
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **October 1, 2020**

CRYOPORT, INC.

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction
of incorporation)

001-34632
(Commission File Number)

88-0313393
(IRS Employer
Identification No.)

112 Westwood Place, Suite 350, Brentwood, TN 37027
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(949) 470-2300**

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, \$0.001 par value	CYRX	The NASDAQ Stock Market LLC
Warrants to purchase Common Stock	CYRXW	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement

CRYOPDP Acquisition

On October 1, 2020, Cryoport, Inc. (the “**Company**”) completed its previously announced acquisition of CRYOPDP, a leading global provider of innovative temperature-controlled logistics solutions to the clinical research, pharmaceutical and cell and gene therapy markets (the “**CRYOPDP Acquisition**”). Prior to completion, the Company entered into Amendment No. 1 to Securities Purchase Agreement, dated October 1, 2020, by and among the Company, Cryoport Netherlands B.V. and certain other parties thereto (the “**Amendment**”) to assign the Company’s interest in the CRYOPDP Acquisition to its subsidiary Cryoport Netherlands B.V. The Amendment is filed herewith as Exhibit 10.2. The description of the Amendment contained herein does not purport to be complete and is qualified in its entirety by reference to the Amendment filed herewith as Exhibit 10.2 hereto and incorporated herein by reference.

MVE Cryobiological Acquisition

On October 1, 2020 (the “**Closing Date**”), the Company completed its previously announced acquisition of Chart Industries, Inc.’s (“**Chart**”) MVE cryobiological storage business (the “**MVE Acquisition**”). The Company financed a portion of the closing payment of the MVE Acquisition with the net proceeds of the Private Placement (as defined below).

Blackstone Private Placement

As previously disclosed, in connection with the MVE Acquisition, the Company entered into a Securities Purchase Agreement with an investment vehicle of funds affiliated with The Blackstone Group Inc., in connection with the issuance and sale of (the “**Private Placement**”) (i) 250,000 shares of a newly designated 4.0% Series C Convertible Preferred Stock, par value \$0.001 per share (the “**Series C Preferred Stock**”), at a price of \$1,000 per share, for \$250,000,000, and (ii) 675,536 shares of common stock of the Company, par value \$0.001 per share (“**Common Stock**”) for \$25,000,000, for an aggregate purchase price of \$275,000,000.

On the Closing Date the parties completed the Private Placement.

Certificate of Designation

Each share of Series C Preferred Stock has the powers, designations, preferences, and other rights of the shares of such series as are set forth in the Certificate of Designation of the Series C Preferred Stock filed by the Company with the Nevada Secretary of State on October 1, 2020 (the “**Certificate of Designation**”).

The Series C Preferred Stock ranks senior to Common Stock, with respect to dividend rights and rights upon the voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the Company (a “**Liquidation**”). The initial purchase price of the Series C Preferred Stock is \$1,000 per share (the “**Original Purchase Price**”). The Holders are entitled to dividends on the Original Purchase Price at the rate of 4.0% per annum, paid-in-kind, accruing daily and paid quarterly in arrears. The Holders are also entitled to participate in dividends declared or paid on the Common Stock on an as-converted basis. Upon a Liquidation, each share of Series C Preferred Stock is entitled to receive an amount per share equal to the greater of (i) the purchase price paid by Blackstone, plus all accrued and unpaid dividends and (ii) the amount that the holder of Series C Preferred Stock (each, a “**Holder**” and collectively, the “**Holders**”) would have been entitled to receive at such time if the Series C Preferred Stock were converted into Common Stock (the “**Liquidation Preference**”).

Conversion Rights

The Holder has the right, at its option, to convert its Series C Preferred Stock, in whole or in part, into fully paid and non-assessable shares of Common Stock at a conversion price equal to \$38.6152 per share subject to certain customary adjustments in the event of certain adjustments to the Common Stock. After the second anniversary of the Closing Date, subject to certain conditions, the Company may, at its option, require conversion of all of the outstanding shares of Series C Preferred Stock to Common Stock if, for at least 20 trading days during the 30 consecutive trading days immediately preceding the date the Company notifies the Holders of the election to convert, the closing price of the Common Stock is at least 150% of the conversion price.

Redemption Rights

The Company may redeem the Series C Preferred Stock for cash (i) within 6 months of the Closing Date, up to 50,000 shares of the Series C Preferred Stock at a price equal to 125% of the purchase price paid by Blackstone plus any accrued and unpaid dividends, (ii) at any time beginning five years after the Closing Date (but prior to six years after the Closing Date), all of the Series C Preferred Stock at a price equal to 105% of the purchase price paid by Blackstone plus any accrued and unpaid dividends, and (iii) at any time beginning six years after the Closing Date, all of the Series C Preferred Stock at a price equal to 100% of the purchase price paid by Blackstone plus any accrued and unpaid dividends. Upon a “**Fundamental Change**” (involving a change of control or de-listing of the Company as further described in the Certificate of Designation), each Holder has the right to require the Company to redeem all or any part of the Holder’s Series C Preferred Stock for an amount equal to the Liquidation Preference plus any accrued and unpaid dividends.

Voting & Consent Rights

The Holders are generally entitled to vote with the holders of the shares of Common Stock on all matters submitted for a vote of holders of shares of Common Stock (voting together with the holders of shares of Common Stock as one class) on an as-converted basis, subject to certain Nasdaq voting limitations, if applicable.

Additionally, the consent of the Holders of a majority of the outstanding shares of Series C Preferred Stock is required for so long as any shares of the Series C Preferred Stock remain outstanding for (i) amendments to the Company's organizational documents that have an adverse effect on the holders of Series C Preferred Stock and (ii) issuances by the Company of securities that are senior to, or equal in priority with, the Series C Preferred Stock, including any shares of the Company's Series A Preferred Stock or Series B Preferred Stock. In addition, for so long as 75% of the Series C Preferred Stock issued in connection with the Securities Purchase Agreement remains outstanding, consent of the Holders of a majority of the outstanding shares of Series C Preferred Stock will be required for (i) any voluntary dissolution, liquidation, bankruptcy, winding up or deregistration or delisting and (ii) incurrence by the Company of any indebtedness unless the Company's ratio of debt to LTM EBITDA (as defined in the Certificate of Designation) would be less than a ratio of 5-to-1 on a pro forma basis giving effect to such incurrence and the use of proceeds therefrom.

Blackstone Governance Rights

As previously disclosed, for so long as the Purchaser Parties (as defined in the Securities Purchase Agreement) hold 66.67% of the Series C Preferred Stock issued to it under the Securities Purchase Agreement, Blackstone Freeze Parent L.P. (f/k/a BTO Freeze Parent L.P.) ("**Blackstone**") has the right to nominate for election one member to the board of directors of the Company (the "**Board of Directors**"). Blackstone has appointed Ram Jagannath as its initial nominee as further discussed below under the heading "Appointment of New Director."

For so long as Blackstone has the right to nominate a director for election to the Board of Directors under the Securities Purchase Agreement, Blackstone is required to vote all of the shares of Series C Preferred Stock and shares of Common Stock issuable upon conversion of the Series C Preferred Stock purchased pursuant to the Private Placement or any other shares of Common Stock owned by Blackstone (i) in favor of each director nominated or recommended by the Board of Directors for election at any such meeting, (ii) against any stockholder nomination for director that is not approved and recommended by the Board of Directors for election at any such meeting, (iii) in favor of the Company's "say-on-pay" proposal and any proposal by the Company relating to equity compensation that has been approved by the Board of Directors or the Compensation Committee of the Board of Directors (or any successor committee, however denominated), (iv) in favor of the Company's proposal for ratification of the appointment of the Company's independent registered public accounting firm and (v) amendments to organizational documents in a manner that does not have an adverse effect on the holders of Series C Preferred Stock to increase the authorized shares of capital stock.

For so long as Blackstone is entitled to nominate a director for election to the Board of Directors, Blackstone has certain customary access and information rights.

Blackstone Standstill

Additionally, for so long as Blackstone has the right to designate or nominate a director to the Board of Directors, Blackstone is subject to certain standstill restrictions pursuant to which Blackstone is restricted, among other things and subject to certain customary exceptions, from (i) acquiring additional equity securities or securities exchangeable for or convertible into equity securities of the Company; (ii) seeking representation on the Board of Directors (beyond the representation provided for above); (iii) seeking to change or influence the policies or management of the Company (beyond their right to do so based on their representation on the Board of Directors); (iv) submitting any shareholder proposal to the Company; and (v) publicly proposing any change of control or other material transaction involving the Company; or supporting or encouraging any person in doing any of the foregoing.

This Current Report on Form 8-K does not constitute an offer to sell, or a solicitation of an offer to buy, any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale would be unlawful. The foregoing description of the Certificate of Designation does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Certificate of Designation, which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

Registration Rights Agreement

The Company and Blackstone entered into a Registration Rights Agreement dated as of the Closing Date (the “**Registration Rights Agreement**”). Pursuant to the Registration Rights Agreement, the holders of shares of Series C Preferred Stock, shares of Common Stock issued upon conversion of Series C Preferred Stock and shares of Common Stock issued in the Private Placement will have certain customary registration rights with respect to such shares of Common Stock issuable upon conversion of Series C Preferred Stock and such shares of Common Stock. The Company is obligated to file within ninety days of the Closing Date and use its commercially reasonable efforts to cause to go effective as promptly as practicable a registration statement covering the sale or distribution from time to time by such holders of such shares of Common Stock.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Registration Rights Agreement, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information under the headings “MVE Cryobiological Acquisition” and “CRYOPDP Acquisition” contained in Item 1.01 is incorporated herein by reference.

Item 3.02 Unregistered Sale of Equity Securities.

The information under the heading “Certificate of Designation” contained in Item 1.01 is incorporated herein by reference.

As described in Item 1.01, on the Closing Date, the Company issued for an aggregate purchase price of \$275,000,000, (i) 250,000 shares of a newly designated 4.0% Series C Convertible Preferred Stock, par value \$0.001 per share, at a price of \$1,000 per share, for \$250,000,000, and (ii) 675,536 shares of common stock of the Company, par value \$0.001 per share for \$25,000,000.

Item 3.03 Material Modification to Rights of Security Holders.

The information under the headings “Certificate of Designation” and “Registration Rights Agreement” contained in Item 1.01 is incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Increase in Size of the Board of Directors

Effective as of the Closing Date, the Board of Directors increased in size from six members to seven members.

Appointment of New Director

The Board of Directors, effective as of the Closing Date, appointed Ram Jagannath as a director. Mr. Jagannath was designated by Blackstone to be appointed to the Board of Directors in accordance with the terms and conditions of the Securities Purchase Agreement.

Mr. Jagannath is a Senior Managing Director and Global Head of Healthcare for Blackstone Growth and Tactical Opportunities, based in New York. He is a member of the Blackstone Growth Investment Committee. Since joining Blackstone in 2019, Mr. Jagannath has led Blackstone’s acquisition of HealthEdge Software and its investments in Bright Health and the Company. He also helped lead Blackstone’s equity investment in Alnylam (NASDAQ: ALNY) and its purchase of Alnylam’s inclisiran royalty. Before joining Blackstone, Mr. Jagannath was a founding Partner of Navab Capital Partners (“NCP”), where he was Head of Healthcare and a member of the firm’s Management and Investment Committees. Prior to NCP, he was a Managing Director of The Carlyle Group, focused on healthcare investments in Carlyle’s flagship US Buyout private equity fund. During his twelve years at Carlyle, Mr. Jagannath was a member of the teams which invested in One Medical Group (NASDAQ: ONEM), Pharmaceutical Product Development (NASDAQ: PPD), X-Co (the parent company of X-Chem and X-Rx), Ortho Clinical Diagnostics (OCD), Healthscope Ltd. (ASX: HSO), and HCR ManorCare. Previously, he worked at Genstar Capital and Thomas Weisel Capital Partners. Mr. Jagannath currently serves as Chairman of the Board of HealthEdge Software. He also serves on the Board of Visitors of the Duke University Pratt School of Engineering and on the Board of Directors of Centering Healthcare Institute. Mr. Jagannath was previously a term member of the Council on Foreign Relations. Mr. Jagannath received a B.S.E. in Biomedical and Electrical Engineering with a minor in Economics from Duke University, a J.D. from the Northwestern University Pritzker School of Law, and an M.B.A. from the Northwestern University Kellogg School of Management. After Duke, he was a Fulbright Scholar in Economic Development at the University of Zagreb in Croatia.

Unless waived, under the terms of the Securities Purchase Agreement, Mr. Jagannath will be compensated in the same manner and to the same extent as other non-executive members of the Board of Directors, and Mr. Jagannath has directed that any such compensation be paid to an affiliate of Blackstone.

There is no transaction between Mr. Jagannath and the Company that would be reportable under Item 404(a) of Regulation S-K promulgated under the Securities Act, other than the transactions consummated pursuant to the terms and conditions of the Securities Purchase Agreement.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information contained under the heading “Certificate of Designation” in Item 1.01 is incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On October 1, 2019, the Company issued a press release relating to the items described in this Current Report on Form 8-K. A copy of the press release is furnished as Exhibit 99.1 hereto and is hereby incorporated by reference into this Item 7.01.

The information contained in this Item 7.01 and in Exhibit 99.1 attached hereto is being furnished to the Securities and Exchange Commission pursuant to Item 7.01 of Form 8-K and shall not be deemed “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that Section, nor shall any such information or exhibits be deemed incorporated by reference in any filing under the Exchange Act or the Securities Act.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

Any financial statements that may be required by this Item 9.01, with respect to the MVE Acquisition and CRYOPDP Acquisition, will be filed by amendment to this Current Report on Form 8-K as soon as practicable, and in any event not later than 71 days after the date on which this Current Report on Form 8-K is required to be filed.

(b) Pro Forma Financial Information.

The information contained in Item 9.01(a) is incorporated herein by reference.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Designation of the Company.
10.1	Registration Rights Agreement by and between Cryoport, Inc. and the parties thereto dated October 1, 2020.
10.2	Amendment No. 1 to Securities Purchase Agreement, dated October 1, 2020, by and among Cryoport Inc., Cryoport Netherlands B.V. and the other parties thereto.
99.1	Press release issued by Cryoport, Inc., dated October 1, 2020.
104.1	Cover Page Interactive Data File (embedded within the inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: October 1, 2020

Cryoport, Inc.

/s/ Robert Stefanovich
Robert Stefanovich
Chief Financial Officer

Cryoport, Inc.

Certificate of Designation

4.0% Series C Convertible Preferred Stock

October 1, 2020

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Certificate of Designation

4.0% Series C Convertible Preferred Stock

The Board of Directors of Cryoport, Inc., a Nevada corporation (the “**Company**”), has adopted the following resolution designating and creating, out of the authorized and unissued shares of preferred stock of the Company, 250,000 authorized shares of a series of preferred stock of the Company titled the “4.0% Series C Convertible Preferred Stock”:

RESOLVED that, as of the Initial Issue Date, pursuant to the authority of the Board of Directors pursuant to the Articles of Incorporation and applicable law, a series of preferred stock of the Company titled the “4.0% Series C Convertible Preferred Stock,” and having a par value of \$0.001 per share and an initial number of authorized shares equal to two hundred fifty thousand (250,000), is hereby designated and created out of the authorized and unissued shares of preferred stock of the Company, which series has the rights, designations, preferences, voting powers and other provisions set forth below:

Section 1. DEFINITIONS.

“**Affiliate**” of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person; provided, however, that (i) the Company and its Subsidiaries, on the one hand, and any Purchaser Party or any of its Affiliates, on the other hand, shall not be deemed to be Affiliates, (ii) “portfolio companies” (as such term is customarily used among institutional investors) in which any Purchaser Party or any of its Affiliates has an investment (whether as debt or equity) shall not be deemed an Affiliate of such Purchaser Party and (iii) the Excluded Sponsor Parties (as defined in the Purchase Agreement) shall not be deemed to be Affiliates of any Purchaser Party, the Company or any of the Company’s Subsidiaries.

“**Articles of Incorporation**” means the Company’s amended and restated Articles of Incorporation, as the same have been and may be further amended or restated.

“**Board of Directors**” means the Company’s board of directors or a committee of such board duly authorized to act with the authority of such board.

“**Business Day**” means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

“**Bylaws**” means the Amended and Restated Bylaws of the Company, adopted as of February 8, 2016, as the same may be further amended or restated.

“**Capital Stock**” of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

“**Certificate**” means a Physical Certificate or an Electronic Certificate.

“**Certificate of Designation**” means this Certificate of Designation, as amended from time to time.

“**Close of Business**” means 5:00 p.m., New York City time.

“**Common Stock**” means the common stock, \$0.001 par value per share, of the Company, subject to **Section 10(i)**.

“**Common Stock Change Event**” has the meaning set forth in **Section 10(i)(i)**.

“**Common Stock Liquidity Conditions**” will be satisfied with respect to a Mandatory Conversion or Redemption if:

(a) the offer and sale of such share of Common Stock by such Holder are registered pursuant to an effective registration statement under the Securities Act and such registration statement is reasonably expected by the Company to remain effective and usable, by the Holder to sell such share of Common Stock, continuously during the period from, and including, the date the related Mandatory Conversion Notice or Redemption Notice Date, as applicable, is sent to, and including, the one (1) year anniversary after the date such share of Common Stock is issued;

(b) each share of Common Stock referred to in **clause (a)** above (i) will, when issued and when sold or otherwise transferred pursuant to the registration statement referred to in such **clause (1)** be admitted for book-entry settlement through The Depository Trust Company with an “unrestricted” CUSIP number; and (2) not be evidenced by any Certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (ii) will, when issued, be listed and admitted for trading, without suspension or material limitation on trading, on any of The New York Stock Exchange, The NYSE American, The NASDAQ Capital Market, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors);

(c) (i) the Company has not received any written threat or notice of delisting or suspension by the applicable exchange referred to in **clause (b)(ii)** above with a reasonable prospect of delisting, after giving effect to all applicable notice and appeal periods; and (ii) no such delisting or suspension is reasonably likely to occur or is pending based on the Company falling below the minimum listing maintenance requirements of such exchange; and

(d) the conversion of all shares of Convertible Preferred Stock pursuant to such Mandatory Conversion or that are subject to such Redemption, as applicable, would not be limited or otherwise restricted by **Section 10(h)**.

“**Common Stock Participating Dividend**” has the meaning set forth in **Section 5(c)(i)**.

“**Company**” means Cryoport, Inc., a Nevada corporation.

“**Continuing Share Reserve Requirement**” means, as of any time, a number of shares of Common Stock equal to the product of (a) two (2); and (b) the number of shares of Common Stock that would be issuable (without regard to **Section 10(h)**) upon conversion of all Convertible Preferred Stock outstanding as of such time (assuming such conversion occurred as of such time).

“**Control**” (including its correlative meanings “under common Control with” and “Controlled by”) means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of securities or partnership or other interests, by contract or otherwise.

“**Conversion Agent**” has the meaning set forth in **Section 3(f)(i)**.

“**Conversion Share**” means any share of Common Stock issued or issuable upon conversion of any Convertible Preferred Stock.

“**Conversion Consideration**” means, with respect to the conversion of any Convertible Preferred Stock, the type and amount of consideration payable to settle such conversion, determined in accordance with **Section 10**.

“**Conversion Date**” means an Optional Conversion Date or a Mandatory Conversion Date.

“**Conversion Price**” initially means \$38.6152 per share of Common Stock; *provided, however*, that the Conversion Price is subject to adjustment pursuant to **Sections 10(f)** and **10(g)**. Each reference in this Certificate of Designation to the Conversion Price as of a particular date without setting forth a particular time on such date will be deemed to be a reference to the Conversion Price immediately before the Close of Business on such date.

“**Convertible Preferred Stock**” has the meaning set forth in **Section 3(a)**.

“**Daily VWAP**” means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading “Bloomberg VWAP” on Bloomberg page “CYRX <EQUITY> AQR” (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one (1) share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm the Company selects). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

“**Deficit Shares**” has the meaning set forth in **Section 10(h)(i)(1)**.

“**Dividend**” means any Regular Dividend or Participating Dividend.

“**Dividend Junior Stock**” means any class or series of the Company’s stock, the terms of which would result in such class or series ranking junior to the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). Dividend Junior Stock includes the Common Stock. For the avoidance of doubt, Dividend Junior Stock will not include any securities of the Company’s Subsidiaries.

“**Dividend Parity Stock**” means any class or series of the Company’s stock (other than the Convertible Preferred Stock), the terms of which would result in such class or series ranking equally with the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). For the avoidance of doubt, Dividend Parity Stock includes the Series A Preferred Stock and the Series B Preferred Stock, but does not include any securities of the Company’s Subsidiaries.

“**Dividend Payment Date**” means each Regular Dividend Payment Date with respect to a Regular Dividend and each date on which any declared Participating Dividend is scheduled to be paid on the Convertible Preferred Stock with respect to a Participating Dividend.

“**Dividend Senior Stock**” means any class or series of the Company’s stock, the terms of which would result in such class or series ranking senior to the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). For the avoidance of doubt, Dividend Senior Stock will not include any securities of the Company’s Subsidiaries.

“**Electronic Certificate**” means any electronic book entry maintained by the Transfer Agent that evidences any share(s) of Convertible Preferred Stock.

“**Equity Treatment Limitation**” has the meaning set forth in **Section 10(h)(i)(1)**.

“**Ex-Dividend Date**” means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended.

“**Expiration Date**” has the meaning set forth in **Section 10(f)(i)(2)**.

“**Expiration Time**” has the meaning set forth in **Section 10(f)(i)(2)**.

“**Final Fundamental Change Notice**” has the meaning set forth in **Section 8(f)**.

“**Fundamental Change**” means any of the following events, whether in a single transaction or a series of related transactions:

(a) a “person” or “group” (within the meaning of Section 13(d) and 14(d) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, or their respective employee benefit plans, files any report with the SEC indicating that such person or group, has become the direct or indirect “beneficial owner” (as defined below) of shares of the Common Stock representing more than fifty percent (50%) of the voting power of all of the Company’s Common Stock in a transaction or series of related transactions approved by the Board of Directors;

(b) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property; *provided, however*, that any merger, consolidation, share exchange, combination, reclassification or recapitalization of the Company pursuant to which the Persons that directly or indirectly “beneficially owned” (as defined below) all classes of the Company’s common equity immediately before such transaction directly or indirectly “beneficially own,” immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction, will be deemed not to be a Fundamental Change pursuant to this **clause (b)**; or

(c) shares of Common Stock or shares of any other Capital Stock into which the Convertible Preferred Stock is convertible are not listed for trading on any United States national securities exchange or cease to be traded in contemplation of a de-listing, in each case, as a result of or in connection with a transaction or series of related transactions (or any filings or other actions related thereto) that have been approved by the Board of Directors (other than as a result of a transaction described in clause (b) above).

For the purposes of this definition, (x) any transaction or event described in both **clause (a)** and in **clause (b)(i)** or **(ii)** above (without regard to the proviso in **clause (b)**) will be deemed to occur solely pursuant to **clause (b)** above (subject to such proviso); and (y) whether a Person is a “beneficial owner”, whether shares are “beneficially owned”, and percentage beneficial ownership, will be determined in accordance with Rules 13d-3 and 13d-5 under the Exchange Act.

“**Fundamental Change Repurchase Date**” means the date fixed, pursuant to **Section 8(c)**, for the repurchase of any Convertible Preferred Stock by the Company pursuant to a Repurchase Upon Fundamental Change.

“**Fundamental Change Repurchase Notice**” means a notice (including a notice substantially in the form of the “Fundamental Change Repurchase Notice” set forth in **Exhibit A**) containing the information, or otherwise complying with the requirements, set forth in **Section 8(g)(i)** and **Section 8(g)(ii)**.

“**Fundamental Change Repurchase Price**” means the cash price payable by the Company to repurchase any share of Convertible Preferred Stock upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 8(d)**.

“**Fundamental Change Repurchase Right**” has the meaning set forth in **Section 8(a)**.

“**Holder**” means a person in whose name any Convertible Preferred Stock is registered on the Registrar’s books.

“**Initial Issue Date**” means October 1, 2020.

“**Initial Fundamental Change Notice**” has the meaning set forth in **Section 8(e)**.

“**Initial Liquidation Preference**” means one thousand dollars (\$1,000.00) per share of Convertible Preferred Stock.

“**Initial Share Reserve Requirement**” means a number of shares of Common Stock equal to the product of (a) two (2); and (b) the number of shares of Common Stock that would be issuable (without regard to **Section 10(h)**) upon conversion of all Convertible Preferred Stock outstanding as of the Initial Issue Date (assuming such conversion occurred on the Initial Issue Date).

“**Last Reported Sale Price**” of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of the Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm the Company selects.

“**Liquidation Junior Stock**” means any class or series of the Company’s stock, the terms of which would result in such class or series ranking junior to the Convertible Preferred Stock with respect to the distribution of assets upon the Company’s liquidation, dissolution or winding up. Liquidation Junior Stock includes the Common Stock. For the avoidance of doubt, Liquidation Junior Stock will not include any securities of the Company’s Subsidiaries.

“**Liquidation Parity Stock**” means any class or series of the Company’s stock (other than the Convertible Preferred Stock), the terms of which would result in such class or series ranking equally with the Convertible Preferred Stock with respect to the distribution of assets upon the Company’s liquidation, dissolution or winding up. For the avoidance of doubt, Liquidation Parity Stock includes the Series A Preferred Stock and the Series B Preferred Stock, but does not include any securities of the Company’s Subsidiaries.

“**Liquidation Preference**” means, with respect to the Convertible Preferred Stock, an amount initially equal to the Initial Liquidation Preference per share of Convertible Preferred Stock; *provided, however*, that the Liquidation Preference is subject to adjustment pursuant to **Section 5(b)(i)**.

“**Liquidation Senior Stock**” means any class or series of the Company’s stock, the terms of which would result in such class or series ranking senior to the Convertible Preferred Stock with respect to the distribution of assets upon the Company’s liquidation, dissolution or winding up. For the avoidance of doubt, Liquidation Senior Stock will not include any securities of the Company’s Subsidiaries.

“**LTM EBITDA**” means, as of any date, the net income before interest, taxes, depreciation and amortization of the Company, calculated in a manner consistent with the Company’s use of EBITDA in its SEC Documents (as defined in the Purchase Agreement), for the twelve (12) month period ending on the calendar month end immediately preceding such date.

“**Mandatory Conversion**” has the meaning set forth in **Section 10(c)(i)**.

“**Mandatory Conversion Date**” means a Conversion Date designated with respect to any Convertible Preferred Stock pursuant to **Section 10(c)(i)** and **10(c)(iii)**.

“**Mandatory Conversion Notice**” has the meaning set forth in **Section 10(c)(iv)**.

“**Mandatory Conversion Notice Date**” means, with respect to a Mandatory Conversion, the date on which the Company sends the Mandatory Conversion Notice for such Mandatory Conversion pursuant to **Section 10(c)(iv)**.

“**Mandatory Conversion Right**” has the meaning set forth in **Section 10(c)(i)**.

“**Market Disruption Event**” means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“**Number of Reserved Shares**” means, as of any time, the number of shares of Common Stock that, at such time, the Company has reserved (out of its authorized but unissued shares of Common Stock that are not reserved for any other purpose) for delivery upon conversion of the Convertible Preferred Stock.

“**Officer**” means the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of the Company.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Optional Conversion**” means the conversion of any Convertible Preferred Stock other than a Mandatory Conversion.

“**Optional Conversion Date**” means, with respect to the Optional Conversion of any Convertible Preferred Stock, the first Business Day on which the requirements set forth in **Section 10(d)(ii)** for such conversion are satisfied.

“**Optional Conversion Notice**” means a notice substantially in the form of the “Optional Conversion Notice” set forth in **Exhibit A**.

“**Participating Dividend**” has the meaning set forth in **Section 5(c)(i)**.

“**Paying Agent**” has the meaning set forth in **Section 3(f)(i)**.

“**Person**” or “**person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate “person” under this Certificate of Designation.

“**Physical Certificate**” means any certificate (other than an Electronic Certificate) evidencing any share(s) of Convertible Preferred Stock, which certificate is substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such share(s) and duly executed by the Company and countersigned by the Transfer Agent.

“**Purchase Agreement**” means that certain Securities Purchase Agreement between the Company and the Purchasers dated as of August 24, 2020, as it may be amended, supplemented or otherwise modified from time to time, with respect to certain terms and conditions concerning, among other things, the rights of and restrictions on the Holders.

“**Purchasers**” has the meaning set forth in the Purchase Agreement.

“**Purchaser Parties**” means the Purchasers and each Permitted Transferee (as defined in the Purchase Agreement) of a Purchaser to whom shares of Convertible Preferred Stock or Common Stock issued upon conversion of shares of Convertible Preferred Stock are transferred pursuant to Section 4.2 of the Purchase Agreement or Common Stock issued under the Purchase Agreement.

“**Record Date**” means, with respect to any dividend or distribution on, or issuance to holders of, Convertible Preferred Stock or Common Stock, the date fixed (whether by law, contract or the Board of Directors or otherwise) to determine the Holders or the holders of Common Stock, as applicable, that are entitled to such dividend, distribution or issuance.

“**Redemption**” has the meaning set forth in **Section 7(b)**.

“**Redemption Date**” means the date fixed, pursuant to **Section 7(d)**, for the settlement of the repurchase of the Convertible Preferred Stock by the Company pursuant to a Redemption.

“**Redemption Notice**” has the meaning set forth in **Section 7(f)**.

“**Redemption Notice Date**” means, with respect to a Redemption, the date on which the Company sends the Redemption Notice for such Redemption pursuant to **Section 7(f)**.

“**Redemption Price**” means the consideration payable by the Company to repurchase any Convertible Preferred Stock upon its Redemption, calculated pursuant to **Section 7(e)**.

“**Reference Property**” has the meaning set forth in **Section 10(i)(i)**.

“**Reference Property Unit**” has the meaning set forth in **Section 10(i)(i)**.

“**Register**” has the meaning set forth in **Section 3(f)(ii)**.

“**Registrar**” has the meaning set forth in **Section 3(f)(i)**.

“**Registration Rights Agreement**” means that certain Registration Rights Agreement, dated as of October 1, 2020, between the Company, BTO Freeze Parent L.P., a Delaware limited partnership, and the other Holders party thereto from time to time, as it may be amended or modified in accordance with the terms thereof.

“**Regular Dividend Payment Date**” means, with respect to any share of Convertible Preferred Stock, each March 31, June 30, September 30 and December 31 of each year, beginning on December 31, 2020 (or beginning on such other date specified in the Certificate evidencing such share).

“**Regular Dividend Period**” means each period from, and including, a Regular Dividend Payment Date (or, in the case of the first Regular Dividend Period, from, and including, the Initial Issue Date) to, but excluding, the next Regular Dividend Payment Date.

“**Regular Dividend Rate**” means four percent (4.0%) per annum or, to the extent and during the period with respect to which such rate has been adjusted as provided in **Section 8(b)**, such adjusted rate.

“**Regular Dividend Record Date**” has the following meaning: (a) March 15th, in the case of a Regular Dividend Payment Date occurring on March 31st; (b) June 15th, in the case of a Regular Dividend Payment Date occurring on June 30th; (c) September 15th, in the case of a Regular Dividend Payment Date occurring on September 30th; and (d) December 15th, in the case of a Regular Dividend Payment Date occurring on December 31st.

“**Regular Dividends**” has the meaning set forth in **Section 5(a)(i)**.

“**Repurchase Upon Fundamental Change**” means the repurchase of any Convertible Preferred Stock by the Company pursuant to **Section 8**.

“**Resale Registration Statement**” has the meaning ascribed to “Resale Shelf Registration Statement” in the Registration Rights Agreement.

“**Restricted Stock Legend**” means a legend substantially in the form set forth in **Exhibit B**.

“**Rule 144**” means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended.

“**Security**” means any Convertible Preferred Stock or Conversion Share.

“**Series A Preferred Stock**” means Series A Preferred Stock, par value \$0.001 of the Company.

“**Series B Preferred Stock**” means Series B Preferred Stock, par value \$0.001 of the Company.

“**Share Agent**” means the Transfer Agent or any Registrar, Paying Agent or Conversion Agent.

“**Subsidiary**” means, with respect to any Person, (a) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than 50% of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (b) any partnership or limited liability company where (x) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (y) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

“**Successor Person**” has the meaning set forth in **Section 10(i)(iii)**.

“**Tender/Exchange Offer Valuation Period**” has the meaning set forth in **Section 10(f)(i)(2)**.

“**Trading Day**” means any day on which (a) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (b) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then “Trading Day” means a Business Day.

“**Transfer Agent**” means Continental Stock Transfer & Trust Company or its successor.

“**Transfer-Restricted Security**” means any Security that constitutes a “restricted security” (as defined in Rule 144); *provided, however*, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(a) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(b) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a “restricted security” (as defined in Rule 144); and

(c) (i) such Security is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice; and (ii) the Company has received such certificates or other documentation or evidence as the Company may reasonably require to determine that the Holder, holder or beneficial owner of such Security is not, and that has not been during the immediately preceding three (3) months, an Affiliate of the Company.

“**VWAP Market Disruption Event**” means, with respect to any date, (a) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (b) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

“**VWAP Trading Day**” means a day on which (a) there is no VWAP Market Disruption Event; and (b) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then “VWAP Trading Day” means a Business Day.

“**Wholly Owned Subsidiary**” of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

Section 2. RULES OF CONSTRUCTION. For purposes of this Certificate of Designation:

- (a) “or” is not exclusive;
- (b) “including” means “including without limitation”;
- (c) “will” expresses a command;
- (d) the “average” of a set of numerical values refers to the arithmetic average of such numerical values;
- (e) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;
- (f) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;
- (g) “herein,” “hereof” and other words of similar import refer to this Certificate of Designation as a whole and not to any particular Section or other subdivision of this Certificate of Designation, unless the context requires otherwise;
- (h) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise; and
- (i) the exhibits, schedules and other attachments to this Certificate of Designation are deemed to form part of this Certificate of Designation.

Section 3. THE CONVERTIBLE PREFERRED STOCK.

(a) *Designation; Par Value.* A series of stock of the Company titled the “4.0% Series C Convertible Preferred Stock” (the “**Convertible Preferred Stock**”) is hereby designated and created out of the authorized and unissued shares of preferred stock of the Company. The par value of the Convertible Preferred Stock is \$0.001 per share.

(b) *Number of Authorized Shares.* The total authorized number of shares of Convertible Preferred Stock is two hundred fifty thousand (250,000); *provided, however* that, by resolution of the Board of Directors and upon proper filing of an amendment to this Certificate of Designation with the Nevada Secretary of State, the total number of authorized shares of Convertible Preferred Stock may be increased or reduced to a number that is not less than the number of shares of Convertible Preferred Stock then outstanding.

(c) *Form, Dating and Denominations.*

(i) *Form and Date of Certificates Evidencing Convertible Preferred Stock.* Each Certificate evidencing any Convertible Preferred Stock will (1) be substantially in the form set forth in **Exhibit A**; (2) bear the legends required by **Section 3(g)** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the Depositary; and (3) be dated as of the date it is countersigned by the Transfer Agent.

(ii) *Electronic Certificates; Physical Certificates.* The Convertible Preferred Stock will be originally issued initially in the form of one or more Electronic Certificates. Electronic Certificates may be exchanged for Physical Certificates, and Physical Certificates may be exchanged for Electronic Certificates, upon request by the Holder thereof pursuant to customary procedures, subject to **Section 3(h)**.

(iii) *Electronic Certificates; Interpretation.* For purposes of this Certificate of Designation, (1) each Electronic Certificate will be deemed to include the text of the stock certificate set forth in **Exhibit A**; (2) any legend or other notation that is required to be included on a Certificate will be deemed to be affixed to any Electronic Certificate notwithstanding that such Electronic Certificate may be in a form that does not permit affixing legends thereto; (3) any reference in this Certificate of Designation to the “delivery” of any Electronic Certificate will be deemed to be satisfied upon the registration of the electronic book entry representing such Electronic Certificate in the name of the applicable Holder; (4) upon satisfaction of any applicable requirements of the Nevada Revised Statutes, the Articles of Incorporation and the Bylaws of the Company, and any related requirements of the Transfer Agent, in each case for the issuance of Convertible Preferred Stock in the form of one or more Electronic Certificates, such Electronic Certificates will be deemed to be executed by the Company and countersigned by the Transfer Agent.

(iv) *Appointment of Depositary.* If any Convertible Preferred Stock is admitted to the book-entry clearance and settlement facilities of any electronic depository, then, notwithstanding anything to the contrary in this Certificate of Designation, each reference in this Certificate of Designation to the delivery of, or payment on, any such Convertible Preferred Stock, or the delivery of any related notice or demand, will be deemed to be satisfied to the extent the applicable procedures of such depository governing such delivery or payment, as applicable, are satisfied.

(v) *No Bearer Certificates; Denominations.* The Convertible Preferred Stock will be issued only in registered form and only in whole numbers of shares.

(vi) *Registration Numbers.* Each Certificate evidencing any share of Convertible Preferred Stock will bear a unique registration number that is not affixed to any other Certificate evidencing any other then-outstanding shares of Convertible Preferred Stock.

(d) *Execution, Countersignature and Delivery.*

(i) *Due Execution by the Company.* At least two (2) duly authorized Officers will sign each Certificate evidencing any Convertible Preferred Stock on behalf of the Company by manual, facsimile or electronic signature. The validity of any Convertible Preferred Stock will not be affected by the failure of any Officer whose signature is on any Certificate evidencing such Convertible Preferred Stock to hold, at the time such Certificate is countersigned by the Transfer Agent, the same or any other office at the Company.

(ii) *Countersignature by Transfer Agent.* No Certificate evidencing any share of Convertible Preferred Stock is valid until such Certificate is countersigned by the Transfer Agent. Each Certificate will be deemed to be duly countersigned only when an authorized signatory of the Transfer Agent (or a duly appointed agent thereof) manually signs the countersignature block set forth in such Certificate.

(e) *Method of Payment; Delay When Payment Date is Not a Business Day.*

(i) *Method of Payment.* The Company will pay all cash amounts due on any shares of Convertible Preferred Stock of any Holder by check mailed to the address of such Holder set forth in the Register; *provided, however,* that if such Holder has delivered to the Company, no later than the time set forth in the next sentence, a written request to receive payment by wire transfer to an account of such Holder within the United States, then the Company will pay such cash amounts by wire transfer of immediately available funds to such account. To be timely, such written request must be delivered no later than the Close of Business on the following date: (1) with respect to the payment of any declared cash Dividend due on a Dividend Payment Date for the Convertible Preferred Stock, the related Record Date; and (y) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

(1) *Electronic Certificates.* The Company will pay (or cause the Paying Agent to pay) all declared cash Dividends or other cash amounts due on any Convertible Preferred Stock evidenced by an Electronic Certificate by wire transfer of immediately available funds.

(2) *Physical Certificates.* The Company will pay (or cause the Paying Agent to pay) all declared cash Dividends or other cash amounts due on any Convertible Preferred Stock evidenced by a Physical Certificate as follows:

(A) if the aggregate Liquidation Preference of the Convertible Preferred Stock evidenced by such Physical Certificate is at least five million dollars (\$5,000,000) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Convertible Preferred Stock entitled to such cash Dividend or amount has delivered to the Paying Agent, no later than the time set forth in the next sentence, a written request to receive payment by wire transfer to an account of such Holder within the United States, by wire transfer of immediately available funds to such account; and

(B) in all other cases, by check mailed to the address of such Holder set forth in the Register.

To be timely, such written request must be delivered no later than the Close of Business on the following date: (x) with respect to the payment of any declared cash Dividend due on a Dividend Payment Date for the Convertible Preferred Stock, the related Record Date; and (y) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

(ii) *Delay of Payment when Payment Date is Not a Business Day.* If the due date for a payment on any Convertible Preferred Stock as provided in this Certificate of Designation is not a Business Day, then, notwithstanding anything to the contrary in this Certificate of Designation, such payment may be made on the immediately following Business Day and no interest, dividend or other amount will accrue or accumulate on such payment as a result of the related delay. Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a “Business Day.”

(f) *Transfer Agent, Registrar, Paying Agent and Conversion Agent.*

(i) *Generally.* The Company designates its principal U.S. executive offices, and any office of the Transfer Agent in the continental United States, as an office or agency where Convertible Preferred Stock may be presented for (1) registration of transfer or for exchange (the “**Registrar**”); (2) payment (the “**Paying Agent**”); and (3) conversion (the “**Conversion Agent**”). At all times when any Convertible Preferred Stock is outstanding, the Company will maintain an office in the continental United States constituting the Registrar, Paying Agent and Conversion Agent.

(ii) *Maintenance of the Register.* The Company will keep, or cause there to be kept, a record (the “**Register**”) of the names and addresses of the Holders, the number of shares of Convertible Preferred Stock held by each Holder and the transfer, exchange, repurchase, Redemption and conversion of the Convertible Preferred Stock. Absent manifest error, the entries in the Register will be conclusive and the Company and the Transfer Agent may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly. The Company will promptly provide a copy of the Register to any Holder upon its request.

(iii) *Subsequent Appointments.* By notice to each Holder, the Company may, at any time, appoint any Person (including any Subsidiary of the Company) to act as Registrar, Paying Agent or Conversion Agent.

(iv) If the Company or any of its Subsidiaries acts as Paying Agent or Conversion Agent, then (1) it will segregate for the benefit of the Holders all money and other property held by it as Paying Agent or Conversion Agent; and (2) references in this Certificate of Designation to the Paying Agent or Conversion Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent or Conversion Agent, in each case for payment or delivery to any Holders or with respect to the Convertible Preferred Stock, will be deemed to refer to cash or other property so segregated, or to the segregation of such cash or other property, respectively.

(g) *Legends.*

(i) *Restricted Stock Legend.*

(1) Each Certificate evidencing any share of Convertible Preferred Stock that is a Transfer-Restricted Security will bear the Restricted Stock Legend.

(2) If any share of Convertible Preferred Stock is issued in exchange for, in substitution of, or to effect a partial conversion of, any other share(s) of Convertible Preferred Stock (such other share(s) being referred to as the “old share(s)” for purposes of this **Section 3(g)(i)(2)**), including pursuant to **Section 3(i)** or **3(k)**, then the Certificate evidencing such share will bear the Restricted Stock Legend if the Certificate evidencing such old share(s) bore the Restricted Stock Legend at the time of such exchange or substitution, or on the related Conversion Date with respect to such conversion, as applicable; *provided, however*, that the Certificate evidencing such share need not bear the Restricted Stock Legend if such share does not constitute a Transfer-Restricted Security immediately after such exchange or substitution, or as of such Conversion Date, as applicable.

(ii) *Other Legends.* The Certificate evidencing any Convertible Preferred Stock may bear any other legend or text, not inconsistent with this Certificate of Designation, as may be required by applicable law, by the rules of any applicable depository for the Convertible Preferred Stock or by any securities exchange or automated quotation system on which such Convertible Preferred Stock is traded or quoted or as may be otherwise reasonably determined by the Company to be appropriate.

(iii) *Acknowledgement and Agreement by the Holders.* A Holder’s acceptance of any Convertible Preferred Stock evidencing by a Certificate bearing any legend required by this **Section 3(g)** will constitute such Holder’s acknowledgement of, and agreement to comply with, the restrictions set forth in such legend.

(iv) *Legends on Conversion Shares.*

(1) Each Conversion Share will bear a legend substantially to the same effect as the Restricted Stock Legend if the Convertible Preferred Stock upon the conversion of which such Conversion Share was issued was (or would have been had it not been converted) a Transfer-Restricted Security at the time such Conversion Share was issued; *provided, however*, that such Conversion Share need not bear such a legend if the Company determines, in its reasonable discretion, that such Conversion Share need not bear such a legend.

(2) Notwithstanding anything to the contrary in **Section 3(g)(iv)(1)**, a Conversion Share need not bear a legend pursuant to **Section 3(g)(iv)(1)** if such Conversion Share is issued in an uncertificated form that does not permit affixing legends thereto (subject to compliance with Nevada Revised Statutes 78.235 and 78.242), *provided* the Company takes measures (including the assignment thereto of a “restricted” CUSIP number) that it reasonably deems appropriate to enforce the transfer restrictions referred to in such legend.

(h) *Transfers and Exchanges; Transfer Taxes; Certain Transfer Restrictions.*

(i) *Provisions Applicable to All Transfers and Exchanges.*

(1) *Generally.* Subject to this **Section 3(h)**, Convertible Preferred Stock evidenced by any Certificate may be transferred or exchanged from time to time and the Company will cause the Registrar to record each such transfer or exchange in the Register.

(2) *No Services Charge; Transfer Taxes.* The Company and the Share Agents will not impose any service charge on any Holder for any transfer, exchange or conversion of any Convertible Preferred Stock, but the Company, the Transfer Agent, the Registrar and the Conversion Agent may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or conversion of Convertible Preferred Stock, other than exchanges pursuant to **Section 3(i)** or **Section 3(q)** not involving any transfer (and; *provided*, that (A) any such taxes or charges incurred in connection with the original issuance of the Convertible Preferred Stock shall be paid and borne by the Company; and (B) any such taxes or charges incurred in connection with a conversion of the Convertible Preferred Stock pursuant to **Section 10** shall be paid and borne as provided in **Section 11(e)**).

(3) *No Transfers or Exchanges of Fractional Shares.* Notwithstanding anything to the contrary in this Certificate of Designation, all transfers or exchanges of Convertible Preferred Stock must be in an amount representing a whole number of shares of Convertible Preferred Stock, and no fractional share of Convertible Preferred Stock may be transferred or exchanged.

(4) *Legends.* Each Certificate evidencing any share of Convertible Preferred Stock that is issued upon transfer of, or in exchange for, another share of Convertible Preferred Stock will bear each legend, if any, required by **Section 3(g)**.

(5) *Settlement of Transfers and Exchanges.* Upon satisfaction of the requirements of this Certificate of Designation to effect a transfer or exchange of any Convertible Preferred Stock, the Company will cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the second (2nd) Business Day after the date of such satisfaction.

(6) *Exchanges to Remove Transfer Restrictions.* For the avoidance of doubt, and subject to the terms of this Certificate of Designation, as used in this **Section 3(h)**, an “exchange” of a Certificate includes an exchange effected for the sole purpose of removing any Restricted Stock Legend affixed to such Certificate.

(ii) *Transfers and Exchanges of Convertible Preferred Stock.*

(1) Subject to this **Section 3(h)**, a Holder of any Convertible Preferred Stock evidenced by a Certificate may (x) transfer any whole number of shares of such Convertible Preferred Stock to one or more other Person(s); and (y) exchange any whole number of shares of such Convertible Preferred Stock for an equal number of shares of Convertible Preferred Stock evidenced by one or more other Certificates; *provided, however*, that, to effect any such transfer or exchange, such Holder must, if such Certificate is a Physical Certificate, surrender such Physical Certificate to the office of the Transfer Agent or the Registrar, together with any endorsements or transfer instruments reasonably required by the Company, the Transfer Agent or the Registrar.

(2) Upon the satisfaction of the requirements of this Certificate of Designation to effect a transfer or exchange of any whole number of shares of a Holder’s Convertible Preferred Stock evidenced by a Certificate (such Certificate being referred to as the “old Certificate” for purposes of this **Section 3(h)(ii)(2)**):

(A) such old Certificate will be promptly cancelled pursuant to **Section 3(m)**;

(B) if fewer than all of the shares of Convertible Preferred Stock evidenced by such old Certificate are to be so transferred or exchanged, then the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Certificate not to be so transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 3(g)**;

(C) in the case of a transfer to a transferee, the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock to be so transferred; (y) are registered in the name of such transferee; and (z) bear each legend, if any, required by **Section 3(g)**; and

(D) in the case of an exchange, the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock to be so exchanged; (y) are registered in the name of the Person to whom such old Certificate was registered; and (z) bear each legend, if any, required by **Section 3(g)**.

(iii) *Transfers of Shares Subject to Redemption, Repurchase or Conversion.* Notwithstanding anything to the contrary in this Certificate of Designation, the Company, the Transfer Agent and the Registrar will not be required to register the transfer of or exchange any share of Convertible Preferred Stock that has been surrendered for conversion.

(i) *Exchange and Cancellation of Convertible Preferred Stock to Be Converted or to Be Repurchased Pursuant to a Repurchase Upon Fundamental Change or a Redemption.*

(i) *Partial Conversions of Physical Certificates and Partial Repurchases of Physical Certificates Pursuant to a Repurchase Upon Fundamental Change or a Redemption.* If fewer than all of the shares of Convertible Preferred Stock evidenced by a Physical Certificate (such Physical Certificate being referred to as the “old Physical Certificate” for purposes of this **Section 3(i)(i)**) are to be converted pursuant to **Section 10** or repurchased pursuant to a Repurchase Upon Fundamental Change or a Redemption, then, as soon as reasonably practicable after such Physical Certificate is surrendered for such conversion or repurchase, as applicable, the Company will cause such Physical Certificate to be exchanged, pursuant and subject to **Section 3(h)**, for (1) one or more Physical Certificates that each evidence a whole number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Physical Certificate that are not to be so converted or repurchased, as applicable, and deliver such Physical Certificate(s) to such Holder; and (2) a Physical Certificate evidencing a whole number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Physical Certificate that are to be so converted or repurchased, as applicable, which Physical Certificate will be converted or repurchased, as applicable, pursuant to the terms of this Certificate of Designation; *provided, however*, that the Physical Certificate referred to in this **clause (2)** need not be issued at any time after which such shares subject to such conversion or repurchase, as applicable, are deemed to cease to be outstanding pursuant to **Section 3(o)**.

(ii) *Cancellation of Convertible Preferred Stock that Is Converted and Convertible Preferred Stock that Is Repurchased Pursuant to a Repurchase Upon Fundamental Change or a Redemption.* If shares of Convertible Preferred Stock evidenced by a Certificate (or any portion thereof that has not theretofore been exchanged pursuant to **Section 3(i)(i)**) (such Certificate being referred to as the “old Certificate” for purposes of this **Section 3(i)(ii)**) are to be converted pursuant to **Section 10** or repurchased pursuant to a Repurchase Upon Fundamental Change or a Redemption, then, promptly after the later of the time such Convertible Preferred Stock is deemed to cease to be outstanding pursuant to **Section 3(o)** and the time such old Certificate is surrendered for such conversion or repurchase, as applicable, (1) such old Certificate will be cancelled pursuant to **Section 3(m)**; and (2) in the case of a partial conversion or repurchase, the Company will issue, execute and deliver to such Holder, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(d)**, one or more Certificates that (x) each evidence a whole number of shares of Convertible Preferred Stock and, in the aggregate, evidence a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock evidenced by such old Certificate that are not to be so converted or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 3(g)**.

(j) *Status of Retired or Treasury Shares.* Upon any share of Convertible Preferred Stock ceasing to be outstanding (including upon conversion or redemption thereof, and including any shares of Convertible Preferred Stock deemed to be treasury shares under Nevada Revised Statutes 78.283), such share will be deemed, automatically and without any further action of the Board of Directors, to be retired and to resume the status of an authorized and unissued share of preferred stock of the Company, and such share cannot thereafter be reissued as Convertible Preferred Stock.

(k) *Replacement Certificates.* If a Holder of any Convertible Preferred Stock claims that the Certificate(s) evidencing such Convertible Preferred Stock have been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(c)**, a replacement Certificate evidencing such Convertible Preferred Stock upon surrender to the Company or the Transfer Agent of such mutilated Certificate, or upon delivery to the Company or the Transfer Agent of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Transfer Agent and the Company. In the case of a lost, destroyed or wrongfully taken Certificate evidencing Convertible Preferred Stock, the Company and the Transfer Agent may require the Holder thereof to provide such security or indemnity that is reasonably satisfactory to the Company and the Transfer Agent to protect the Company and the Transfer Agent from any loss that any of them may suffer if such Certificate is replaced.

(l) *Registered Holders.* Only the Holder of any share of Convertible Preferred Stock will have rights under this Certificate of Designation as the owner of such share of Convertible Preferred Stock.

(m) *Cancellation.* The Company may at any time deliver Certificates evidencing Convertible Preferred Stock, if any, to the Transfer Agent for cancellation. The Registrar, the Paying Agent and the Conversion Agent will forward to the Transfer Agent each share of Convertible Preferred Stock duly surrendered to them for transfer, exchange, payment or conversion. The Company will cause the Transfer Agent to promptly cancel all Certificates evidencing shares of Convertible Preferred Stock so surrendered to it in accordance with its customary procedures.

(n) *Shares Held by the Company or its Subsidiaries.* Without limiting the generality of **Section 3(j)** and **Section 3(o)**, in determining whether the Holders of the required number of outstanding shares of Convertible Preferred Stock have concurred in any direction, waiver or consent, shares of Convertible Preferred Stock owned by the Company or any of its Subsidiaries will be deemed not to be outstanding.

(o) *Outstanding Shares.*

(i) *Generally.* The shares of Convertible Preferred Stock that are outstanding at any time will be deemed to be those shares indicated as outstanding in the Register (absent manifest error), excluding those shares of Convertible Preferred Stock that have theretofore been (1) cancelled by the Transfer Agent or delivered to the Transfer Agent for cancellation in accordance with **Section 3(m)**; (2) paid in full upon their conversion or upon their repurchase pursuant to a Repurchase Upon Fundamental Change or a Redemption in accordance with this Certificate of Designation; or (3) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (ii), (iii), (iv) or (v)** of this **Section 3(o)**.

(ii) *Replaced Shares.* If any Certificate evidencing any share of Convertible Preferred Stock is replaced pursuant to **Section 3(k)**, then such share will cease to be outstanding at the time of such replacement, unless the Transfer Agent and the Company receive proof reasonably satisfactory to them that such share is held by a “*bona fide purchaser*” under applicable law.

(iii) *Shares to Be Repurchased Pursuant to a Redemption.* If, on a Redemption Date, the Paying Agent holds consideration in kind and amount that is sufficient to pay the aggregate Redemption Price due on such date, then (unless there occurs a default in the payment of the Redemption Price) (1) the Convertible Preferred Stock to be redeemed on such date will be deemed, as of such date, to cease to be outstanding (without limiting the Company’s obligations pursuant to **Section 5(d)**); and (2) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive the Redemption Price as provided in **Section 7** (and, if applicable, declared Dividends as provided in **Section 5(d)**).

(iv) *Shares to Be Repurchased Pursuant to a Repurchase Upon Fundamental Change.* If, on a Fundamental Change Repurchase Date, the Paying Agent holds consideration in kind and amount that is sufficient to pay the aggregate Fundamental Change Repurchase Price due on such date, then (unless there occurs a default in the payment of the Fundamental Change Repurchase Price) (1) the Convertible Preferred Stock to be repurchased on such date will be deemed, as of such date, to cease to be outstanding (without limiting the Company's obligations pursuant to **Section 5(d)**); and (2) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive the Fundamental Change Repurchase Price as provided in **Section 8** (and, if applicable, declared Dividends as provided in **Section 5(d)**).

(v) *Shares to Be Converted.* If any Convertible Preferred Stock is to be converted, then, at the Close of Business on the Conversion Date for such conversion (unless there occurs a default in the delivery of the Conversion Consideration due pursuant to **Section 10** upon such conversion): (1) such Convertible Preferred Stock will be deemed to cease to be outstanding (without limiting the Company's obligations pursuant to **Section 5(d)**); and (2) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive such Conversion Consideration as provided in **Section 10** (and, if applicable, declared Dividends as provided in **Section 5(d)**).

(p) *Repurchases by the Company and its Subsidiaries.* Without limiting the generality of **Section 3(m)** and the next sentence, the Company may, from time to time, repurchase Convertible Preferred Stock in open market purchases or in negotiated transactions without delivering prior notice to Holders. The Company will promptly deliver to the Transfer Agent for cancellation all Convertible Preferred Stock that the Company or any of its Subsidiaries have purchased or otherwise acquired.

(q) *Notations and Exchanges.* Without limiting any rights of Holders pursuant to **Section 9**, if any amendment, supplement or waiver to the Articles of Incorporation or this Certificate of Designation changes the terms of any Convertible Preferred Stock, then the Company may, in its discretion, require the Holder of the Certificate evidencing such Convertible Preferred Stock to deliver such Certificate to the Transfer Agent so that the Transfer Agent may place an appropriate notation prepared by the Company on such Certificate and return such Certificate to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Convertible Preferred Stock, issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(c)**, a new Certificate evidencing such Convertible Preferred Stock that reflects the changed terms. The failure to make any appropriate notation or issue a new Certificate evidencing any Convertible Preferred Stock pursuant to this **Section 3(q)** will not impair or affect the validity of such amendment, supplement or waiver.

Section 4. **RANKING.** The Convertible Preferred Stock will rank (a) senior to (i) Dividend Junior Stock with respect to the payment of dividends; and (ii) Liquidation Junior Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up; (b) equally with (i) Dividend Parity Stock with respect to the payment of dividends; and (ii) Liquidation Parity Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up; and (c) junior to (i) Dividend Senior Stock with respect to the payment of dividends; and (ii) Liquidation Senior Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up.

Section 5. **DIVIDENDS.**

(a) *Regular Dividends.*

(i) *Accumulation and Payment of Regular Dividends.* The Convertible Preferred Stock will accumulate cumulative dividends at a rate per annum equal to the Regular Dividend Rate on the Liquidation Preference thereof (calculated in accordance with **Section 5(a)(ii)**), regardless of whether or not declared or funds are legally available for their payment (such dividends that accumulate on the Convertible Preferred Stock pursuant to this sentence, "**Regular Dividends**"). Subject to the other provisions of this **Section 5** (including, for the avoidance of doubt, **Section 5(b)(i)**), such Regular Dividends will be payable when, as and if declared by the Board of Directors, quarterly in arrears on each Regular Dividend Payment Date, to the Holders as of the Close of Business on the immediately preceding Regular Dividend Record Date. Regular Dividends on the Convertible Preferred Stock will accumulate daily from, and including, the last date on which Regular Dividends have been paid (or, if no Regular Dividends have been paid, from, and including, the Initial Issue Date) to, but excluding, the next Regular Dividend Payment Date.

(ii) *Computation of Accumulated Regular Dividends.* Accumulated Regular Dividends will be computed on the basis of a 360-day year comprised of twelve 30-day months. Regular Dividends on each share of Convertible Preferred Stock will accrue on the Liquidation Preference of such share as of immediately before the Close of Business on the preceding Regular Dividend Payment Date (or, if there is no preceding Regular Dividend Payment Date, on the Initial Issue Date of such share).

(b) *Calculation of Regular Dividends.*

(i) *Generally.* The dollar amount (expressed as an amount per share of Convertible Preferred Stock) of each Regular Dividend on the Convertible Preferred Stock (whether or not declared) that has accumulated on the Convertible Preferred Stock in respect of the Regular Dividend Period ending on, but excluding, a Regular Dividend Payment Date, will be added, effective immediately before the Close of Business on the related Regular Dividend Payment Date, to the Liquidation Preference of each share of Convertible Preferred Stock outstanding as of such time. Such addition will occur automatically, without the need of any action on the part of the Company or any other Person.

(ii) *Construction.* Any Regular Dividends added to the Liquidation Preference of any share of Convertible Preferred Stock pursuant to **Section 5(b)(i)** will be deemed to be “declared” and “paid” on such share of Convertible Preferred Stock for all purposes of this Certificate of Designation.

(c) *Participating Dividends.*

(i) *Generally.* Subject to **Section 5(c)(ii)**, no dividend or other distribution on the Common Stock (whether in cash, securities (including rights or options) or other property, or any combination of the foregoing) will be declared or paid on the Common Stock unless, at the time of such declaration and payment, an equivalent dividend or distribution is declared and paid, respectively, on the Convertible Preferred Stock (such a dividend or distribution on the Convertible Preferred Stock, a “**Participating Dividend**,” and such corresponding dividend or distribution on the Common Stock, the “**Common Stock Participating Dividend**”), such that (1) the Record Date and the payment date for such Participating Dividend occur on the same dates as the Record Date and payment date, respectively, for such Common Stock Participating Dividend; and (2) the kind and amount of consideration payable per share of Convertible Preferred Stock in such Participating Dividend is the same kind and amount of consideration that would be payable in the Common Stock Participating Dividend in respect of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with **Section 10** but without regard to **Section 10(h)**) in respect of one (1) share of Convertible Preferred Stock that is converted with a Conversion Date occurring on such Record Date (subject to the same arrangements, if any, in such Common Stock Participating Dividend not to issue or deliver a fractional portion of any security or other property, but with such arrangement applying separately to each Holder and computed based on the total number of shares of Convertible Preferred Stock held by such Holder on such Record Date).

(ii) *Stockholder Rights Plans, Common Stock Change Events and Stock Splits, Dividends and Combinations.* **Section 5(c)(i)** will not apply to, and no Participating Dividend will be required to be declared or paid in respect of, (1) a Common Stock Change Event, or an event for which an adjustment to the Conversion Price is required pursuant to **Section 10(f)(i)(1)**, as to which **Section 10(i)** or **Section 10(f)(i)(1)**, respectively, will apply; and (2) rights issued pursuant to a stockholder rights plan.

(d) *Treatment of Dividends Upon Redemption, Repurchase Upon Fundamental Change or Conversion.* If the Redemption Date, Fundamental Change Repurchase Date or Conversion Date of any share of Convertible Preferred Stock is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, then the Holder of such share at the Close of Business on such Record Date will be entitled, notwithstanding the related Redemption, Repurchase Upon Fundamental Change or conversion, as applicable, to receive, on or, at the Company’s election, before such Dividend Payment Date, such declared Dividend on such share.

Section 6. RIGHTS UPON LIQUIDATION, DISSOLUTION OR WINDING UP.

(a) *Generally.* If the Company liquidates, dissolves or winds up, whether voluntarily or involuntarily, then, subject to the rights of any of the Company's creditors or holders of any outstanding Liquidation Senior Stock, each share of Convertible Preferred Stock will entitle the Holder thereof to receive payment for the greater of the amounts set forth in **clause (i)** and **(ii)** below out of the Company's assets or funds legally available for distribution to the Company's stockholders, before any such assets or funds are distributed to, or set aside for the benefit of, any Liquidation Junior Stock:

(i) the Liquidation Preference (including any accumulated and unpaid Regular Dividends on such shares of Convertible Preferred Stock to, but excluding, the date of such payment); and

(ii) the amount such Holder would have received in respect of the number of shares of Common Stock that would be issuable upon conversion of such share of Convertible Preferred Stock in connection with an Optional Conversion assuming the Conversion Date of such conversion occurs on the date of such payment.

Upon payment of such amount in full on the outstanding Convertible Preferred Stock, Holders of the Convertible Preferred Stock will have no rights to the Company's remaining assets or funds, if any. If such assets or funds are insufficient to fully pay such amount on all outstanding shares of Convertible Preferred Stock and the corresponding amounts payable in respect of all outstanding shares of Liquidation Parity Stock, if any, then, subject to the rights of any of the Company's creditors or holders of any outstanding Liquidation Senior Stock, such assets or funds will be distributed ratably on the outstanding shares of Convertible Preferred Stock and Liquidation Parity Stock in proportion to the full respective distributions to which such shares would otherwise be entitled.

(b) *Certain Business Combination Transactions Deemed Not to Be a Liquidation.* For purposes of **Section 6(a)**, the Company's consolidation or combination with, or merger with or into, or the sale, lease or other transfer of all or substantially all of the Company's assets (other than a sale, lease or other transfer in connection with the Company's liquidation, dissolution or winding up) to, another Person will not, in itself, constitute the Company's liquidation, dissolution or winding up, even if, in connection therewith, the Convertible Preferred Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing.

Section 7. RIGHT OF THE COMPANY TO REDEEM THE CONVERTIBLE PREFERRED STOCK.

(a) *Right to Redeem Prior to the One Hundred Eighty Day Anniversary.* Subject to the terms of this **Section 7**, the Company has the right, at its election, to redeem up to fifty thousand (50,000) shares of the Convertible Preferred Stock, at any time and from time to time, on a Redemption Date prior to the one hundred eighty (180) day anniversary of the Initial Issue Date, for a cash purchase price equal to the Redemption Price.

(b) *Right to Redeem On or After the Five Year Anniversary.* Subject to the terms of this **Section 7**, the Company has the right, at its election, to redeem, subject to the right of the Holders to convert the Convertible Preferred Stock pursuant to **Section 10** prior to such redemption, all, but not less than all, of the Convertible Preferred Stock, at any time, on a Redemption Date on or after the five (5) year anniversary of the Initial Issue Date, for a cash purchase price equal to the Redemption Price (such redemption, together with the redemption referenced in **Section 7(a)**, the "**Redemptions**" and each, a "**Redemption**").

(c) *Redemption Prohibited in Certain Circumstances.* The Company will not call for Redemption, or otherwise send a Redemption Notice in respect of the Redemption of, any Convertible Preferred Stock pursuant to this **Section 7** unless (i) the Company has sufficient funds legally available, and is permitted under the terms of its indebtedness for borrowed money, to fully pay the Redemption Price in respect of all shares of Convertible Preferred Stock called for Redemption; and (ii) the Common Stock Liquidity Conditions are satisfied and will be satisfied on the Redemption Date.

(d) *Redemption Date.* The Redemption Date for any Redemption will be a Business Day of the Company's choosing that is no more than twenty (20), nor less than ten (10), calendar days after the Redemption Notice Date for such Redemption.

(e) *Redemption Price.* The Redemption Price for any share of Convertible Preferred Stock to be repurchased pursuant to a Redemption is an amount in cash equal the product of (x) the Liquidation Preference (including any accumulated and unpaid Regular Dividends) of such share at the Close of Business on the Redemption Date for such Redemption (including any accumulated and unpaid Regular Dividends on such share), and (y):

- (i) in the case of a Redemption with a Redemption Date occurring prior to the one hundred eighty (180) day anniversary of the Initial Issue Date, 125%;
- (ii) in the case of a Redemption with a Redemption Date occurring on or after the five (5) year anniversary but prior to the six (6) year anniversary of the Initial Issue Date, 105%; or
- (iii) in the case of a Redemption with a Redemption Date occurring on or after the six (6) year anniversary of the Initial Issue Date, 100%.

(f) *Redemption Notice.* To call any share of Convertible Preferred Stock for Redemption, the Company must send to the Holder of such share a notice of such Redemption (a "**Redemption Notice**"), which Redemption Notice must state:

- (i) that such share has been called for Redemption, briefly describing the Company's Redemption right under this Certificate of Designation;
- (ii) the Redemption Date for such Redemption;
- (iii) the Redemption Price per share of Convertible Preferred Stock;
- (iv) if the Redemption Date is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, that such Dividend will be paid in accordance with **Section 5(d)**;
- (v) the name and address of the Transfer Agent and the Conversion Agent, as well as instructions whereby the Holder may surrender such share to the Transfer Agent or Conversion Agent;
- (vi) that Convertible Preferred Stock called for Redemption may be converted pursuant to **Section 10**, at any time before the Close of Business on the Business Day immediately before the Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full); and
- (vii) the Conversion Price in effect on the Redemption Notice Date for such Redemption.

(g) *Payment of the Redemption Price.* The Company will cause the Redemption Price for each share of Convertible Preferred Stock subject to Redemption to be paid to the Holder thereof on or before the applicable Redemption Date.

SECTION 8. RIGHT OF HOLDERS TO REQUIRE THE COMPANY TO REPURCHASE CONVERTIBLE PREFERRED STOCK UPON A FUNDAMENTAL CHANGE.

(a) *Fundamental Change Repurchase Right.* Subject to the other terms of this **Section 8**, if a Fundamental Change occurs, then each Holder may, at its election, either (i) effective as of immediately prior to the Fundamental Change, convert all or a portion of its shares of Convertible Preferred Stock pursuant to **Section 10** at the then-current Conversion Price or (ii) require the Company to repurchase (the "**Fundamental Change Repurchase Right**") all, or any whole number of shares that is less than all, of such Holder's Convertible Preferred Stock that have not been converted pursuant to clause (i) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(b) *Funds Legally Available for Payment of Fundamental Change Repurchase Price; Covenant Not to Take Certain Actions.* If the Company does not have sufficient funds legally available to pay the Fundamental Change Repurchase Price of all shares of Convertible Preferred Stock that are to be repurchased pursuant to a Repurchase Upon Fundamental Change, then the Company shall (1) pay the maximum amount of such Fundamental Change Repurchase Price that can be paid out of funds legally available for payment, which payment will be made pro rata to each Holder based on the total number of shares of Convertible Preferred Stock of such Holder that were otherwise to be repurchased pursuant to such Repurchase Upon Fundamental Change; and (2) purchase any shares of Convertible Preferred Stock not purchased because of the foregoing limitations at the applicable Fundamental Change Repurchase Price as soon as practicable after the Company is able to make such purchase out of assets legally available for the purchase of such shares of Convertible Preferred Stock. The inability of the Company (or its successor) to make a purchase payment for any reason shall not relieve the Company (or its successor) from its obligation to effect any required purchase when, as and if permitted by applicable law. If the Company fails to pay the Fundamental Change Repurchase Price in full when due in accordance with this **Section 8** in respect of some or all of the shares or Convertible Preferred Stock to be repurchased pursuant to the Fundamental Change Repurchase Right, the Company will pay Dividends on such shares not repurchased at a Dividend Rate of five and one half percent (5.5%) per annum until such shares are repurchased, payable quarterly in arrears on each Dividend Payment Date, for the period from and including the first Dividend Payment Date (or the Initial Issue Date, as applicable) upon which the Company fails to pay the Fundamental Change Repurchase Price in full when due in accordance with this Section 8 through but not including the latest of the day upon which the Company pays the Fundamental Change Repurchase Price in full in accordance with this **Section 8**. Notwithstanding the foregoing, in the event a Holder exercises a Fundamental Change Repurchase Right pursuant to this **Section 8** at a time when the Company is restricted or prohibited (contractually or otherwise) from repurchasing some or all of the Convertible Preferred Stock subject to the Fundamental Change Repurchase Right, the Company will use its commercially reasonable efforts to obtain the requisite consents to remove or obtain an exception or waiver to such restrictions or prohibition. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to comply with its obligations under this **Section 8**. The Company will not voluntarily take any action, or voluntarily engage in any transaction, that would result in a Fundamental Change unless the Company has sufficient funds legally available to fully pay the maximum aggregate Fundamental Change Repurchase Price that would be payable in respect of such Fundamental Change on all shares of Conversion Preferred Stock then outstanding.

(c) *Fundamental Change Repurchase Date.* The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Company's choosing that is no more than thirty (30), nor less than twenty (20), Business Days after the date the Company sends the related Final Fundamental Change Notice pursuant to **Section 8(f)**.

(d) *Fundamental Change Repurchase Price.* The Fundamental Change Repurchase Price for any share of Convertible Preferred Stock to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the greater of (i) the Liquidation Preference (including any accumulated and unpaid Regular Dividends) of such share at the Close of Business on the Fundamental Change Repurchase Date for such Fundamental Change (including any accumulated and unpaid Regular Dividends on such share to, but excluding, such Fundamental Change Repurchase Date) and (ii) the amount that such Holders would have received had such Holders, immediately prior to such Fundamental Change, converted such shares of Convertible Preferred Stock into Common Stock pursuant to **Section 10(a)**, without regard to any of the limitations on convertibility contained in **Section 10(h)**.

(e) *Initial Fundamental Change Notice.* On or before the twentieth (20th) Business Day prior to the date on which the Company anticipates consummating a Fundamental Change (or, if later, promptly after the Company discovers that a Fundamental Change may occur), a written notice shall be sent by or on behalf of the Company to the Holders as they appear in the records of the Company, which notice shall contain the date on which the Fundamental Change is anticipated to be effected (or, if applicable, the date on which a Schedule TO or other schedule, form or report disclosing a Fundamental Change was filed) (the "**Initial Fundamental Change Notice**"). No later than ten (10) Business Days prior to the date on which the Company anticipates consummating the Fundamental Change as set forth in the Initial Fundamental Change Notice (or, if the Fundamental Change has already occurred as provided in the Initial Fundamental Change Notice, promptly, but no later than the tenth (10th) Business Day following receipt thereof), any Holder that desires to exercise its rights pursuant to **Section 8(a)** shall notify the Company in writing thereof and shall specify (x) whether such Holder is electing to exercise its rights pursuant to clause (i) or (ii) of **Section 8(a)** and (y) the number of shares of Convertible Preferred Stock subject thereto.

(f) *Final Fundamental Change Notice.* If a Holder elects to exercise its Fundamental Change Repurchase Right pursuant to **Section 8(a)(ii)**, on or before the second (2nd) Business Day after the effective date of a Fundamental Change, the Company will send to each Holder a notice of such Fundamental Change (a "**Final Fundamental Change Notice**"). Such Final Fundamental Change Notice must state:

- (i) briefly, the events causing such Fundamental Change;
- (ii) the effective date of such Fundamental Change;

(iii) the procedures that a Holder must follow to require the Company to repurchase its Convertible Preferred Stock pursuant to this **Section 8**, including the deadline for exercising the Fundamental Change Repurchase Right and the procedures for submitting and withdrawing a Fundamental Change Repurchase Notice;

(iv) the Fundamental Change Repurchase Date for such Fundamental Change;

(v) the Fundamental Change Repurchase Price per share of Convertible Preferred Stock, including reasonable detail of the calculation thereof;

(vi) if the Fundamental Change Repurchase Date is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, that such Dividend will be paid in accordance with **Section 5(d)**;

(vii) the name and address of the Transfer Agent and the Conversion Agent;

(viii) the Conversion Price in effect on the date of such Final Fundamental Change Notice and a description and quantification of any adjustments to the Conversion Price that may result from such Fundamental Change;

(ix) that Convertible Preferred Stock may be converted pursuant to **Section 10** at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or, if the Company fails to pay the Fundamental Change Repurchase Price due on such Fundamental Change Repurchase Date in full, at any time until such time as the Company pays such Fundamental Change Repurchase Price in full);

(x) that shares of Convertible Preferred Stock for which a Fundamental Change Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Fundamental Change Repurchase Price; and

(xi) that shares of Convertible Preferred Stock that are subject to a Fundamental Change Repurchase Notice that has been duly tendered may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with this Certificate of Designation.

(g) *Procedures to Exercise the Fundamental Change Repurchase Right.*

(i) *Delivery of Fundamental Change Repurchase Notice and Shares of Convertible Preferred Stock to Be Repurchased.* To exercise its Fundamental Change Repurchase Right for any share(s) of Convertible Preferred Stock following a Fundamental Change, the Holder thereof must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or such later time as may be required by law), a duly completed, written Fundamental Change Repurchase Notice with respect to such share(s); and

(2) such share(s), duly endorsed for transfer (to the extent such share(s) are evidenced by one or more Physical Certificates).

(ii) *Contents of Fundamental Change Repurchase Notices.* Each Fundamental Change Repurchase Notice with respect to any share(s) of Convertible Preferred Stock must state:

(1) if such share(s) are evidenced by one or more Physical Certificates, the certificate number(s) of such Physical Certificate(s);

(2) the number of shares of Convertible Preferred Stock to be repurchased, which must be a whole number; and

(3) that such Holder is exercising its Fundamental Change Repurchase Right with respect to such share(s).

(iii) *Withdrawal of Fundamental Change Repurchase Notice.* A Holder that has delivered a Fundamental Change Repurchase Notice with respect to any share(s) of Convertible Preferred Stock may withdraw such Fundamental Change Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date. Such withdrawal notice must state:

(1) if such share(s) are evidenced by one or more Physical Certificates, the certificate number(s) of such Physical Certificate(s);

(2) the number of shares of Convertible Preferred Stock to be withdrawn, which must be a whole number; and

(3) the number of shares of Convertible Preferred Stock, if any, that remain subject to such Fundamental Change Repurchase Notice, which must be a whole number.

If any Holder delivers to the Paying Agent any such withdrawal notice withdrawing any share(s) of Convertible Preferred Stock from any Fundamental Change Repurchase Notice previously delivered to the Paying Agent, and such share(s) have been surrendered to the Paying Agent, then such share(s) will be returned to the Holder thereof.

(h) *Payment of the Fundamental Change Repurchase Price.* Subject to **Section 8(b)**, the Company will cause the Fundamental Change Repurchase Price for each share of Convertible Preferred Stock to be repurchased pursuant to a Repurchase Upon Fundamental Change to be paid to the Holder thereof on or before the applicable Fundamental Change Repurchase Date (or, if later in the case such share is evidenced by a Physical Certificate, the date (x) the Physical Certificate evidencing such share is delivered to the Paying Agent).

(i) *Third Party May Conduct Repurchase Offer In Lieu of the Company.* Notwithstanding anything to the contrary in this **Section 8**, the Company will be deemed to satisfy its obligations under this **Section 8** if one or more third parties conduct any Repurchase Upon Fundamental Change and related offer to repurchase Convertible Preferred Stock otherwise required by this **Section 8** in a manner that would have satisfied the requirements of this **Section 8** if conducted directly by the Company.

(j) *Fundamental Change Agreements.* The Company shall not enter into any agreement for a transaction constituting a Fundamental Change unless such agreement provides for, or does not interfere with or prevent (as applicable), the exercise by the Holders of their Fundamental Change Repurchase Right in a manner that is consistent with, and gives effect to, this **Section 8**.

Section 9. **VOTING RIGHTS.** The Convertible Preferred Stock will have no voting rights except as set forth in this **Section 9** or as provided in the Articles of Incorporation or required by the Nevada Revised Statutes.

(a) *Voting and Consent Rights with Respect to Specified Matters.*

(i) *Generally.* Subject to the other provisions of this **Section 9(a)**, (x) while any share of the Convertible Preferred Stock is outstanding with respect to **Section 9(a)(i)(1)** and **Section 9(a)(i)(2)**, and (y) while at least seventy-five percent (75%) of the Convertible Preferred Stock issued on the Initial Issue Date is outstanding with respect to **Section 9(a)(i)(3)** and **Section 9(a)(i)(4)**, each following event will require, and cannot be effected without, the affirmative vote or consent of Holders constituting at least a majority of the outstanding voting power of the Convertible Preferred Stock:

(1) any amendment, modification or repeal of any provision of the Articles of Incorporation, Bylaws or this Certificate of Designation that adversely affects the rights, preferences or powers of the Convertible Preferred Stock (other than an amendment, modification or repeal permitted by **Section 9(a)(ii)**);

(2) any issuances by the Company of shares of, or other securities convertible into, Dividend Parity Stock, Liquidation Parity Stock, Dividend Senior Stock or Liquidation Senior Stock;

(3) any voluntary dissolution, liquidation, bankruptcy or winding up of the Company or any deregistration or delisting of the Common Stock of the Company; or

(4) any incurrence by the Company of any indebtedness for borrowed money unless the Company's ratio of indebtedness for borrowed money to LTM EBITDA would be less than a ratio of 5-to-1 on a pro forma basis giving effect to such incurrence and the use of proceeds therefrom;

provided, however, that each of the following will be deemed not to adversely affect the special rights, preferences or voting powers of the Convertible Preferred Stock and will not require any vote or consent pursuant to **Section 9(a)(i)(1)** and **Section 9(a)(i)(2)**:

(I) any increase in the number of the authorized but unissued shares of the Company's undesignated preferred stock;

(II) any increase in the number of authorized shares of Convertible Preferred Stock;

(III) the creation and issuance, or increase in the authorized or issued number, of any shares of any class or series of stock that is both Dividend Junior Stock and Liquidation Junior Stock; and

(IV) the application of **Section 10(i)**, including the execution and delivery of any supplemental instruments pursuant to **Section 10(i)(iii)** solely to give effect to such provision.

(ii) *Certain Amendments Permitted Without Consent.* Notwithstanding anything to the contrary in **Section 9(a)(i)(1)**, the Company may amend, modify or repeal any of the terms of the Convertible Preferred Stock without the vote or consent of any Holder to:

(1) amend or correct this Certificate of Designation to cure any ambiguity or correct any omission, defect or inconsistency; or

(2) make any other change to the Articles of Incorporation or this Certificate of Designation that does not, individually or in the aggregate with all other such changes, adversely affect the rights of any Holder (other than any Holders that have consented to such change).

(b) *Right to Vote with Holders of Common Stock on an As-Converted Basis.* Subject to the other provisions of, and without limiting the other voting rights provided in, this **Section 9**, and except as provided in the Articles of Incorporation or restricted by the Nevada Revised Statutes, the Holders will have the right to vote together as a single class with the holders of the Common Stock on each matter submitted for a vote or consent by the holders of the Common Stock, and, for these purposes, (i) the Convertible Preferred Stock of each Holder will entitle such Holder to be treated as if such Holder were the holder of record, as of the record or other relevant date for such matter, of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with **Section 10(e)**, including **Section 10(e)(ii)**) upon conversion of such Convertible Preferred Stock assuming such Convertible Preferred Stock were converted with a Conversion Date occurring on such record or other relevant date; and (ii) the Holders will be entitled to notice of all stockholder meetings or proposed actions by written consent in accordance with the Articles of Incorporation, the Bylaws of the Company, and the Nevada Revised Statutes as if the Holders were holders of Common Stock. Notwithstanding the foregoing, the aggregate voting power of the Convertible Preferred Stock when voting with the holders of the Common Stock shall be limited to the extent necessary to comply with the NASDAQ Listing Standard Rules, and any resulting limitation on the voting rights of the Convertible Preferred Stock shall apply pro rata among the Holders thereof.

(c) *Procedures for Voting and Consents.*

(i) *Rules and Procedures Governing Votes and Consents.* If any vote or consent of the Holders will be held or solicited, including at an annual meeting or a special meeting of stockholders, then (1) the Board of Directors will adopt customary rules and procedures at its discretion to govern such vote or consent, subject to the other provisions of this **Section 9**; and (2) such rules and procedures may include fixing a record date to determine the Holders that are entitled to vote or provide consent, as applicable, rules governing the solicitation and use of proxies or written consents and customary procedures for the nomination and designation, by Holders, of directors for election; *provided, however*, that with respect to any voting rights of the Holders pursuant to **Section 9(b)**, such rules and procedures will be the same rules and procedures that apply to holders of the Common Stock with respect to the applicable matter referred to in **Section 9(b)**.

(ii) *Voting Power of the Convertible Preferred Stock.* Each share of Convertible Preferred Stock will be entitled to one vote on each matter on which the Holders of the Convertible Preferred Stock are entitled to vote separately as a class and not together with the holders of any other class or series of stock.

(iii) *Written Consent in Lieu of Stockholder Meeting.* Notwithstanding anything to the contrary set forth in the Bylaws or otherwise, a consent or affirmative vote of the Holders pursuant to **Section 9(a)** may be given or obtained in writing without a meeting.

Section 10. CONVERSION.

(a) *Generally.* Subject to the provisions of this **Section 10**, the Convertible Preferred Stock may be converted only pursuant to a Mandatory Conversion or an Optional Conversion.

(b) *Conversion at the Option of the Holders.*

(i) *Conversion Right; When Shares May Be Submitted for Optional Conversion.* Holders will have the right to submit all, or any whole number of shares that is less than all, of their shares of Convertible Preferred Stock pursuant to an Optional Conversion at any time; *provided, however*, that, notwithstanding anything to the contrary in this Certificate of Designation,

(1) if a Fundamental Change Repurchase Notice is validly delivered pursuant to **Section 8(g)(i)** with respect to any share of Convertible Preferred Stock, then such share may not be submitted for Optional Conversion after the Business Day prior to the consummation of the Fundamental Change, except to the extent (A) such share is not subject to such notice; (B) such notice is withdrawn in accordance with **Section 8(g)(iii)**; or (C) the Company fails to pay the Fundamental Change Repurchase Price for such share in accordance with this Certificate of Designation;

(2) no Convertible Preferred Stock may be submitted for Optional Conversion to the extent limited by **Section 10(h)**;

(3) shares of Convertible Preferred Stock that are called for Redemption may not be submitted for Optional Conversion after the Close of Business on the Business Day immediately before the related Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full); and

(4) shares of Convertible Preferred Stock that are subject to Mandatory Conversion may not be submitted for Optional Conversion after the Close of Business on the Business Day immediately before the related Mandatory Conversion Date.

(ii) *Conversions of Fractional Shares Not Permitted.* Notwithstanding anything to the contrary in this Certificate of Designation, in no event will any Holder be entitled to convert a number of shares of Convertible Preferred Stock that is not a whole number.

(c) *Mandatory Conversion at the Company's Election.*

(i) *Mandatory Conversion Right.* Subject to the provisions of this **Section 10**, the Company has the right (the "**Mandatory Conversion Right**"), exercisable at its election, to designate any Business Day on or after the two (2) year anniversary of the Initial Issue Date as a Conversion Date for the conversion (such a conversion, a "**Mandatory Conversion**") of all, but not less than all, of the outstanding shares of Convertible Preferred Stock, but only if the Last Reported Sale Price per share of Common Stock exceeds one hundred and fifty percent (150%) of the Conversion Price on each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the Trading Day immediately before the Mandatory Conversion Notice Date for such Mandatory Conversion.

(ii) *Mandatory Conversion Prohibited in Certain Circumstances.* The Company will not exercise its Mandatory Conversion Right, or otherwise send a Mandatory Conversion Notice, with respect to any Convertible Preferred Stock pursuant to this **Section 10(c)** unless the Common Stock Liquidity Conditions are satisfied with respect to the Mandatory Conversion. Notwithstanding anything to the contrary in this **Section 10(c)**, the Company's exercise of its Mandatory Conversion Right, and any related Mandatory Conversion Notice, will not apply to any share of Convertible Preferred Stock as to which a Fundamental Change Repurchase Notice has been duly delivered, and not withdrawn, pursuant to **Section 8(g)**. Notwithstanding anything to the contrary in this **Section 10(c)**, the Company cannot exercise its Mandatory Conversion Right with respect to any shares of Convertible Preferred Stock to the extent limited by **Section 10(h)**.

(iii) *Mandatory Conversion Date.* The Mandatory Conversion Date for any Mandatory Conversion will be a Business Day of the Company's choosing that is no more than twenty (20), nor less than ten (10), Business Days after the Mandatory Conversion Notice Date for such Mandatory Conversion.

(iv) *Mandatory Conversion Notice.* To exercise its Mandatory Conversion Right with respect to any shares of Convertible Preferred Stock, the Company must send to each Holder of such shares a written notice of such exercise (a "**Mandatory Conversion Notice**").

(v) Such Mandatory Conversion Notice must state:

(1) that the Company has exercised its Mandatory Conversion Right to cause the Mandatory Conversion of the shares of Convertible Preferred Stock, briefly describing the Company's Mandatory Conversion Right under this Certificate of Designation;

(2) the Mandatory Conversion Date for such Mandatory Conversion and the date scheduled for the settlement of such Mandatory Conversion;

(3) the name and address of the Paying Agent and the Conversion Agent, as well as instructions whereby the Holder may surrender such share to the Transfer Agent or Conversion Agent;

(4) that shares of Convertible Preferred Stock subject to Mandatory Conversion may be converted earlier at the option of the Holders thereof pursuant to an Optional Conversion at any time before the Close of Business on the Business Day immediately before the Mandatory Conversion Date; and

(5) the Conversion Price in effect on the Mandatory Conversion Notice Date for such Mandatory Conversion), the number of shares of Common Stock to be issued to such Holder upon conversion of each share of Convertible Preferred Stock held by such Holder and, if applicable, the amount of accumulated and unpaid Regular Dividends in respect of such share of Convertible Preferred Stock as of the Mandatory Conversion Date.

(d) *Conversion Procedures.*

(i) *Mandatory Conversion.* If the Company duly exercises, in accordance with **Section 10(c)**, its Mandatory Conversion Right with respect to any share of Convertible Preferred Stock, then (1) the Mandatory Conversion of such share will occur automatically and without the need for any action on the part of the Holder(s) thereof; and (2) the shares of Common Stock due upon such Mandatory Conversion will be registered in the name of, and, if applicable, the cash due upon such Mandatory Conversion will be delivered to, the Holder(s) of such share of Convertible Preferred Stock as of the Close of Business on the related Mandatory Conversion Date.

(ii) *Requirements for Holders to Exercise Optional Conversion Right.*

(1) *Generally.* To convert any share of Convertible Preferred Stock evidenced by a Certificate pursuant to an Optional Conversion, the Holder of such share must (w) complete, manually sign and deliver to the Conversion Agent an Optional Conversion Notice (at which time, in the case such Certificate is an Electronic Certificate, such Optional Conversion will become irrevocable); (x) if such Certificate is a Physical Certificate, deliver such Physical Certificate to the Conversion Agent (at which time such Optional Conversion will become irrevocable); (y) furnish any endorsements and transfer documents that the Company or the Conversion Agent may require; and (z) if applicable, pay any documentary or other taxes that are required to be paid by the Company as a result of a Holder requesting that shares be registered in a name other than such Holders' name as described in **Section 11(c)**.

(2) *Optional Conversion Permitted only During Business Hours.* Convertible Preferred Stock will be deemed to be surrendered for Optional Conversion only after the Open of Business and before the Close of Business on a day that is a Business Day.

(iii) *Treatment of Accumulated Dividends upon Conversion.*

(1) *No Adjustments for Accumulated Regular Dividends.* Without limiting the operation of **Section 5(b)(i)** and **Section 10(c)(i)**, the Conversion Price will not be adjusted to account for any accumulated and unpaid Regular Dividends on any Convertible Preferred Stock being converted.

(2) *Conversions Between A Record Date and a Dividend Payment Date.* If the Conversion Date of any share of Convertible Preferred Stock to be converted is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, then such Dividend will be paid pursuant to **Section 5(d)** notwithstanding such conversion.

(iv) *When Holders Become Stockholders of Record of the Shares of Common Stock Issuable Upon Conversion.* The Person in whose name any share of Common Stock is issuable upon conversion of any Convertible Preferred Stock will be deemed to become the holder of record of such share as of the Close of Business on the Conversion Date for such conversion.

(e) *Settlement upon Conversion.*

(i) *Generally.* Subject to **Section 10(e)(ii)**, **Section 10(h)** and **Section 15(b)**, the consideration due upon settlement of the conversion of each share of Convertible Preferred Stock will consist of a number of shares of Common Stock equal to the quotient obtained by dividing (I) the Liquidation Preference (including any accumulated and unpaid Regular Dividends on such shares of Convertible Preferred Stock to, but excluding, the Conversion Date) for such shares of Convertible Preferred Stock subject to conversion by (II) the Conversion Price, in each case, as of immediately before the Close of Business on such Conversion Date.

(ii) *Payment of Cash in Lieu of any Fractional Share of Common Stock.* Subject to **Section 15(b)**, in lieu of delivering any fractional share of Common Stock otherwise due upon conversion of any Convertible Preferred Stock, the Company will, to the extent it is legally able to do so and permitted under the terms of its indebtedness for borrowed money, pay cash based on the Last Reported Sale Price per share of Common Stock on the Conversion Date for such conversion (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(iii) *Delivery of Conversion Consideration.* Except as provided in **Sections 10(f)(i)(2)** and **10(i)**, the Company will pay or deliver, as applicable, the Conversion Consideration due upon conversion of any Convertible Preferred Stock on or before the second (2nd) Business Day immediately after the Conversion Date for such conversion.

(f) *Conversion Price Adjustments.*

(i) *Events Requiring an Adjustment to the Conversion Price.* The Conversion Price will be adjusted from time to time as follows:

(1) *Stock Dividends, Splits and Combinations.* If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 10(i)** will apply), then the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where:

CP_0 = the Conversion Price in effect immediately before the Close of Business on the Record Date for such dividend or distribution, or immediately before the Close of Business on the effective date of such stock split or stock combination, as applicable;

CP_1 = the Conversion Price in effect immediately after the Close of Business on such Record Date or effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Close of Business on such Record Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

If any dividend, distribution, stock split or stock combination of the type described in this **Section 10(f)(i)(1)** is declared or announced, but not so paid or made, then the Conversion Price will be readjusted, effective as of the date the Board of Directors, or any Officer acting pursuant to authority conferred by the Board of Directors, determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Price that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(2) *Tender Offers or Exchange Offers.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act), and the value (determined as of the Expiration Time by the Board of Directors) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the “**Expiration Date**”) on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP \times OS_0}{AC + (SP \times OS_1)}$$

where:

CP_0 = the Conversion Price in effect immediately before the time (the “**Expiration Time**”) such tender or exchange offer expires;

CP_1 = the Conversion Price in effect immediately after the Expiration Time;

SP = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the “**Tender/Exchange Offer Valuation Period**”) beginning on, and including, the Trading Day immediately after the Expiration Date;

OS₀ = the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

AC = the aggregate value (determined as of the Expiration Time by the Board of Directors) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer; and

OS₁ = the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

provided, however, that the Conversion Price will in no event be adjusted up pursuant to this **Section 10(f)(i)(2)**, except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Price pursuant to this **Section 10(f)(i)(2)** will be calculated as of the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period but will be given effect immediately after the Expiration Time, with retroactive effect. If the Conversion Date for any share of Convertible Preferred Stock to be converted occurs on the Expiration Date or during the Tender/Exchange Offer Valuation Period, then, notwithstanding anything to the contrary in this Certificate of Designation, the Company will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last Trading Day of the Tender/Exchange Offer Valuation Period.

To the extent such tender or exchange offer is announced but not consummated (including as a result of being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Price will be readjusted to the Conversion Price that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(ii) *No Adjustments in Certain Cases.*

(1) *Certain Events.* Without limiting the operation of **Section 5(b)(i)** and **10(e)(i)**, the Company will not be required to adjust the Conversion Price except pursuant to **Section 10(f)(i)**. Without limiting the foregoing, the Company will not be required to adjust the Conversion Price on account of:

(A) except as otherwise provided in **Section 10(f)(i)**, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(B) the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company’s securities and the investment of additional optional amounts in shares of Common Stock under any such plan;

(C) the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(D) the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company outstanding as of the Initial Issue Date; or

(E) solely a change in the par value of the Common Stock.

(iii) *Stockholder Rights Plans.* If any shares of Common Stock are to be issued upon conversion of any Convertible Preferred Stock and, at the time of such conversion, the Company has in effect any stockholder rights plan, then the Holder of such Convertible Preferred Stock will be entitled to receive, in addition to, and concurrently with the delivery of, the consideration otherwise due upon such conversion, the rights set forth in such stockholder rights plan.

(iv) *Determination of the Number of Outstanding Shares of Common Stock.* For purposes of **Section 10(f)(i)**, the number of shares of Common Stock outstanding at any time will (1) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (2) exclude shares of Common Stock held in the Company's treasury.

(v) *Calculations.* All calculations with respect to the Conversion Price and adjustments thereto will be made to the nearest 1/100th of a cent (with 5/1,000ths rounded upward).

(vi) *Notice of Conversion Price Adjustments.* Upon the effectiveness of any adjustment to the Conversion Price pursuant to **Section 10(f)(i)**, the Company will promptly send notice to the Holders containing (1) a brief description of the transaction or other event on account of which such adjustment was made; (2) the Conversion Price in effect immediately after such adjustment; and (3) the effective time of such adjustment.

(g) *Voluntary Conversion Price Decreases.*

(i) *Generally.* To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) decrease the Conversion Price by any amount if (1) the Board of Directors determines that such decrease is in the Company's best interest or that such decrease is advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (2) such decrease is in effect for a period of at least twenty (20) Business Days; and (3) such decrease is irrevocable during such period; *provided, however*, that any such decrease that would be reasonably expected to result in any income tax imposed on holders of Convertible Preferred Stock shall require the affirmative vote or consent of Holders, voting exclusively as a single class, constituting a majority of the voting power of the outstanding shares of Convertible Preferred Stock.

(ii) *Notice of Voluntary Decrease.* If the Board of Directors determines to decrease the Conversion Price pursuant to **Section 10(g)(i)**, then, no later than the first Business Day of the related twenty (20) Business Day period referred to in **Section 10(g)(i)**, the Company will send notice to each Holder, the Transfer Agent and the Conversion Agent of such decrease to the Conversion Price, the amount thereof and the period during which such decrease will be in effect.

(h) *Restriction on Conversions.*

(i) *Equity Treatment Limitation.*

(1) *Generally.* Notwithstanding anything to the contrary in this Certificate of Designation, the Company will in no event be required to deliver any shares of Common Stock in settlement of the conversion of any Convertible Preferred Stock to the extent, but only to the extent, the Company does not then have sufficient authorized and unissued shares of Common Stock that are not reserved for other purposes (the limitation set forth in this sentence, the "**Equity Treatment Limitation**," and any shares of Common Stock that would otherwise be deliverable in excess of the number of such authorized and unissued shares, the "**Deficit Shares**"). If any Deficit Shares are withheld pursuant to the Equity Treatment Limitation and, at any time thereafter, some or all of such Deficit Shares could be delivered without violating the Equity Treatment Limitation, then (A) the Company will deliver such Deficit Shares to the extent, but only to the extent, such delivery is permitted by the Equity Treatment Limitation; and (B) the provisions of this sentence will continue to apply until there are no remaining Deficit Shares.

(2) *Share Reserve Provisions.* On the Initial Issue Date, the Number of Reserved Shares is not less than the Initial Share Reserve Requirement. The Company shall at all times reserve and keep available a Number of Reserved Shares to be no less than the Continuing Share Reserve Requirement at any time when any Convertible Preferred Stock is outstanding (including, if applicable, by seeking the approval of its stockholders to amend the Articles of Incorporation to increase the number of authorized shares of Common Stock).

(3) *Limitation on Certain Transactions.* The Company will not, without the prior written consent of Holders of a majority of the Convertible Preferred Stock then outstanding, effect any transaction that would require an adjustment to the Conversion Price pursuant to **Section 10(f)(i)** if the settlement of the conversion of all Convertible Preferred Stock then outstanding (assuming such conversion occurred immediately after giving effect to such adjustment) would result in any Deficit Shares pursuant to the Equity Treatment Limitation.

(i) *Effect of Common Stock Change Event.*

(i) *Generally.* If there occurs any:

(1) recapitalization, reclassification or change of the Common Stock, other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value or (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities;

(2) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(3) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person;
or

(4) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a “**Common Stock Change Event**,” and such other securities, cash or property, the “**Reference Property**,” and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a “**Reference Property Unit**”), then, notwithstanding anything to the contrary in this Certificate of Designation,

(A) from and after the effective time of such Common Stock Change Event, (I) the consideration due upon conversion of any Convertible Preferred Stock will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Section 10** or in **Section 11**, or in any related definitions, were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section 7** and **Section 10(c)**, each reference to any number of shares of Common Stock in such Sections (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (III) for purposes of the definitions of “Fundamental Change,” the terms “Common Stock” and “common equity” will be deemed to mean the common equity (including depository receipts representing common equity), if any, forming part of such Reference Property; and

(B) if such Reference Property Unit consists entirely of cash, then the Company will pay the cash due in respect of all conversions whose Conversion Date occurs on or after the effective date of such Common Stock Change Event no later than the tenth (10th) Business Day after the relevant Conversion Date; and

(C) for these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of common equity securities will be determined by reference to the definition of “Daily VWAP,” substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of common equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify the Holders of such weighted average as soon as practicable after such determination is made.

(ii) *Compliance Covenant.* The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 10(i)**.

(iii) *Execution of Supplemental Instruments.* On or before the date the Common Stock Change Event becomes effective, the Company and, if applicable, the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the “**Successor Person**”) will execute and deliver such supplemental instruments, if any, as the Company reasonably determines are necessary or desirable to (1) provide for subsequent adjustments to the Conversion Price pursuant to **Section 10(f)(i)** in a manner consistent with this **Section 10(i)**; and (2) give effect to such other provisions, if any, as the Company reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to **Section 10(i)(i)**. If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such supplemental instrument(s) and such supplemental instrument(s) will contain such additional provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of Holders.

(iv) *Notice of Common Stock Change Event.* The Company will provide notice of each Common Stock Change Event to Holders as promptly as possible after the effective date of the Common Stock Change Event.

Section 11. CERTAIN PROVISIONS RELATING TO THE ISSUANCE OF COMMON STOCK.

(a) *Equitable Adjustments to Prices.* Whenever this Certificate of Designation requires the Company to calculate the average of the Last Reported Sale Prices or Daily VWAPs, or any function thereof, over a period of multiple days (including to calculate an adjustment to the Conversion Price), the Company will make appropriate adjustments, if any, to those calculations to account for any adjustment to the Conversion Price pursuant to **Section 10(f)(i)** that becomes effective, or any event requiring such an adjustment to the Conversion Price where the Ex-Dividend Date, effective date or Expiration Date, as applicable, of such event occurs, at any time during such period.

(b) *Status of Shares of Common Stock.* Each share of Common Stock delivered upon conversion of the Convertible Preferred Stock of any Holder will be a newly issued share and will be duly authorized and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of such Holder or the Person to whom such share of Common Stock will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each such share of Common Stock, when so delivered, to be admitted for listing on such exchange or quotation on such system.

(c) *Taxes Upon Issuance of Common Stock.* The Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon conversion of the Convertible Preferred Stock of any Holder, except any tax or duty that is due because such Holder requests those shares to be registered in a name other than such Holder's name.

Section 12. NO PREEMPTIVE RIGHTS. Without limiting the rights of the Holder set forth in this Certificate of Designation (including in connection with the issuance of Common Stock or Reference Property upon conversion of the Convertible Preferred Stock), the Convertible Preferred Stock will not have any preemptive rights to subscribe for or purchase any of the Company's securities.

Section 13. TAXES. The Company shall pay any and all stock transfer, documentary, stamp and similar taxes that may be payable in respect of any issuance or delivery of shares of Convertible Preferred Stock or shares of Common Stock or other securities issued on account of Convertible Preferred Stock pursuant hereto or certificates evidencing such shares or securities. However, in the case of conversion of Convertible Preferred Stock, the Company shall not be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Convertible Preferred Stock, shares of Common Stock or other securities to a beneficial owner other than the beneficial owner of the Convertible Preferred Stock immediately prior to such conversion, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Company the amount of any such tax or has established, to the satisfaction of the Company, that such tax has been paid or is not payable.

Section 14. TERM. Except as expressly provided in this Certificate of Designation, the shares of Convertible Preferred Stock shall not be redeemable or otherwise mature and the term of the Convertible Preferred Stock shall be perpetual.

Section 15. CALCULATIONS.

(a) *Responsibility; Schedule of Calculations.* Except as otherwise provided in this Certificate of Designation, the Company will be responsible for making all calculations called for under this Certificate of Designation or the Convertible Preferred Stock, including determinations of the Conversion Price, the Daily VWAPs, the Last Reported Sale Prices and accumulated Regular Dividends on the Convertible Preferred Stock. The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of such calculations to any Holder upon written request.

(b) *Calculations Aggregated for Each Holder.* The composition of the Conversion Consideration due upon conversion of the Convertible Preferred Stock of any Holder will be computed based on the total number of shares of Convertible Preferred Stock of such Holder being converted with the same Conversion Date. For these purposes, any cash amounts due to such Holder in respect thereof will be rounded to the nearest cent.

Section 16. NOTICES. The Company will send all notices or communications to Holders pursuant to this Certificate of Designation in writing and delivered personally, by facsimile or e-mail (with confirmation of receipt requested from the recipient, in the case of e-mail), or sent by a nationally recognized overnight courier service guaranteeing next day delivery, to the Holders' respective addresses shown on the Register. Unless otherwise specified herein, all notices and communications hereunder shall be deemed to have been given upon the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, or by private courier service.

Section 17. FACTS ASCERTAINABLE. When the terms of this Certificate of Designation refers to a specific agreement or other document to determine the meaning or operation of a provision hereof, the Secretary of the Company shall maintain a copy of such agreement or document at the principal executive offices of the Company and a copy thereof shall be provided free of charge to any Holder who makes a request therefor. The Secretary of the Company shall also maintain a written record of the Initial Issue Date, the number of shares of Convertible Preferred Stock issued to a Holder and the date of each such issuance, and shall furnish such written record free of charge to any Holder who makes a request therefor.

Section 18. WAIVER. Notwithstanding any provision in this Certificate of Designation to the contrary, any provision contained herein and any right of the Holders of Convertible Preferred Stock granted hereunder may be waived as to all shares of Convertible Preferred Stock (and the Holders thereof) upon the vote or written consent of the Holders of a majority of the shares of Convertible Preferred Stock then outstanding.

Section 19. SEVERABILITY. If any term of the Convertible Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein.

Section 20. NO OTHER RIGHTS. The Convertible Preferred Stock will have no rights, preferences or voting powers except as provided in this Certificate of Designation or the Articles of Incorporation or as required by applicable law.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be duly executed as of the date first written above.

CRYOPORT, INC.

By: /s/ Jerrell Shelton

Name: Jerrell Shelton

Title: President & Chief Executive Officer

[Signature Page to Certificate of Designation]

FORM OF PREFERRED STOCK CERTIFICATE

[Insert Restricted Stock Legend, if applicable]

Cryoport, Inc.

4.0% Series C Convertible Preferred Stock

Certificate No. []

Cryoport, Inc., a Nevada corporation (the “**Company**”), certifies that [] is the registered owner of [] shares of the Company’s 4.0% Series C Convertible Preferred Stock (the “**Convertible Preferred Stock**”) evidenced by this certificate (this “**Certificate**”). The special rights, preferences and voting powers of the Convertible Preferred Stock are set forth in the Certificate of Designation of the Company establishing the Convertible Preferred Stock (the “**Certificate of Designation**”). Capitalized terms used in this Certificate without definition have the respective meanings ascribed to them in the Certificate of Designation.

Additional terms of this Certificate are set forth on the other side of this Certificate.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Cryoport, Inc. has caused this instrument to be duly executed as of the date set forth below.

CRYOPORT, INC.

Date: _____ By: _____
Name:
Title:

Date: _____ By: _____
Name:
Title:

TRANSFER AGENT'S COUNTERSIGNATURE

[*legal name of Transfer Agent*], as Transfer Agent, certifies that this Certificate evidences shares of Convertible Preferred Stock referred to in the within-mentioned Certificate of Designation.

Date: _____ By: _____
Authorized Signatory

Cryoport, Inc.

4.0% Series C Convertible Preferred Stock

This Certificate evidences duly authorized, issued and outstanding shares of Convertible Preferred Stock. Notwithstanding anything to the contrary in this Certificate, to the extent that any provision of this Certificate conflicts with the provisions of the Certificate of Designation or the Articles of Incorporation, the provisions of the of the Certificate of Designation or the Articles of Incorporation, as applicable, will control.

1. **Countersignature.** This Certificate will not be valid until countersigned by the Transfer Agent.
2. **Abbreviations.** Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entirety), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

* * *

To request a copy of the Certificate of Designation, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Cryoport, Inc.
112 Westwood Place, Suite 350
Brentwood, TN 37027

Attention: (i) Jerrell Shelton, President, Chief Executive Officer, and Chairman of the Board, (ii) Robert Stefanovich, Chief Financial Officer, Treasurer and Corporate Secretary, and (iii) Tony Ippolito, Vice President and General Counsel

OPTIONAL CONVERSION NOTICE

Cryoport, Inc.

4.0% Series C Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, by executing and delivering this Optional Conversion Notice, the undersigned Holder of the Convertible Preferred Stock identified below directs the Company to convert (check one):

- all of the shares of Convertible Preferred Stock
- _____* shares of Convertible Preferred Stock

evidenced by Certificate No. _____.

Date: _____ (Legal Name of Holder)

By: _____
Name:
Title:

* Must be a whole number.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

Cryoport, Inc.

4.0% Series C Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Convertible Preferred Stock identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

- all of the shares of Convertible Preferred Stock
- _____ * shares of Convertible Preferred Stock

evidenced by Certificate No. _____.

The undersigned acknowledges that Certificate identified above, duly endorsed for transfer, must be delivered to the Paying Agent before the Fundamental Change Repurchase Price will be paid.

Date: _____ (Legal Name of Holder)

By: _____
Name:
Title:

* Must be a whole number.

ASSIGNMENT FORM

Cryoport, Inc.

4.0% Series C Convertible Preferred Stock

Subject to the terms of the Certificate of Designation, the undersigned Holder of the within Convertible Preferred Stock assigns to:

Name: _____

Address: _____

Social security or tax identification number: _____

the within Convertible Preferred Stock and all rights thereunder irrevocably appoints:

as agent to transfer the within Convertible Preferred Stock on the books of the Company. The agent may substitute another to act for him/her.

Date: _____ (Legal Name of Holder)

By: _____
Name:
Title:

FORM OF RESTRICTED STOCK LEGEND

THE OFFER AND SALE OF THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY AND SUCH SHARES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT; OR (B) PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

REGISTRATION RIGHTS AGREEMENT

BY AND BETWEEN

CRYOPORT, INC.

AND

BLACKSTONE FREEZE PARENT L.P.

Dated as of October 1, 2020

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”) is entered into as of October 1, 2020, by and between Cryoport, Inc., a Nevada corporation (including its successors and permitted assigns, the “**Company**”), and Blackstone Freeze Parent L.P., a Delaware limited partnership (the “**Investor**”). Capitalized terms used but not defined elsewhere herein are defined in Exhibit A.

This Agreement is entered into in connection with the closing of the issuance of 250,000 shares of the Series C Convertible Preferred Stock, which are convertible into shares of Common Stock, and 675,536 shares of Common Securities Pursuant to the Securities Purchase Agreement, dated as of August 24, 2020, by and between the Company and the Investor (the “**Securities Purchase Agreement**”).

As a condition to each of the parties’ obligations under the Securities Purchase Agreement, the Company and the Investor are entering into this Agreement for the purpose of granting certain registration rights to the Investor.

In consideration of the premises and the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I RESALE SHELF REGISTRATION

Section 1.1 Resale Shelf Registration Statement. Subject to the other applicable provisions of this Agreement, the Company shall file within ninety (90) days of the date hereof and use its commercially reasonable efforts to cause to go effective as promptly as practicable a registration statement covering the sale or distribution from time to time by the Holders, on a delayed or continuous basis pursuant to Rule 415 of the Securities Act of all of the Registrable Securities on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form (including Form S-1) and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders) (the “**Resale Shelf Registration Statement**” and such registration, the “**Resale Shelf Registration**”), and if the Company is a WKSI as of the filing date, the Resale Shelf Registration Statement shall be an Automatic Shelf Registration Statement. If the Resale Shelf Registration Statement is not an Automatic Shelf Registration Statement, then the Company shall use its commercially reasonable efforts to cause such Resale Shelf Registration Statement to be declared effective by the Commission as promptly as practicable after the filing thereof.

Notwithstanding the foregoing, if the Commission prevents the Company from including any or all of the Registrable Securities on the Resale Shelf Registration Statement due to limitations on the use of Rule 415 of the Securities Act for the resale of the Registrable Securities by the Holders (a “**Rule 415 Limitation**”), the Resale Shelf Registration Statement shall register the resale of a number of shares of the Registrable Securities which is equal to the maximum number of shares as is permitted by the Commission, and, subject to the provisions of this Section 1.1, the Company shall continue to use commercially reasonable efforts to register all remaining Registrable Securities as set forth in this Section 1.1. In such event, the number of shares of Registrable Securities to be registered for each Holder in the Resale Shelf Registration Statement shall be reduced pro rata among all Holders, provided, however, that, prior to reducing the number of shares of Registrable Securities to be registered for any Holder in such Resale Shelf Registration Statement, the Company shall first remove any shares of Registrable Securities to be registered for any Person other than a Holder that was proposed to be included in such Resale Shelf Registration Statement. The Company shall continue to use its commercially reasonable efforts to register all remaining Registrable Securities as promptly as practicable in accordance with the applicable rules, regulations and guidance of the Commission. Notwithstanding anything herein to the contrary, if the Commission, by written comment, limits the Company’s ability to file, or prohibits or delays the filing of, a Resale Shelf Registration Statement or a Subsequent Shelf Registration with respect to any or all the Registrable Securities, the Company’s compliance with such limitation, prohibition or delay solely to the extent of such limitation, prohibition or delay shall not be a breach or default by the Company under this Agreement and shall not be deemed a failure by the Company to use “commercially reasonable efforts” or “reasonable efforts” as set forth above or elsewhere in this Agreement.

Section 1.2 Effectiveness Period. Once effective, the Company shall, subject to the other applicable provisions of this Agreement, use its commercially reasonable efforts to cause the Resale Shelf Registration Statement or a Subsequent Shelf Registration to be continuously effective and usable for so long as any Registrable Securities remain outstanding (the “**Effectiveness Period**”).

Section 1.3 Subsequent Shelf Registration. If any Shelf Registration ceases to be effective under the Securities Act for any reason at any time during the Effectiveness Period, the Company shall use its commercially reasonable efforts to promptly cause such Shelf Registration to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration), and in any event shall within thirty (30) days of such cessation of effectiveness, amend such Shelf Registration in a manner reasonably expected to obtain the withdrawal of any order suspending the effectiveness of such Shelf Registration or, file an additional registration statement (a “**Subsequent Shelf Registration**”) for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by Holders thereof of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration is filed, the Company shall use its commercially reasonable efforts to (a) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after such filing, but in no event later than the date that is ninety (90) days after such Subsequent Shelf Registration is filed and (b) keep such Subsequent Shelf Registration (or another Subsequent Shelf Registration) continuously effective until the end of the Effectiveness Period. Any such Subsequent Shelf Registration shall be a Registration Statement on Form S-3 to the extent that the Company is eligible to use such form, and if the Company is a WKSI as of the filing date, such Registration Statement shall be an Automatic Shelf Registration Statement. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form (including Form S-1) and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders.

Section 1.4 Supplements and Amendments. The Company shall supplement and amend any Shelf Registration if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration if required by the Securities Act or as reasonably requested by the Holders covered by such Shelf Registration.

Section 1.5 Subsequent Holder Notice. If a Person becomes a Holder of Registrable Securities after a Shelf Registration becomes effective under the Securities Act, the Company shall, as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming a Holder and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration (a “**Subsequent Holder Notice**”):

(a) if required and permitted by applicable law, file with the Commission a supplement to the related prospectus or a post-effective amendment to the Shelf Registration so that such Holder is named as a selling securityholder in the Shelf Registration and the related prospectus in such a manner as to permit such Holder to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law;

(b) if, pursuant to Section 1.5(a), the Company shall have filed a post-effective amendment to the Shelf Registration that is not automatically effective, use its commercially reasonable efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is reasonably practicable, but in any event by the date that is ninety (90) days after the date such post-effective amendment is required by Section 1.5(a) to be filed; and

(c) notify such Holder as promptly as is reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 1.5(a).

Section 1.6 Underwritten Offering. The Holders of Registrable Securities may on up to four (4) occasions after the Resale Shelf Registration Statement becomes effective deliver a written notice to the Company specifying that the sale of some or all of the Registrable Securities subject to the Shelf Registration is intended to be conducted through an underwritten offering, so long as the anticipated gross proceeds of such underwritten offering is not less than thirty-five million dollars (\$35,000,000) (unless the Holders are proposing to sell all of their remaining Registrable Securities in which case no such minimum gross proceeds threshold shall apply) (the “**Underwritten Offering**”). In the event of an Underwritten Offering:

(a) The Holder or Holders of a majority of the Registrable Securities participating in an Underwritten Offering shall select the managing underwriter or underwriters to administer the Underwritten Offering; provided that such Holder or Holders will not make the choice of such managing underwriter or underwriters without first consulting with the Company.

(b) Notwithstanding any other provision of this Section 1.6, if the managing underwriter or underwriters of a proposed Underwritten Offering advises the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in such Underwritten Offering exceeds the number which can be sold in such Underwritten Offering in light of market conditions, the Registrable Securities shall be included on a pro rata basis upon the number of securities that each Holder shall have requested to be included in such offering. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters.

(c) The Company shall agree and shall cause its executive officers and directors to sign a customary “lock-up” agreement with the underwriters in any Underwritten Offering.

Section 1.7 Take-Down Notice. Subject to the other applicable provisions of this Agreement, at any time that any Shelf Registration Statement is effective, if a Holder delivers a notice to the Company (a “**Take-Down Notice**”) stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement (a “**Shelf Offering**”) and stating the number of Registrable Securities to be included in such Shelf Offering, then, subject to the other applicable provisions of this Agreement, the Company shall, as promptly as practicable, amend or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

ARTICLE II COMPANY REGISTRATION

Section 2.1 Notice of Registration. If at any time or from time to time the Company shall determine to file a registration statement with respect to an offering (or to make an underwritten public offering pursuant to a previously filed registration statement) of its Common Stock, whether or not for its own account (other than a registration statement on Form S-4, Form S-8 or any successor forms), the Company will:

(a) promptly give to each Holder written notice thereof, which notice shall be given, to the extent reasonably practicable, no later than five (5) business days prior to the filing or launch date (except in the case of an offering that is an “overnight offering”, in which case such notice must be given no later than two (2) business days prior to the filing or launch date); and

(b) subject to Section 2.2, include in such registration or underwritten offering (and any related qualification under blue sky laws or other compliance) all the Registrable Securities specified in a written request or requests made within three (3) business days after receipt of such written notice from the Company by any Holder (except in the case of an offering that is an “overnight offering”, in which case such request must be made no later than one (1) business day after receipt of such written notice from the Company).

Section 2.2 Underwriting. The right of any Holder to registration pursuant to Section 1.6 or this Article II shall be conditioned upon such Holder's participation in such underwriting and the inclusion of Registrable Securities in the underwriting to the extent provided herein. Each Holder proposing to distribute its securities through such underwriting shall (together with the Company and the other holders distributing their securities through such underwriting) enter into and perform such Holder's obligations under an underwriting agreement with the managing underwriter selected for such underwriting by the Company or by the stockholders of the Company who have the right to select the underwriters (such underwriting agreement to be in a customary form negotiated by the Company or such stockholders, as the case may be). Notwithstanding any other provision of this Article II, if the managing underwriter or underwriters of a proposed underwritten offering with respect to which Holders of Registrable Securities have exercised their piggyback registration rights advise the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in the offering thereby and all other securities proposed to be sold in the offering exceeds the number which can be sold in such underwritten offering in light of market conditions, the Registrable Securities and such other securities to be included in such underwritten offering shall be allocated, (a) first, in the event such offering was initiated by the Company for its own account, up to the total number of securities that the Company has requested to be included in such registration, (b) second, and only if all the securities referred to in clause (a) have been included, up to the total number of securities that the Holders have requested to be included in such offering (pro rata based upon the number of securities that each of them shall have requested to be included in such offering) and (c) third, and only if all the securities referred to in clause (b) have been included, all other securities proposed to be included in such offering that, in the opinion of the managing underwriter or underwriters can be sold without having such adverse effect. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters. Any securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

Section 2.3 Right to Terminate Registration. The Company or the holders of securities who have caused a registration statement to be filed as contemplated by this Article II, as the case may be, shall have the right to have any registration initiated by it or them under this Article II terminated or withdrawn prior to the effectiveness thereof, whether or not any Holder has elected to include securities in such registration.

ARTICLE III ADDITIONAL PROVISIONS REGARDING REGISTRATION RIGHTS

Section 3.1 Registration Procedures. In the case of each registration effected by the Company pursuant to Article I or II, the Company will keep each Holder participating in such registration reasonably informed as to the status thereof and, at its expense, the Company will, as expeditiously as possible to the extent applicable:

(a) prepare and file, as promptly as reasonably practicable, with the Commission a registration statement with respect to such securities in accordance with the applicable provisions of this Agreement;

(b) prepare and file, as promptly as reasonably practicable, with the Commission such amendments, including post-effective amendments, and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement (including to permit the intended method of distribution thereof) and as may be necessary to keep the registration statement continuously effective for the period set forth in this Agreement;

(c) furnish to the Holders participating in such registration and to their legal counsel copies of the registration statement proposed to be filed, and provide such Holders and their legal counsel the reasonable opportunity to review and comment on such registration statement;

(d) furnish to the Holders participating in such registration and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus and final prospectus as the such underwriters may reasonably request in order to facilitate the public offering of such securities;

(e) use commercially reasonable efforts to notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the Company's knowledge of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing, and, subject to Section 3.1(n), at the request of any such Holder, prepare promptly and furnish to such Holder a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchaser of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing;

(f) use commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions in which it is not already qualified;

(g) in the event that the Registrable Securities are being offered in an underwritten public offering, enter into and perform its obligations under an underwriting agreement on customary terms and in accordance with the applicable provisions of this Agreement;

(h) use commercially reasonable efforts to furnish, (i) on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, an opinion and negative assurance letter, dated as of such date, of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) on the date that the offering of such Registrable Securities is priced and on the date that such securities are being sold through underwriters, a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(i) in connection with a customary due diligence review, make available during business hours for inspection by the Holders, any underwriter participating in any such disposition of Registrable Securities, if any, and any counsel or accountants retained by the Holders or underwriter (collectively, the “**Offering Persons**”), all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the officers, directors and employees of the Company and its subsidiaries to supply all relevant information and participate in customary due diligence sessions in each case reasonably requested by any such representative, underwriter, counsel or accountant in connection with such registration statement, provided, however, each such underwriter shall agree in writing to hold in strict confidence and not to make any disclosure or use of any information requested above (the “**Requested Information**”), unless (1) the disclosure of the Requested Information is necessary to avoid or correct a misstatement or omission in such registration or is otherwise required under the Securities Act, (2) the release of the Requested Information is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, (3) the Requested Information is or has been made generally available to the public other than by disclosure in violation of this Agreement, (4) the Requested Information was within such underwriter’s possession on a non-confidential basis prior to it being furnished to such underwriter by or on behalf of the Company or any of its representatives, provided that the source of such information was not bound by a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality with respect to such information or (5) the Requested Information becomes available to such underwriter on a non-confidential basis from a source other than the Company or any of its representatives, provided that such source is not bound by a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality with respect to such information. Such underwriter agrees that it shall, upon learning that disclosure of the Requested Information is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at the Company’s expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Requested Information deemed confidential;

(j) in the event that any broker-dealer underwrites any Registrable Securities or participates as a member of an underwriting syndicate or selling group or “participates in an offering” (within the meaning of the FINRA Rules) thereof, whether as a Holder or as an underwriter, placement, sales agent or broker or dealer in respect thereof, or otherwise, the Company will, upon the reasonable request of such broker-dealer, comply with any reasonable request of such broker-dealer in complying with the FINRA Rules;

(k) notwithstanding any other provision of this Agreement, if the Board of Directors of the Company has determined in good faith that the disclosure necessary for continued use of the prospectus and registration statement by the Holders could be materially detrimental to the Company, the Company shall have the right not to file or not to cause the effectiveness of any registration covering any Registrable Securities and to suspend the use of the prospectus and the registration statement covering any Registrable Security for such period of time as its use would be materially detrimental to the Company by delivering written notice of such suspension to all Holders listed on the Company’s records; provided, however, that in any 12-month period the Company may exercise the right to such suspension not more than twice. From and after the date of a notice of suspension under this Section 3.1(k), each Holder agrees not to use the prospectus or registration statement until the earlier of (i) notice from the Company that such suspension has been lifted or (ii) the day following the sixtieth (60th) day of suspension within any 12-month period;

(l) cooperate with, and direct the Company's transfer agent to cooperate with, the Holders and the managing underwriters, if any, to facilitate the timely settlement of any offering or sale of Registrable Securities, including the preparation and delivery of certificates or book-entry representing Registrable Securities to be sold together with any other authorizations, certificates, opinions and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without restriction upon sale by the holder of such shares of Registrable Securities;

(m) use its reasonable best efforts to cause all shares of Registrable Securities to be listed on the national securities exchange on which the Common Stock is then listed; and

(n) cause its officers to use their reasonable best efforts to support the marketing of the Registrable Securities (including, without limitation, participation in "road shows" and other customary marketing activities, which may be virtual).

Section 3.2 Limitation on Subsequent Registration Rights. From and after the date hereof, the Company shall not enter into any agreement granting any holder or prospective holder of any securities of the Company registration rights with respect to such securities that conflict with the rights granted to the Holders herein, without the prior written consent of Holders of a majority of the Registrable Securities.

Section 3.3 Expenses of Registration. All Registration Expenses incurred in connection with any registration pursuant to this Agreement or otherwise in complying with this Agreement shall be borne by the Company. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the Holders of the registered securities included in such registration.

Section 3.4 Information by Holders. The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders, the Registrable Securities held by them and the distribution proposed by such Holder or Holders as the Company may reasonably request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement. It is understood and agreed that the obligations of the Company under Article I or II are conditioned on the timely provisions of the foregoing information by such Holder or Holders and, without limitation of the foregoing, will be conditioned on compliance by such Holder or Holders with the following:

(a) such Holder or Holders will cooperate with the Company in connection with the preparation of the applicable registration statement, and for so long as the Company is obligated to keep such registration statement effective, such Holder or Holders will provide to the Company, in writing and in a timely manner, for use in such registration statement (and expressly identified in writing as such), all information regarding themselves and such other information as may be required by applicable law to enable the Company to prepare such registration statement and the related prospectus covering the applicable Registrable Securities owned by such Holder or Holders and to maintain the currency and effectiveness thereof;

(b) during such time as such Holder or Holders may be engaged in a distribution of the Registrable Securities, such Holder or Holders will comply with all laws applicable to such distribution, including Regulation M promulgated under the Exchange Act, and, to the extent required by such laws, will, among other things: (i) not engage in any stabilization activity in connection with the securities of the Company in contravention of such laws and (ii) if required by applicable law, cause to be furnished to each agent or broker-dealer to or through whom such Registrable Securities may be offered, or to the offeree if an offer is made directly by such Holder or Holders, such copies of the applicable prospectus (as amended and supplemented to such date) and documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree; and

(c) on receipt of written notice from the Company of the happening of any of the events specified in Section 3.1(k), or that requires the suspension by such Holder or Holders of the distribution of any of the Registrable Securities owned by such Holder or Holders pursuant to a registered offering, then such Holders shall cease offering or distributing the Registrable Securities owned by such Holder or Holders in a registered offering until the offering and distribution of the Registrable Securities owned by such Holder or Holders may recommence in accordance with the terms hereof and applicable law.

Section 3.5 Rule 144 Reporting. With a view to making available the benefits of Rule 144 to the Holders, the Company agrees that it will file with the Commission the “Form 10 information” required by Rule 144(i)(2) as soon as practical after the date of this Agreement and, for so long as a Holder owns Registrable Securities, the Company will use commercially reasonable efforts to:

(a) file with the Commission in a timely manner all reports and other documents required of the Company under the Exchange Act; and

(b) so long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act.

Section 3.6 “Market Stand-Off” Agreement. The Holders shall not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to, any Common Stock (or other securities of the Company) held by the Holders (other than those included in the registration) for a period specified by the representatives of the managing underwriter or underwriters of Common Stock (or other securities of the Company convertible into Common Stock) not to exceed five (5) days prior and ninety (90) days following any registered public sale of securities by the Company in which such Holder participates in accordance with Article II, subject to customary exceptions (including, without limitation, to the extent that any securities of the Company are subject to a Permitted Loan (as defined in the Securities Purchase Agreement), to permit the pledge of such securities pursuant to such Permitted Loan and any foreclosure in connection with such Permitted Loan, or transfer in lieu of a foreclosure thereunder, and subsequent sales, dispositions or other transfers). Each of the Holders also shall execute and deliver any “lock-up” agreement reasonably requested by the representatives of any underwriters of the Company in connection with an offering in which such Holder participates, subject to customary exceptions (including, without limitation, as described in the preceding sentence in respect of a Permitted Loan).

ARTICLE IV
INDEMNIFICATION

Section 4.1 Indemnification by Company. To the extent permitted by applicable law, the Company will, with respect to any Registrable Securities as to which registration or qualification or compliance under applicable “blue sky” laws has been effected pursuant to this Agreement, indemnify each Holder, each Holder’s current and former officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents and employees, and each Person controlling such Holder or any of the foregoing within the meaning of Section 15 of the Securities Act, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the Securities Act (collectively, the “**Company Indemnified Parties**”), against all expenses, claims, losses, damages, costs (including costs of preparation and reasonable attorney’s fees and any legal or other fees or expenses actually incurred by such party in connection with any investigation or proceeding), judgments, fines, penalties, charges, amounts paid in settlement and other liabilities, joint or several (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of, or any rule or regulation promulgated under, the Securities Act, Exchange Act or state securities laws applicable to the Company in connection with any such registration, and the Company will reimburse each of the Company Indemnified Parties for any reasonable legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred. The indemnity agreement contained in this Section 4.1 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), nor shall the Company be liable to a Holder in any such case for any such loss, claim, damage, liability or action (a) to the extent that it arises out of or is based upon a violation or alleged violation of any state or federal law (including any claim arising out of or based on any untrue statement or alleged untrue statement or omission or alleged omission in the registration statement or prospectus) which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by or on behalf of any Holder or (b) in the case of a sale directly by a Holder of Registrable Securities (including a sale of such Registrable Securities through any underwriter retained by such Holder engaging in a distribution solely on behalf of such Holder), such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and such Holder failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act.

Section 4.2 Indemnification by Holders. To the extent permitted by applicable law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration or qualification or compliance under applicable “blue sky” laws is being effected, indemnify, severally and not jointly, the Company, each of its directors, officers, partners, members, managers, shareholders, accountants, attorneys, agents and employees, each underwriter, if any, of the Company’s securities covered by such a registration, each Person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, and each other Holder and each of such other Holder’s officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents and employees and each Person controlling such Holder or any of the foregoing within the meaning of Section 15 of the Securities Act (collectively, the “**Holder Indemnified Parties**”), against all expenses, claims, losses, damages, costs (including costs of preparation and reasonable attorney’s fees and any legal or other fees or expenses actually incurred by such party in connection with any investigation or proceeding), judgments, fines, penalties, charges, amounts paid in settlement and other and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by such Holder of, or any rule or regulation promulgated under, the Securities Act, Exchange Act or state securities law applicable to such Holder, and will reimburse each of the Holder Indemnified Parties for any reasonable legal or any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein, provided, however, that in no event shall any indemnity under this Section 4.2 payable by a Holder exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission or violation. The indemnity agreement contained in this Section 4.2 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the applicable Holder (which consent shall not be unreasonably withheld or delayed), nor shall the Holder be liable for any such loss, claim, damage, liability or action where such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and the Company or the underwriters failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act

Section 4.3 Notification. Each party entitled to indemnification under this Article IV (the “**Indemnified Party**”) shall give notice to the party required to provide indemnification (the “**Indemnifying Party**”) promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided, however, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld or delayed), and the Indemnified Party may participate in such defense at such party’s expense; provided, further, however, that an Indemnified Party (together with all other Indemnified Parties) shall have the right to retain one (1) separate counsel, with the reasonable fees and expenses to be paid by the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to conflicting interests between such Indemnified Party and any other party represented by such counsel in such proceeding. The failure of any Indemnified Party to give notice as provided herein shall relieve the Indemnifying Party of its obligations under this Article IV, only to the extent that, the failure to give such notice is materially prejudicial or harmful to an Indemnifying Party’s ability to defend such action. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the prior written consent of each Indemnified Party (which consent shall not be unreasonably withheld or delayed), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. The indemnity agreements contained in this Article IV shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. The indemnification set forth in this Article IV shall be in addition to any other indemnification rights or agreements that an Indemnified Party may have.

Section 4.4 Contribution. If the indemnification provided for in this Article IV is held by a court of competent jurisdiction to be unavailable to an Indemnified Party, other than pursuant to its terms, with respect to any claim, loss, damage, liability or action referred to therein, then, subject to the limitations contained in Article IV, the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such claim, loss, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with the actions that resulted in such claims, loss, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact related to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were based solely upon the number of entities from whom contribution was requested or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 4.4. In no event shall any Holder's contribution obligation under this Section 4.4 exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission or violation. No Person guilty of fraudulent misrepresentation (within the meaning of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

ARTICLE V
TRANSFER AND TERMINATION OF REGISTRATION RIGHTS

Section 5.1 Transfer of Registration Rights. The rights to cause the Company to register securities granted to a Holder under this Agreement may be assigned to any Person in connection with any Transfer (as defined in the Securities Purchase Agreement) or assignment of Registrable Securities to in a Transfer permitted by Section 4.2 of the Securities Purchase Agreement; provided, however, that (a) such transfer may otherwise be effected in accordance with applicable securities laws, (b) prior written notice of such assignment is given to the Company, and (c) such transferee agrees in writing to be bound by, and subject to, this Agreement as a “Holder” pursuant to a written instrument in form and substance reasonably acceptable to the Company.

Section 5.2 Termination of Registration Rights. The rights of any particular Holder to cause the Company to register securities under Articles I and II shall terminate with respect to such Holder upon the date upon which such Holder no longer holds any Registrable Securities.

ARTICLE VI
MISCELLANEOUS

Section 6.1 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when one or more counterparts have been signed by a party and delivered to the other parties. Copies of executed counterparts transmitted by telecopy, telefax or other electronic transmission service shall be considered original executed counterparts for purposes of this Section 6.1, provided that receipt of copies of such counterparts is confirmed.

Section 6.2 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the state of New York (except to the extent that mandatory provisions of the laws of the state of Nevada are applicable), without giving effect to any choice of law or conflict of law rules or provisions (whether of the state of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of New York.

(b) Any dispute relating hereto shall be heard in the U.S. District Court for the Southern District of New York (and any federal appellate courts therefrom) (and to the extent such court declines jurisdiction, state court located in the Borough of Manhattan) (each a “**Chosen Court**” and collectively, the “**Chosen Courts**”), and the parties agree to the exclusive jurisdiction and venue of the Chosen Courts. Such Persons further agree that any proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or by any matters related to the foregoing (the “**Applicable Matters**”) shall be brought exclusively in a Chosen Court, and that any proceeding arising out of this Agreement or any other Applicable Matter shall be deemed to have arisen from a transaction of business in the state of New York, and each of the foregoing Persons hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such Person may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such Chosen Court or that any such proceeding brought in any such Chosen Court has been brought in an inconvenient forum.

(c) Such Persons further covenant not to bring a proceeding with respect to the Applicable Matters (or that could affect any Applicable Matter) other than in such Chosen Court and not to challenge or enforce in another jurisdiction a judgment of such Chosen Court.

(d) Process in any such proceeding may be served on any Person with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. Without limiting the foregoing, each such Person agrees that service of process on such party as provided in Section 6.5 shall be deemed effective service of process on such Person.

(e) Waiver of Jury Trial. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

Section 6.3 Entire Agreement; No Third Party Beneficiary. This Agreement and the Securities Purchase Agreement contain the entire agreement by and among the parties with respect to the subject matter hereof and all prior negotiations, writings and understandings relating to the subject matter of this Agreement. Except as provided in Article IV, this Agreement is not intended to confer upon any Person not a party hereto (or their successors and permitted assigns) any rights or remedies hereunder.

Section 6.4 Expenses. Except as provided in Section 3.3, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including accounting and legal fees shall be paid by the party incurring such expenses. The fees specified in clause (b) of the definition of "Registration Expenses" incurred in connection with any Shelf Registration or Underwritten Offering pursuant to this Agreement shall, in each case, not exceed \$50,000.

Section 6.5 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier, one (1) Business Day after mailing; (c) if sent by e-mail transmission, with a copy sent on the same day in the manner provided in the foregoing clause (a) or (b), when transmitted and receipt is confirmed; and (d) if otherwise actually personally delivered, when delivered, provided, that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

If to the Company, to:

Cryoport, Inc.
112 Westwood Place, Suite 350
Brentwood, TN 37027
Attention: (i) Jerrell Shelton, President, Chief Executive Officer, and Chairman of the Board, (ii) Robert Stefanovich, Chief Financial Officer, Treasurer and Corporate Secretary, and (iii) Tony Ippolito, Vice President and General Counsel.
Email: JShelton@cryoport.com; RStefanovich@cryoport.com; and TIppolito@cryoport.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626
Attention: Daniel Rees
Email: Daniel.Rees@lw.com

If to the Investor, to:

Blackstone Freeze Parent L.P.
c/o The Blackstone Group Inc.
345 Park Avenue
New York, NY 10154
Attention: Ram Jagannath
E-mail: Ram.Jagannath@Blackstone.com

with a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Ave
New York, New York 10017
Attention: Anthony F. Vernace
E-mail: avernace@stblaw.com

Section 6.6 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as provided in Section 5.1, no assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other parties hereto. Any purported assignment or delegation in violation of this Agreement shall be null and void *ab initio*.

Section 6.7 Headings. The Section, Article and other headings contained in this Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Agreement.

Section 6.8 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the Company and the Holders of a majority of the Registrable Securities outstanding at the time of such amendment. Any party hereto may, only by an instrument in writing, waive compliance by any other party or parties hereto with any term or provision hereof on the part of such other party or parties hereto to be performed or complied with. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor will any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The waiver by any party hereto of a breach of any term or provision hereof shall not be construed as a waiver of any subsequent breach. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

Section 6.9 Interpretation; Absence of Presumption.

(a) For the purposes hereof: (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires; (ii) the terms “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and paragraph references are to the Sections and paragraphs in this Agreement unless otherwise specified; (iii) the word “including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless the context otherwise requires or unless otherwise specified; and (iv) the word “or” , “any” or “either” shall not be exclusive. References to a Person are also to its permitted assigns and successors. When calculating the period of time between which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded (and unless, otherwise required by Law, if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day)

(b) With regard to each and every term and condition of this Agreement, the parties hereto understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the parties hereto desire or are required to interpret or construe any such term or condition, no consideration will be given to the issue of which party hereto actually prepared, drafted or requested any term or condition of this Agreement.

Section 6.10 Severability. Any provision hereof that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof, provided, however, that the parties will attempt in good faith to reform this Agreement in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent.

(The next page is the signature page)

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

CRYOPORT, INC.

By: /s/ Jerrell Shelton

Name: Jerrell Shelton

Title: President & CEO

BLACKSTONE FREEZE PARENT L.P.

By: BTO Holdings Manager L.L.C., its general partner

By: /s/ Christopher J. James

Name: Christopher J. James

Title: Authorized Person

[Signature Page to Registration Rights Agreement]

EXHIBIT A
DEFINED TERMS

1. The following capitalized terms have the meanings indicated:

“**Affiliate**” of any Person means any Person, directly or indirectly, controlling, controlled by or under common control with such Person.

“**Automatic Shelf Registration Statement**” means an “automatic shelf registration statement” as defined under Rule 405.

“**Commission**” means the Securities and Exchange Commission.

“**Common Stock**” means the Company’s common stock, par value \$0.001 per share.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, or any similar successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

“**Holder**” means (a) any Investor holding Registrable Securities and (b) any transferee to which the rights under this Agreement have been transferred in accordance with Section 5.1.

“**Person**” means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, other legal entity, or any government or governmental agency or authority.

“**register**”, “**registered**” and “**registration**” refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

“**Registration Expenses**” means (a) all expenses incurred by the Company in complying with this Agreement, including, without limitation, internal expenses, all registration, qualification, listing and filing fees, printing expenses, escrow fees, rating agency fees, fees and disbursements of the Company’s independent registered public accounting firm, fees and disbursements of counsel for the Company, blue sky fees and expenses and (b) the fees and expenses of one counsel to the Holders in connection with this Agreement; provided, however, that Registration Expenses shall not include any Selling Expenses.

“**Registrable Securities**” means (a) any shares of Common Stock issued or issuable upon conversion of the Series C Convertible Preferred Stock, (b) the shares of Common Stock issued to the Investor pursuant to the Securities Purchase Agreement and (c) any Common Stock actually issued in respect of the securities described in clauses (a) or (b) above or this clause (c) upon any stock split, stock dividend, recapitalization, reclassification, merger, consolidation or similar event; provided, however, that the securities described in clauses (a), (b) and (c) above shall only be treated as Registrable Securities until the earliest of: (i) the date on which such security has been registered under the Securities Act and disposed of in accordance with an effective Registration Statement relating thereto; (ii) the date on which such security has been sold pursuant to Rule 144 and the security is no longer a Restricted Security; or (iii) the date on which such security is transferred in a transaction pursuant to which the registration rights are not also assigned in accordance with Section 5.1.

“**Restricted Securities**” means any Common Stock required to bear the legend set forth in Section 4.3(a) of the Securities Purchase Agreement.

“**Rule 144**” means Rule 144 promulgated under the Securities Act and any successor provision.

“**Rule 405**” means Rule 405 promulgated under the Securities Act and any successor provision.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder or any similar federal statute and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

“**Selling Expenses**” means (a) all underwriting discounts, selling commissions and stock transfer taxes applicable to the securities registered by the Holders and (b) the fees and expenses of any counsel to the Holders.

“**Series C Convertible Preferred Stock**” means the Company’s Series C Convertible Preferred Stock, par value \$0.001 per share.

“**Shelf Registration**” means the Resale Shelf Registration or a Subsequent Shelf Registration, as applicable.

“**Transfer**” has the meaning given to such term in the Securities Purchase Agreement.

“**WKSI**” means a “well known seasoned issuer” as defined under Rule 405.

2. The following terms are defined in the Sections of the Agreement indicated:

INDEX OF TERMS

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Applicable Matters	Section 6.2(b)
Chosen Court	Section 6.2(b)
Company	Preamble
Company Indemnified Parties	Section 4.1
Effectiveness Period	Section 1.2
Holder	Section 5.1
Holder Indemnified Parties	Section 4.2
Indemnified Party	Section 4.3
Indemnifying Party	Section 4.3
Investor	Preamble
Market Stand-Off	Section 3.6
Resale Shelf Registration	Section 1.1
Securities Purchase Agreement	Preamble
Subsequent Holder Notice	Section 1.5
Subsequent Shelf Registration	Section 1.3
Underwritten Offering	Section 1.6

REGISTRATION RIGHTS AGREEMENT JOINDER

The undersigned is executing and delivering this joinder (this "**Joinder**") pursuant to the Registration Rights Agreement, dated as of October 1, 2020 (as the same may hereafter be amended, the "**Registration Rights Agreement**"), between Cryoport, Inc., a Nevada corporation (the "**Company**"), and Blackstone Freeze Parent L.P. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the Registration Rights Agreement.

By executing and delivering this Joinder to the Company, and upon acceptance hereof by the Company upon the execution of a counterpart hereof, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the Registration Rights Agreement as a Holder in the same manner as if the undersigned were an original signatory to the Registration Rights Agreement.

[Signature Pages Follow]

Accordingly, the undersigned has executed and delivered this Joinder as of the 1st day of October, 2020.

BLACKSTONE TACTICAL OPPORTUNITIES FUND – FD L.P.

By: Blackstone Tactical Opportunities Associates III – NQ L.P., its general partner

By: BTO DE GP – NQ L.L.C., its general partner

By: /s/ Christopher J. James

Name: Christopher J. James

Its: Authorized Person

Agreed and Accepted as of October 1, 2020

CRYOPORT, INC.

By: /s/ Jerrell Shelton

Name: Jerrell Shelton

Its: President & Chief Executive Officer

AMENDMENT N°1 TO THE SECURITIES PURCHASE AGREEMENT WITH RESPECT TO ADVANCED THERAPY LOGISTICS AND SOLUTIONS SAS

This amendment n°1 to the securities purchase agreement with respect to Advanced Therapy Logistics And Solutions SAS dated as of August 21st, 2020 (the “**Amendment Agreement**”) is entered into by and between:

- (1) **CRYOPORT, INC.**, a corporation organized under the laws of the State of Nevada having its principal place of business at 112 Westwood Place – Suite 350, Brentwood, Tennessee 37027, duly represented and authorized for the purposes hereof (hereinafter referred to as the “**Purchaser**” or “**Cryoport**”); and
- (2) **CRYOPORT NETHERLANDS B.V.**, a Dutch company having its registered office located at Parellaan 18, 2132WS Hoofddorp, Netherlands and registered within the Netherlands Chamber of Commerce Business Register under number 858683751 (RSIN) and 000039547469 (establishment number), duly represented and authorized for the purposes hereof (“**Cryoport Netherlands**”);

On the one hand,

And each of:

- (3) **HIVEST I FPCI**, a *fonds professionnel de capital investissement* governed by articles L. 214-159 *et seq.* of the French *Code monétaire et financier*, represented by its management company (*société de gestion*), Hivest Capital Partners, a company (*société par actions simplifiée*) organized under the laws of France, having its registered office at 24, rue de Prony, 75017, Paris, France, registered with the trade and companies registry of Paris under number 823 869 979 (hereinafter referred to as “**Hivest Capital Partners**”), represented by Mr. Cédric Lépée, duly authorized for the purposes hereof;
- (4) **ATLAS Co-INVEST FPS**, a *fonds professionnel spécialisé* represented by its management company (*société de gestion*), Hivest Capital Partners, a company (*société par actions simplifiée*) organized under the laws of France, having its registered office at 24, rue de Prony, 75017, Paris, France, registered with the trade and companies registry of Paris under number 823 869 979, represented by Mr. Cédric Lépée, duly authorized for the purposes hereof;
- (5) **TIKEHAU DIRECT LENDING IV**, a sub-fund of Tikehau Investment II S.C.S, SICAV-SIF, an investment company with variable capital (*société d'investissement à capital variable*) organised as multi sub-fund specialised investment fund (*fonds d'investissement spécialisé*) established as a limited partnership (*société en commandite simple*), incorporated under the laws of the Grand-Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B-215.556 and having its registered address at 60, avenue J.F. Kennedy, L-1855 Luxembourg Grand Duchy of Luxembourg, represented by Tikehau General Partner II S.à r.l., a limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand-Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B-215.499 and having its registered office at 60, avenue J.F. Kennedy, L-1855 Luxembourg, Grand Duchy of Luxembourg, acting in its capacity of general partner of Tikehau Investment II S.C.S, SICAV-SIF, itself represented by Tikehau Investment Management acting in its capacity of alternative investment fund manager and duly represented for the purposes hereof;
- (6) **TIKEHAU MERCATI PRIVATI EUROPEI**, an Italian non-reserved closed-ended alternative investment fund (*fondo di investimento alternativo di tipo chiuso non riservato*) represented by its management company Tikehau Investment Management, a French *société par actions simplifiée*, having its registered office at 32, rue de Monceau 75008, Paris, France, registered with the Paris Register of Commerce and Companies under number 491 909 446 and duly represented for the purposes hereof;

- (7) **MTDL**, a special limited partnership (*société en commandite spéciale*) incorporated under the laws of the Grand-Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B-231.397 and having its registered office at 60, avenue J.F. Kennedy, L-1855 Luxembourg, Grand Duchy of Luxembourg, represented by Tikehau General Partner II S.à r.l., a limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand-Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B-215.499 and having its registered office at 60, avenue J.F. Kennedy, L-1855 Luxembourg, Grand Duchy of Luxembourg, acting in its capacity of general partner of MTDL, itself represented by Tikehau Investment Management acting in its capacity of alternative investment fund manager and duly represented for the purposes hereof;
- (8) **FPCI SWEN CO-INVEST 2**, a *fonds professionnel de capital investissement* managed by Swen Capital Partners, a French société anonyme having its registered office located at 20-22 rue Vernier, 75017, Paris, France, registered with the trade and companies registry of Paris under number 803 812 593 and duly represented for the purposes hereof;
- (9) **MR. CÉDRIC PICAUD**, born on 9 December 1974 in Saint-Martin-d'Hères (38) residing 356, Chemin du Cret, 01170 GEX, France;
- (10) **MR. GUILLAUME CHEVILLON**, born on 21 April 1981 in Paris 14e (75) residing 29, rue de la Fontaine au Roi, 75011 Paris, France;
- (11) **MRS. KARINE GRADZIEL**, born on 12 December 1966 in Mans (72) residing 23, Avenue Balzac, 94210 Saint-Maur-des-Fossés, France;
- (12) **MR. TANGI TREMORIN**, born on 5 avril 1975 in Léhon (22) residing 344, Route de la Carnalaz, 73420 Drumettaz Clarafond, France;
- (13) **MRS. BERANGERE DELAHAYE**, born on 23 February 1976 in Versailles (78) residing 11, rue Eugène Carrière, 75018 Paris, France;
- (14) **MR. SEBASTIEN OUDARD**, born on 29 November 1975 in Romilly-sur-Seine (10) residing 15, Lotissement du Chemin Neuf, 42410 Chavanay, France;
- (15) **MR. NICOLAS PEDRONO**, born on 7 May 1975 à Caen (14) residing R Palmeiras 53 4C, Parede, 2775-347 Parede, Portugal;
- (16) **MR. MARK PETTLER**, born on 26 December 1963 in Hartlepool (Angleterre) residing 3, Weyview Close, Guildford, Surrey GU1 1HN, United Kingdom;
- (17) **MR. GIRISH PATTATHIL RADHAKRISHNAN**, born on 3 December 1959 in Mannur, Kerala (Inde) residing 307 Silver Creast, C Wing RAHEJA VIHAR, Chandivali Studio, Chandivali, Andheri East, Mumbai, Maharashtra 400072, India; and
- (18) **MR. WASIM DAWOOD DINGANKAR**, born on 10 August 1974 in Mumbai, Maharashtra (Inde) residing Carlton Patalipada Carlton CHSL, Flat 301 9th Floor, Hiranandani Estate, Ghod Bunder, Road, Thane, 400607, India;

the Parties listed under (3) to (18) above, acting severally but not jointly (*conjointement mais non solidairement*), are hereinafter referred to collectively as the "**Sellers**" and individually as a "**Seller**".

On the other hand.

The Purchaser and the Sellers are hereinafter referred to collectively as the "**Parties**" and individually as a "**Party**".

In the presence of:

- (19) **ADVANCED THERAPY LOGISTICS AND SOLUTIONS**, a *société par actions simplifiée* organized under the laws of France, having its registered office at 24, rue de Prony, 75017, Paris, France, registered with the trade and companies registry of Paris under number 841 182 272, represented by Mr. Cédric Picaud duly authorized for the purposes hereof (hereinafter referred to as "**ATLAS**" or the "**Company**").

Capitalized terms not otherwise defined in this Amendment Agreement shall have the meaning ascribed to them in the Securities Purchase Agreement (as this term is defined below).

Whereas:

- (A) On 21 August 2020, the Parties entered into a securities purchase agreement in respect of the acquisition by the Purchaser from the Sellers of 100% of the Transferred Securities (the "**Securities Purchase Agreement**").
- (B) In accordance with the provisions of clause 5.1 of the Securities Purchase Agreement, the Parties were initially contemplating to hold the Closing of the Transaction on 30 September 2020. However, to address accounting constraints pertaining to the Cryoport group (to which the Purchaser belongs), the Parties have agreed to amend the Securities Purchase Agreement with a view to (i) agreeing on, and formalizing, a Closing Date by 1 October 2020, (ii) crystallizing the financial aggregates provided for under the Securities Purchase Agreement on 30 September 2020, in particular for the purpose of determining the Post-Closing Adjustment which shall remain based on Closing Balance Sheet as of 30 September 2020 and (iii) formalizing, subject to the terms and conditions hereof, the subrogation of Cryoport Netherlands into the contractual position of Cryoport (i.e., Cryoport assigning to Cryoport Netherlands its rights and obligations under the Securities Purchase Agreement but remaining fully jointly and severally liable with Cryoport Netherlands for any liability and obligation of Cryoport Netherlands under the Securities Purchase Agreement including, *inter alia*, in respect of the payment to the Sellers of the Closing Payment, the amount of the Post-Closing Adjustment (if any) and, more generally, any other sums due by the Sellers under the Securities Purchase Agreement).
- (C) In order to reflect the foregoing, the Parties desire to amend certain provisions of the Securities Purchase Agreement and therefore enter into this Amendment Agreement.

It is hereby agreed as follows:

1. Amendment of certain definitions of the Securities Purchase Agreement

- 1.1. The Parties agree that the definition of "Actual Closing Net Debt" of the Securities Purchase Agreement is hereby amended and shall now read as follows:

"Actual Closing Net Debt" means the actual Net Debt of the Group Companies as at 30 September 2020 as resulting from the Closing Balance Sheet as finally determined and agreed between the Sellers' Representative and the Purchaser or as otherwise determined in accordance with Section 3.4(d);"

- 1.2. The Parties agree that the definition of "Actual Closing Working Capital" of the Securities Purchase Agreement is hereby amended and shall now read as follows:
- "Actual Closing Working Capital" means the actual Working Capital of the Group Companies as at 30 September 2020 as resulting from the Closing Balance Sheet as finally determined and agreed between the Sellers' Representative and the Purchaser or as otherwise determined in accordance with Section 3.4(d)."*
- 1.3. The Parties agree that paragraphs (iii) and (iv) of the definition of "Cash" of the Securities Purchase Agreement is hereby amended and shall now read as follows:
- "(iii) "CFE Recovery": the difference between (1) the total amount of CFE (cotisations foncières des entreprises) to be recovered by the French subsidiaries amounting to two hundred and ten thousand (EUR 210,000.00) (such amount is a fixed amount, mutually agreed by the Parties as such) and (2) the amount of CFE actually recovered at 30 September 2020 or, and without double counting, accounted in the Working Capital;*
- (iv) A fixed amount of one hundred sixteen thousand euros (EUR 116,000.00) placed in an escrow account for the benefit of Spirit as part of the new Tremblay lease, it being understood that this amount shall be decreased by the amount already recovered at 30 September 2020 or, and without double counting, the amount accounted in the Working Capital".*
- The other provisions of the definition of "Cash" of the Securities Purchase Agreement shall remain unchanged.
- 1.4. The Parties agree that the definition of "Existing Indebtedness" of the Securities Purchase Agreement is hereby amended and shall now read as follows:
- "Existing Indebtedness" means all outstanding and unpaid amounts owing as at 30 September 2020 (in principal, interest, penalties and any other sums) by the Group Companies, pursuant to, or in connection with, the Existing Facilities (including, without limitation, all break fees due in connection with the voluntary prepayment of any sums due by the Company pursuant to, or in connection with the Existing Facilities), as determined in accordance with the terms of the Existing Facilities."*
- 1.5. The Parties agree that paragraph (iii), (ix), (x), (xii) and (xvii) of the definition of "Indebtedness" of the Securities Purchase Agreement is hereby amended and shall now read as follows:
- "(iii) deferred purchase price of assets, property, securities, goods or services (in each case, other than in the ordinary course of business) including the non-contingent amount of any current or future obligations under any "earn-outs" or similar obligations (including, if non-contingent, (i) any amounts due to former owners of any Group Company or "Company notes" payable, and (ii) any amounts payable attributable to the period prior to 30 September 2020,*
- (...)*
- (ix) "Remaining Carve-Out Costs": the difference between (1) one million four hundred thirty-two thousand euros (EUR 1,432,000.00) which corresponds to the budgeted carve-out costs (IT, rebranding, relocation from Bobigny to Tremblay, SAGE, accounting and finance) excl. VAT or its foreign equivalent as mutually agreed upon by the Parties and (2) carve-out costs, excl. VAT, having already being accounted as of 30 September 2020 (to the extend paid on or prior to 30 September 2020 or reflected in Working Capital), it being understood that if the Closing Date were 30-June-2020, the Remaining Carve-Out Costs would be one million two hundred thousand euros (EUR 1,200,000.00) as mutually agreed upon by the Parties,*
- (x) "Pension Costs": an amount of one hundred seventy-six thousand euros (€176,000) for the purpose of the accrued and unpaid obligations in respect of severance due (and that should reasonably be payable during a period not exceeding 10 years after 30 September 2020) as mutually agreed upon by the Parties,*

(...)

(xvi) "**Unpaid Settlement Not Covered**": the difference, if it is a positive amount, between (1) one hundred thousand euros (EUR 100,000.00) and (2) costs already accounted before 30 September 2020 (to the extent paid on or prior to 30 September 2020 or reflected in Working Capital) regarding the on-going litigation in Israel between PDP Courier Services Ltd and PDP Israël Ltd., an Israeli company registered under number 514694736 with the trade and companies registry (including costs and expenses incurred in connection to the litigation), it being understood that if the Closing Date were 31-July-2020, the Unpaid Settlement Not Covered would be fifty-nine thousand and one hundred euros (EUR 59,100.00),

(...)

(xvii) any amounts owed (and not paid at 30 September 2020) to Sellers or their Affiliates other than salary or compensation due to individual Sellers that are also an officer or employee of a Group Company solely for their salary or compensation for such services and excluding any compensation arising out of the AL/Hivest Transaction or the transactions contemplated by this Agreement,".

The other provisions of the definition of "Indebtedness" of the Securities Purchase Agreement shall remain unchanged.

- 1.6. The Parties agree that the definition of "Leakage" of the Securities Purchase Agreement is hereby amended and shall now read as follows:

"Leakage" means, other than Permitted Leakage, the sum of the amounts resulting from any of the following events to the extent it would occur after the Effective Date and prior to, or as of, 30 September 2020 without being taken into account in the Purchase Price, Actual Closing Net Debt (notably through a decrease of the Cash or an Increase of the Indebtedness) or Actual Closing Working Capital (through, for example, an increase in payables and/or provisions):

(...)

(ii) any Transaction Costs incurred prior to 30 September 2020, not included in the Actual Closing Net Debt or the Actual Closing Working Capital, and to be paid after 30 September 2020;".

The other provisions of the definition of "Leakage" of the Securities Purchase Agreement shall remain unchanged.

- 1.7. The Parties agree that the definition of "Transaction Costs" of the Securities Purchase Agreement is hereby amended and shall now read as follows:

"Transaction Costs" means any fees, expenses or other costs agreed to be paid or paid by any Group Company after 30 September 2020 or prior to or on 30 September 2020 but not included in the Actual Net Debt or in the Actual Working Capital, in respect of (i) the Transaction or the transactions contemplated by this Agreement by any Group Company (to the extent such fees, expenses or other costs are paid or payable for the sole account of the Sellers) and (ii) the AL/Hivest Transaction or the transactions contemplated by the AL SPA by any Group Company (but excluding any Remaining Carve-out Costs). The amounts of the Transaction Costs as at 21 August 2020 are in Section 13.6.1 of the Data Room (minor changes may be expected as of 30 September 2020);".

1.8. The Parties agree that the last paragraph of clause 3.1(a) of the Securities Purchase Agreement is hereby amended and shall now read as follows:

“in each case as finally determined in accordance with Section 3.4(d) (the “Purchase Price”).”

The other provisions of clause 3.1(a) of the Securities Purchase Agreement shall remain unchanged.

1.9. The Parties agree that the first paragraph of clause 3.4(d) of the Securities Purchase Agreement is hereby amended and shall now read as follows:

“Closing Balance Sheet; Computation of Post-Closing Adjustment. Within sixty (60) Business Days after the Closing Date, the Purchaser shall procure that the Company prepare a consolidated balance sheet (bilan consolidé) as at the start of business on 30 September 2020 (the “Closing Balance Sheet”), in the same format as the balance sheet included in Schedule 3.4(d), in accordance with the Accounting Principles and reviewed by Ernst & Young in compliance with applicable relevant Accounting Principles. As soon as reasonably practicable, and in any event by no later than five (5) Business Days after the Closing Balance Sheet has been made available to the Purchaser, the Purchaser shall deliver to the Sellers’ Representative a copy of the Closing Balance Sheet and a statement (the “Purchaser’s Statement”), signed by an authorized representative of the Purchaser, setting forth in reasonable detail a computation as of 30 September 2020 of the following amounts (the “Adjustment Amounts”) (i) the Indebtedness in the Closing Balance Sheet, (ii) the Cash in the Closing Balance Sheet, (iii) the Actual Closing Net Debt, (iv) the Actual Closing Working Capital, and (v) the Post-Closing Adjustment. As from the date of the delivery of the Purchaser’s Statement, the Purchaser shall, subject to reasonable notice, make available to the Sellers’ Representative the books, records and any other document and information relating to the Group Companies reasonably required by the Sellers’ Representative in connection with its review of the Closing Balance Sheet and the Purchaser’s Statement.”

The other provisions of clause 3.4(d) of the Securities Purchase Agreement shall remain unchanged.

1.10. The Parties agree that clause 5.1 (*Date and Place of Closing*) of the Securities Purchase Agreement is hereby amended and shall now read as follows:

5.1. DATE AND PLACE OF CLOSING

The Closing takes place electronically through the DocuSign platform on October 1st, 2020 or at any other later date which is the last day of a month as notified by the Sellers’ Representative to the Purchaser with a 10-day prior notice at least but not later than the Long Stop Date (the “Closing Date”).”

1.11. The Parties agree that the paragraph (iv) of clause 9(b) of the Securities Purchase Agreement is hereby amended and shall now read as follows:

“(iv) there has been no Leakage in the period from (and including) the Effective Date to (and including) 30 September 2020;”

1.12. With respect to any actions to be taken by the Group Companies on 1 October 2020, each Group Company shall maintain and carry on its business in the ordinary course of business as a going concern and there shall be no Leakage.

1.13. The Parties agree that Schedule (F) (*Calculation of Target Closing Working Capital – Specific policies*) of the Securities Purchase Agreement is hereby amended and is fully replaced and restated by Schedule (F) (*Calculation of Target Closing Working Capital – Specific policies*) attached as **Appendix 1** to this Amendment Agreement.

2. Subrogation of Cryoport Netherlands in the rights and obligations of Cryoport under the Securities Purchase Agreement

2.1. In accordance with clause 14.5(b) of the Securities Purchase Agreement, Cryoport hereby assigns all of its rights and obligations under the Securities Purchase Agreement to Cryoport Netherlands, its wholly-owned Affiliate.

2.2. Cryoport Netherlands hereby accepts the foregoing assignment and hereby declares that (i) it has read the Securities Purchase Agreement and (ii) it assumes and agrees to perform and to be liable for each and every obligation of Cryoport, to the same extent as Cryoport, under the terms and conditions of the Securities Purchase Agreement including, *inter alia*, in respect of the payment to the Sellers of the Closing Payments, the amount of the Post-Closing Adjustment (if any) and, more generally, any other sums due by the Purchaser to the Sellers under the Securities Purchase Agreement.

2.3. Cryoport shall remain jointly and severally liable with Cryoport Netherlands for the performance of the obligations (including payment obligations) under the Securities Purchase Agreement.

2.4. The assignment, together with the joint and several commitment of Cryoport under this clause 2 and the Securities Purchase Agreement, shall become effective as from the date hereof.

2.5. As a consequence of the foregoing, article 14.3 is hereby amended with respect to the Purchaser as follows:

“If to the Purchaser, to Cryoport Netherlands B.V.:

*Cryoport Netherlands B.V.
Parellaan 18, 2132WS Hoofddorp, Netherlands
Attn: Robert Stefanovich (director); Yvonne
Theuns (director)
Email: RStefanovich@cryoport.com ;
ytheuns@cryoport.com*

with a copy to:

*Cryoport, Inc.
112 Westwood Place – Suite 350
Brentwood, Tennessee 37027
Attn: Robert Stefanovich (CFO) ; Tony Ippolito
(GC)
Email: RStefanovich@cryoport.com ;
tippolito@cryoport.com*

*McDermott Will & Emery AARPI
23, rue de l’Université
75007 - Paris
Attn: Me Bertrand Delafaye
Email: bdelafaye@mwe.com »*

3. Payment by the Purchaser of the Closing Purchase Price and the Existing Indebtedness

On the Closing Date, the Purchaser shall (i) pay the Closing Purchase Price and (ii) repay the Existing Indebtedness as per the instructions of the Sellers' Representative as set out in Appendix 2 of this Amendment Agreement. The Purchaser shall be fully discharged by any payment made at the Closing Date in accordance with, and subject to, this Appendix 2.

The Purchaser declares that the funds used to satisfy its payment obligations under the Securities Purchase Agreement do not come from illegal activities or from activities which contradict, or are likely to contradict, the provisions of any and all anti-corruption Laws or Laws against money laundering, financing of terrorism or tax evasion and fraud applicable to it.

4. Reiteration of the Representations and Warranties

The representations and warranties set forth in Article 8 of the Securities Purchase Agreement (*Representations of the Sellers*) and in Article 9 of the Securities Purchase Agreement (*Representations and Warranties under the AL SPA*) are repeated on the Closing Date.

5. Waiver of Article 5.2(a)(i) of the Securities Purchase Agreement

According to Article 5.2(a)(i) of the Securities Purchase Agreement, the Sellers' Representative shall deliver to the Purchaser the Accounts Closing Delivery on the Closing Date.

Prior to the date hereof, the Sellers' Representative and the Purchaser have recognized and accepted that, given timing constraints, the Accounts Closing Delivery, the final version of which is being finalized pending review and comments from the Purchaser, will not be delivered on the Closing Date.

In order not to delay the completion of the Transaction on October 1, 2020, the Purchaser acknowledges and agrees to waive the condition set forth in Article 5.2(a)(i) provided that the Sellers' Representative shall make its commercially reasonable efforts to assist, within the limit of its powers, the Purchaser in the finalization of such Accounts Closing Delivery no later than October 31, 2020 it being specified and agreed by the Parties that such reasonable assistance from the Sellers' Representative shall not result in incurring the liability of the Sellers' Representative, in any manner whatsoever.

For the sake of clarity, and notwithstanding the foregoing, the Parties hereby reiterate and agree that:

- the definition of "Cash" under the Securities Purchase Agreement shall include any fees, including VAT, actually paid (or accounted and to the extent reflected in the Working Capital) to Crowe HAF or Daniel Plessis to prepare the Accounts Closing Delivery; and
- the definition of "Unpaid Transaction Fees" under the Securities Purchase Agreement shall exclude the fees owed to Crowe HAF or Daniel Plessis for preparing the Accounts Closing Delivery.

6. Miscellaneous

- 6.1. Any reference to the Securities Purchase Agreement shall be a reference to the Securities Purchase Agreement as modified by this Amendment Agreement and the provisions of the Securities Purchase Agreement shall be interpreted and construed in the light of this Amendment Agreement.

- 6.2. This Amendment Agreement shall come into force as from the date hereof.
- 6.3. This Amendment Agreement shall not constitute an amendment or waiver of any other provisions (including its schedules) of the Securities Purchase Agreement not expressly referred to herein. Except as expressly amended and/or superseded hereby, the provisions of the Securities Purchase Agreement are, and shall remain, in full force and effect.
- 6.4. The provisions of clauses 13 (*Confidentiality*) and 14 (*Miscellaneous*) of the Securities Purchase Agreement are incorporated by reference to this Amendment Agreement and shall apply *mutatis mutandis*.

7. **Electronic signature**

- 7.1. In accordance with articles 1366 and 1367 of the French civil code, this Amendment Agreement shall be signed electronically by each of the authorized representatives of the Parties hereto. Each Party acknowledges that it has received all the information required for the electronic signature of this Amendment Agreement and that it has signed this Amendment electronically in full knowledge of the technology used and its terms and conditions, and consequently waives any claim and/or legal action challenging the reliability of this electronic signature system and/or its intention to enter into this Amendment Agreement.
- 7.2. In accordance with the provisions of article 1375 of the French *Code civil*, the obligation to deliver an original copy to each of the Parties hereto is not necessary as proof of the commitments and obligations of each Party to this Amendment Agreement. The delivery of an electronic copy of this Amendment Agreement directly by DocuSign to each Party shall constitute sufficient and irrefutable proof of the commitments and obligations of each Party to this Amendment Agreement.

Each Party acknowledge and agree, by exception to the provisions of article 1161 of the French Code Civil, that a Party to this Amendment Agreement may represent, and act in the name and on behalf of, another Party and, as such, to irrevocably waive its rights to require the invalidity and nullity of the Amendment Agreement or any other agreement or document entered into in accordance with the terms and conditions of the Amendment Agreement on the basis of article 1161 of the French *Code Civil*.

The effective date of signature of this Amendment Agreement shall be the date of signature certified by the DocuSign platform.

/s/ **ROBERT STEFANOVICH**

Cryoport, Inc.
By: Mr. Robert Stefanovich

/s/ **ROBERT STEFANOVICH**

Cryoport Netherlands B.V.
By: Mr. Robert Stefanovich

/s/ **CÉDRIC PICAUD**

Hivest I FPCI
Represented by Hivest Capital Partners SAS itself represented by Mr. Cédric Lépée

/s/ **CÉDRIC PICAUD**

MR. CÉDRIC PICAUD

MR. GUILLAUME CHEVILLON

/s/ CÉDRIC PICAUD

MRS. BERANGERE DELAHAYE

By: Mr. Cédric Picaud

/s/ CÉDRIC PICAUD

MR. WASIM DINGANKAR

By: Mr. Cédric Picaud

/s/ CÉDRIC PICAUD

MR. NICOLAS PEDRONO

By: Mr. Cédric Picaud

/s/ CÉDRIC PICAUD

Mrs. Karine GRADZIEL

By: Mr. Cédric Picaud

/s/ CÉDRIC LÉPÉE

ATLAS Co-INVEST FPS

By Hivest Capital Partners SAS represented by Mr. Cédric Lépée

MR. TANGI TREMORIN

By: Mr. Cédric Picaud

/s/ CÉDRIC PICAUD

MR. SEBASTIEN OUDARD

By: Mr. Cédric Picaud

/s/ CÉDRIC PICAUD

MR. MARK PETTLER

By: Mr. Cédric Picaud

/s/ CÉDRIC PICAUD

MR. GIRISH PATTATHIL RADHAKRISHNAN

By: Mr. Cédric Picaud

/s/ DIEGO FELIPE APONTE

FPCI SWEN Co-INVEST 2

By: Swen Capital Partners SA itself represented by Mr. Diego Felipe Aponte

/s/ VINCENT LEPREVOTS

TIKEHAU DIRECT LENDING IV

By: Tikehau Associé II (SARL), itself represented by Tikehau Investment Management, itself represented by Mr. Vincent Leprevots

/s/ VINCENT LEPREVOIS

/s/ VINCENT LEPREVOIS

TIKEHAU MERCATI PRIVATI EUROPEI

By: Tikehau Investment Management, itself represented by Mr. Vincent Leprevots

MTDL

By: Tikehau General Partner II (SARL) represented by Tikehau Investment Management itself represented by Mr. Vincent Leprevots

/s/ CÉDRIC PICAUD

ADVANCED THERAPY LOGISTICS AND SOLUTIONS SAS

By: Mr. Cédric Picaud



Cryoport Completes Acquisitions of MVE Biological Solutions and CRYOPDP

Cryoport fortifies its position as a leading global provider of temperature-controlled life sciences solutions with a combined revenue run rate of over \$160 million

Blackstone invests \$275 million

NASHVILLE, Tennessee, October 1, 2020 - Cryoport, Inc. (NASDAQ: CYRX) (“Cryoport” or the “Company”), the life sciences industry’s preeminent partner for temperature-controlled supply chain solutions, today announced it has completed the acquisitions of MVE Biological Solutions (“MVE”), a global leader in manufactured vacuum insulated products and cryogenic freezer systems and solutions, and CRYOPDP, a leading global provider of innovative temperature-controlled logistics solutions for the clinical research, pharmaceutical and cell and gene therapy markets.

In 2019, MVE generated revenue of approximately \$84 million and CRYOPDP generated approximately \$47 million of revenue. With the closing of these acquisitions, Cryoport’s annual revenue run rate is over \$160 million and both acquisitions are expected to be immediately accretive to earnings.

These two strategic acquisitions uniquely position Cryoport with a comprehensive and global platform supporting the growing need for fully integrated temperature controlled supply chain requirements of the life sciences industry. MVE and CRYOPDP add significant capabilities and competencies to Cryoport as well as markedly expand its client coverage of the global cell and gene therapy market. This newly formed end-to-end solutions platform significantly enhances Cryoport’s market position.

Jerrell Shelton, CEO of Cryoport, said, “Based on market forecasts the cell and gene therapy market will continue to grow rapidly for the next decade. The closing of the acquisitions of MVE and CRYOPDP uniquely positions Cryoport to answer the increasing demand for fully integrated temperature controlled supply chain solutions in this fast growing global market. The acquisitions are also expected to expand Cryoport’s total addressable market, provide our clients’ with expanded end-to-end support across the cell and gene therapy value chain and enhance our innovation pipeline.

“We now support well over 500 of the preeminent companies in biopharma and are positioned to be the global leader in advanced temperature controlled supply chain solutions tailored to the life sciences industry. Cryoport is an exceptional company with a strong focus on customer service and bringing innovative solutions to market. Our qualified and experienced personnel around the world employ specialized industry know-how and work closely with our sophisticated life sciences clients to implement best-in-class solutions.

“We are excited by the prospects of our future as we vigorously work to fulfill and maintain our mission of being the life sciences industry’s pre-eminent choice for temperature controlled supply chain solutions supporting life and health on earth.”

Blackstone Investment and Financing

In conjunction with the acquisition of MVE, the Company completed its previously announced private placement issuance of \$25 million of common stock and \$250 million of newly designated Series C Convertible Preferred Stock to funds affiliated with The Blackstone Group Inc. (NYSE: BX) (“Blackstone”). In conjunction with Blackstone’s investment in Cryoport, Ram Jagannath, Senior Managing Director and Global Head of Healthcare for Blackstone Growth and Tactical Opportunities, joined the Board of Directors of Cryoport.

About Cryoport, Inc.

Cryoport, Inc. (Nasdaq: CYRX) is redefining temperature controlled supply chain support for the life sciences industry by continually broadening its platform of solutions, serving the Biopharma, Reproductive Medicine, and Animal Health markets. Through its family of companies, Cryoport Systems, MVE, CRYOPDP and Cryogene, Cryoport provides strategic solutions that will support the growing needs of these markets.

Our mission is to support life and health on earth through our advanced technologies, global supply chain network and dedicated scientists, technicians and supporting teams of professionals. Cryoport serves clients in life sciences research, clinical trials, and product commercializations. We support the creation of life, the sustaining of life and life-saving advanced cell and gene therapies in over 100 countries around the world. For more information, visit www.cryoport.com or follow @cryoport on Twitter at www.twitter.com/cryoport for live updates.

Forward-Looking Statements

Statements in this news release which are not purely historical, including statements regarding Cryoport, Inc.'s intentions, hopes, beliefs, expectations, representations, projections, plans or predictions of the future are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, but are not limited to, the potential benefit of Cryoport's acquisition of MVE and CYROPDP and the estimated or anticipated future business, performance and results of operations following the transaction. It is important to note that the Company's actual results could differ materially from those in any such forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to, delays and unanticipated costs in integrating MVE and CRYOPDP's businesses, risks and uncertainties associated with the effect of changing economic conditions, trends in the products markets, variations in the Company's cash flow, market acceptance risks, and technical development risks. The Company's business could be affected by a number of other factors, including the risk factors listed from time to time in the Company's SEC reports including, but not limited to, the Company's 10-K for the year ended December 31, 2019 and the Company's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2020 and June 30, 2020 filed with the SEC. The Company cautions investors not to place undue reliance on the forward-looking statements contained in this press release. Cryoport, Inc. disclaims any obligation, and does not undertake to update or revise any forward-looking statements in this press release.

Cryoport Investor Contacts:

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