

STOCK PURCHASE AGREEMENT¹

This Stock Purchase Agreement (this “**Agreement**”) is made as of *[Date] (the “**Effective Date**”) by and between *[Company Name], a *[State Of Incorporation] corporation (the “**Company**”), and *[Purchaser Name] (the “**Purchaser**”).

In consideration of the mutual covenants and representations set forth below, the Company and the Purchaser agree as follows:

1. **Purchase and Sale of the Shares.** The Company hereby issues and sells to the Purchaser, and the Purchaser hereby purchases from the Company, subject to the terms and conditions set forth in this Agreement, *[No. Of Shares] shares of the Company’s Common Stock (the “**Shares**”) at a price of \$*[Price Per Share] per share (the “**Purchase Price**”), for an aggregate purchase price of \$*[Aggregate Purchase Price]. The aggregate purchase price for the Shares shall be paid by the Purchaser by [a check payable to the order of the Company or such other method as may be acceptable to the Company] **OR** [transferring and assigning to the Company: (i) the business plan of the Company (the “**Business Plan**”) and (ii) any and all right, title and interest the Purchaser has in the Business Plan and any Intellectual Property (as defined below) related to the Company’s business, as currently conducted and as contemplated to be conducted pursuant to the Business Plan or otherwise. For purposes hereof, “**Intellectual Property**” means: (i) United States and foreign patents, trademarks, copyrights and mask works, registrations and applications therefor, and rights granted upon any reissue, division, continuation or continuation-in-part thereof, (ii) trade secret rights arising out of the laws of any and all jurisdictions, (iii) ideas, inventions, concepts, technology, software, methods, processes, drawings, illustrations, writings know-how, show-how, trade names, domain names, web addresses and web sites, and all rights therein and thereto, (iv) any other intellectual property rights, whether or not registrable, and (v) licenses in or to any of the foregoing. Further, the Purchaser agrees to take all actions reasonably requested by the Company to assist the Company in effecting the foregoing transfer and in establishing, perfecting, defending, enforcing and protecting the Company’s rights in any of the above transferred items, including without limitation assisting in the prosecution of any patent applications included in or based upon the Intellectual Property.]² Upon receipt of said consideration by the Company for the Shares, the Company shall issue to the Purchaser one or more certificates in the name of the Purchaser for that number of the Shares purchased by the Purchaser.

¹ Use this form of Stock Purchase Agreement if the founder’s shares are not subject to vesting. However, if the founder’s shares will be subject to vesting, use the form of Restricted Stock Purchase Agreement (Document No.: 192654).

² Typically, founders purchase stock for a nominal amount of cash. Bona fide in-kind consideration is frequently employed, but raises a number of potential concerns. Among these are: (i) difficulty in adequately defining the scope of what is being assigned or what the Company needs in this regard now or in the future; (ii) difficulty in making sure the assignment is properly perfected; (iii) difficulty in accurately valuing the assets assigned; and (iv) potential tax ramifications of the contribution.

2. Restrictions on Transfer; Rights of First Refusal [and Stockholder Agreements].

(a) The Purchaser acknowledges and agrees that the Shares are subject to the provisions of the Company's Bylaws, as amended from time to time (the "**Bylaws**"), including without limitation, all restrictions on transfer and rights of first refusal described in the Bylaws. The Purchaser may inspect the Bylaws at the Company's principal office.

(b) Legends. Any certificate representing Shares shall bear legends substantially in the following form (in addition to, or in combination with, any legend required by applicable federal and state securities laws and agreements relating to the transfer and/or voting of the Company securities):

"The securities represented by this certificate, and the transfer thereof, are subject to the restriction on transfer provisions of the Bylaws of the Company, a copy of which is on file in, and may be examined at, the principal office of the Company"

(c) [Stockholder Agreements. The Purchaser acknowledges and agrees that upon the request of the Company, the Purchaser shall join and become a party to such stockholder agreements, which may impose certain contractual rights and obligations on the Shares, as may be entered into from time to time by and among the Company and the holders of the Company's capital stock.]³

3. Agreement in Connection with Public Offering. The Purchaser agrees, in connection with the initial underwritten public offering of the Company's securities pursuant to a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**"): (i) not to sell, make short sale of, loan, grant any options for the purchase of, or otherwise dispose of any shares of Common Stock held by the Purchaser (other than those shares included in the offering) without the prior written consent of the Company or the underwriters managing such initial underwritten public offering of the Company's securities for a period of 180 days from the effective date of such registration statement, which period may be extended upon the request of the underwriters for an additional period of up to 15 days if the Company issues or proposes to issue an earnings or other public release within 15 days of the expiration of the 180-day lockup period, and (ii) to execute any agreement reflecting clause (i) above as may be requested by the Company or the managing underwriters at the time of such offering.

The Purchaser agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters of such offering which are consistent with the foregoing or which are necessary to give further effect thereto. In addition, if requested, by the Company or the underwriters of such offering, the Purchaser shall provide, within 10 days of such request, such information as may be required by the Company or such underwriters 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 obligations described in this Section 3 shall not apply to a registration relating solely to employee benefits plans on Form S-1 or Form

³ This provision may be used if the Company reasonably anticipates it will take venture financing and that the Participant may be required to become a party to certain customary stockholders agreements, such as a Right of First Refusal and Co-Sale Agreement and/or a Voting Agreement.

S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. 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 applicable period. Purchaser agrees that any transferee of the Shares pursuant to this Agreement shall be bound by this Section 3.

4. Investment Representations. The Purchaser represents, warrants and covenants as follows:

(a) The Purchaser is purchasing the Shares for the Purchaser's own account for investment only, and not with a view to, or for sale in connection with, any distribution of the Shares in violation of the Securities Act, or any rule or regulation under the Securities Act.

(b) The Purchaser has had such opportunity as the Purchaser deems adequate to obtain from representatives of the Company such information as is necessary to permit the Purchaser to evaluate the merits and risks of the Purchaser's investment in the Company.

(c) The Purchaser has sufficient experience in business, financial and investment matters to be able to evaluate the risks involved in the purchase of the Shares and to make an informed investment decision with respect to such purchase.

(d) The Purchaser can afford a complete loss of the value of the Shares and is able to bear the economic risk of holding such Shares for an indefinite period.

(e) The Purchaser acknowledges that the Company has encouraged the Purchaser to consult the Purchaser's own adviser to determine the tax consequences of acquiring the Shares at this time.

(f) The Purchaser acknowledges that the Shares shall be subject to the Company's right of first refusal and the market stand-off (sometimes referred to as the "lock-up"), as set forth in this Agreement.

(g) The Purchaser understands that (i) the Shares have not been registered under the Securities Act and are "restricted securities" within the meaning of Rule 144 under the Securities Act, (ii) the Shares cannot be sold, transferred or otherwise disposed of unless they are subsequently registered under the Securities Act or an exemption from registration is then available; (iii) in any event, the exemption from registration under Rule 144 will not be available for at least six months or one year (depending on whether the Company is subject to the reporting obligations of the Securities Exchange Act of 1934, as amended) and even then will not be available unless applicable terms and conditions of Rule 144 are complied with; and (iv) there is now no registration statement on file with the Securities and Exchange Commission with respect to any stock of the Company and the Company has no obligation or current intention to register the Shares under the Securities Act.

5. Withholding Taxes. The Purchaser acknowledges and agrees that the Company has the right to deduct from payments of any kind otherwise due to the Purchaser any federal, state or local taxes of any kind required by law to be withheld with respect to the purchase of the Shares by the Purchaser. The Purchaser has reviewed with the Purchaser's own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement. The Purchaser is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Purchaser understands that the Purchaser (and not the Company) shall be responsible for the Purchaser's own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement.

6. Miscellaneous.

(a) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and each other provision of this Agreement shall be severable and enforceable to the extent permitted by law.

(b) Waiver. Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board of Directors of the Company.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and the Purchaser and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth in Section 2 of this Agreement.

(d) Notice. All notices required or permitted hereunder shall be in writing and deemed effectively given upon personal delivery or five days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party hereto at the address shown beneath his or its respective signature to this Agreement, or at such other address or addresses as either party shall designate to the other in accordance with this Section 6(d). Notwithstanding the foregoing, notices with respect to the shares shall be provided in accordance with the Company's Bylaws.

(e) Pronouns. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

(f) Entire Agreement; Governing Law. This Agreement constitutes the entire agreement between the Company and the Purchaser with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Purchaser with respect to the subject matter hereof, and this Agreement may not be modified adversely to the Purchaser's interest except by means of a writing signed by the Company and Purchaser. 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 the internal laws of the State of North Carolina (without reference to conflict of law provisions), as to all

other matters.] **OR if not a Delaware corporation:** [the laws of the State of *[STATE] without reference to conflict of law provisions.]

(g) Amendment. This Agreement may be amended or modified only by a written instrument executed by both the Company and the Purchaser.

(h) Purchaser's Acknowledgments. The Purchaser acknowledges that the Purchaser: (i) has read this Agreement; (ii) has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of the Purchaser's own choice or has voluntarily declined to seek such counsel; (iii) understands the terms and consequences of this Agreement; (iv) is fully aware of the legal and binding effect of this Agreement; and (v) understands that the law firm of Hutchison PLLC, is acting as counsel to the Company in connection with the transactions contemplated by the Agreement, and is not acting as counsel for the Purchaser.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

COMPANY:

***[COMPANY NAME]**

By: _____

Name: _____

Title: _____

PURCHASER:

***[Purchaser Name]**

Mailing Address for Notice: _____
