof. Each party hereto hereby revokes any and all previous proxies or powers of attorney with respect to the Shares and shall not hereafter, unless and until this Agreement terminates or expires pursuant to Section 3.4 hereof, purport to grant any other proxy or power of attorney with respect to any of the Shares, deposit any of the Shares into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any Person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of the Shares, in each case, with respect to any of the matters set forth herein.

3.3 REMEDIES CUMULATIVE. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

3.4 TERMINATION. This Agreement shall be effective as of the date hereof and shall continue in effect until and shall terminate upon the earliest to occur of (a) the consummation of the Company's first underwritten public offering of its Common Stock (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to its stock option, stock purchase or similar plan or an SEC Rule 145 transaction); (b) the consummation of a Sale of the Company and distribution of proceeds to or escrow for the benefit of the Stockholders in accordance with the Certificate, provided that the provisions of Section 2 hereof will continue after the closing of any Sale of the Company to the extent necessary to enforce the provisions of Section 2 with respect to such Sale of the Company; and (c) the date upon which the parties hereto terminate this Agreement by written consent by a majority in interest of the Investors and a majority in interest of the Key Holders.

4. MISCELLANEOUS.

4.1 OWNERSHIP. Each Key Holder represents and warrants to the Investors and the Company that (a) such Key Holder now owns the Key Holder Shares, free and clear of liens or encumbrances, and has not, prior to or on the date of this Agreement, executed or delivered any proxy or entered into any other voting agreement or similar arrangement other than one which has expired or terminated prior to the date hereof, and (b) such Key Holder has full power and capacity to execute, deliver and perform this Agreement, which has been duly executed and delivered by, and evidences the valid and binding obligation of, such Key Holder enforceable in accordance with its terms.

4.2 FURTHER ACTION. If and whenever the Key Holder Shares are sold, the Key Holders or the Personal representative of the Key Holders shall do all things and execute and deliver all documents and make all transfers, and cause any transferee of the Key Holder Shares to do all things and execute and deliver all documents, as may be necessary to consummate such sale consistent with this Agreement.

4.3 Specific Performance. The parties hereto hereby declare that it is impossible to measure in money the damages which will accrue to a party hereto or to their heirs, Personal representatives, or assigns by reason of a failure to perform any of the obligations under this Agreement and agree that the terms of this Agreement shall be specifically enforceable. If any party hereto or his heirs, Personal representatives, or assigns institutes any action or proceeding to specifically enforce the provisions hereof, any Person against whom such action or proceeding is brought hereby waives the claim or defense therein that such party or such Personal representative has an adequate remedy at law, and such Person shall not offer in any such action or proceeding the claim or defense that such remedy at law exists.

4.4 Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its principles of conflicts of laws. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the state and federal courts located in the State of Delaware for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

4.5 Waiver of Jury Trial. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

4.6 Amendment or Waiver. This Agreement may be amended (or provisions of this Agreement waived) only by an instrument in writing signed by (a) the Company, (b) holders of a majority of the outstanding shares held by the Investors, and (c) holders of a majority of the outstanding shares held by the Key Holders; provided, however, that the consent of the Key Holders shall not be required for any amendment or waiver that does not apply to the Key Holders. Any amendment or waiver so effected shall be binding upon the Company, each of the parties hereto and any assignee of any such party, provided, however, that notwithstanding the foregoing, Section 1.4(a) of this Agreement may not be amended or waived without the written consent of the holders of a majority of the outstanding shares of the Series A Preferred, and Section 1.4(c) may be not be amended or waived without the written consent of the holders of a majority of the outstanding shares of the Series A Preferred and the Common Stock, voting together as a single class on an as converted to shares of the Common Stock basis. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each Stockholder that has entered into this Agreement. Each Stockholder acknowledges that by the operation of this paragraph, the holders of a majority of the shares held by the Key Holders and the holders of a majority of the shares held by the Investors will have the right and power to diminish or eliminate all rights of such Stockholder under this Agreement, except for those rights set forth in Section 1.4(a) and Section 1.4(c).

4.7 SEVERABILITY. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4.8 SUCCESSORS. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, assigns, administrators, executors and other legal representatives.

4.9 ADDITIONAL SHARES.

(a) Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of the Series A Preferred after the date hereof, as a condition to the issuance of such shares the Company shall require that the purchaser of such shares become a party to this Agreement by executing and delivering (i) the Adoption Agreement attached to this Agreement as EXHIBIT C (the ***"Adoption Agreement"***), or (ii) a counterpart signature page hereto agreeing to be bound by and subject to the terms of this Agreement as an Investor and Stockholder hereunder. In either event, each such Person shall thereafter be deemed an Investor and Stockholder for all purposes under this Agreement without the requirement to seek the consent of any other party hereto.

(b) In the event that after the date of this Agreement, the Company enters into an agreement with any Person to issue shares of capital stock to such Person (other than to a purchaser of the Series A Preferred described in the foregoing subsection (a) above) then, the Company shall cause such Person, as a condition precedent to entering into such agreement, to become a party to this Agreement by executing an Adoption Agreement, agreeing to be bound by and subject to the terms of this Agreement as a Stockholder and thereafter such Person shall be deemed a Stockholder for all purposes under this Agreement without the requirement to seek the consent of any other party hereto.

(c) In the event that subsequent to the date of this Agreement any shares or other securities are issued on, or in exchange for, any of the Key Holder Shares or Investor Shares by reason of any stock dividend, stock split, combination of shares, reclassification or the like, such shares or securities shall be deemed to be Key Holder Shares or Investor Shares, as the case may be, for purposes of this Agreement.

4.10 TRANSFERS. Each transferee or assignee of any Shares subject to this Agreement shall continue to be subject to the terms hereof, and, as a condition precedent to the Company's recognizing such transfer, each transferee or assignee shall agree in writing to be subject to each of the terms of this Agreement by executing and delivering an Adoption Agreement. Upon the execution and delivery of an Adoption Agreement by any transferee, such transferee shall be deemed to be a party hereto as if such transferee were the transferor and such transferee's signature appeared on the signature pages of this Agreement and shall be deemed to be an Investor and Stockholder, or Key Holder and Stockholder, as applicable. The Company shall not permit the transfer of the Shares subject to this Agreement on its books or issue a new certificate representing any such Shares unless and until such transferee shall have complied with the terms

of this Section 4.10. Each certificate representing the Shares subject to this Agreement if issued on or after the date of this Agreement shall be endorsed by the Company with the Legend.

4.11 WAIVER. No waivers of any breach of this Agreement extended by any party hereto to any other party shall be construed as a waiver of any rights or remedies of any other party hereto or with respect to any subsequent breach.

4.12 ATTORNEYS' FEES. In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

4.13 NOTICES. Any notices required in connection with this Agreement shall be in writing and shall be deemed effectively given: (a) upon Personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to the holder appearing on the books of the Company or at such address as such party may designate by ten (10) days advance written notice to the other parties hereto.

4.14 ENTIRE AGREEMENT. This Agreement and the Exhibits hereto, along with the Purchase Agreement and each of the Series A Financing Agreements referenced therein, constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

4.15 AGGREGATION OF STOCK. All shares of the Series A Preferred held or acquired by Affiliates entities or Persons under common management or control shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

4.16 CONSENT TO ELECTRONIC NOTICE UNDER SECTION 232 OF THE DGCL. Each Stockholder hereby consents to the delivery of stockholder notices by electronic transmission for all purposes and to the fullest extent permitted by law, including the fullest extent set forth in Section 232 of the Delaware General Corporation Law, as amended (the ***"DGCL"***). Notices by electronic transmission shall be delivered to the Stockholder as follows: (a) if by electronic mail, such notices shall be sent to the electronic mail address previously provided by such Stockholder to the Company or to such other electronic mail address as shall be designated by such Stockholder in a written notice sent to Phillip D. Torrence, Angel Medical Systems, Inc., 650 Trade Centre Way, Suite 200, Kalamazoo, Michigan 49002, Email: ptorrence@honigman.com; and (b) if by posting on an electronic network, such notices shall be posted for at least five (5) business days on the Company's web site and such Stockholder shall be notified of such posting at least three (3) business days' in advance either (i) by electronic mail complying as to delivery

with the terms of Section 4.13(a) above or (ii) by written notice to such Stockholder at the address set forth in the Company's records. The consent provided by such Stockholder pursuant to this Section 4.16 applies to any and all notices required to be given to the Stockholder for any purpose, including under the DGCL and/or the Certificate, as amended from time to time, the Company's Bylaws or otherwise. The consent provided by such Stockholder pursuant to this Section 4.16 also applies to any and all notices required to be given to such Stockholder pursuant to the Purchase Agreement and the Right of First Refusal and Co-Sale Agreement (as defined in the Purchase Agreement) and the Investor Rights Agreement (as defined in the Purchase Agreement), each of even date herewith. All notices sent by electronic mail will be considered given and received as of and on the date of electronic transmission thereof. The consent provided by such Stockholder pursuant to this Section 4.16 shall survive the termination or amendment of this Agreement.

4.17 COUNTERPARTS; ELECTRONIC TRANSMISSION. This Agreement may be executed in one or more counterparts and by facsimile, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Signatures of the parties transmitted by facsimile or via .pdf format shall be deemed to be their original signatures for all purposes. The words "execution," "signed," "signature," and words of like import shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the Delaware Electronic Transactions Act, or any other similar state laws based on the Uniform Electronic Transactions Act. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent delivered by means of a facsimile machine or electronic mail (any such delivery, an ***"Electronic Delivery"***), will be treated in all manner and respects as an original agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in Person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto will re-execute original forms thereof and deliver them to the other party. No party hereto or to any such agreement or instrument will raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense related to lack of authenticity.

SIGNATURES ON THE FOLLOWING PAGES

This **VOTING AGREEMENT** is hereby executed as of the date first above written.

THE COMPANY:

ANGEL MEDICAL SYSTEMS, INC.

By:____________________________
Name: David R. Fischell
Title: CEO and President

This **VOTING AGREEMENT** is hereby executed as of the date first above written.

THE KEY HOLDERS:

[INSERT NAME]

By:________________________________
Name: ______________________________
Title:_______________________________

____
[INSERT NAME]

____
[INSERT NAME]

This **VOTING AGREEMENT** is hereby executed as of the date first above written.

THE INVESTORS:

[NAME OF INVESTOR]

____
[NAME OF INVESTORS]

By:___________________________
Name: ________________________
Title: ________________________

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EXHIBIT A

LIST OF KEY HOLDERS

Name	Address	Number of Shares
TOTAL		

EXHIBIT B

LIST OF INVESTORS

Name	Address	Number of Shares of Series A Preferred

EXHIBIT C

ADOPTION AGREEMENT

This **ADOPTION AGREEMENT** (the ***"Adoption Agreement"***) is made as of [ ], [ ], by the undersigned (the ***"Holder"***) pursuant to the terms of that certain Voting Agreement dated as of [ ], 2019 (the ***"Voting Agreement"***), by and among Angel Medical Systems, Inc. (the ***"Company"***) and certain of its Stockholders, as such Agreement may be amended or amended and restated hereafter. Capitalized terms used but not defined in this Adoption Agreement shall have the respective meanings ascribed to such terms in the Voting Agreement. By the execution of this Adoption Agreement, the Holder agrees as follows.

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

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

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

☐ as a new Investor in accordance with Section 4.9(a) of the Voting Agreement, in which case Holder will be an "Investor" and a "Stockholder" for all purposes of the Voting Agreement.

☐ in accordance with Section 4.9(b) of the Voting Agreement, as a new party who is not a new Investor, in which case Holder will be a "Stockholder" for all purposes of the Voting Agreement.

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

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

HOLDER**:** ____________________________

By: ________________________________
Name and Title of Signatory

Address: ____________________________
____

Email/Facsimile Number: _______________

ACCEPTED AND AGREED:

ANGEL MEDICAL SYSTEMS, INC.

By: ________________________________
Name: ______________________________
Title: _______________________________

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Comparison Details	
Title	**pdfDocs compareDocs Comparison Results**
Date & Time	2/8/2019 1:33:16 PM
Comparison Time	0.78 seconds
compareDocs version	v4.3.200.37

Sources	
Original Document	[WS01][#10741214] [v1] VOTING AGREEMENT - ANGEL MEDICAL SYSTEMS INC. - SERIES A PREFERRED FINANCING(29889533_4).docx
Modified Document	[WS01][#10754795] [v1] [AMENDED] VOTING AGREEMENT - ANGEL MEDICAL SYSTEMS INC. - SERIES A PREFERRED FINANCING(29889533_7).docx

Comparison Statistics	
Insertions	54
Deletions	19
Changes	23
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	96

Word Rendering Set Markup Options	
Name	Standard
Insertions	
~~Deletions~~	
Moves / ~~Moves~~	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True

EXHIBIT H

New Right of First Refusal and Co-Sale Agreement

ANGEL MEDICAL SYSTEMS, INC.

RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT

This **RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT** (this ***"Agreement"***) is made and entered into as of _________, 2019, by and among **ANGEL MEDICAL SYSTEMS, INC.**, a Delaware corporation (the ***"Company"***), those certain holders of the Company's common stock listed on EXHIBIT A attached hereto (the ***"Key Holders"***), and the persons and entities listed on EXHIBIT B attached hereto (the ***"Investors"***).

RECITALS

WHEREAS, the Key Holders (or their affiliates) are collectively the beneficial owners of [TBD] shares of the Company's common stock;[1]

WHEREAS, certain of the Investors are purchasing shares of the Company's Series A Preferred Stock (the ***"Series A Preferred"***) pursuant to that certain Series A Preferred Stock Purchase Agreement (the ***"Purchase Agreement"***);

WHEREAS, the obligations in the Purchase Agreement are conditioned upon the execution and delivery of this Agreement; and

WHEREAS, in connection with the consummation of the transactions contemplated by the Purchase Agreement, the parties desire to enter into this Agreement in order to grant first refusal and co-sale rights to the Company and to the Investors on the terms and conditions set forth herein.

AGREEMENT

NOW, **THEREFORE**, in consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree hereto as follows:

1. DEFINITIONS. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the following meanings:

1.1 ***"Affiliate"*** means, with respect to any specified person or party, any other person or party who or which, directly or indirectly, controls, is controlled by, or is under common control with such specified person or party, including without limitation any partner, officer, director, manager or employee of such person or party and any venture capital fund now or hereafter existing that is controlled by or under common control with one or more general partners or managing members of, or shares the same management company with, such person or party.

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[1] Note to Draft: To be confirmed based on parties who receive shares of common stock in the reorganization and who are willing to execute this Agreement

1.2 ***"Change of Control"*** means a Deemed Liquidation Event (as defined in the Charter).

1.3 ***"Charter"*** means the Company's Amended and Restated Certificate of Incorporation, as it may be amended and restated from time to time as permitted thereby.

1.4 ***"Common Stock"*** means shares of the Company's common stock and shares of common stock issued or issuable upon conversion of the Company's outstanding Series A Preferred or exercise of any option, warrant or other security or right of any kind convertible into or exchangeable for common stock.

1.5 ***"Investor Stock"*** means the shares of Preferred Stock or Common Stock–, as applicable, now owned or subsequently acquired by the Investors whether or not such securities are only registered in an Investor's name or beneficially or otherwise legally owned by such Investor.

1.6 ***"Key Holder Stock"*** means shares of Common Stock now owned or subsequently acquired by the Key Holders by gift, purchase, dividend, option exercise or any other means whether or not such securities are registered in a Key Holder's name or beneficially or legally owned by such Key Holder, including any interest of a spouse in any of the Key Holder Stock, whether that interest is asserted pursuant to marital property laws or otherwise. The number of shares of Key Holder Stock owned by the Key Holders as of the date hereof are set forth on EXHIBIT A, which Exhibit may be amended from time to time by the Company to reflect changes in the number of shares owned by the Key Holders, but the failure to so amend shall have no effect on such Key Holder Stock being subject to this Agreement.

1.7 ***"Transfer"*** means any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by request, devise or descent, or other transfer or disposition of any kind, including, but not limited to, transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly, of any of the Key Holder Stock.

2. TRANSFERS BY A KEY HOLDER.

2.1 **NOTICE OF TRANSFER.** If a Key Holder proposes to Transfer any shares of Key Holder Stock, the Key Holder shall promptly give written notice (the ***"Notice"***) simultaneously to the Company and to each of the Investors at least forty-five (45) days prior to the closing of such Transfer. The Notice shall describe in reasonable detail the proposed Transfer including, without limitation, the number of shares of Key Holder Stock to be transferred, the nature of such Transfer, the consideration to be paid, and the name and address of each prospective purchaser or transferee. In the event that the Transfer is being made pursuant to the provisions of Section 3.1 hereof, the Notice shall state under which clause of such Section the Key Holder proposes to make such Transfer.

2.2 **COMPANY RIGHT OF FIRST REFUSAL.** For a period of ten (10) days following receipt of any Notice described in Section 2.1, the Company shall have the right to purchase all or a portion of the Key Holder Stock subject to such Notice on the same terms and conditions as set forth therein. The Company's purchase right shall be exercised by written notice signed by

an officer of the Company (the ***"Company Notice"***) and delivered to the Key Holder within such ten (10) day period. The Company shall effect the purchase of the Key Holder Stock, including payment of the purchase price, by the later of (i) the date specified in the Notice as the intended date of the Transfer or (ii) thirty (30) days after delivery of the Notice, and at such time the Key Holder shall deliver to the Company the certificate(s) representing the Key Holder Stock to be purchased by the Company, each certificate to be properly endorsed for transfer. The Key Holder Stock so purchased shall thereupon be cancelled and cease to be issued and outstanding shares of Common Stock. In the event of a conflict between this Agreement and the Company's Bylaws or any other agreement that may have been entered into by a Key Holder with the Company that contains a preexisting right of first refusal, the Company and the Key Holder acknowledge and agree that the terms of this Agreement shall control and the preexisting right of first refusal shall be deemed satisfied by compliance with this Section 2.

2.3 INVESTOR RIGHT OF FIRST REFUSAL.

(a) In the event that the Company does not elect to purchase all of the Key Holder Stock available pursuant to its rights under Section 2.2 within the period set forth therein, the Key Holder shall promptly give written notice (the ***"Second Notice"***) to each of the Investors, which shall set forth the number of shares of Key Holder Stock not purchased by the Company and which shall include the terms of Notice set forth in Section 2.1. Each Investor shall then have the right, exercisable upon written notice to the Key Holder (the ***"Investor Notice"***) within ten (10) days after the receipt of the Second Notice, to purchase up to its *pro rata* share of the Key Holder Stock subject to the Second Notice and on the same terms and conditions as set forth therein. Except as set forth in Section 2.3(c), the Investors who so exercise their rights (the ***"Participating Investors"***) shall effect the purchase of the Key Holder Stock, including payment of the purchase price, by the later of (i) the date specified in the Notice as the intended date of the Transfer and (ii) thirty (30) days after delivery of the Notice, and at such time the Key Holder shall deliver to the Participating Investors the certificate(s) representing the Key Holder Stock to be purchased by the Participating Investors, each certificate to be properly endorsed for transfer. An Investor may assign some or all of its rights under this Section 2.3 to one or more Affiliates of the Investor.

(b) Each Investor's *pro rata* share shall be equal to the product obtained by multiplying (i) the aggregate number of shares of Key Holder Stock covered by the Second Notice, and (ii) a fraction, the numerator of which is the number of shares of Common Stock owned (assuming conversion of any shares of Series A Preferred held) by the Participating Investor at the time of the Transfer and the denominator of which is the total number of shares of Common Stock owned (assuming conversion of any shares of Series A Preferred) by all of the Investors at the time of the Transfer, in each case assuming conversion of all of the shares of Series A Preferred held by all the Investors.

(c) In the event that not all of the Investors elect to purchase their *pro rata* share of the Key Holder Stock available pursuant to their rights under Section 2.3(a) within the time period set forth therein, then the Key Holder shall promptly give written notice to each of the Participating Investors (the ***"Overallotment Notice"***), which shall set forth the number of shares of Key Holder Stock not purchased by the other Investors, and shall offer such Participating Investors the right to acquire such unsubscribed shares. The Participating Investors

shall have five (5) days after receipt of the Overallotment Notice to deliver a written notice to the Key Holder (the ***"Participating Holders Overallotment Notice"***) of its election to purchase the unsubscribed shares on the same terms and conditions as set forth in the Second Notice. In the event there are two (2) or more such Participating Investors that choose to exercise the last-mentioned option for a total number of remaining shares in excess of the number available, the remaining shares available for purchase under this Section 2.3(c) shall be allocated to such Participating Investors pro rata based on the number of shares of Key Holder Stock such Participating Investors have elected to purchase pursuant to the Second Notice (without giving effect to any shares of Key Holder Stock that any such Participating Investor has elected to purchase pursuant to the Overallotment Notice). The Participating Investors shall then effect the purchase of the Key Holder Stock, including payment of the purchase price, by the later of (i) the date specified in the Notice as the intended date of the Transfer and (ii) thirty (30) days after delivery of the Notice, and at such time, the Key Holder shall deliver to the Participating Investors the certificates representing the Key Holder Stock to be purchased by the Participating Investors, each certificate to be properly endorsed for transfer. Such shares of the Key Holder Stock purchased pursuant to the terms of this Section 2.3 shall be delivered free and clear of subsequent rights of first refusal and co-sale rights under this Agreement.

2.4 RIGHT OF CO-SALE.

(a) In the event the Investors fail to exercise their respective rights to purchase all of the Key Holder Stock subject to Section 2.3 hereof, following the exercise or expiration of the rights of purchase set forth in Section 2.3, then the Key Holder shall deliver to the Company and each Investor written notice (the ***"Co-Sale Notice"***) that each Investor shall have the right, exercisable upon written notice to such Key Holder with a copy to the Company within fifteen (15) days after receipt of the Co-Sale Notice, to participate in such Transfer of Key Holder Stock on the same terms and conditions. Such notice shall indicate the number of shares of Investor Stock up to that number of shares determined under Section 2.4(b) such Investor wishes to sell under his or her right to participate. To the extent one or more of the Investors exercise such right of participation in accordance with the terms and conditions set forth below, the number of shares of Key Holder Stock that such Key Holder may sell in the transaction shall be correspondingly reduced.

(b) Each Investor may sell all or any part of that number of shares equal to the product obtained by multiplying (i) the aggregate number of shares of Key Holder Stock covered by the Co-Sale Notice and not purchased by the Company or the Investors pursuant to Section 2.2 or 2.3 by (ii) a fraction, the numerator of which is the number of shares of Common Stock owned (or deemed to be owned upon conversion of the Series A Preferred) by such Investor at the time of the Transfer and the denominator of which is the total number of shares of Common Stock owned (or deemed to be owned upon conversion of the Series A Preferred) by such Key Holder (excluding shares purchased by the Company and/or Investors pursuant to Section 2.2 or 2.3) and the Investors at the time of the Transfer. If not all of the Investors elect to sell their shares of capital stock proposed to be transferred within said fifteen (15) day period, then the Key Holder shall promptly notify in writing the Investors who do so elect and shall offer such Investors the additional right to participate in the sale of such additional shares of Key Holder Stock proposed to be transferred on the same percentage basis as set forth above in this Section 2.4(b). The Investors shall have five (5) days after receipt of such notice to notify the

Key Holder in writing with a copy to the Company of its election to sell all or a portion thereof of the unsubscribed shares.

(c) Each Investor who elects to participate in the Transfer pursuant to this Section 2.4 (a ***"Co-Sale Participant"***) shall effect its participation in the Transfer by promptly delivering to such Key Holder for transfer to the prospective purchaser one or more certificates, properly endorsed for transfer, which represent:

(i) the type and number of shares of Common Stock which such Co-Sale Participant elects to sell; or

(ii) that number of shares of Series A Preferred which is at such time convertible into the number of shares of Common Stock which such Co-Sale Participant elects to sell; *provided, however,* that if the prospective purchaser objects to the delivery of Series A Preferred in lieu of Common Stock, such Co-Sale Participant shall convert such Series A Preferred into Common Stock and deliver Common Stock as provided in Section 2.4(c)(i) above. The Company agrees to make any such conversion concurrent with the actual transfer of such shares to the purchaser.

(d) The stock certificate or certificates that the Co-Sale Participant delivers to such Key Holder pursuant to Section 2.4(c) shall be transferred to the prospective purchaser in consummation of the sale of the Common Stock pursuant to the terms and conditions specified in the Co-Sale Notice, and the Key Holder shall concurrently therewith remit to such Co-Sale Participant that portion of the sale proceeds to which such Co-Sale Participant is entitled by reason of its participation in such sale. To the extent that any prospective purchaser or purchasers prohibits such assignment or otherwise refuses to purchase shares or other securities from a Co-Sale Participant exercising its rights of co-sale hereunder, such Key Holder shall not sell to such prospective purchaser or purchasers any Key Holder Stock unless and until, simultaneously with such sale, such Key Holder shall purchase such shares or other securities from such Co-Sale Participant on the same terms and conditions specified in the Co-Sale Notice.

(e) In the event that the Proposed Key Holder Transfer constitutes a Change of Control, the terms of the purchase and sale agreement shall provide that the aggregate consideration from such transfer shall be allocated to the Co-Sale Participants and the selling Key Holder in accordance with Section 3 of Article IV.D. of the Charter as if (A) such transfer were a Deemed Liquidation Event (as defined in the Charter), and (B) the Common Stock sold in accordance with the purchase and sale agreement were the only Common Stock outstanding.

(f) The exercise or non-exercise of the rights of the Investors hereunder to participate in one or more Transfers of Key Holder Stock made by such Key Holder shall not adversely affect their rights to participate in subsequent Transfers of Key Holder Stock subject to Section 2.

(g) To the extent that the Investors do not elect to participate in the sale of the Key Holder Stock subject to the Co-Sale Notice, such Key Holder may, not later than sixty (60) days following delivery to the Company of the Co-Sale Notice, enter into an agreement providing for the closing of the Transfer of such Key Holder Stock covered by the Co-Sale

Notice within thirty (30) days of such agreement on terms and conditions not more favorable to the transferor than those described in the Co-Sale Notice. Any proposed Transfer on terms and conditions more favorable than those described in the Co-Sale Notice, as well as any subsequent proposed Transfer of any of the Key Holder Stock by a Key Holder, shall again be subject to the first refusal and co-sale rights of the Company and/or Investors and shall require compliance by a Key Holder with the procedures described in this Section 2.

3. EXEMPT TRANSFERS.

3.1 REGISTERED STOCK; ESTATE PLANNING; EQUITY OWNERS. Notwithstanding the foregoing, the provisions of Section 2 shall not apply to (a) the sale of any Key Holder Stock to the public pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission under the Securities Act of 1933, as amended (the ***"Securities Act"***), or (b) any Transfer (i) that is a conveyance in trust, gift or devise or descent of any Common Stock by a Key Holder to any family member, for estate planning purposes, so long as the transferee agrees in writing to be bound by this Agreement as though an original Key Holder party hereto, (ii) to any person occurring as a matter of law upon the death or declaration of incompetence of a Key Holder, so long as the transferee agrees in writing to be bound by this Agreement as though an original Key Holder party hereto, (iii) to the Company, (iv) by merger or share exchange or an exchange of existing shares for other shares of the same or a different class or series in the Company, (v) to any Affiliate of a Key Holder, so long as the Affiliate agrees in writing to be bound by this Agreement as though an original key Holder party hereto, or (vi) to any equity owner (partner, shareholder, member or the like) of any Key Holder that is an "accredited investor", as that term is defined in Rule 501 of Regulation D, as promulgated under the Securities Act, so long as the transferee agrees in writing to be bound by this Agreement as though an original Key Holder party hereto; and provided further in the case of transfers pursuant to clause (i), (ii), (v) or (vi) above, that such Transfer is made without any consideration paid for such Transfer; provided, that if such transferee under clause (v) ceases to be an Affiliate of such Key Holder, it shall be required to Transfer such Key Holder Stock back to the transferor Key Holder.

3.2 EXISTING RIGHTS. This Agreement is subject to, and shall in no manner limit the right which the Company may have to repurchase securities from the Key Holder pursuant to (a) a stock restriction agreement or other agreement between the Company and the Key Holder and (b) any right of first refusal set forth in the Company's Bylaws or in any incentive stock option, restricted stock or other incentive plan or agreement adopted by the Company for the benefit of its employees, non-employee directors, contractors and consultants.

4. PROHIBITED TRANSFERS.

4.1 TRANSFER VOID; EQUITABLE RELIEF. In the event a Key Holder shall (i) Transfer any Key Holder Stock in contravention of the first refusal rights of the Company under Section 2.2 hereof or the Investors under Section 2.3 hereof, or (ii) in contravention of the co-sale rights of the Investors under Section 2.4 hereof (each a ***"Prohibited Transfer"***), the Transfer purportedly effected by such Prohibited Transfer shall be null and void *ab initio*, shall not be recorded on the books of the Company or its transfer agent and shall not be recognized by the Company. Each party hereto acknowledges and agrees that any breach of this Agreement would

result in substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocably agree that any non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales and other transfers of Key Holder Stock not made in strict compliance with this Agreement).

4.2 VIOLATION OF FIRST REFUSAL RIGHT. If any Key Holder becomes obligated to sell any Key Holder Stock to the Company or any Investor in respect of the first refusal rights of the Company under Section 2.2 hereof or the Investors under Section 2.3 hereof and fails to deliver such Key Holder Stock in accordance with the terms of this Agreement, the Company and/or such Investor may, at its option, in addition to all other remedies it may have, send to such Key Holder the purchase price for such Key Holder Stock as is herein specified and transfer to the name of the Company or such Investor (or request that the Company effect such transfer in the name of an Investor) on the Company's books the certificate or certificates representing the Key Holder Stock to be sold.

4.3 VIOLATION OF CO-SALE RIGHT. If any Key Holder purports to sell any Key Holder Stock in contravention of the right of co-sale under Section 2.4, each Investor who desires to exercise its right of co-sale under Section 2.4 may, in addition to such remedies as may be available by law, in equity or hereunder, require such Key Holder to purchase from such Investor the type and number of shares of Common Stock that such Investor would have been entitled to sell to the prospective transferee had the prohibited transfer been effected in compliance with the terms of Section 2.4. The sale will be made on the same terms and subject to the same conditions as would have applied had the Key Holder not made the prohibited transfer, except that the sale (including, without limitation, the delivery of the purchase price) must be made within ninety (90) days after the Investor learns of the Prohibited Transfer, as opposed to the timeframe proscribed in Section 2.4. Such Key Holder shall also reimburse each Investor for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Investor's rights under Section 2.4.

5. LEGEND.

5.1 TEXT. Each certificate representing shares of Key Holder Stock (including, without limitation such shares of Key Holder Stock issued to any person in connection with a Transfer pursuant to Section 3.1 hereof) shall be stamped or otherwise imprinted with a legend substantially similar to the following restrictive legend (the ***"Legend"***):

> THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT BY AND BETWEEN THE STOCKHOLDER, THE CORPORATION AND CERTAIN HOLDERS OF STOCK OF THE CORPORATION. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE CORPORATION.

5.2 RESTRICTIONS AND REMOVAL. During the term of this Agreement, the Company shall not remove, and shall not permit to be removed (upon registration of transfer, re-issuance of otherwise), the Legend from any such certificate and shall place or cause to be placed the Legend on any new certificate issued to represent Key Holder Stock theretofore represented by a certificate carrying the Legend. The Key Holders agree that the Company shall instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the Legend to enforce the provisions of this Agreement and the Company agrees to promptly do so. The Legend shall be removed upon termination of this Agreement.

6. MISCELLANEOUS.

6.1 CONDITIONS TO EXERCISE OF RIGHTS. Exercise of the Investors' rights under this Agreement shall be subject to and conditioned upon, and the Key Holders and the Company shall use their best efforts to assist each Investor in, compliance with applicable laws. The parties agree to execute such further instruments and to take such further actions as may reasonably be necessary to carry out the intent of this Agreement. Each Key Holder agrees to cooperate affirmatively with the Company, the Investors, and the other Key Holders to enforce rights and obligations pursuant hereto.

6.2 GOVERNING LAW; CONSENT TO JURISDICTION. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its principles of conflicts of laws. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the state and federal courts located in the State of Delaware for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

6.3 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.

6.4 AMENDMENT. Any provision of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only by the written consent of (a) as to the Company, only by the Company, (b) as to the Investors, by a majority in interest of the Investors, and (c) as to the Key Holders, by a majority in interest of the Key Holders; provided, that no consent of any Key Holder shall be necessary for (i) any amendment and/or restatement which includes additional holders of the Series A Preferred or other preferred stock of the Company as ***"Investors"*** and parties hereto or (ii) any amendment and/or restatement that does not apply to the Key Holders. Any amendment or waiver effected in accordance with clauses (a), (b), and (c) of this Section 6.4

shall be binding upon each Investor, its successors and assigns, the Company and the Key Holders, even if such particular Investor or Key Holder did not consent to such amendment or waiver. Each Investor acknowledges that by the operation of this paragraph, the holders of a majority of the Common Stock issued or issuable upon conversion of the Series A Preferred (excluding any of such shares that have been sold to the public or pursuant to Rule 144) will have the right and power to diminish or eliminate all rights of such Investor under this Agreement.

6.5 BINDING EFFECT. This Agreement and the rights and obligations of the parties hereunder shall inure to the benefit of, and be binding upon, their respective successors, assigns and legal representatives.

6.6 TERM. This Agreement shall continue in full force and effect from the date hereof through the earliest of the following dates, on which date it shall terminate in its entirety:

(a) the date of the closing of a firmly underwritten public offering of the Common Stock pursuant to a registration statement filed with the Securities and Exchange Commission, and declared effective under the Securities Act and not subsequently withdrawn;

(b) the date of the closing of a sale, lease, or other disposition of all or substantially all of the Company's assets or the Company's merger into or consolidation with any other corporation or other entity, or any other corporate reorganization, in which the holders of the Company's outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than fifty percent (50%) of the voting power of the corporation or other entity surviving such transaction; *provided, however,* that this Section 6.6(b) shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Company; or

(c) the date as of which the parties hereto terminate this Agreement by written consent of the Company, a majority in interest of the Investors and a majority in interest of the Key Holders.

6.7 OWNERSHIP. The Key Holders represent and warrant that each is the sole legal and beneficial owner of those shares of Key Holder Stock he or she currently holds subject to the Agreement and that no other person has any interest (other than a community property interest) in such shares.

6.8 ADJUSTMENT. If, from time to time, the Company pays a stock dividend or effects a stock split or other change in the character or amount of any of the outstanding stock of the Company, then in such event any and all new, substitute or additional securities to which a Key Holder is entitled by reason of such Key Holder's ownership of capital stock following such event shall be immediately subject to the rights and obligations set forth in this Agreement with the same force and effect as the Common Stock subject to such rights immediately before such event.

6.9 RESTRICTIONS ON TRANSFER OF VOTING RIGHTS. Each Key Holder agrees that it will not, without the unanimous prior written consent of the Company's Board of Directors, (a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, any option of

contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Common Stock without simultaneously transferring any and all voting rights arising from or relating to such Common Stock to the same transferee to which the Key Holder is so transferred, (b) enter into any swap or other arrangement that transfers to another transferee, in whole or in part, any of the economic consequences of ownership of the Common Stock or any voting rights arising from or relative to such Common Stock without simultaneously transferring any and all voting rights arising from or relating to such Common Stock or the economic consequences of such Common Stock, as applicable, to such transferee. Each Key Holder hereby (x) agrees to, and does hereby, revoke any and all proxies or powers of attorney with respect to any and all Common Stock, unless otherwise approved by prior written consent of the Company's Board of Directors, including the directors designated by the Investors under the Voting Agreement (as defined below), and (y) agrees that it shall not, without the prior written consent of the Company's Board of Directors and the directors designated by the Investors under the Voting Agreement (as defined below), purport to grant any proxy or power of attorney with respect to any Common Stock now or hereafter held by such Key Holder or Investor (as the case may be), deposit any of the Common Stock now or hereafter held by such Key Holder into a voting trust, or enter into any agreement (other than this Agreement and that certain Voting Agreement of even date herewith (the ***"Voting Agreement"***)), arrangement or understanding with any person or entity, directly or indirectly, to vote, grant any proxy, or give instructions with respect to the voting or any of the Common Stock, in each case, without also simultaneously transferring all economic consequences of ownership of such Common Stock. Notwithstanding the foregoing, the Voting Agreement shall remain in full force and effect in all respects and shall bind each party thereto that is also a party to this Agreement, in accordance with the terms set forth in the Voting Agreement.

6.10 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 (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the party to be notified at the address as set forth on the Exhibits hereto, or at such other address as such party may designate by ten (10) days advance written notice to the other parties hereto.

6.11 SEVERABILITY. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.12 ATTORNEYS' FEES. In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

6.13 ENTIRE AGREEMENT. This Agreement and the Exhibits hereto, along with the Purchase Agreement and each of the Exhibits thereto, constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

6.14 ADDITIONAL INVESTORS.

(a) Notwithstanding anything to the contrary contained herein, if the Company shall issue additional shares of the Series A Preferred pursuant to the Purchase Agreement or otherwise, any purchaser of such shares of the Series A Preferred may become a party to this Agreement by executing and delivering an additional counterpart signature page or joinder agreement to this Agreement and shall be deemed an ***"Investor"*** hereunder without any requirement to seek the consent of an party hereto.

(b) In the event that after the date of this Agreement, the Company enters into an agreement with any person or entity to issue shares of capital stock to such Person (other than to a purchaser of Series A Preferred described in the foregoing subsection (a)), following which such Person shall hold Common Stock (or rights thereto) constituting five percent (5%) or more of the Company's Common Stock, on a fully diluted basis, then the Company shall use commercially reasonable efforts to cause such Person, as a condition precedent to entering into such agreement, to become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement, agreeing to be bound by and subject to the terms of this Agreement as a Key Holder and thereafter such person shall be deemed a Key Holder for all purposes under this Agreement.

6.15 COUNTERPARTS; ELECTRONIC EXECUTION AND DELIVERY. This Agreement may be executed in one or more counterparts and by facsimile, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Signatures of the parties transmitted by facsimile or via .pdf format shall be deemed to be their original signatures for all purposes. The words "execution," "signed," "signature," and words of like import shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the Delaware Uniform Electronic Transactions Act, or any other similar state laws based on the Uniform Electronic Transactions Act. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent delivered by means of a facsimile machine or electronic mail (any such delivery, an ***"Electronic Delivery"***), will be treated in all manner and respects as an original agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument will raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through

the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense related to lack of authenticity.

SIGNATURES ON THE FOLLOWING PAGES

This **RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT** is hereby executed as of the date first above written.

THE COMPANY:

ANGEL MEDICAL SYSTEMS, INC.

By:_______________________________
Name: David R. Fischell
Title: CEO and President

This **RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT** is hereby executed as of the date first above written.

THE KEY HOLDERS:

[INSERT NAME]

By:________________________________
Name: ______________________________
Title:________________________________

____
[INSERT NAME]

____
[INSERT NAME]

This **RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT** is hereby executed as of the date first above written.

THE INVESTORS:

[INSERT NAME]

By:_______________________________
Name: _____________________________
Title:_____________________________

____
[INSERT NAME]

____
[INSERT NAME]

EXHIBIT A

LIST OF KEY HOLDERS

Name	Address	# of Shares
TOTAL		

EXHIBIT B

LIST OF INVESTORS

Name	Address

29889490.2

10741219/1
10754804/1

29889490.5

Comparison Details	
Title	**pdfDocs compareDocs Comparison Results**
Date & Time	2/8/2019 1:31:32 PM
Comparison Time	1.54 seconds
compareDocs version	v4.3.200.37

Sources	
Original Document	[WS01][#10741219] [v1] Right of First Refusal and Co-Sale Agreement -Angel Medical Systems Inc. - Series A Preferred Financing - 2019(29889490_2).docx
Modified Document	[WS01][#10754804] [v1] [AMENDED] Right of First Refusal and Co-Sale Agreement - Angel Medical Systems Inc. - Series A Preferred Financing - 2019(29889490_5).docx

Comparison Statistics	
Insertions	14
Deletions	11
Changes	1
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	26

Word Rendering Set Markup Options	
Name	Standard
Insertions	
~~Deletions~~	
Moves / ~~Moves~~	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True