**\*\*\*\*CAUTION: FORM DOCUMENT\*\*\*\*\***

**This is a sample or form document, and is to be used as a guide only. One size does not fit all. Any corporation contract should be tailored to the corporation’s needs. Anyone wishing to use this form document should only do so with the advice of legal counsel.**

Shareholders Agreement

This Shareholders Agreement ("Agreement"), dated as of \_\_\_\_\_\_\_\_\_\_ \_\_\_\_, \_\_\_\_, is entered into by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, an Ohio for profit corporation ("Corporation") and the Persons whose names, addresses and taxpayer identification numbers are listed on Schedule I attached hereto (each a "Shareholder" and collectively the "Shareholders").

RECITALS

1. WHEREAS, the authorized capital stock of the Corporation consists of one thousand five hundred (1,500) shares ("Shares") of common stock, no par value ("Common Stock"), \_\_\_\_\_\_\_\_\_\_ (\_\_\_\_) shares of which are issued and outstanding.
2. WHEREAS, as of the date stated above, the Shareholders are the holders of that number of issued and outstanding shares of Common Stock as detailed in Schedule II, and such Schedule sets forth any shares reserved for future issuance.
3. WHEREAS, the Shareholders and the other parties hereto deem it in their best interests and in the best interests of the Corporation to set forth in this Agreement their respective rights and obligations in connection with their investment in the Corporation.
4. NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

# Management and Operation of the Corporation

## **Board of Directors.**

### The Shareholders agree that the business and affairs of the Corporation shall be managed through a board of directors ("Board") consisting of three (3) members (each, a "Director"). The Board shall consist of (i) one (1) Director appointed by Person(s) listed on Schedule I as founding Shareholder(s) ("Founder Director"), (ii) a second director appointed by Person(s) listed on Schedule I as founding Shareholder(s) ("Second Founder Director"), and (iii) one (1) Director as agreed upon by the Founder Director and the Second Founder Director ("Independent Director"). The following individuals are hereby elected as the initial Directors and will continue to serve as Directors until the earlier of their resignation, death or removal:

#### \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Founder Director);

#### **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (Second Founder Director; and

#### \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Independent Director).

#### Except as otherwise set forth in this Agreement, the election and removal of Directors, and the process by which the Board acts, shall be as set forth in the Corporation’s Code of Regulations as then in effect.

### OSIF, at its sole expense and discretion, may appoint one representative ("Observer") to attend and participate in all meetings of the Board in a non-voting observer capacity. The Observer shall be entitled to receive copies of all notices, minutes, written consents, and other materials that the Corporation provides to members of the Board ("Board Materials"). In the sole discretion of the Board, the Corporation may withhold from the Observer certain privileged information or materials furnished or made available to the Board and may exclude the Observer from executive sessions of the Board. OSIF, on behalf of itself and the Observer, agrees that, to the extent permitted by law, it shall hold in strict confidence all information and materials that it may receive or be given access to in connection with meetings of the Board.

### Any Director of the Corporation may resign at any time by giving written notice to the President or Secretary of the Corporation. A resignation shall take effect at the time specified therein and, unless otherwise specified therein, shall become effective upon delivery. The acceptance of any resignation shall not be necessary to make it effective unless so specified in the resignation.

### Any vacancy or vacancies in the Board of Directors shall be filled pursuant to Section 1.01(a) above.

### Nothing in this Section 1.01 shall affect or supersede any such restrictions imposed on a Director by any other contract or agreement to which both the Corporation and/or any of its Affiliates, and such Director are a party, including any employment agreement between the Corporation and the Director if the Director is also an Officer or employee of the Corporation.

## **Meetings of the Board of Directors.**

### The Board will meet no less than four (4) times a year at such times and in such places in Ohio as the Board shall designate from time to time. In addition to the regular meetings contemplated by the foregoing sentence, special meetings of the Board may be called by the Chairman of the Board, the President, any Director, or any Shareholder or group of Shareholders holding at least 20% of the Common Stock on no less than five (5) business days prior written notice of the time, place and agenda of the meeting.

### The Directors may participate in any meeting of the Board by means of video conference, teleconference or other similar communications equipment by means of which all persons participating in the meeting can both speak and hear each other, and such participation shall constitute such Director’s presence in person at the meeting.

### The presence of a majority of Directors then in office shall constitute a quorum. If a quorum is not achieved at any duly called meeting, such meeting may be postponed by a majority of those present to a time no earlier than two (2) business days after written notice of such postponement has been given to the Directors.

### Unless otherwise restricted by this Agreement, any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if: (i) all Directors consent thereto in writing or by electronic transmission, and (ii) the writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors.

## **Decisions of the Board**

### Decisions of the Board within its scope of authority shall be binding upon the Corporation and each Shareholder. Except where approval of the Shareholders is expressly required by this Agreement or by non-waivable provisions of applicable law, the Board shall have full and complete authority, power and discretion (including power to delegate powers and duties to the Officers) to manage and control the business, affairs and properties of the Corporation, to make all decisions regarding the business, affairs and properties of the Corporation and to perform any and all other acts and activities customary or incident to the management of the Corporation’s business, including:

### preparing, or contracting for the preparation of, all requisite reports on behalf of the Corporation;

### acquiring by purchase, lease or otherwise, any real or personal property, tangible or intangible;

### selling, disposing, trading, or exchanging Corporation assets in the ordinary course of the Corporation’s business;

### authorizing agreements and contracts and giving receipts, releases, and discharges;

### pledging material assets of, and borrowing money for and on behalf of, the Corporation;

### purchasing liability and other insurance to protect the Corporation’s properties and business;

### making any and all expenditures which the Board, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Corporation and the carrying out of its obligations and responsibilities under this Agreement, including all legal, accounting and other related expenses incurred in connection with the organization and financing and operation of the Corporation;

### employing, terminating, appointing, renewing or extending the employment of, or entering into or amending an employment agreement (or committing the Corporation to do any of the foregoing) with any person;

### entering into any kind of activity necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Corporation;

### directly or indirectly declaring or making any dividends or distributions upon any of the Shares or other equity securities;

### directly or indirectly redeeming, purchasing or otherwise acquiring any of the Shares or any other equity securities, except as expressly provided otherwise by this Agreement;

### authorizing, issuing or entering into any agreement providing for the issuance (contingent or otherwise) of (A) any notes or debt securities containing equity features (including any notes or debt securities convertible into or exchangeable for equity securities, issued in connection with the issuance of equity securities or containing profit participation features), or (B) any Shares or other equity securities (or any securities convertible into or exchangeable for any Shares or other equity securities), except as expressly provided otherwise by this Agreement;

### issuing options or other equity interests to employees, consultants, or Officers of the Corporation provided, however, that for Officers who are also Directors, such compensation is subject to Section 1.06 of this Agreement; and,

### directing or delegating any Person to take all actions and execute all documents or instruments as are necessary to carry out the intentions and purposes of the above duties and powers.

## **Officers.**

### The Shareholders agree that the day to day operations shall be conducted by duly elected Officers. The Corporation shall have a president, treasurer and secretary, and the same person may hold more than one officer position at the same time. These offices shall initially be filled as follows:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ President

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Treasurer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Secretary

### Officers may be removed for any reason upon a majority vote of the Board of Directors.

## **Shareholder Action Without a Meeting**.

### Any action that must or may be taken at a Shareholders’ meeting may be taken by written consent of each person entitled to vote on that action. Action by written consent is deemed taken by unanimous vote.

### To be valid, a notice of written consent shall describe the action to be taken and bear the signature of the person whose consent is given. Persons giving written consent need not all sign the same writing. If more than one consent form is used, each shall bear an identical description of the action to be taken.

### The original consent form or forms that support an action shall be placed in the Corporation’s minute book.

## **Supermajority Shareholder Approval.**

### Except as otherwise provided in this Agreement, wherever this Agreement requires the consent or approval of the Shareholders, the affirmative vote of the Shareholders holding at least a majority of the Shares then outstanding held by Shareholders shall be required to approve the matter.

### Notwithstanding any provision of applicable Ohio law to the contrary, unless waived in writing by all of the Shareholders, (i) an affirmative vote of the Shareholders holding at least two-thirds in interest of the Shares then outstanding at a meeting which is held pursuant to proper call and notice or (ii) the unanimous written consent signed by all Shareholders pursuant to Section 1.05 shall be required to:

#### Amend the Articles of Incorporation or Code of Regulations of the Corporation;

#### Amend, modify, supplement or terminate this Agreement, subject to Section7.09;

#### Remove a Director with cause from the Board of Directors;

#### Authorize the lease, sale, exchange, transfer or other disposition of the Corporation pursuant to which the purchaser or purchasers acquire equity securities of the Corporation constituting a majority of the voting securities of the Corporation (whether by merger, consolidation, sale or transfer of the equity securities or otherwise) (a "Change-in-Control Sale");

#### Authorize the lease, sale, exchange, transfer or other disposition of all, or substantially all, of the Corporation’s assets determined on a consolidated basis, including the sale or other transfer, however effected, of a majority in interest of the voting securities, or substantially all the assets, of any subsidiary of the Corporation which constitutes substantially all of the Corporation’s assets determined on a consolidated basis (an "Asset Sale");

#### Adopt an agreement of merger, stock purchase, asset purchase, or consolidation on behalf of the Corporation with any other corporation;

#### Advance, lend or contribute to the capital of another person any funds of the Corporation;

#### Set compensation and issue options or other equity interests to Directors;

#### Authorize the sale, exchange, transfer, assignment or disposition of any Shareholder’s interest in the Corporation except to a Permitted Transferee;

#### Issue any equity securities of the Corporation, except to a person who is a bona fide third-party subject to Section 3.01 and except for the securities exempted in Section 3.01 from the definition of New Securities;

#### Dissolve, liquidate and wind up the Corporation, or commence an action seeking to accomplish the same, except as otherwise provided in this Agreement; and,

#### Create a subsidiary.

## **Other Business Interests and Conflicts of Interest**

### Each Shareholder understands and acknowledges that the conduct of the Corporation’s business may involve business dealings and undertakings with Directors, Shareholders and their Affiliates. With the approval of the disinterested members of the Board and the consent of the disinterested Shareholders holding a majority-in-interest of the Shares held by all disinterested Shareholders, the Corporation may contract with any of the Directors, Shareholders or their Affiliates for the purchase of goods and services for the benefit of the Corporation at any time provided that the compensation paid to such Person shall be commensurate with rates prevailing for such services at the time such services are performed in the city in which the Corporation is headquartered, and any charges so incurred shall be deemed expenses of the Corporation. With the consent of the disinterested Shareholders holding a majority-in-interest of the Shares held by all disinterested Shareholders, the Corporation shall have the authority to enter into any transaction despite the fact that another party to the transaction may be (a) a trust of which a Shareholder is a trustee or beneficiary; (b) an estate of which a Shareholder is a personal representative or beneficiary; (c) a business controlled by one or more Shareholders or a business of which any Shareholder is also a director, officer, partner, member, manager or employee; (d) any Affiliate, employee, stockholder, associate, manager, partner, or business associate or any Shareholder; (e) any Shareholder, acting individually; or (f) any relative of a Shareholder; provided the terms of the transaction are no less favorable than those the Corporation could obtain from unrelated third parties in the city in which the Corporation is headquartered.

# Transfer of Equity

## **General Restrictions on Transfer.**

### Except as permitted pursuant to Section 2.01(b) or in accordance with the procedures described in Section 2.02, Section 2.03 or Section 2.04, each Shareholder agrees that while this Agreement is in force, such Shareholder will not, directly or indirectly, voluntarily or involuntarily sell, hypothecate, pledge, assign, or otherwise transfer any of such Shareholder’s Common Stock.

### The provisions of Section 2.01(a), Section 2.02, Section 2.03 and Section 2.04 shall not apply to any of the following transfers by any Shareholder of any of its Common Stock ("Permitted Transferee") provided, in each case, the Permitted Transferee has agreed to become a party to the Agreement and has executed and delivered to the Corporation a counterpart of this Agreement:

#### with respect to the Ohio State Innovation Foundation ("OSIF"), to any affiliate of OSIF;

#### with respect to each Shareholder other than OSIF, to a member of an individual Shareholder’s immediate family, the immediate family of such Shareholder’s spouse, or a trust, the beneficiaries of which are exclusively the Shareholder and/or one or more of such Shareholder’s immediate family or the immediate family of such Shareholder’s spouse (for purposes hereof, a person’s "immediate family" includes such person’s spouse, lineal descendants, father, mother, grandfather, grandmother, brother(s) or sister(s)); and,

#### with respect to the Shareholders, pursuant to a merger, consolidation or other business combination of the Corporation with a third party purchaser that has been approved in compliance with Section 1.06.

### In addition to any legends required by applicable law, each certificate representing the Common Stock of the Corporation shall bear a legend substantially in the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A SHAREHOLDERS AGREEMENT (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION). NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH SHAREHOLDERS AGREEMENT AND (A) PURSUANT TO A REGISTRATION STATEMENT EFFECTIVE UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER. THE HOLDER OF THIS CERTIFICATE, BY ACCEPTANCE OF THIS CERTIFICATE, AGREES TO BE BOUND BY ALL OF THE PROVISIONS OF SUCH SHAREHOLDERS AGREEMENT."

### Prior notice shall be given to the Corporation by the transferor of any transfer (whether or not to a Permitted Transferee) of any Common Stock. Prior to consummation of any transfer by any Shareholder of any of its Common Stock, such party shall cause the transferee thereof to execute and deliver to the Corporation a joinder agreement and agree to be bound by the terms and conditions of this Agreement. Upon any transfer by any Shareholder of any of its Common Stock, in accordance with the terms of this Agreement, the transferee thereof shall be substituted for, and shall assume all the rights and obligations under this Agreement of, the transferor thereof.

### Any transfer or attempted transfer of any Common Stock in violation of this Agreement shall be null and void; no such transfer shall be recorded on the Corporation’s books; and the purported transferee in any such transfer shall not be treated (and the purported transferor shall continue be treated) as the owner of such Common Stock for all purposes of this Agreement.

## **Right of First Refusal.**

### Any Shareholder who intends to sell, assign, transfer or otherwise dispose of all or part of his or her Shares ("Selling Shareholder"), except as provided in Section 2.01(b) shall give written notice of such intention to the Corporation, which notice shall include the number of shares proposed for sale or transfer, the name of the proposed transferee, the proposed purchase price per Share, the terms of payment of such purchase price and all other matters relating to such sale ("Sale Notice"). Such Sale Notice shall constitute a binding offer by the Selling Shareholder to sell to the Corporation such number of Shares then held by the Selling Shareholder as are proposed to be sold in the Sale Notice.

### Within thirty (30) days after receipt of the Sale Notice from the Selling Shareholder, the Corporation shall give written notice to the Selling Shareholder as to whether such offer has been accepted by the Corporation. The Corporation may only accept such offer in whole and may not accept such offer in part. Such acceptance notice shall fix a time, location and date for the closing on such purchase ("Closing Date") which shall not be less than seven (7) nor more than thirty (30) days after the giving of the acceptance notice. The place for such closing shall be at the principal office of the Corporation or such other location agreed to by the parties. At such closing, the Selling Shareholder shall accept such payment as is due at closing and shall deliver to the Corporation, in exchange therefor, certificates for the number of Shares stated in the Sale Notice accompanied by duly executed instruments of transfer.

### If the Corporation shall fail to accept the offer within the thirty-day period or is otherwise prohibited by law or this Agreement from doing so, then the Shareholders other than the Selling Shareholder ("Buying Shareholders") shall have ten (10) days from the expiration of such notice period within which to accept in whole, but not in part, the offer of the Selling Shareholder, by giving to such Selling Shareholder written notice as set forth above of Buying Shareholders’ intent to purchase all, but not less than all, of the Shares proposed to be sold as provided in the notice to the Corporation and the Buying Shareholders, at the monetary price per Share and on the terms designated in the Sale Notice (such ten-day notice period being defined as the "Shareholder Notice Period"). Unless otherwise agreed between them, the purchase by the Buying Shareholders shall be pro rata to their then holdings of Shares, except that if one of the Buying Shareholders elects not to purchase any Shares, the remaining Buying Shareholders may purchase all of the Shares without consent of the non-purchasing Shareholders pro rata among them or in such other manner as they may agree. The place for such closing shall be at the principal office of the Corporation or such other location agreed to by the parties. At the closing of such purchase and sale, the Selling Shareholder shall accept such payment as is due at closing and shall deliver to the Buying Shareholders, in exchange therefor, certificates for the number of Shares stated in the Sale Notice accompanied by duly executed instruments of transfer.

### If the Corporation and the Buying Shareholders shall fail to accept any such offer, then the Selling Shareholder shall be free to sell all, but not less than all, of the Shares set forth in his or her notice to the designated transferee at a price and on terms no less favorable to the Selling Shareholder than described in the Selling Shareholder’s Sale Notice, providedthat such sale is consummated within sixty (60) days after the expiration of the Shareholder Notice Period, that the parties comply with the provisions set forth in Section 2.04 (if applicable), and further, provided that the transferee agrees to become a party to and be bound by the terms, conditions and restrictions set forth in this Agreement. Upon the expiration of such closing period, the provisions of this Section 2.02 shall again apply with respect to any proposed transfer of the Selling Shareholder’s Shares.

### The purchase price of any Shares to be acquired pursuant to this Section 2.02 shall be payable on the terms offered to the Selling Shareholder by the proposed transferee (provided, however*,* that the Corporation and the Shareholders shall not be required to meet any non-monetary terms of the proposed transfer, including, without limitation, delivery of other securities in exchange for the Shares proposed to be sold, including any consulting or similar agreements).

## Approved Sale.

### Upon the election by the holders of the voting Shares pursuant to Section 1.06 ("Electing Holders") to consummate a sale of the Corporation, an Asset Sale, a Change-in-Control Sale or a sale of the Electing Holders’ Shares of the Corporation (collectively, "Approved Sale") and provided that the purchaser is a bona fide third-party and the price, terms and condition for the Approved Sale of Shares are identical for each Shareholder, then:

#### Each Shareholder shall take all necessary or desirable action within such person’s control (including, without limitation, the removal and election of Directors, attendance at Shareholders’ meetings in person or by proxy for the purposes of obtaining a quorum and the execution of written consents in lieu of meetings) such that any proposal or resolution requested by such Electing Holders in connection therewith shall be implemented by the Corporation;

#### If the Shareholders are entitled to vote on any such matter, whether by law, under the Corporation’s articles or otherwise, all of the voting Shares over which such Shareholder has voting control shall be voted in favor of the proposal or resolution in connection with such Approved Sale Transaction;

#### Each Shareholder will consent to and raise no objections against such Approved Sale Transaction;

#### If such Approved Sale is structured as a sale of Shares, each Shareholder shall sell the Shares held by him, her or it on the terms and conditions approved by the Board and the Electing Holders; and,

#### Each Shareholder will take all action necessary and desirable in connection with the consummation of the Approved Sale Transaction, including, without limitation, the waiver of all appraisal rights available to any such Shareholder under applicable law.

### Each Shareholder will bear its pro rata share (based upon the number of Shares held on a fully diluted basis) of the cost of any sale of Shares pursuant to an Approved Sale Transaction to the extent such costs are incurred for the benefit of all Shareholders and are not otherwise paid by the Corporation or the acquiring party. Costs incurred by Shareholders on their own behalf will not be considered costs of the transaction hereunder.

### Notwithstanding the foregoing, a Shareholder (i) shall not be required to give disproportionately greater or more onerous representations, warranties, indemnities or covenants than the Electing Holders; (ii) shall only make representations, warranties, indemnities and covenants severally and in its capacity as a Shareholder concerning its valid ownership of shares of Common Stock of the Corporation, free of all liens, and its authority, power, and right to enter into and consummate such purchase and sale without violating any other agreements to which it is a party or its assets are bound; and, (iii) shall not be obligated to bear more than its pro rata share of any expenses or any indemnification liability up to the net cash proceeds received by such Shareholder in connection with the sale.

## **Right of Co-Sale.**

### If the Corporation does not elect its right of first refusal under Section 2.02(a) then, during the fifteen (15) day period following the Shareholder Notice Period (the fifteenth day being hereafter referred to as the "Cutoff Date"), each Shareholder choosing not to exercise his, her, or its right of first refusal as set forth in Section 2.02(b) (each a "Co-Sale Shareholder") shall have the right to sell to the purchaser named in the Sale Notice delivered pursuant to Section 2.02(a), upon the terms set forth in the Sale Notice, up to that number of Shares held by such selling Co-Sale Shareholder obtained by multiplying the number of Shares that the purchaser is willing to purchase by a fraction, the numerator of which is the number of Shares such selling Co-Sale Shareholder has proposed to sell to the purchaser, and the denominator of which is the number of Shares that all selling Co-Sale Shareholders and the Selling Shareholder have proposed to sell to the purchaser ( "Pro Rata Amount"). The selling Co-Sale Shareholder(s) exercising their rights pursuant to this Section 2.04 shall sell the number of Shares required to be sold by such selling Co-Sale Shareholder(s) pursuant to this Section 2.04(a), and the number of Shares to be sold to such purchaser by the Selling Shareholder shall be reduced accordingly.

### Any Co-Sale Shareholder electing to exercise his, her or its rights of co-sale ("Selling Co-Sale Shareholder") must notify the Selling Shareholder in writing before the close of business on the Cutoff Date, stating such Selling Co-Sale Shareholder’s intention to participate in the sale and specifying the number of shares such Selling Co-Sale Shareholder desires to sell ("Co-Sale Offered Shares"), provided that any Co-Sale Shareholder may waive his, her or its rights under this Section 2.04 prior to the expiration of such period by giving written notice to the Selling Shareholder, with a copy to the Corporation.

### Each Selling Co-Sale Shareholder shall sell, at the price per Share and on the terms set forth in the Sale Notice, a number of Shares held by such Selling Co-Sale Shareholder up to such Selling Co-Sale Shareholder’s Pro Rata Amount (as defined in Section 2.04(a)). Each Selling Co-Sale Shareholder which has so notified the Selling Shareholder prior to the Cutoff Date of its desire to sell Shares in the transaction shall be entitled to do so, subject to the terms as set forth in this Section 2.04(d); provided, however, that if such sale is not closed within ninety (90) days after the Cutoff Date, the Selling Shareholder shall not transfer Shares without again complying with the provisions of this Section 2.04. If the purchaser fails to purchase Shares from any Co-Sale Shareholder that has properly exercised its co-sale rights pursuant to this Section 2.04, then the Selling Shareholder shall not be permitted to consummate the proposed sale of the Selling Shareholder’s offered Shares, and any such attempted sale shall be null and void ab initio.

### Notwithstanding the foregoing, a Selling Co-Sale Shareholder (i) shall not be required to give disproportionately greater or more onerous representations, warranties, indemnities or covenants than the Selling Shareholder, (ii) shall only make representations, warranties, indemnities and covenants severally and in its capacity as a Shareholder concerning its valid ownership of shares of Common Stock of the Corporation, free of all liens, and its authority, power and right to enter into and consummate such purchase and sale without violating any other agreements to which it is a party or its assets are bound, and (iii) shall not be obligated to bear more than its pro rata share of any expenses or any indemnification liability up to the net cash proceeds received by such Selling Co-Sale Shareholder in connection with the sale.

# Preemptive Rights

## **Preemptive Rights.**

### Subject to the conditions set forth in Section 3.02, if the Corporation proposes to issue or sell any Shares whether now or hereafter authorized, or any securities or instruments convertible into, exchangeable for or exercisable for Shares, subject to Section 3.01(e) ("New Securities"), to any person, whether or not a Shareholder, then, not less than fifteen (15) days nor more than one hundred twenty (120) days prior to the consummation of such transaction, the Corporation shall give notice thereof ("Preemptive Rights Notice") to each Shareholder (individually, "Participating Shareholder," and collectively, "Participating Shareholders"). Each such Preemptive Rights Notice shall:

#### specify in reasonable detail (x) the number and type of New Securities which the Corporation proposes to issue or sell and (y) the time within which, the price at which, and all other material terms and conditions upon which, the Corporation proposes to issue or sell such New Securities; and

#### make explicit reference to this Section 3.01 and state that the right of each Participating Shareholder to purchase any of such New Securities under this Section 3.01 shall expire unless exercised within thirty (30) days of the Preemptive Rights Notice.

### Notwithstanding anything contrary to the foregoing, OSIF has the right to assign OSIF’s preemptive rights under this Agreement, in connection with an offering of New Securities, with any exercise of such assignment being evidenced by an executed assignment (of a form attached hereto as Exhibit A) filed with the Corporation and maintained in the corporate minute book. Upon OSIF’s exercise of such assignment right, the assignee and not OSIF shall be deemed the "Participating Shareholder" pursuant to Section 3.01 of this Agreement.

### Each Participating Shareholder shall have the right, in the nature of a preemptive right, but no obligation, to purchase up to all of its Preemptive Rights Pro Rata Amount (as defined below) of such New Securities as described in clause (a) above. As used herein, the term "Preemptive Rights Pro Rata Amount," as applied to any Participating Shareholder on any date, shall mean a fraction (expressed as a percentage), the numerator of which is the Shares of the Corporation then held by such Participating Shareholder and the denominator of which is the outstanding Shares of the Corporation, in each case, excluding the New Securities to be issued.

### Each Participating Shareholder must notify the Corporation within thirty (30) days of receiving the Preemptive Rights Notice, whether such Participating Shareholder desires to exercise its purchase rights under this Section 3.01 by executing and returning the form of acceptance provided with the Preemptive Rights Notice. The failure of any Participating Shareholder to provide such notice within such thirty (30) day period shall, for purposes of this Section 3.01, be deemed to constitute a waiver by such Participating Shareholder of its right to purchase any portion of the New Securities specified in such Preemptive Rights Notice. If a Participating Shareholder elects to purchase its Preemptive Rights Pro Rata Amount of the New Securities, it shall comply with the terms stated in the Preemptive Rights Notice.

### For purposes of this Section 3.01, “New Securities” shall exclude the following:

#### Common Stock issued pursuant to stock dividends, stock splits or similar transactions;

#### Up to \_\_\_\_\_\_\_\_ shares of Common Stock issued or issuable to employees, consultants or directors of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of the Corporation, or such greater number as may be reserved by the Board of the Corporation from time to time;

#### Common Stock or options or warrants to purchase Common Stock issued to financial institutions, equipment lessors, brokers or similar person in connection with commercial credit arrangements, equipment financings, commercial property lease transactions or similar transactions, the terms of which are approved by the Board;

#### Common Stock or options or warrants to purchase Common Stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by the Board; and,

#### Common Stock specifically excluded from the definition of “New Securities” by the affirmative vote or written consent of the holders of at least two-thirds in interest of the outstanding Shares and OSIF.

## Anti-Dilution. Corporation agrees that OSIF’s percentage interest in the Corporation shall not fall below **\_\_\_\_ % ("Percentage Threshold")** on a fully-diluted basis (and accounting for the reserved equity securities identified in the capitalization table, if any) until the Corporation receives investment, in the aggregate, by way of a single transaction or a series of transactions, an amount equal or exceeding **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_)** (the “Equity Financing Threshold”), regardless of whether any New Securities are excluded from the definition thereof pursuant to Section 3.01(e); provided that for purposes of this Section 3.02 only, a cash investment in exchange for convertible securities shall not constitute an Equity Financing at the time of issuance of such convertible securities but instead shall constitute an Equity Financing only at the time that (i) the convertible securities (other than convertible notes) are convertible or exchangeable into the equity securities that are substantially similar to the equity securities received by OSIF; and (ii) the convertible notes are converted into equity securities. In the  event the Corporation receives Equity Financing in a certain transaction, a portion of which (the “Applicable Portion”), when added to the prior aggregate amount of Equity Financing received by the Corporation, brings the total amount of Equity Financing received by the Corporation up to the Equity Financing Threshold and a portion of which (the “Excess Portion”), when added to the aggregate amount of Equity Financing received by the Corporation (inclusive of the Applicable Portion), brings the total amount of Equity Financing received by the Corporation above the Equity Financing Threshold, then the anti-dilution provisions contained in this Section 3.02 shall apply only to the Applicable Portion and not to the Excess Portion.

## An “Equity Financing” shall mean a cash investment in exchange for any equity securities subject to the limitations set forth in the preceding sentence. Simultaneous with the closing of any Equity Financing, the Corporation shall issue to OSIF for no additional consideration that additional number of equity securities necessary so that OSIF’s percentage interest in the Corporation shall be as set forth in the capitalization table set forth on Schedule II hereto.  Once the Corporation meets the Equity Financing Threshold, OSIF shall have the right to participate in any sales of New Securities pursuant to Section 3.01 of this Agreement, so as to maintain its then percentage interest in the Corporation.

## The term “fully-diluted basis” will be calculated to include (i) the number of shares of capital stock outstanding assuming conversion of all issued and outstanding securities convertible or exchangeable into capital stock, whether or not then exercisable, exchangeable or convertible; and (ii) the number of shares of capital stock that have been, or in the future may be, authorized or reserved for issuance or award under the Corporation’s stock option plan pool or other equity compensation plans.

## All equity securities issued to OSIF under this Section 3.02 will be considered fully paid, non-assessable, and have no requirement of contribution of any kind to the Corporation by OSIF.

# Information Rights

## **Financial Statements.** In addition to, and without limiting any rights that a Shareholder may have with respect to inspection of the books and records of the Corporation under applicable laws, the Corporation shall furnish to each Shareholder, as soon as available, and in any event within 120 days after the end of each Fiscal Year, the balance sheet of the Corporation as at the end of each such Fiscal Year and the statements of income, cash flows and changes in shareholders’ equity for such year.

## **Inspection Rights.**

### The Corporation shall, and shall cause its officers, Directors and employees to: (i) afford each Shareholder and the representatives of each such Shareholder, during normal business hours and upon reasonable notice, reasonable access at all reasonable times to its officers, employees, properties, offices and other facilities and to all books and records, and (ii) afford such Shareholder the opportunity to consult with its officers from time to time regarding the Corporation’s affairs, finances and accounts as each such Shareholder may reasonably request upon reasonable notice.

### The right set forth in Section 4.02(a) above shall not and is not intended to limit any rights which the Shareholders may have with respect to the books and records of the Corporation, or to inspect its properties or discuss its affairs, finances and accounts under the laws of the jurisdiction in which the Corporation is incorporated.

# Representations and Warranties

## **Shareholder Representations and Warranties.** Each Shareholder, severally and not jointly, represents and warrants to the Corporation and each other Shareholder that:

### For each such Shareholder that is not an individual, such Shareholder is a for-profit corporation, domestic corporation, business corporation or limited liability company duly organized, validly existing and in good standing under the laws of the state(s) of its incorporation.

### Such Shareholder has full capacity or corporate power and authority, as the case may be, to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action of such Shareholder. Such Shareholder has duly executed and delivered this Agreement.

### This Agreement constitutes the legal, valid and binding obligation of such Shareholder, enforceable against such Shareholder in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law). The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, require no action by or in respect of, or filing with, any governmental authority.

### The execution, delivery and performance by such Shareholder of this Agreement and the consummation of the transactions contemplated hereby do not: (i) conflict with or result in any violation or breach of any provision of any of the organizational documents of such Shareholder, (ii) conflict with or result in any violation or breach of any provision of any applicable law, or (iii) require any consent or other action by any person under any provision of any material agreement or other instrument to which the Shareholder is a party.

### Except for this Agreement, such Shareholder has not entered into or agreed to be bound by any other agreements or arrangements of any kind with any other party with respect to any Common Stock of the Corporation, including agreements or arrangements with respect to the acquisition or disposition of any such Common Stock or any interest therein or the voting of any Common Stock (whether or not such agreements and arrangements are with the Corporation or any other Shareholder).

### Subject to the other provisions of this Agreement, the representations and warranties contained herein shall survive the date of this Agreement and shall remain in full force and effect for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof).

## **Corporation Representations and Warranties.** The Corporation represents and warrants to each Shareholder that the capitalization table set forth in Schedule II shows all outstanding, committed, and reserved equity securities of the Corporation as of the Effective Date on a fully-diluted basis. Upon a Shareholder's request, the Corporation shall provide an updated capitalization table along with a certification from the Corporation's chief financial officer, or other person having the requisite knowledge, certifying the capitalization table's completeness and accuracy and identifying any equity holders who are employees of either the Corporation or The Ohio State University.

# Term and Termination

## **Termination.** This Agreement shall terminate upon the earliest of:

### an initial public offering of the Corporation, which generates proceeds of at least $10,000,000;

### the dissolution, liquidation, or winding up of the Corporation; and,

### upon the vote of the Shareholders as provided in Section 1.06.

## **Effect of Termination.**

### The termination of this Agreement shall terminate all further rights and obligations of the Shareholders under this Agreement except that such termination shall not effect:

#### the existence of the Corporation;

#### the obligation of any party to pay any amounts arising on or prior to the date of termination, or as a result of or in connection with such termination;

#### the rights which any Shareholder may have by operation of law as a shareholder of the Corporation; or

#### the rights contained herein which, but their terms are intended to survive termination of this Agreement.

# Miscellaneous

## **Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

## **Release of Liability.** In the event any Shareholder shall transfer all of the Common Stock held by such Shareholder in compliance with the provisions of this Agreement without retaining any interest therein, then such Shareholder shall cease to be a party to this Agreement and shall be relieved and have no further liability arising hereunder for events occurring from and after the date of such Transfer.

## **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (costs prepaid), (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the Company at its then principal office and respective Shareholders at the address on the records of the Corporation and, initially, as set forth on Schedule I.

## **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

## **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

## **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

## **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

## **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

## **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by: (i) approval of Shareholders pursuant to Section 1.06(b)(ii), or an agreement in writing signed by each Shareholder or their respective successors hereto; and (ii) approval of the Corporation’s Board of Directors; provided, however, that no such amendment, modification or supplement may create an additional liability or obligation of any Shareholder or remove a right, or create a disproportionate adverse effect on any Shareholder, without the prior written consent of such Shareholder; provided, further, that Sections 1.01(b), 2.04, 3.01 and 3.02 may not be amended, modified or supplemented without the prior written approval of OSIF. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio.

## **Jurisdiction.**

### Any action, suit or proceeding in respect of or arising from or out of this Agreement or the transactions contemplated hereby shall be prosecuted as to any one or more of the parties hereto exclusively in Franklin County, Ohio.

### Each party hereto consents to the exercise of jurisdiction over the Shareholder’s person by any court situated in Franklin County, Ohio and having jurisdiction over the subject matter of any action, suit or proceeding arising from or out of or in respect of this Agreement or the transactions contemplated hereby.

### Adequate notice of any such action, suit or proceeding in any such court shall conclusively be deemed to have been given to any or more of the parties hereto against whom the same is instituted if given in accordance with the provisions of Section 7.03 or by any other means consistent with due process of applicable law.

## **Equitable Remedies.** Each party hereto acknowledges that the other parties hereto would be irreparably damaged in the event of a breach or threatened breach by such party of any of its obligations under this Agreement and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, each of the other parties hereto shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to an injunction from a court of competent jurisdiction (without any requirement to post bond) granting such parties specific performance by such party of its obligations under this Agreement. In the event that any party files a suit to enforce the covenants contained in this Agreement (or obtain any other remedy in respect of any breach thereof), the prevailing party in the suit shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, including reasonable attorney’s fees and expenses.

## **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

|  |  |
| --- | --- |
|  | **CORPORATION:**    [CORPORATION NAME] |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**SHAREHOLDERS:**

|  |  |
| --- | --- |
|  |  |
|  | Ohio State Innovation Foundation  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Name) |

|  |  |
| --- | --- |
|  |  |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Name) |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Name) |

**Schedule I**

**List of Shareholders**

1. **FOUNDING SHAREHOLDER(S)**

[Name]

[Address]

[Tax ID]

1. **REMAINING SHAREHOLDER(S)**

**Schedule II**

**Capitalization Table**

**Exhibit A**

**Assignment of Preemptive Rights Agreement Attached**