

ANNOTATED SERIES A PURCHASE AGREEMENT

Davis Wright Tremaine LLP

The Series A Preferred Stock Purchase Agreement is typically the "master" agreement of a preferred stock financing. It sets forth in detail the terms of the financing which were agreed to by the investors and the company in the term sheet. It also contains the representations and warranties of each of the parties and the conditions to the closing of the financing.

PREFERRED STOCK PURCHASE AGREEMENT

HI-TECH CORPORATION

SERIES A PREFERRED STOCK PURCHASE AGREEMENT

THIS SERIES A PREFERRED STOCK PURCHASE AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2005, by and between HI-TECH CORPORATION, a Delaware corporation (the "Company"), and each of the persons listed on Schedule A hereto, each of which is herein referred to as an "Investor."

[COMMENT: The introductory paragraph of the Preferred Stock Purchase Agreement (the "Agreement") sets forth the date as of which the Agreement is made and identifies the Company selling the Preferred Stock and the Investors who have agreed to purchase it. The Investors typically are identified by reference to an Exhibit or Schedule attached to the Agreement. If only a few Investors are involved, however, the names of the Investors may be included in the introductory paragraph.]

Typically, the Agreement is dated as of the date of closing and is not delivered until immediately prior to the closing. This gives all parties the chance to back out until immediately prior to the closing. Sometimes, however, the Agreement is dated and signed by the Company and delivered to the Investors as soon as the Agreement is finalized.]

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. PURCHASE AND SALE OF STOCK.

1.1 Sale and Issuance of Series A Preferred Stock.

(a) The Company shall adopt and file with the Secretary of the State of Delaware on or before the Closing (as defined below) an Amended and Restated Certificate of Incorporation in the Form attached hereto as Exhibit A (the "Restated Certificate").

(b) Subject to the terms and conditions of this Agreement, each Investor agrees, severally and not jointly, to purchase at the Closing and the Company agrees to sell and issue to each Investor, severally and not jointly, at

the Closing that number of shares of the Company's Series A Preferred Stock set forth opposite each Investor's name on Schedule A hereto at a purchase price of \$5.00 per share. The Series A Preferred Stock will have the rights, preferences, privileges and restrictions set forth in the Restated Certificate.

[COMMENT: The function of Paragraph 1.1 is to identify the security being purchased, the number of shares that each Investor is purchasing, and the purchase price for such shares. Paragraph 1.1 (a) is actually a "closing condition." It appears at this place in the Agreement because it is necessary to identify the securities being purchased.]

1.2 Closing.

(a) The purchase and sale of the Series A Preferred Stock shall take place at the offices of _____ in _____, at 2:00 p.m., on _____, 2005, or at such other time and place as the Company and Investors acquiring in the aggregate more than half the shares of Series A Preferred Stock being sold pursuant hereto shall mutually agree, either orally or in writing (which time and place are designated as the "Closing").

(b) At the Closing, the Company shall deliver to each Investor a certificate representing the shares of Series A Preferred Stock that such Investor is purchasing against payment of the purchase price therefor by check, wire transfer, cancellation of indebtedness, or such other form of payment as shall be mutually agreed upon by such Investor and the Company. In the event that payment by an Investor is made, in whole or in part, by cancellation of indebtedness, then such Investor shall surrender to the Company for cancellation at the Closing any evidence of such indebtedness or shall execute an instrument of cancellation in form and substance acceptable to the Company. In addition, the Company at the Closing shall deliver to any Investor choosing to pay any part of the purchase price of the Series A Preferred Stock by cancellation of indebtedness, a check in the amount of any interest accrued on such indebtedness through the Closing.

[COMMENT: Paragraph 1.2 establishes the time, date, and place of the Closing and the mutual delivery obligations of the Company and the Investors at the Closing. Paragraph 1.2 permits the Investors to pay by check, wire transfer, or cancellation of indebtedness. Some Investors prefer to use wire transfers of funds rather than checks. Wire transfers present the potential advantage of immediately available funds.]

It is quite common for Investors, particularly existing Investors in later rounds, to make loans to the Company in anticipation of the Closing. These "bridge" loans typically are converted into equity at the current round price. Usually warrants are used to sweeten the bridge loan. Paragraph 1.2 includes comprehensive language regarding the mechanical aspects of cancellation of indebtedness.]

1.3 Subsequent Sale of Series A Preferred Stock.

If less than all of the authorized number of shares of Series A Preferred Stock are sold at the Closing, then, subject to the terms and conditions of this Agreement, the Company may sell, on or before _____, 2005, up to the balance of the authorized but unissued Series A Preferred Stock to such persons as the Board of Directors of the Company may determine at the same price per share as the Series A Preferred Stock purchased and sold at the Closing. Any such sale shall be made upon the same terms and conditions as those contained herein, and such persons or entities shall become parties to this Agreement, that certain Investors' Rights Agreement dated as of _____, 2005, by and among the Company and the Investors, the form of which is attached hereto as Exhibit B (the "Investors' Rights Agreement"), and that certain Co-Sale Agreement dated as of _____, 2005, by and among the Company, the Investors and the founders of the Company named therein, the form of which is attached hereto as Exhibit C (the "Co-Sale Agreement"), and shall have the rights and obligations of an Investor hereunder and thereunder.

[COMMENT: Paragraph 1.3 establishes a mechanism for second or subsequent closings. It is not unusual for lead Investors to allow the Company 30 or 60 days after the initial Closing to sell any unsold shares. Typical reasons for a second or subsequent Closing include Investors who entered the transaction late and have not finished their due diligence by the time of the initial Closing. Investors sometimes will want the right to approve any new purchasers.]

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company hereby represents and warrants to each Investor that, except as set forth on a Schedule of Exceptions furnished to each Investor and special counsel for the Investors, specifically identifying the relevant subparagraph(s) hereof, which exceptions shall be deemed to be representations and warranties as if made hereunder:

[COMMENT: The Company's representations and warranties are an integral part of any stock purchase agreement. The representations and warranties, including the Schedule of Exceptions, provide the Investors with a written statement of important facts concerning the Company (and its plans, prospects, and financial condition). They also serve to memorialize certain basic understandings among the Company and the Investors concerning the Company. By causing the Company to focus on the matters raised by a well-crafted set of representations and warranties, issues or problems that have previously been glossed over may surface, be disclosed, and possibly be resolved.

In some cases, if the matters involved seriously impact the Company and come as a surprise to the Investors, disclosures made as part of the Schedule of Exceptions may lead to a reopening of negotiations regarding the Company's pre-financing valuation. In the most serious cases, the Investors may reconsider their original invest-

ment decision.]

2.1 Organization; Good Standing; Qualification.

The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, has all requisite corporate power and authority to own and operate its properties and assets and to carry on its business as now conducted and as presently proposed to be conducted, to execute and deliver this Agreement, the Investors' Rights Agreement, and any other agreement to which the Company is a party the execution and delivery of which is contemplated hereby (the "Ancillary Agreements"), to issue and sell the Series A Preferred Stock and the Common Stock issuable upon conversion thereof, and to carry out the provisions of this Agreement, the Investors' Rights Agreement, the Restated Certificate and any Ancillary Agreement. The Company is duly qualified and is authorized to transact business and is in good standing as a foreign corporation in each jurisdiction in which the failure so to qualify would have a material adverse effect on its business, properties, prospects, or financial condition.

[COMMENT: The principal function of Paragraph 2.1 is to assure the Investors that all necessary corporate house-keeping has been done, that the Company is in good standing in its domicile, and that it is qualified to do business as a foreign corporation and is in good standing in those jurisdictions in which such qualification is required.]

2.2 Authorization.

All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement, the Investors' Rights Agreement and any Ancillary Agreement, the performance of all obligations of the Company hereunder and thereunder at the Closing and the authorization, issuance (or reservation for issuance), sale, and delivery of the Series A Preferred Stock being sold hereunder and the Common Stock issuable upon conversion thereof has been taken or will be taken prior to the Closing, and this Agreement, the Investors' Rights Agreement, and any Ancillary Agreement, when executed and delivered, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (iii) to the extent that the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable laws.

[COMMENT: This representation states that all necessary corporate action relative to the agreements and the transactions contemplated by the agreements will be completed by the Closing. Paragraph 2.2 also assures the Investors that the agreements are valid and binding agreements of the Company and are enforceable in accordance with their terms (subject to certain standard exceptions).

2.3 Valid Issuance of Preferred and Common Stock. The Series A Preferred Stock that is being purchased by the Investors hereunder, when issued, sold, and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Agreement and the Investors' Rights Agreement and under applicable state and federal securities laws. The Common Stock issuable upon conversion of the Series A Preferred Stock being purchased under this Agreement has been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Restated Certificate, will be duly and validly issued, fully paid, and nonassessable and will be free of restrictions on transfer other than restrictions on transfer under this Agreement and the Investors' Rights Agreement and under applicable state and federal securities laws.

[COMMENT: One function of Paragraph 2.3 is to give Investors the assurance that there will not be fundamental corporation law problems with the issuance of the Preferred Stock that they are purchasing (or the Common Stock into which it is convertible). The other function of this Paragraph is to identify any restrictions on transfer that apply to the securities being purchased by the Investors. Restrictions not referred to above that might apply are rights of first refusal under a Company's bylaws or certificate of incorporation (not often agreed to by venture funds or institutional investors) or rights existing under a co-sale agreement.]

2.4 Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any local, state, or federal governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery, or performance of this Agreement, the offer, sale or issuance of the Series A Preferred Stock by the Company or the issuance of Common Stock upon conversion of the Series A Preferred Stock, except (i) the filing of the Restated Certificate with the Secretary of State of the State of Delaware, and (ii) such filings as have been made prior to the Closing, (except any notices of sale required to be filed with the Securities and Exchange Commission under Regulation D of the Securities Act of 1933, as amended (the "Securities Act"), or such post-closing filings as may be required under applicable state securities laws, which will be timely filed within the applicable periods therefor.

[COMMENT: Paragraph 2.4 assures the Investors that all necessary governmental consents and approvals have been obtained and will be effective on the Closing.]

2.5 Capitalization and Voting Rights. The authorized capital of the Company consists, or will consist immediately prior to the Closing, of:

(a) Preferred Stock. 5,000,000 shares of Preferred Stock, par value \$.001, of which 2,000,000 shares have been designated Series A Preferred Stock, up to all of

which will be sold pursuant to this Agreement. The rights, privileges and preferences of the Series A Preferred Stock are as stated in the Restated Certificate.

(b) Common Stock. 10,000,000 shares of common stock, par value \$.001 ("Common Stock"), of which 3,000,000 shares are issued and outstanding.

(c) The outstanding shares of Common Stock are owned by the stockholders and in the numbers specified in Exhibit C hereto.

(d) The outstanding shares of Series A Preferred Stock and Common Stock have been duly authorized and validly issued, are fully paid and nonassessable, and were issued in accordance with the registration or qualification provisions of the Securities Act and any relevant state securities laws or pursuant to valid exemptions therefrom.

(e) Except for (i) the conversion privileges of the Series A Preferred Stock, (ii) the rights provided in Paragraph 2.3 of the Investors' Rights Agreement, and (iii) currently outstanding options to purchase 165,000 shares of Common Stock granted to employees pursuant to the Company's _____ Stock Option Plan (the "Option Plan"), there are no other 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. In addition to the aforementioned options, the Company has reserved an additional 835,000 shares of its Common Stock for purchase upon exercise of options to be granted in the future under the Option Plan. The Company is not a party or subject to any agreement or understanding, and, to the best of the Company's knowledge, there is no agreement or understanding between any persons that affects or relates to the voting or giving of written consents with respect to any security or the voting by a director of the Company.

[COMMENT: Paragraph 2.5 serves to describe the capital structure of the Company, including a description of any outstanding rights relating to the Company's unissued securities. This is important because it in effect sets the framework for the value being given to the Company by the Investors. Any change in shares deemed outstanding from that assumed by the Investors could result in an adjustment in the purchase price.]

Paragraph 2.5 also contains the additional representation that all of the outstanding stock has been fully paid, is nonassessable, and has been issued in compliance with the registration and qualification provisions of all applicable state and Federal securities laws. This representation serves to assure the Investors that no potential rescission rights exist or, if there are exceptions or uncertainties regarding this representation, it serves to bring these issues to the Investors' attention.]

2.6 Subsidiaries. The Company does not own or control, directly or indirectly, any interest in any other corporation, partnership, limited liability company, association, or other business entity. The Company is not a participant in any joint ven-

ture, partnership, or similar arrangement.

[COMMENT: This representation serves to disclose the corporate structure of the Company, including the existence of any controlled corporations, as well as the existence of any joint venture or corporate partnering or similar arrangement.]

2.7 Contracts and Other Commitments.

The Company does not have and is not bound by any contract, agreement, lease, commitment, or proposed transaction, judgment, order, writ or decree, written or oral, absolute or contingent, other than (i) contracts for the purchase of supplies and services that were entered into in the ordinary course of business and that do not involve more than \$10,000, and do not extend for more than one (1) year beyond the date hereof, (ii) sales contracts entered into in the ordinary course of business, and (iii) contracts terminable at will by the Company on no more than thirty (30) days' notice without cost or liability to the Company and that do not involve any employment or consulting arrangement and are not material to the conduct of the Company's business. For the purpose of this paragraph, employment and consulting contracts and contracts with labor unions, and license agreements and any other agreements relating to the Company's acquisition or disposition of patent, copyright, trade secret or other proprietary rights or technology (other than standard end-user license agreements) shall not be considered to be contracts entered into in the ordinary course of business.

[COMMENT: Paragraph 2.7 requires the Company to disclose its material contracts (other than sales contracts) on the Schedule of Exceptions. The parameters that define materiality will vary from company to company and over the life-cycle of the corporation.]

2.8 Related-Party Transactions.

No employee, officer, stockholder or director of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company, and (iii) 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 of Directors of the Company). To the best of the Company's knowledge, none of such persons has 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 that competes with the Company, except that employees, stockholders, officers, or directors of the Company and members of their immediate families may own stock in publicly traded companies that may compete with the Company. To the best of the Company's knowledge, 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).

[COMMENT: The purpose of Paragraph 2.8 is to uncover potential conflicts of interest or self-dealing. Prior to a Company's first round of venture capital financing, working capital is often obtained through loans from friends, relatives, or directly from the founders themselves. Paragraph 2.8 requires that such transactions be set forth on the Schedule of Exceptions to the Agreement and allows investors to assess the terms and conditions of these transactions prior to their investment.]

2.9 Registration Rights.

Except as provided in the Investors' Rights Agreement, the Company is presently not under any obligation and has not granted any rights to register under the Securities Act any of its presently outstanding securities or any of its securities that may subsequently be issued.

[COMMENT: Prior registration rights sometimes conflict with those that Investors in a later round wish to obtain.]

2.10 Permits.

The Company has all franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, the lack of which could materially and adversely affect the business, properties, prospects, or financial condition of the Company, and believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as presently planned to be conducted. The Company is not in default in any material respect under any of such franchises, permits, licenses or other similar authority.

[COMMENT: The purpose of Paragraph 2.10 is to assure the Investors that the Company has all necessary operating authority to conduct its business.]

2.11 Compliance With Other Instruments.

The Company is not in violation or default in any material respect of any provision of its Restated Certificate or Bylaws or in any material respect of any provision of any mortgage, indenture, agreement, instrument, or contract to which it is a party or by which it is bound or, to the best of its knowledge, of any federal or state judgment, order, writ, decree, statute, rule, regulation or restriction applicable to the Company. The execution, delivery, and performance by the Company of this Agreement, the Investors' Rights Agreement and any Ancillary Agreement, and the consummation of the transactions contemplated hereby and thereby, will not result in any such violation or be in material conflict with or constitute, with or without the passage of time or giving of notice, either a material default under any such provision or an event that results in the creation of any material lien, charge, or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any mate-

rial permit, license, authorization, or approval applicable to the Company, its business or operations, or any of its assets or properties.

[COMMENT: Paragraph 2.11 assures the Investors that the Company is not operating in violation in any material respect of its charter documents, material agreements to which it is a party, or, to the best of the Company's knowledge, any applicable state or federal law.]

2.12 Litigation.

There is no action, suit, proceeding, or investigation pending or currently threatened against the Company that questions the validity of this Agreement, the Investors' Rights Agreement, or any Ancillary Agreement or the right of the Company to enter into such agreements, or to consummate the transactions contemplated hereby or thereby, or that might result, either individually or in the aggregate, in any material adverse change in the assets, business, properties, prospects, or financial condition of the Company, or in any material change in the current equity ownership of the Company. The Company is not a party to or, to the best of its knowledge, named in or subject to any order, writ, injunction, judgment, or decree of any court, government agency, or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or that the Company currently intends to initiate.

[COMMENT: Paragraph 2.12 serves to bring to the Investors' attention any material litigation relating to the Company, whether actual or threatened. The litigation representation is particularly important to the venture capitalist. Significant litigation, if it arises, will divert the funds and attention of the Company and may adversely affect its business prospects. This may all be acceptable under the circumstances, but it is clearly a factor the venture capitalist wishes to evaluate in advance.]

2.13 Disclosure.

The Company has provided each Investor with all the information reasonably available to it without undue expense that such Investor has requested for deciding whether to purchase the Series A Preferred Stock and all information that the Company believes is reasonably necessary to enable such Investor to make such decision. To the best of the Company's knowledge, after reasonable investigation, neither this Agreement nor any other agreements, written statements or certificates made or delivered in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

[COMMENT: Paragraph 2.13 incorporates a Federal securities law antifraud standard into the Agreement with respect to the disclosure made in the Agreement itself and in accompanying documents, such as the Schedule of Exceptions.]

2.14 Business Plan.

The Business Plan dated _____ previously delivered to each Investor (the "Business Plan") was prepared in good faith by the Company and does not, to the best of the Company's knowledge after reasonable investigation, contain any untrue statement of a material fact nor does it omit to state a material fact necessary to make the statements therein not misleading, except that with respect to assumptions, projections and expressions of opinion or predictions contained in the Business Plan, the Company represents only that such assumptions, projections, expressions of opinion and predictions were made in good faith and that the Company believes there is a reasonable basis therefor.

[COMMENT: The Company's business plan contains a collection of projections and predictions about the future, as well as descriptions of the present and past.]

2.15 Offering.

Subject in part to the truth and accuracy of each Investor's representations set forth in this Agreement, the offer, sale and issuance of the Series A Preferred Stock as contemplated by this Agreement are exempt from the registration requirements of the Securities Act, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

[COMMENT: Some lawyers take the position that Paragraph 2.15 is unnecessary in light of the inclusion of Paragraph 2.4. Other lawyers prefer to include the representation, even if duplicative, to highlight the importance of the availability of the Securities Act exemption.]

2.16 Title to Property and Assets; Leases.

Except (i) as reflected in the Financial Statements (defined in Paragraph 2.17), (ii) for liens for current taxes not yet delinquent, (iii) for liens imposed by law and incurred in the ordinary course of business for obligations not past due to carriers, warehousemen, laborers, materialmen and the like, (iv) for liens in respect of pledges or deposits under workers' compensation laws or similar legislation or (v) for minor defects in title, none of which, individually or in the aggregate, materially interferes with the use of such property, the Company has good and marketable title to its property and assets free and clear of all mortgages, liens, claims, and encumbrances. With respect to the property and assets it leases, the Company is in compliance with such leases and, to the best of its knowledge, holds a valid leasehold interest free of any liens, claims, or encumbrances, subject to clauses (i)-(v) above.

[COMMENT: Paragraph 2.16 assures the Investors that the Company's assets (including leasehold interests) are held, unless the Company discloses otherwise, either in its Financial Statements or in the Schedule of Exceptions, and subject to standard exceptions, free and clear of any encumbrances.]

2.17 Financial Statements.

The Company has delivered to each Investor its audited financial statements (balance sheet and profit and loss statement, statement of stockholders' equity and statement of cash flows including notes thereto) at December 31, ____ and for the fiscal year then ended and its unaudited financial statements (balance sheet and profit and loss statement) as at, and for the nine-month period ended September 30, ____ (the "Balance Sheet Date", and collectively the "Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other, except that unaudited Financial Statements may not contain all footnotes required by generally accepted accounting principles. The Financial Statements fairly present the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of the unaudited Financial Statements to normal year-end audit adjustments. Except as set forth in the Financial Statements, the Company has no material liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the Balance Sheet Date and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. Except as disclosed in the Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm, or corporation. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

[COMMENT: The function of Paragraph 2.17 is to assure the Investors that the financial statements provided to them, and upon which they relied in making their investment decisions, have been prepared in accordance with generally accepted accounting principles and fairly present the financial condition and position of the Company. A representation in substantially the form of Paragraph 2.17 is appropriate in all instances in which the Company has financial statements reviewed by outside auditors. In start-up situations, where no financial statements are available, a different Form of representation may be used to perform the function of Paragraph 2.17.]

2.18 Changes.

To the best of the Company's knowledge, since the Balance Sheet Date, there has not been:

(a) any change in the assets, liabilities, financial condition, or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;

(b) any damage, destruction or loss, whether or not

covered by insurance, materially and adversely affecting the business, properties, prospects, or financial condition of the Company (as such business is presently conducted and as it is presently proposed to be conducted);

(c) any waiver or compromise by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any lien, claim, or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the business, properties, prospects, or financial condition of the Company (as such business is presently conducted and as it is presently proposed to be conducted);

(e) any material change to a material contract or arrangement by which the Company or any of its assets is bound or subject;

(f) any material change in any compensation arrangement or agreement with any employee, officer, director or stockholder;

(g) any sale, assignment, or transfer of any patents, trademarks, copyrights, trade secrets, or other intangible assets;

(h) any resignation or termination of employment of any key officer of the Company; and the Company, to the best of its knowledge, does not know of the impending resignation or termination of employment of any such officer;

(i) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

(j) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;

(k) any loans or guarantees made by the Company to or for the benefit of its employees, stockholders, officers, or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(l) any declaration, setting aside, or payment of any dividend or other distribution of the Company's assets in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase, or other acquisition of any of such stock by the Company;

(m) to the best of the Company's knowledge, any other event or condition of any character that might materially and adversely affect the business, properties, prospects, or financial condition of the Company (as such business is presently conducted and as it is presently proposed to be conducted); or

(n) any agreement or commitment by the Company to do any of the things described in this Paragraph 2.18.

[COMMENT: Paragraph 2.18 is a long form version of a "bring-down" representation that assures the Investors that the Financial Statements still accurately portray the financial condition of the Company. The representation serves as a useful checklist for counsel when the Schedule of Exceptions is prepared.]

2.19 Patents and Trademarks.

To the best of its knowledge (but without having conducted any special investigation or patent search), the Company owns or possesses sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, and proprietary rights and processes necessary for its business as now conducted and as proposed to be conducted without any conflict with, or infringement of the rights of, others. The Schedule of Exceptions contains a complete list of patents and pending patent applications of the Company. Except for agreements with its own employees or consultants, substantially in the Form referenced in Paragraph 2.21 below, and standard end-user license agreements, there are no outstanding options, licenses, or agreements of any kind relating to the foregoing, 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, and proprietary rights and processes of any other person or entity. The Company has not received any communications alleging that the Company has violated or, by conducting its business as proposed, would violate any of the patents, trademarks, service marks, trade names, copyrights, trade secrets, or other proprietary rights or processes of any other person or entity. The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants, or commitments of any nature) or other agreement, or subject to any judgment, decree, or order of any court or administrative agency, that would interfere with the use of such employee's best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as proposed, will, to the best of 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. The Company does not believe it is or will be necessary to use any inventions of any of its employees (or persons it currently intends to hire) made prior to their employment by the Company.

[COMMENT: Paragraph 2.19 is intended to assure the Investors that the Company has, or has identified and disclosed the need for, all intellectual property rights needed for the business. This version is comprehensive, but depending on circumstances could be more or less comprehensive. The issue of whether the representation should be to the best of knowledge or not (i.e., the extent to which the representation is used for risk shifting) is often debated, and a number of Investors insist upon a "reasonable investigation" as a prerequisite to making the representation to the best of the Company's knowledge.]

2.20 Employees; Employee Compensation.

To the best of the Company's knowledge, there is no

strike, labor dispute or union organization activities pending or threatened between it and its employees. None of the Company's employees belongs to any union or collective bargaining unit. To the best of its knowledge, the Company has complied in all material respects with all applicable state and federal equal opportunity and other laws related to employment. To the best of the Company's knowledge, no employee of the Company is or will be in violation of any judgment, decree, or order, or any term of any employment contract, patent disclosure agreement, or other contract or agreement relating to the relationship of any such employee with the Company, or any other party because of the nature of the business conducted or presently proposed to be conducted by the Company or to the use by the employee of his or her best efforts with respect to such business. The Company is not a party to or bound by any currently effective employment contract, deferred compensation agreement, bonus plan, incentive plan, profit sharing plan, retirement agreement, or other employee compensation agreement. The Company is not aware that any officer or key employee, or that any group of key employees, intends to terminate their employment with the Company, nor does the Company have a present intention to terminate the employment of any of the foregoing. Subject to general principles related to wrongful termination of employees, the employment of each officer and employee of the Company is terminable at the will of the Company.

[COMMENT: Paragraph 2.20 is intended to elicit disclosure of employment commitments and more general information as to employee relations.]

2.21 Proprietary Information and Inventions Agreements.

Each employee and officer of the Company has executed a Proprietary Information and Inventions Agreement substantially in the form or forms, which have been delivered to special counsel for the Investors.

[COMMENT: This Paragraph is intended to provide counsel for the Investors with assurances as to the terms of outstanding nondisclosure and inventions agreements. In addition, it assumes that all employees have signed nondisclosure and inventions agreements.]

2.22 Tax Returns, Payments, and Elections.

The Company has timely filed all tax returns and reports (federal, state and local) as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and other assessments due, except those contested by it in good faith. The provision for taxes of the Company as shown in the Financial Statements is adequate for taxes due or accrued as of the date thereof. The Company has not elected pursuant to the Internal Revenue Code of 1986, as amended ("Code"), to be treated as an S corporation or a collapsible corporation pursuant to Section 1362(a) or Section 341(f) of the Code, nor has it made any other elections pursuant to the Code (other than elections that relate

solely to methods of accounting, depreciation, or amortization) that would have a material effect on the business, properties, prospects, or financial condition of the Company. 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 or governmental charge. None of the Company's federal income tax returns and none of its state income or franchise tax or sales or use tax returns has ever been audited by governmental authorities. Since the date of the Financial Statements, the Company has made adequate provisions on its books of account for all taxes, assessments, and governmental charges with respect to its business, properties, and operations for such period. 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 tax receiving officers or authorized depositaries.

[COMMENT: Paragraph 2.22 serves to assure the Investors that in tax-related matters the Company has a clean bill of health. Tax liabilities that have not been paid pending the resolution of a dispute with tax authorities should be disclosed on the Schedule of Exceptions.]

2.23 Insurance.

The Company has in full force and effect fire and casualty insurance policies, with extended coverage, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties that might be damaged or destroyed. The Company has in full force and effect products liability and errors and omissions insurance in amounts customary for companies similarly situated.

[COMMENT: Paragraph 2.23 covers property insurance. The first sentence mandates replacement-cost insurance, unless another type of insurance is disclosed. Adequate products liability and errors and omissions coverage is critical to companies manufacturing and distributing products.]

2.24 Environmental and Safety Laws.

To the best of its knowledge, the Company is not in violation of any applicable statute, law, or regulation relating to the environment or occupational health and safety, and to the best of its knowledge, no material expenditures are or will be required in order to comply with any such existing statute, law, or regulation.

[COMMENT: Depending on the Company's business, environmental compliance may be of great significance. Paragraph 2.24 is intended only to get at the actual knowledge of the Company. In appropriate circumstances, the Investors may require an investigation by the Company of its environmental compliance (with an appropriate representation as to such an investigation) or may insist on an unqualified representation to shift the risk of unknown violations to the Company.]

2.25 Minute Books.

The copy of the minute books of the Company provided to the Investors' special counsel contains minutes of all meetings of directors and stockholders and all actions by written consent without a meeting by the directors and stockholders since the date of incorporation and accurately reflects all actions by the directors (and any committee of directors) and stockholders with respect to all transactions referred to in such minutes in all material respects.

[COMMENT: Paragraph 2.25 is intended to assure that the Company has complete and accurate records of all actions taken by its directors and stockholders.]

2.26 Qualified Small Business.

The Company covenants that so long as any of the shares of Series A Preferred Stock, or the Common Stock into which such shares are converted, are held by an Investor (or a transferee in whose hands such shares or Common Stock are eligible to qualify as Qualified Small Business Stock as defined in Section 1202(c) of the Code), it will use its reasonable efforts (including complying with any applicable filing or reporting requirements imposed by the Code on issuers of Qualified Small Business Stock) to cause such shares, or the Common Stock into which they are converted, to qualify as Qualified Small Business Stock; provided, however, that "reasonable efforts" as used in this Paragraph 2.31 shall not be construed to require the Company to operate its business in a manner which would adversely affect its business, limit its future prospects or alter the timing or resource allocation related to its planned operations or financing activities.

[COMMENT: Effective August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 narrowly crafts a reduction (up to 50%) in the tax on capital gains for individuals who acquire "qualified small business stock" at its original issuance and hold it for at least five years. Numerous restrictions on the size and operations of a qualifying small business apply. Since the availability of this small business stock exemption is dependent upon the operations of the issuer and its filing of the required reports during the five years following issuance, Investors' counsel may want to consider requiring a representation and covenant of the Company such as that in Paragraph 2.26 that it will conduct its activities so as to preserve the small business corporation status with respect to the Investors' stock.]

3. REPRESENTATIONS AND WARRANTIES OF THE INVESTORS.

Each Investor hereby represents and warrants to the Company that:

3.1 Authorization.

Such Investor has full power and authority to enter into this Agreement, and that this Agreement, when executed and delivered, will constitute a valid and legally binding obligation of such Investor.

[COMMENT: In contrast to the representations and warranties of the Company, the representations and war-

ranties of the Investors are very few in number. The primary concern of the Company and the other Investors is that the Agreement be binding on each Investor and that the Company has complied with applicable securities laws in connection with the sale and issuance of the stock to the Investors.]

3.2 Purchase Entirely for Own Account.

This Agreement is made with each Investor in reliance upon such Investor's representation to the Company, which by such Investor's execution of this Agreement such Investor hereby confirms, that the Series A Preferred Stock to be purchased by such Investor and the Common Stock issuable upon conversion thereof (collectively, the "Securities") will be acquired for investment for such Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, each Investor further represents that such Investor does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

[COMMENT: Some venture capital partnerships (particularly those that are funded off-shore) invest through a nominee name. This representation would need to be modified if such were the case.]

3.3 Reliance Upon Investors' Representations.

Each Investor understands that the Series A Preferred Stock is not, and any Common Stock acquired on conversion thereof at the time of issuance may not be, registered under the Securities Act on the ground that the sale provided for in this Agreement and the issuance of securities hereunder is exempt from registration under the Securities Act pursuant to Section 4(2) thereof, and that the Company's reliance on such exemption is predicated on the Investors' representations set forth herein. Each Investor realizes that the basis for the exemption may not be present if, notwithstanding such representations, the Investor has in mind merely acquiring shares of the Series A Preferred Stock for a fixed or determinable period in the future, or for a market rise, or for sale if the market does not rise. No Investor has any such intention.

3.4 Receipt of Information.

Each Investor believes such Investor has received all the information such Investor considers necessary or appropriate for deciding whether to purchase the Series A Preferred Stock. Each Investor further represents that such Investor has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Series A Preferred Stock and the business, properties, prospects, and financial condition of the Company and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort

or expense) necessary to verify the accuracy of any information furnished to such Investor or to which such Investor had access. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of the Investors to rely thereon.

3.5 Investment Experience.

Each Investor represents that such Investor is experienced in evaluating and investing in private placement transactions of securities of companies in a similar stage of development and acknowledges that such Investor is able to fend for himself, herself or itself, can bear the economic risk of such Investor's investment, and has such knowledge and experience in financial and business matters that such Investor is capable of evaluating the merits and risks of the investment in the Series A Preferred Stock. If other than an individual, Investor also represents such Investor has not been organized for the purpose of acquiring the Series A Preferred Stock.

3.6 Accredited Investor.

Each Investor is an "accredited investor" within the meaning of SEC Rule 501 of Regulation D, as presently in effect.

[COMMENT: Counsel should review the relevant exemptions from registration under the Securities Act. State laws often impose more strict requirements than federal law.]

3.7 Restricted Securities.

Each Investor understands that the Series A Preferred Stock (and any Common Stock issued on conversion thereof) may not be sold, transferred, or otherwise disposed of without registration under the Securities Act or an exemption therefrom, and that in the absence of an effective registration statement covering the Stock (or the Common Stock issued on conversion thereof) or an available exemption from registration under the Securities Act, the Series A Preferred Stock (and any Common Stock issued on conversion thereof) must be held indefinitely. In particular, each Investor is aware that the Series A Preferred Stock (and any Common Stock issued on conversion thereof) may not be sold pursuant to Rule 144 promulgated under the Securities Act unless all of the conditions of that Rule are met. Among the conditions for use of Rule 144 may be the availability of current information to the public about the Company. Such information is not now available and the Company has no present plans to make such information available.

3.8 Legends.

To the extent applicable, each certificate or other document evidencing any of the Series A Preferred Stock or any Common Stock issued upon conversion thereof shall be endorsed with the legends substantially in the Form set forth below:

(a) The following legend under the Securities Act: "THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED,

ASSIGNED, PLEDGED, OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SUCH ACT, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED."

(b) Any legend imposed or required by the Company's Bylaws or applicable state securities laws.

[COMMENT: The foregoing legends assume that the transaction is not being conducted pursuant to Regulation S of the Securities and Exchange Commission, which constitutes a safe harbor for certain issuances to foreign investors.]

4. CONDITIONS OF INVESTORS' OBLIGATIONS AT CLOSING.

The obligations of each Investor under subparagraph 1.1(b) of this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, the waiver of which shall not be effective against any Investor who does not consent in writing thereto:

[COMMENT: This Section sets forth the conditions precedent and concurrent to the Investors' obligations to purchase the Series A Preferred Stock. Unless all conditions are met or waived, the Closing will not occur, nor will any Investor be liable to the Company for not purchasing the Series A Preferred Stock.]

In a start-up transaction, this Paragraph normally would include conditions that require the founders to have executed and delivered to the Company specified forms of employee stock purchase agreements, employment agreements, proprietary information and inventions agreements, and voting agreements (if applicable).]

4.1 Representations and Warranties.

The representations and warranties of the Company contained in Section 2 shall be true on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the date of the Closing.

[COMMENT: This condition serves two purposes: (1) to "bring down" the representations and warranties to the time of Closing, and (2) to release the Investors from their commitments to purchase the Series A Preferred Stock if there is a breach of the representations and warranties prior to the Closing, rather than leaving the Investors with a damage remedy after their investment has been made.]

4.2 Performance.

The Company shall have performed and complied with all agreements, obligations, and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing.

[COMMENT: As mentioned above, an example of the type of provision incorporated into the Closing conditions

by this Paragraph is the filing of the Restated Certificate called for by Paragraph 1.1(a). Without this paragraph, Investors' special counsel would have to be extremely careful to ensure that the list of Closing conditions was exhaustive.]

4.3 Compliance Certificate.

The President of the Company shall deliver to each Investor at the Closing a certificate certifying that the conditions specified in paragraphs 4.1, 4.2, 4.4, 4.6, 4.7, 4.8, 4.10, and 4.11 have been fulfilled.

[COMMENT: The requirement that a "Compliance Certificate" be delivered at the Closing is designed to force a responsible officer of the Company to review the Closing conditions to ensure that they have in fact been met.]

4.4 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 in connection with the lawful issuance and sale of the Series A Preferred Stock pursuant to this Agreement shall be duly obtained and effective as of the Closing.

[COMMENT: This Paragraph requires that any necessary blue-sky approvals be obtained prior to the Closing. Failure to obtain a required approval would generally give the Investor (or Investors) located in the jurisdiction in question rescission rights.]

4.5 Proceedings and Documents.

All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in Form and substance to the Investors' special counsel, which shall have received all such counterpart original and certified or other copies of such documents as it may reasonably request.

[COMMENT: Paragraph 4.5 gives the Investors and their special counsel the right to insist that proper procedures be followed and documents and certificates be delivered in connection with the transactions contemplated by the Agreement, and that, if there is a disagreement on this subject, the Investors are not bound to proceed.]

4.6 Voting for Directors.

Section 4(b) of the Restated Certificate shall provide that the authorized number of directors of the Company shall be five (5), three (3) of whom shall be elected by the Preferred Stock, voting as a class.

4.7 Board of Directors.

Effective as of the Closing, the directors of the Company shall be _____, _____, and _____ and [and there shall be vacancies on the Board of Directors].

[COMMENT: Paragraphs 4.6 and 4.7 are designed to implement an arrangement assuring the Series A Investors of a significant voice on the Board. Paragraph 4.6 is really informative in nature, since Paragraph 1.1 (a) has already required adoption of the required Form of the Restated Certificate.]

4.8 Opinion of Company Counsel.
Each Investor shall have received from _____, & _____, counsel for the Company, an opinion, dated the date of the Closing, in Form and substance satisfactory to special counsel to the Investors.

[COMMENT: The opinion is often one of the more heatedly negotiated portions of the Agreement, as Investors' special counsel (whose clients do not directly bear either their own legal bill or that of the Company) often insists on comprehensive coverage. Company counsel, in contrast, will strive to minimize the cost to the Company and its own exposure by advocating a narrower approach. The subject of legal opinions has been the topic of extensive articles, and at least one book.]

4.9 Investors' Rights Agreement.
The Company, each Investor, and the holders of more than 50% of the Common Stock issued or issuable on conversion of the Company's Series A Preferred Stock shall have entered into the Investors' Rights Agreement in the Form attached hereto as Exhibit B.

[COMMENT: See the form of Investors Rights Agreement included in the materials.]

4.10 Co-Sale Agreements.
_____ and _____ and each shall have entered into a Co-Sale Agreement in the Form attached hereto as Exhibit D.

[COMMENT: Co-sale agreements are designed to assure Investors that they will receive equal opportunity, along with major common stockholders (usually the founders), to sell their stock in a transaction that may shift control of the Company. Although mergers and sales of substantially all assets transactions require a stockholder vote under most corporate laws, sales by stockholders usually do not; thus, the need for a co-sale agreement.]

4.11 Minimum Investment.
The Investors shall purchase an aggregate of at least _____ shares of Series A Preferred Stock at the Closing.

[COMMENT: Paragraph 4.12 assures each Investor that if sufficient other Investors do not complete the deal to provide the minimum capital the Company requires, no Investor will be bound.]

5. CONDITIONS OF THE COMPANY'S OBLIGATIONS AT CLOSING.

The obligations of the Company to each Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by that Investor:

[COMMENT: This Section sets forth the conditions precedent and concurrent to the Company's obligations to sell the Series A Preferred Stock. Nonfulfillment of any of these conditions provides the Company with a basis for not proceeding with the Closing.]

5.1 Representations and Warranties.

The representations and warranties of each Investor contained in Section 3 shall be true on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the date of the Closing.

5.2 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 in connection with the lawful issuance and sale of the Stock pursuant to this Agreement shall be duly obtained and effective as of the Closing.

6. MISCELLANEOUS.

[COMMENT: The miscellaneous provisions that follow are typical of those that appear in virtually every venture capital purchase agreement.]

6.1 Entire Agreement.

This Agreement and the documents referred to herein constitute the entire agreement among the parties and no party shall be liable or bound to any other party in any manner by any warranties, representations, or covenants except as specifically set forth herein or therein.

6.2 Survival of Warranties.

The warranties, representations, and covenants of the Company and the Investors contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing.

[COMMENT: Sometimes the survival Paragraph will include a provision to the effect that the Investors' investigation does not adversely affect the Investors' right to rely on the Company's representations and warranties.]

6.3 Successors and Assigns.

Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including permitted transferees of any shares of Series A Preferred Stock sold hereunder or any Common Stock issued upon conversion thereof). Nothing in this Agreement, express or implied, is intended to con-

fer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.4 Governing Law.

This Agreement shall be governed by and construed under the laws of the State of [STATE] as applied to agreements among [STATE] residents entered into and to be performed entirely within [STATE].

6.5 Counterparts.

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

6.6 Titles and Subtitles.

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

6.7 Notices.

Unless otherwise provided, all notices and other communications required or permitted under this Agreement shall be in writing and shall be mailed by United States first-class mail, postage prepaid, sent by facsimile or delivered personally by hand or by a nationally recognized courier addressed to the party to be notified at the address or facsimile number indicated for such person on the signature page hereof, or at such other address or facsimile number as such party may designate by ten (10) days' advance written notice to the other parties hereto. All such notices and other written communications shall be effective on the date of mailing, confirmed facsimile transfer or delivery.

6.8 Finder's Fees.

Each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with this transaction.

6.9 Expenses.

Irrespective of whether the 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 Closing is effected, the Company shall, at the Closing, reimburse the reasonable fees of one special counsel for the Investors not to exceed \$_____ and shall, upon receipt of a bill therefor, reimburse the reasonable out-of-pocket expenses of such counsel.

[COMMENT: The cap on the amount payable by the Company for the Investors' special counsel sometimes covers fees and expenses. When additional experts (e.g., patent lawyers) are used, the parties negotiate as to who will bear such fees and expenses.]

6.10 Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the Investors' Rights Agreement, any Ancillary Agreement or the Restated Certificate, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and disbursements in addition to any other relief to which such party may be entitled.

6.11 Amendments and Waivers.

Any term of this Agreement may be amended and the observance of any term of this Agreement 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 50% of the Common Stock not previously sold to the public that is issued or issuable upon conversion of the Series A Preferred Stock. Any amendment or waiver effected in accordance with this Paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities have been converted), each future holder of all such securities, and the Company.

[COMMENT: Prior to the advent of the separate registration or investors' rights agreement, the amendment provision was one of the most critical provisions in every venture capital purchase agreement, since it was the rare registration rights provision that never required modification or waiver. Failure to include an amendment and waiver provision meant that the Company had to get each Investor's (or transferee's) consent before an amendment or waiver would bind such Investor.]

6.12 Severability.

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

6.13 [STATE] Corporate Securities Law.

THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF [STATE] AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION FOR SUCH SECURITIES PRIOR TO SUCH QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION [SECTION(S) NO.(S)] OF THE [STATE] CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

6.14 Effect of Amendment or Waiver.

Each Investor acknowledges that by the operation of Paragraph 6.9 hereof the holders of more than fifty per-

cent (50%) of the Common Stock not previously sold to the public that is issued or issuable upon conversion of the Series A Preferred Stock will have the right and power to diminish or eliminate all rights of such Investor under this Agreement.

6.15 Rights of Investors.
Each holder of Series A Preferred Stock (and Common Stock issued upon conversion thereof) shall have the absolute right to exercise or refrain from exercising any right or rights that such holder may have by reason of this Agreement or any Series A Preferred Stock, including without limitation the right to consent to the waiver of any obligation of the Company under this Agreement and to enter into an agreement with the Company for the purpose of modifying this Agreement or any agreement effecting any such modification, and such holder shall not incur any liability to any other holder or holders of Series A Preferred Stock (or Common Stock issued upon exercise thereof) with respect to exercising or refraining from exercising any such right or rights.

6.16 Exculpation Among Investors.
Each Investor acknowledges that such Investor 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 Investor agrees that no Investor nor the respective controlling persons, officers, directors, partners, agents, or employees of any Investor shall be liable for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the Series A Preferred Stock (and Common Stock issued upon conversion thereof).

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

HI-TECH CORPORATION

By: A. B. Cole, President

Address:

INVESTORS:

By:

Title:

Address:

By:

Title:

Address:

By:

Title:

Address: