**[Company Name]**

**Series First Agreement**

In exchange for the payment of the Investment Amount by the Investor, the Company will issue the number of Series First Shares listed below to the Investor according to this Series First Agreement (“**Agreement**”) as of the Effective Date. This Agreement is based on one of the forms available at <https://seriesfirst.com> without modification except to fill in blanks and bracketed terms. Capitalized terms used and not otherwise defined in this Agreement have the meanings in the table below.

Key terms and definitions:

|  |  |
| --- | --- |
| **Effective Date**: |  |
| **Company**: |  |
| **Investor**: |  |
| **Investment Amount**: |  |
| **Post-Money Valuation**: |  |
| **Post-Money Incentive Pool (%)**: |  |
| **Price per Share**: |  |
| **Number of Series First Shares**: |  |

1. **Certificate of Incorporation**. On or before the Effective Date, the Company filed the Amended and Restated Certificate of Incorporation as attached at **Exhibit A** (the “**Restated Certificate**”). The Restated Certificate authorizes the Company to issue up to shares of Series First Preferred Stock (the “**Series First Shares**”).
2. **Stock Certificate**. Within a commercially reasonable time following the Effective Date, if required by the Company’s governing documents, the Company will deliver to the Investor a certificate representing the Shares purchased by the Investor against payment of the Investment Amount as directed by the Company.
3. **Company Representations**.
   1. The Company is a corporation duly organized, validly existing, and in good standing under the laws of its state of incorporation, and has the power and authority to own, lease, and operate its properties and carry on its business as now conducted.
   2. The capital of the Company consists of the following as of [DATE]:

|  |  |
| --- | --- |
| **Common Stock** |  |
| Authorized: |  |
| Issued and outstanding: |  |
| Reserved for equity incentive pool (e.g., options): |  |
| Issued as equity incentive (e.g., issued options): |  |
| Reserved for conversion of Series First Shares: |  |
| **Preferred Stock** |  |
| Series First Shares authorized: |  |
| Series First Shares issued and outstanding: |  |

* 1. There are no outstanding preemptive rights, options, warrants, conversion rights, rights of first refusal, or similar rights to purchase or acquire any securities from the Company including, for example, any shares of common stock, preferred stock, or any securities convertible into or exchangeable or exercisable for shares of common stock or preferred stock, except for: (a) the conversion rights of the Series First Shares according to the Restated Certificate, and (b) the rights in this Agreement. All of the outstanding shares of capital stock have been duly authorized, are fully paid and nonassessable, and were issued in material compliance with applicable securities laws.
  2. The Series First Shares, when issued, sold, and delivered according to this Agreement, will be duly authorized, validly issued, fully paid, and nonassessable and free of restrictions on transfer other than restrictions on transfer under this Agreement, applicable state and federal securities laws, and liens or encumbrances created by or imposed by the Investor. Based in part on the accuracy of the representations of the Investor in Section 4 and subject to compliance with Securities Act of 1933, as amended (the “**Securities Act**”), and applicable state securities laws, the offer, sale, and issuance of the Series First Shares and the issuance of common stock, if any, upon conversion of the Series First Shares according to the Restated Certificate, will comply with all applicable federal and state securities laws. Common stock issuable upon conversion of the Series First Shares has been duly reserved for issuance, and upon issuance according to the Restated Certificate, will be duly authorized, validly issued, fully paid, and nonassessable and free of restrictions on transfer other than restrictions on transfer under this Agreement, applicable federal and state securities laws, and liens or encumbrances created by or imposed by the Investor.
  3. The execution, delivery, and performance by the Company of this Agreement is within the power of the Company and has been duly authorized by all necessary actions on the part of the Company (subject to Section 3.7). This Agreement constitutes a legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency, or other laws of general application relating to or affecting the enforcement of creditors’ rights generally and general principles of equity. To its knowledge, the Company is not in violation of: (a) its Restated Certificate or bylaws, (b) any material statute, rule, or regulation applicable to the Company, or (c) any material debt or contract to which the Company is a party or by which it is bound, where, in each case, a violation or default, individually, or together with all violations or defaults, could reasonably be expected to have a material adverse effect on the Company.
  4. The performance and consummation of the transactions contemplated by this Agreement do not and will not: (a) violate any material judgment, statute, rule or regulation applicable to the Company, (b) result in the acceleration of any material debt or contract to which the Company is a party or by which it is bound, or (c) result in the creation or imposition of any lien on any property, asset, or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license, or authorization applicable to the Company, its business, or operations.
  5. No consents or approvals are required in connection with the performance of this Agreement other than the Company’s corporate and stockholder approvals and any qualifications or filings under applicable securities laws.
  6. To its knowledge, the Company owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes, and other intellectual property rights necessary for its business as now conducted and as currently proposed to be conducted, without any conflict with, or infringement of the rights of, others.

1. **Investor Representations**.
   1. The Investor has full legal capacity, power, and authority to execute and deliver this Agreement and to perform its obligations under it. This Agreement constitutes a legal, valid, and binding obligation of the Investor, enforceable against the Investor in accordance with its terms, except as limited by bankruptcy, insolvency, or other laws of general application relating to or affecting the enforcement of creditors’ rights generally and general principles of equity.
   2. The Investor is an accredited investor as defined in Rule 501 of Regulation D under the Securities Act. The Investor understands that this Agreement and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from registration is available. The Investor is purchasing the Series First Shares for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution of them, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the Series First Shares. The Investor has the knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of the investment, is able to incur a complete loss of the investment without impairing the Investor’s financial condition and is able to bear the economic risk of the investment for an indefinite period of time.
   3. If the Investor is not a United States person (as defined by Section 7701(a)(30) of Internal Revenue Code of 1986, as amended), the Investor hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Series First Shares or any use of this Agreement, including: (a) the legal requirements within its jurisdiction for the purchase of the Series First Shares, (b) any foreign exchange restrictions applicable to the purchase, (c) any governmental or other consents that may need to be obtained, and (d) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of the Series First Shares. The Investor’s subscription and payment for and continued beneficial ownership of the Series First Shares will not violate any applicable securities or other laws of the Investor’s jurisdiction.
   4. The Investor understands that the Series First Shares and any securities issued in respect of or exchange for the Series First Shares, may bear any one or more of the following legends: (a) any legend required by the securities laws of any state to the extent applicable to the Series First Shares, and (b) the following or substantially similar legends:

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

“THE SECURITIES REPRESENTED THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE COMPANY.”

1. **Next Financing Rights**. If the Company issues preferred stock in its next equity financing after the Effective Date (the “**Next Financing**”) that: (a) have rights that are more favorable than the terms of the Series First Shares, or (b) provide all future investors in the Next Financing other contractual terms such as registration rights, the Company will provide substantially equivalent rights to the Investor according to the documents executed by investors in the Next Financing, including, as applicable, investor rights, co-sale, voting, and other agreements (the “**Next Financing Documents**”), other than the per share liquidation preference, conversion price, and dividend rights, which will be based on the Price per Share. Notwithstanding anything in this Agreement to the contrary, upon the execution and delivery of the Next Financing Documents by investors holding a majority of the then outstanding Series First Shares held by all investors, this Agreement (excluding any then-existing and outstanding obligations) will be amended and restated by and into the Next Financing Documents and will be terminated and of no further force or effect.
2. **Transfer Restrictions**. The Investor and each person or entity owning of record the Series First Shares, or shares of common stock issued or issuable on conversion of the Series First Shares and any shares of common stock issued as a dividend or other distribution with respect to the foregoing or in exchange or in replacement of the foregoing (collectively, the “**Securities**”) or any assignee of record of Securities (each a “**Holder**”) will not make any disposition of all or any portion of any Securities unless: (a) there is then in effect a registration statement under the Securities Act covering the proposed disposition and the disposition is made in accordance with the registration statement, (b) to the Holder’s estate, heirs, executors, administrators, guardians or successors upon the Holder’s death or disability, or to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Holder, including, for example, any general partner, managing member, officer or director of the Holder, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, the Holder, or (c) the Holder has notified the Company of the proposed disposition and has furnished the Company with a statement of the circumstances surrounding the proposed disposition, and, at the expense of the Holder or its transferee, with an opinion of counsel, reasonably satisfactory to the Company, that the disposition will not require registration of the Securities under the Securities Act.
3. **Miscellaneous**
   1. **Entire Agreement; Amendment**. This Agreement constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications among the parties. It may be amended, waived, or modified by written consent of the Company and either (a) the Investor, or (b) investors holding a majority of the then outstanding Series First Shares held by all investors except that: (i) the Investment Amount may not modified in this manner, (ii) the consent of all Investors must be solicited even if not obtained, and (iii) any amendment, waiver, or modification treats all investors in the same manner.
   2. **Notices**. Any notice required or permitted by this Agreement will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at the party’s address listed on the signature page, as subsequently modified by written notice.
   3. **Severability**. If any part of this Agreement is held to be unenforceable: (a) that part must be deemed amended to achieve as nearly as possible the same economic effect as the original part, and (b) the rest of this Agreement remains fully enforceable.
   4. **Governing Law; Jurisdiction**. [NAME OF STATE] law governs all claims relating to this Agreement without regard for any choice-of-law rules that might direct the application of the laws of any other jurisdiction. Exclusive jurisdiction must lie with the state or federal courts in [NAME OF STATE] for all actions or proceedings arising out of or relating to this Agreement.
   5. **Interpretation**. Section headings are included for convenience only and do not affect the interpretation of this Agreement. This Agreement must be construed as if drafted jointly by the parties after meaningful negotiations. Any rule of construction that a document is to be construed against the drafting party may not be applied to this Agreement.
   6. **Further Assurances**. Each of the parties to this Agreement will use commercially reasonable efforts to, and will cause its respective affiliates to use their commercially reasonable efforts to, from time to time at the request and sole expense of the other party, without any additional consideration, furnish the other party further information or assurances; execute and deliver additional documents, instruments, and conveyances; and take other actions and do other things, as may be reasonably necessary to carry out the terms of this Agreement and give effect to the transactions contemplated by it.
   7. **Attorneys’ Fees**. In any dispute that arises out of the relationship of the parties, including tort claims, the prevailing party will be entitled to attorneys’ fees and costs.
   8. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which is considered an original, but all of which together constitute the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, including, for example, Docusign) or other substantially similar transmission method and any counterpart so delivered is deemed to have been duly and validly delivered and valid and effective for all purposes.
   9. **Spousal Consent**. Reference in this Agreement to the Securities includes any community property, dower, curtesy, or like interest of an Investor’s Spouse, if any, in the Securities. The Spouse of an Investor must sign the Spousal Consent attached to this Agreement concurrently with the Investor’s signature, or within 30 days of becoming a Spouse of an Investor in the future. “**Spouse**” means a spouse, registered domestic partner, or other partner of an Investor with community property, dower, curtesy, or rights substantially similar to the rights of a spouse.

Signed as of the Effective Date:

|  |  |
| --- | --- |
| Company: | Investor: |
| Name:    By:  Name:  Title:  Address:      Email: | Entity Name (if any):  By:  Name:  Title:  Address:      Email: |

**Spousal Consent**

I am the Spouse of (“**Investor**”). I acknowledge that I have read, understand, and approve the Series First Agreement between , a   
 corporation and the Investor, dated as of (the “**Agreement**”).

Defined terms used in this consent but not defined in it have the meaning given them in the Agreement.

I hereby agree that I and any interest, including any community property interest, that I may have in any Securities subject to the Agreement are irrevocably bound by the Agreement, including any restrictions on the transfer or other disposition of any Securities. I hereby appoint the Investor as my attorney-in-fact with respect to the exercise of any rights and obligations under the Agreement.

This consent is binding on my executors, administrators, heirs, and assigns. I agree to execute and deliver any documents necessary to carry out the intent of the Agreement and this consent.

I am aware that the legal, financial, and related matters contained in the Agreement and this consent are complex and that I am free to seek independent professional guidance or counsel with respect to this consent. I have either sought that guidance or counsel or determined after reviewing the Agreement and this consent carefully that I will waive that right. I am under no disability or impairment that affects my decision to sign this consent and I knowingly and voluntarily intend to be legally bound by this consent.

Signed as of: :

|  |  |
| --- | --- |
|  | **Signature of Spouse**:  By:    Print Name |

**Exhibit A**

**Restated Certificate**

(Attached)