



Founder Stock Restriction Agreement

[for use in venture capital financing]

Document 1587A

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[Note: This agreement is for a venture capital private placement. It gives the company and the investors rights of first refusal, and the investors co-sale rights, with respect to common stock held by the founders. The company also has a repurchase option (with vesting). (Before using this document, attorneys should determine whether founders' shares are already subject to vesting pursuant to their original stock purchase agreement.)

In addition, the founder is restricted from selling the shares until a specified date. No distinction is made between different reasons for termination of the founder's employment. A lock-up agreement is included. This version is for multiple founders, all of whom are treated the same. If founders are to be treated differently or are not to see the terms received by the other founders, separate agreements should be used for each founder.]

FOUNDER STOCK RESTRICTION AGREEMENT

THIS FOUNDER STOCK RESTRICTION AGREEMENT (this "**Agreement**") is entered into by and among [NAME OF COMPANY], a [____] corporation (the "**Company**"), [____], [____] and [____] (the "**Founders**"), and the persons listed as Investors on Schedule 1 hereto as Investors (collectively, the "**Investors**" and individually, a "**Investor**") as of [____], 20[____].

WHEREAS, the Founders are the holders of an aggregate of [____] shares of common stock, \$[____] par value per share, of the Company (the "**Common Stock**");

WHEREAS, the Investors are acquiring an aggregate of [____] shares of Series [____] Convertible Preferred Stock of the Company pursuant to the terms of a Series [____] Convertible Preferred Stock Purchase Agreement, dated the date hereof, by and among the Company and the Investors (the "**Purchase Agreement**"); and

WHEREAS, it is a condition to the obligations of the Investors under the Purchase Agreement that this Agreement be executed by the parties hereto, and the parties are willing to execute this Agreement and to be bound by the provisions hereof;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Definitions.

As used in this Agreement, the following terms shall have the following meanings:

"**Fully-Diluted Basis**" shall mean "assuming the conversion into or exercise for Common Stock of all securities of the Company convertible into or exercisable for Common Stock, as the case may be."

"**Shares**" shall mean and include all shares of Stock now owned or hereafter acquired by any Founder or any Investor.

“**Stock**” shall mean and include all shares of Common Stock, and all other securities of the Company which may be issued in exchange for or in respect of shares of Common Stock (whether by way of stock split, stock dividend, combination, reclassification, reorganization, or any other means).

2. Limitation on Transfer of Founder Stock.

2.1 General Restriction. No Founder shall sell, assign, transfer, pledge, hypothecate, mortgage, encumber or otherwise dispose of all or any of her Shares except as expressly provided in this Agreement.

2.2 Exceptions. Notwithstanding Section 2.1, a Founder may transfer all or any of her Shares:

(a) by way of gift to any member of her family or to any trust for the benefit of any such family member or the Founder; provided, however that any such transferee shall agree in writing with the Company and the Investors, as a condition to such transfer, to be bound by all of the provisions of this Agreement to the same extent as if such transferee were the Founder, or

(b) by will or the laws of descent and distribution, in which event each transferee shall be bound by all of the provisions of this Agreement to the same extent as if such transferee were the Founder. As used herein, the word “family” shall include any spouse, lineal ancestor or descendant, brother or sister.

2.3 Underwriters’ Lockup. In addition to the foregoing, if requested by the underwriters for the initial underwritten public offering of securities of the Company, each Founder shall agree not to sell, assign, transfer, pledge, hypothecate, mortgage, encumber or otherwise dispose of all or any of her Shares, without the written consent of such underwriters, for a period of not more than 180 days following the effective date of the registration statement relating to such offering. This Section 2.3 shall expressly survive a termination of this Agreement pursuant to Section 8.

3. Right of First Refusal on Disposition of Founder Stock.

3.1 Company Right of First Refusal.

(a) If at any time a Founder desires to sell for cash any of her Shares pursuant to a bona fide offer from a third party (the “**Proposed Transferee**”), the Founder (the “**Selling Founder**”) shall submit a written offer (the “**Offer**”) to sell such Shares (the “**Offered Shares**”) to the Company on terms and conditions, including price, not less favorable to the Company than those on which the Selling Founder proposes to sell such Offered Shares to the Proposed Transferee. The Offer shall disclose the identity of the Proposed Transferee, the number of Offered Shares proposed to be sold and the price thereof, the total number of Shares owned by the Selling Founder, and the terms and conditions of, and any other material facts relating to, the proposed sale.

(b) The Company shall have an option for a period of [] days (the “**Company Option Period**”) following its receipt of the Offer to purchase some or all of the Offered Shares

in place of the Proposed Transferee. If the Company desires to purchase any of the Offered Shares, it shall notify the Selling Founder of such election during the Company Option Period, stating the number of Offered Shares it desires to purchase. Such notice shall, when taken in conjunction with the Offer, be deemed to constitute a valid, legally binding and enforceable agreement for the sale and purchase of such Offered Shares.

3.2 Investors' Right of First Refusal.

(a) If the Company does not elect to purchase all of the Offered Shares before the expiration of the Company Option Period, then the Selling Founder shall promptly distribute the Offer to all Investors, and each Investor shall have the right for a period of [] days following receipt of the Offer (the "**Investor Option Period**") to purchase, at the price and on the terms and conditions contained in the Offer, the number of Offered Shares (its "**Pro Rata Fraction**") equal to the number of Offered Shares that the Company did not elect to purchase (the "**Remaining Offered Shares**") multiplied by a fraction, the numerator of which shall be the number of Shares then owned by such Investor and the denominator of which shall be the aggregate number of Shares then owned by all Investors (calculated in each case on a Fully-Diluted Basis).

(b) If any Investor fails purchase its Pro Rata Fraction of Remaining Offered Shares, each other Investor shall have the right to purchase up to its Pro Rata Fraction of any shares not purchased by such Investor. Such right must be exercised by an Investor by initially accepting the Offer as to more than its Pro Rata Fraction. If, as a result thereof, such oversubscriptions exceed the total number of Remaining Offered Shares available, the oversubscribing Investors shall be cut back with respect to their oversubscriptions on a pro rata basis in accordance with their respective Pro Rata Fractions or as they may otherwise agree among themselves.

(c) If an Investor desires to purchase all or any part of the Remaining Offered Shares, the Investor shall notify the Company and the Selling Founder of such election during the Investor Option Period, stating the number of Remaining Offered Shares such Investor desires to purchase (which number may exceed its Pro Rata Fraction). Such notice shall, when taken in conjunction with the Offer, be deemed to constitute a valid, legally binding and enforceable agreement for the sale and purchase of such Offered Shares (subject to the aforesaid limitations as to an Investor's right to purchase more than its Pro Rata Fraction).

(d) Sales of the Offered Shares to the Company or to Investors pursuant to this Section 3 shall be made at the offices of the Company on the []th day following the date the Offer was made (or if such day is not a business day, then on the next succeeding business day) and shall be effected by the Selling Founder's delivery to each purchaser of a certificate or certificates evidencing the Offered Shares to be purchased by it, duly endorsed for transfer to such purchaser, against payment to the Selling Founder of the purchase price therefor by such purchaser.

(e) If the Company and the Investors do not, in the aggregate, purchase all of the Offered Shares, the Offered Shares not so purchased may be sold by the Selling Founder at any time within [] days after the date the Offer was made, subject to the provisions of Section 4, Section 5 and Section 6 of this Agreement. Any such sale shall be to the Proposed Transferee,

at not less than the price and upon other terms and conditions, if any, not more favorable to the Proposed Transferee than those specified in the Offer. Any Offered Shares not sold within such [__]-day period shall continue to be subject to the requirements of a prior offer pursuant to this Section 3. Offered Shares that are sold pursuant to this Section 3 to any person who is not a party hereto shall no longer be subject to this Agreement.

4. Right of Co-Sale on Disposition of Founder Stock.

4.1 Investors' Option. If at any time a Selling Founder desires to sell Offered Shares for cash to any person or entity (the “**Buyer**”) other than the Company or one or more of the Investors, then:

(a) each Investor shall have the right (the “**Co-Sale Option**”) to sell to the Buyer, as a condition to such sale by the Selling Founder, at the same price per share and on the same terms and conditions as set forth in the Offer, a number of Shares equal to the number of Offered Shares multiplied by a fraction, the numerator of which is the number of Shares owned by such Investor and the denominator of which is the aggregate number of shares owned by the Selling Founder and all Investors (calculated in each case on a Fully-Diluted Basis); and

(b) the Selling Founder shall have the right to sell to the Buyer only the number of Shares equal to the number of Offered Shares multiplied by a fraction, the numerator of which is the number of Shares owned by the Selling Founder and the denominator of which is the aggregate number of shares owned by the Selling Founder and all Investors (calculated in each case on a Fully-Diluted Basis).

4.2 Notice. Each Investor wishing to exercise its Co-Sale Option shall notify the Selling Founder of such intention as soon as practicable after such Investor's receipt of the Offer made pursuant to Section 3, and in any event within [__] days after the date the Offer was made.

4.3 Price and Terms. The Selling Founder and each participating Investor shall sell Shares to the Buyer at not less than the price and upon other terms and conditions, if any, not more favorable to the Buyer than those in the Offer provided by the Selling Founder under Section 3 of this Agreement.

4.4 Release of Shares. Any Shares sold by a Selling Founder or an Investor pursuant to this Section 4 shall no longer be subject to this Agreement.

5. Further Limitation on Transfers by a Founder. In addition to the other restrictions provided in this Agreement, each Founder agrees that until the earlier to occur of the [__] anniversary of the date of this Agreement or the date on which such Founder is no longer employed in any capacity by the Company or any of its subsidiaries, the aggregate number of Shares which such Founder may transfer pursuant to Section 3 and Section 4 of this Agreement shall not exceed [__] (subject to equitable adjustment for any stock split, stock dividend, combination of shares or the like and based upon Common Stock or Common Stock equivalents).

6. Company Repurchase Option Upon Termination of Employment.

6.1 Repurchase Option. If a Founder shall for any reason, including death, disability or involuntary removal with or without cause, cease to be employed in any capacity by the Company or any of its subsidiaries, the Company shall have the option, exercisable for [____] days (the “**Repurchase Period**”) from the date upon which the Founder shall so cease to be employed (the “**Termination Date**”), to purchase from such Founder up to [____] of her Shares at a price (the “**Option Price**”) of [____] per share (such number of Shares and such price being subject to equitable adjustment for any stock split, stock dividend, combination of shares or the like and based upon Common Stock or Common Stock equivalents), other than any of such Shares which become vested as described in Section 6.2.

6.2 Vesting Schedule. On each anniversary of the date of this Agreement, [____]% of each Founder’s Shares shall become vested, provided, however, that no additional Shares shall become vested after the Termination Date.

6.3 Procedure. If the Company desires to exercise its option to purchase, it shall notify the Founder (the “**Repurchase Notice**”), stating the number of Shares the Company is electing to purchase and the Option Price, prior to the expiration of the Repurchase Period. The sale shall be effected at the offices of the Company on the [____]th day following the date of the Repurchase Notice (or if such day is not a business day, then on the next succeeding business day) by the Founder’s delivery to the Company of a certificate or certificates evidencing the Shares to be purchased by it, duly endorsed for transfer to the Company, against payment to the Founder by the Company of the Option Price for each such Share.

6.4 Conflict with Permitted Sales. No Founder may transfer any unvested shares except pursuant to Section 2.2 or this Section 6.

7. Drag-Along Rights. In the event that the Company or a majority in interest of its shareholders determine to effect a merger or sale of all or substantially all of the assets or the equity interests of the Company to a third party in a bona fide negotiated transaction (a “**Sale Transaction**”), each Founder shall be obligated to and shall promptly upon notice from the Company (a) transfer or sell all Shares owned by it to such third party on the same terms and conditions, including price and type, applicable to the Company or the other shareholders, as the case may be, and (b) execute and deliver such instruments of conveyance and transfer and take such other action, including voting such Founder’s Shares in favor of the Sale Transaction and executing any purchase agreements, merger agreements, indemnity agreements, escrow agreements or related documents, as the Company or the third party may require in order to carry out the terms and provisions of this Section 7. Not less than 30 days prior to the date proposed for the closing of any Sale Transaction, the Company shall give notice to the Founder, setting forth in reasonable detail the name or names of the third party, the terms and conditions of the Sale Transaction, including the purchase price, and the proposed closing date. In furtherance of the provisions of this Section 7, each Founder hereby (x) irrevocably appoints the Company as its agent and attorney-in-fact (with full power of substitution) to execute all agreements, instruments and certificates and take all actions necessary or desirable to effectuate any Sale Transaction, and (y) grants to the Company a proxy to vote the Shares held by such Founder in favor of any Sale Transaction.

8. Term. This Agreement shall terminate (a) immediately prior to the consummation of the first firm commitment underwritten public offering pursuant to an effective registration statement on Form S-1 (or its then equivalent) under the Securities Act of 1933, pursuant to which the aggregate price paid by the public for the purchase of Stock is at least \$[_____] or (b) on the [_____] anniversary of the date of this Agreement, whichever occurs first.

9. Enforcement of Agreement. Each Founder expressly agrees that the Investors and the Company will be irreparably damaged if this Agreement is not specifically enforced. Upon a breach or threatened breach of the terms, covenants or conditions of this Agreement by a Founder, each of the Investors and the Company shall, in addition to all other remedies, be entitled to a temporary or permanent injunction, without showing any actual damage, or a decree for specific performance, in accordance with the provisions hereof. If a Founder fails to fulfill any obligation to sell Shares to an Investor or the Company under this Agreement, such Investor or the Company, as the case may be, may, at its option, in addition to all other remedies it may have, send to such Founder the purchase price for such Shares as is herein specified. Thereupon, the Company upon written notice to such Founder, (a) shall cancel on its books the certificate or certificates representing the Shares to be sold and (b) shall issue, in lieu thereof, in the name of such Investor or the Company, as the case may be, a new certificate or certificates representing such Shares, and thereupon all of such Founder's rights in and to such Shares shall terminate.

10. Legend. Each certificate evidencing any of the Shares shall bear a legend substantially as follows:

"The shares represented by this certificate are subject to restrictions on transfer and may not be sold, exchanged, transferred, pledged, hypothecated or otherwise disposed of except in accordance with and subject to all the terms and conditions of a certain Founder Stock Restriction Agreement dated as of [____], a copy of which the Company will furnish to the holder of this certificate upon request and without charge."

11. No Obligation to Continue Employment. Nothing in this Agreement shall create an obligation on the Company or the Investors to continue any Founder's employment with the Company.

12. General.

12.1 Governing Law. This Agreement will be construed in accordance with and governed by the laws of the [____], without giving effect to the conflict of law principles of the [_____].

12.2 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.

12.3 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to the Company:

fax: _____
e-mail: _____
Attention: _____

if to any Founder or Investor, as set forth on Schedule 1.

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 12.3. All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

12.4 Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

12.5 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

12.5 Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled by binding arbitration in [CITY/STATE]. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of [NAME OF ARBITRATOR], with the following exceptions if in conflict: (a) one arbitrator shall be chosen by [ARBITRATOR]; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the Arbitrator’s rules and regulations) of the proceeding has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection

shall be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO

12.7 Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.

12.8 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. Notwithstanding the foregoing, (a) Investors owning at least two thirds of the Shares owned by all Investors may effect any such amendment or waiver on behalf of all of the Investors and (b) the consent of a Founder is not required to amend this agreement in a manner which does not materially affect the treatment of such Founder's Shares hereunder, it being understood that the addition of additional Investors who share in the rights granted to Investors pursuant to Section 3 and Section 4 shall not be deemed material for this purpose. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

12.9 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, this Founder Stock Restriction Agreement has been executed as of the date and year first written above.

COMPANY:

[COMPANY NAME]

By: _____

Name: _____

Title: _____

INVESTORS:

[INVESTOR 1]

By: _____

Name: _____

Title: _____

[INVESTOR 2]

By: _____

Name: _____

Title: _____

FOUNDERS:

[Name]

[Name]

Schedule 1

FOUNDERS AND INVESTORS

FOUNDERS

Founder Name	Address

INVESTORS

Investor Name	Address