

# FOUNDRY GROUP VOTING AGREEMENT

\_\_\_\_\_, INC.

## VOTING AGREEMENT

**This Voting Agreement** (the “**Agreement**”) is made and entered into as of \_\_\_\_\_, by and among \_\_\_\_\_, a \_\_\_\_\_ corporation (the “**Company**”), those certain holders of the Company’s Common Stock listed on Exhibit A hereto (the “**Key Holders**”) and the persons and entities listed on Exhibit B hereto (the “**Investors**”).

### Witnesseth

**Whereas**, the Key Holders are the beneficial owners of an aggregate of \_\_\_\_\_ shares of the common stock of the Company (the “**Common Stock**”);

**Whereas**, the Investors are purchasing shares of the Company’s Series A Preferred Stock (the “**Series A Stock**” or “**Preferred Stock**”), pursuant to that certain Series A Preferred Stock Purchase Agreement (the “**Purchase Agreement**”) of even date herewith (the “**Financing**”); and

**Whereas**, the obligations in the Purchase Agreement are conditioned upon the execution and delivery of this Agreement; and

**Whereas**, in connection with the consummation of the Financing, the Company, the Key Holders and the Investors have agreed to provide for the future voting of their shares of the Company’s capital stock as set forth below.

**Now, Therefore**, in consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## AGREEMENT

### 1. Voting.

#### 1.1 Key Holder Shares; Investor Shares.

(a) The Key Holders each agree to hold all shares of voting capital stock of the Company registered in their respective names or beneficially owned by them as of the date hereof and any and all other securities of the Company legally or beneficially acquired by each of the Key Holders after the date hereof (hereinafter collectively referred to as the “**Key Holder Shares**”) subject to, and to vote the Key Holder Shares in accordance with, the provisions of this Agreement.

(b) The Investors each agree to hold all shares of voting capital stock of the Company (including but not limited to all shares of Common Stock issued or issuable upon conversion of the Preferred Stock) registered in their respective names or beneficially owned by them as of the date hereof and any and all other securities of the Company legally or beneficially acquired by each of the Investors after the date hereof (hereinafter collectively referred to as the “Investor Shares”) subject to, and to vote the Investor Shares in accordance with, the provisions of this Agreement.

1.2 **Election of Directors.** On all matters relating to the election and removal of directors of the Company, the Key Holders and the Investors agree to vote all Key Holder Shares and Investor Shares held by them (or the holders thereof shall consent pursuant to an action by written consent of the holders of capital stock of the Company) so as to elect members of the board of directors of the Company (the “**Board**”) as follows:

(a) At each election of or action by written consent to elect directors in which the holders of Series A Stock, voting as a separate class, are entitled to elect a director of the Company, the Investors shall vote all of their respective Investor Shares so as to elect one (1) individual designated by \_\_\_\_\_ (“**Foundry**”), which individual shall initially be \_\_\_\_\_. Any vote taken to remove any director elected pursuant to this Section 1.2(a), or to fill any vacancy created by the resignation, removal or death of a director elected pursuant to this Section 1.2(a), shall also be subject to the provisions of this Section 1.2(a). Upon the request of any party entitled to designate a director as provided in this Section 1.2(a), each Investor agrees to vote its Investor Shares for the removal of such director.

(b) At each election of directors in which the holders of Common Stock, voting as a separate class, are entitled to elect directors of the Company, the Key Holders shall vote all of their respective Key Holder Shares so as to elect (i) the person serving as Chief Executive Officer of the Company, which individual shall initially be \_\_\_\_\_, and (ii) one (1) individual designated by the holders of a majority of the Key Holder Shares held by Key Holders then providing services to the Company as officers or employees, if any. Any vote taken to remove any director elected pursuant to this Section 1.2(b), or to fill any vacancy created by the resignation, removal or death of a director elected pursuant to this Section 1.2(b), shall also be subject to the provisions of this Section 1.2(b). In the event that the person serving as the director to be elected as set forth in this Section 1.2(b)(i) ceases to serve as the Chief Executive Officer of the Company, each Key Holder agrees to vote its Key Holder Shares for the removal of such director at the request of a majority of the members of the Board excluding the director to be removed.

1.3 **No Liability for Election of Recommended Director.** None of the parties hereto and no officer, director, stockholder, partner, employee or agent of any party makes any representation or warranty as to the fitness or competence of the nominee of any party hereunder to serve on the Board of Directors by virtue of such party’s execution of this Agreement or by the act of such party in voting for such nominee pursuant to this Agreement.

1.4 **Legend.**

(a) Concurrently with the execution of this Agreement, there shall be imprinted or otherwise placed, on certificates representing the Key Holder Shares and the Investor Shares the following restrictive legend (the “**Legend**”):

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A VOTING AGREEMENT WHICH PLACES CERTAIN RESTRICTIONS ON THE VOTING OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH AGREEMENT. A COPY OF SUCH VOTING AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS.”

(b) The Company agrees that, during the term of this Agreement, it will not remove, and will not permit to be removed (upon registration of transfer, reissuance of otherwise), the Legend from any such certificate and will place or cause to be placed the Legend on any new certificate issued to represent Key Holder Shares or Investor Shares theretofore represented by a certificate carrying the Legend. If at any time or from time to time any Key Holder or Investor holds any certificate representing shares of the Company’s capital stock not bearing the aforementioned legend, such Key Holder or Investor agrees to deliver such certificate to the Company promptly to have such legend placed on such certificate.

1.5 **Successors.** The provisions of this Agreement shall be binding upon the successors in interest to any of the Key Holder Shares or Investor Shares. The Company shall not permit the transfer of any of the Key Holder Shares or Investor Shares on its books or issue a new certificate representing any of the Key Holder Shares or Investor Shares unless and until the person to whom such security is to be transferred shall have executed a written agreement, substantially in the form of this Agreement, pursuant to which such person becomes a party to this Agreement and agrees to be bound by all the provisions hereof as if such person were a Key Holder or Investor, as applicable.

1.6 **Other Rights.** Except as provided by this Agreement or any other agreement entered into in connection with the Financing, each Key Holder and Investor shall exercise the full rights of a holder of capital stock of the Company with respect to the Key Holder Shares and the Investor Shares, respectively.

1.7 **Approved Sale; Financing.**

(a) In the event that (i) the Board and (ii) the holders of a majority of the outstanding shares of Common Stock then providing services to the Company as employees or officers and (iii) the holders of a majority of the outstanding shares of Series A Stock (together, the “**Requisite Holders**”) approve an Acquisition or Asset Transfer (each as defined in the Company’s Restated Certificate of Incorporation) (an “**Approved Sale**”), (x) if the Approved Sale is structured as a

merger or consolidation of the Company, or a sale of all or substantially all of the Company's assets, each Key Holder and Investor agrees to be present, in person or by proxy, at all meetings for the vote thereon, to vote all shares of capital stock held by such person for, or in connection with any solicitation of written consents from the stockholders of the Company, and raise no objections to such Approved Sale, and to waive and refrain from exercising any dissenters rights, appraisal rights or similar rights in connection with such merger, consolidation or asset sale or (y) if the Approved Sale is structured as a sale of the stock of the Company, the Key Holders and Investors shall each agree to sell their Key Holder Shares and Investor Shares on the terms and conditions approved by the Requisite Holders; provided in each case that (A) the terms of the Approved Sale do not provide that such Key Holder or Investor would receive as a result of such Approved Sale less than the amount that would be distributed to such Key Holder or Investor in the event the proceeds of such Approved Sale of the Company were distributed in accordance with the liquidation preferences set forth in the Company's Certificate of Incorporation and (B) under the agreements related to the Approved Sale, any liability of a Key Holder or Investor for indemnification is pro rata in accordance with the relative gross amount of consideration payable to such Key Holder or Investor, as applicable, in such Approved Sale and does not exceed the consideration actually received by such Key Holder and Investor, if any, in such Approved Sale. Subject to the foregoing, the Key Holders and the Investors shall each take all necessary and desirable actions approved by the Requisite Holders in connection with the consummation of the Approved Sale, including the execution of such agreements and such instruments and other actions reasonably necessary to (1) provide the representations, warranties, indemnities, covenants, conditions, non-compete agreements, escrow agreements and other provisions and agreements relating to such Approved Sale and (2) effectuate the allocation and distribution of the aggregate consideration upon the Approved Sale.

(b) In the event that the Requisite Holders approve a debt or equity financing of the Company (an "**Approved Financing**"), each Key Holder and Investor agrees to vote all Key Holder Shares held by such Key Holder at any meeting of the stockholders of the Company, however called, or in connection with any solicitation of written consents from the stockholders of the Company, in favor of the Approved Financing. Subject to the foregoing, the Key Holders and the Investors shall each take all necessary and desirable actions approved by the Requisite Holders in connection with the consummation of the Approved Financing.

1.8 **Voting Covenants.** With respect to all matters presented to the Company's stockholders (a "**Stockholder Matter**"), each Key Holder who is not then providing services to the Company as an officer or employee (a "**Non-Employee Key Holder**") shall vote all of his Key Holder Shares (or shall consent pursuant to an action by written consent of the holders of capital stock of the Company) in the same manner and in the same proportion as shares of such class (with respect to shares of the Company's Common Stock) or series (with respect to shares of the Company's Preferred Stock) that are not held by Non-Employee Key Holders are voted.

1.9 **Irrevocable Proxy.** To secure the Key Holder's and the Investor's obligations to vote the

Key Holder Shares and the Investor Shares in accordance with this Agreement, each Key Holder and each Investor hereby appoints the Chief Executive, President or Secretary of the Company, or any of them from time to time, or their designees, as such Key Holder's or Investor's true and lawful proxy and attorney, with the power to act alone and with full power of substitution, to vote all of such Key Holder's Key Holder Shares or such Investor's Investor Shares as set forth in this Agreement and to execute all appropriate instruments consistent with this Agreement on behalf of such Key Holder or Investor if, and only if, such Key Holder or Investor fails to vote all of such Key Holder's Key Holder Shares or such Investor's Investor Shares or execute such other instruments in accordance with the provisions of this Agreement within five (5) days of the Company's or any other party's written request for such Key Holder's or Investor's written consent or signature. The proxy and power granted by each Key Holder and Investor pursuant to this Section are coupled with an interest and are given to secure the performance of such party's duties under this Agreement. Each such proxy and power will be irrevocable for the term hereof. The proxy and power, so long as any party hereto is an individual, will survive the death, incompetency and disability of such party or any other individual holder of the Shares and, so long as any party hereto is an entity, will survive the merger or reorganization of such party or any other entity holding any Investor Shares or Key Holder Shares.

1.10 **Future Issuance.** The Company covenants and agrees that, as a condition to the future issuance, sale or transfer of any shares of the Company's capital stock (including shares of capital stock issued upon the exercise of options, warrants or other convertible securities) issued by the Company to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary, such holder shall become a party to this Agreement or agree to be bound by the provisions of this Agreement as a "Key Holder" hereunder.

## 2. **Termination.**

2.1 This Agreement shall continue in full force and effect from the date hereof through the earliest of the following dates, on which date it shall terminate in its entirety:

- (a) the date of the closing of a firmly underwritten public offering of the Common Stock pursuant to a registration statement filed with the Securities and Exchange Commission, and declared effective under the Securities Act of 1933, as amended, that results in the Series A Stock being converted into Common Stock;
- (b) subject to Section 2.2, the date of the closing of an Acquisition (as defined in the Company's Restated Certificate of Incorporation as in effect as of the date hereof); and
- (c) the date as of which the parties hereto terminate this Agreement by written consent of the Requisite Holders; *provided, however*, that for so long as Foundry has the right to designate a director for election to the Board pursuant to Section 1.2(a), this Agreement shall not be terminated without the written consent of Foundry.

2.2 Notwithstanding anything in Section 2.1 to the contrary, if this Agreement is terminated

automatically pursuant to Section 2.1(b), then the obligations of the Key Holders and the Investors under Sections 1.7, 3.3, 3.4 and 3.13 shall survive such termination. The stockholders of the Company as of immediately prior to the closing of such Acquisition are the intended third party beneficiaries of this Section 2.2 and Section 1.7.

**3. Miscellaneous.**

**3.1 Ownership.** Each Key Holder represents and warrants to the Investors and the Company that (a) such Key Holder now owns the Key Holder Shares listed on Exhibit A hereto, free and clear of liens or encumbrances, and has not, prior to or on the date of this Agreement, executed or delivered any proxy or entered into any other voting agreement or similar arrangement other than one which has expired or terminated prior to the date hereof, and (b) such Key Holder has full power and capacity to execute, deliver and perform this Agreement, which has been duly executed and delivered by, and evidences the valid and binding obligation of, such Key Holder enforceable in accordance with its terms.

**3.2 Further Action.** If and whenever any Key Holder Shares are sold, the Key Holders or the personal representative of the Key Holders shall do all things and execute and deliver all documents and make all transfers, and cause any transferee of the Key Holder Shares to do all things and execute and deliver all documents, as may be necessary to consummate such sale consistent with this Agreement.

**3.3 Specific Performance.** The parties hereto hereby declare that it is impossible to measure in money the damages which will accrue to a party hereto or to their heirs, personal representatives, or assigns by reason of a failure to perform any of the obligations under this Agreement and agree that the terms of this Agreement shall be specifically enforceable. If any party hereto or his heirs, personal representatives, or assigns institutes any action or proceeding to specifically enforce the provisions hereof, any person against whom such action or proceeding is brought hereby waives the claim or defense therein that such party or such personal representative has an adequate remedy at law, and such person shall not offer in any such action or proceeding the claim or defense that such remedy at law exists.

**3.4 Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of \_\_\_\_\_, and shall be binding upon the parties hereto in the United States and worldwide. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any federal or state court within \_\_\_\_\_ County, State of \_\_\_\_\_ in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein or any other matter relating to the equity interests of the Investors in the Company (whether based on breach of contract, tort, breach of duty or any other theory), agrees that process may be served upon it in any manner authorized by the laws of the State of \_\_\_\_\_ for such persons and waives and covenants not to assert or plead any objection that they might otherwise have to jurisdiction, venue and such process. Each party agrees not to commence any legal proceedings based upon or

arising out of this Agreement or the matters contemplated herein or any other matter relating to the equity interests of the Investors in the Company (whether based on breach of contract, tort, breach of duty or any other theory) except in such courts.

3.5 **Amendment or Waiver.** This Agreement may be amended or modified (or provisions of this Agreement waived) only upon the written consent of (a) the Company and (b) the Requisite Holders; *provided, however*, that for so long as Foundry has the right to designate a director for election to the Board pursuant to Section 1.2(a), Section 1.2(a) and the provisions of this Agreement that enable Section 1.2(a) shall not be amended, modified or waived without the written consent of Foundry. Any amendment or waiver so effected shall be binding upon the Company, each of the parties hereto and any assignee of any such party. Notwithstanding the foregoing, this Agreement and the exhibits hereto may be amended to add additional holders of Common Stock or Preferred Stock as “Key Holders” or “Investors” hereunder by an instrument in writing signed by the Company and such holders.

3.6 **Severability.** In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

3.7 **Successors and Assigns.** The provisions hereof shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors, assigns, heirs, executors and administrators and other legal representatives.

3.8 **Additional Shares.** In the event that subsequent to the date of this Agreement any shares or other securities are issued on, or in exchange for, any of the Key Holder Shares or Investor Shares by reason of any stock dividend, stock split, combination of shares, reclassification or the like, such shares or securities shall be deemed to be Key Holder Shares or Investor Shares, as the case may be, for purposes of this Agreement.

3.9 **Additional Investors.** Notwithstanding anything to the contrary contained herein, if the Company shall issue additional shares of its Preferred Stock pursuant to the Purchase Agreement, any purchaser of such shares of Preferred Stock shall become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed an “Investor” and a party hereunder.

3.10 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together shall constitute one instrument.

3.11 **Waiver.** No waivers of any breach of this Agreement extended by any party hereto to any other party shall be construed as a waiver of any rights or remedies of any other party hereto or with respect to any subsequent breach.

3.12 **Delays or Omissions.** It is agreed that no delay or omission to exercise any right, power

or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement or any waiver on such party's part of any provisions or conditions of the Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement by law, or otherwise afforded to any party, shall be cumulative and not alternative.

**3.13 Costs and Attorney's Fees.** In the event that any action, suit or other proceeding is instituted based upon or arising out of this Agreement or the matters contemplated herein or any other matter relating to the equity interests of the Investors in the Company (whether based on breach of contract, tort, breach of duty or any other theory), the prevailing party shall recover all of such party's costs (including, but not limited to expert witness costs) and reasonable attorneys' fees incurred in each such action, suit or other proceeding, including any and all appeals or petitions therefrom.

**3.14 Notices.** All notices required in connection with this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written notification of receipt. All communications shall be sent to the address appearing on the books of the Company or at such other address or electronic mail address as such party may designate by 10 days advance written notice to the other parties hereto.

**3.15 Entire Agreement.** This Agreement and the Exhibits hereto, along with the Purchase Agreement and the other documents delivered pursuant thereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof and no party shall be liable or bound to any other in any manner by any oral or written representations, warranties, covenants and agreements except as specifically set forth herein and therein. Each party expressly represents and warrants that it is not relying on any oral or written representations, warranties, covenants or agreements outside of this Agreement.

**In Witness Whereof**, the parties hereto have executed this **Voting Agreement** as of the date first above written.

#### **Exhibit A**

#### **LIST OF KEY HOLDERS**

**[[Founder 1]]**

[[Founder 2]]

**Exhibit B**  
**LIST OF INVESTORS**

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