
**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): June 30, 2014

Amedica Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-33624
(Commission
File Number)

84-1375299
(IRS Employer
Identification No.)

1885 West 2100 South
Salt Lake City, UT
(Address of principal executive offices)

84119
(Zip Code)

Registrant's telephone number, including area code: (801) 839-3500

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:

- 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))
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Item 1.01 Entry into a Material Definitive Agreement.***Hercules Loan and Security Agreement***

On June 30, 2014 the Company and its subsidiary entered into a Loan and Security Agreement (the "Loan and Security Agreement") with Hercules Technology Growth Capital, Inc. (the "Agent"), as administrative and collateral agent for the lenders thereunder and as lender, and Hercules Technology III, LP, as lender. The Loan and Security Agreement provides for a \$20 million term loan with a maturity date of January 1, 2018 and is secured by substantially all of the assets of the Company and its subsidiary. Proceeds of the loan will be used to repay in full and terminate the Company's prior credit facility with General Electric Capital Corporation and for general corporate purposes.

The loan bears interest at the rate of the greater of either (i) the prime rate plus 7.7%, and (ii) 10.95%. Interest accrues from the date of the Loan and Security Agreement but interest payments are not required to be made until commencing on July 1, 2014. Principal payments are required commencing August 1, 2015 and are to be made in thirty equal installments, with the remainder due at maturity; provided, that in the event that the Company meets certain conditions set forth in the Loan and Security Agreement it may extend the interest only period through February 1, 2016, reducing the number of required principal payments to twenty-four. Additionally, under certain circumstances the Company may, or the Agent may require that the Company, repay a portion of the principal in the form of the Company's common stock. The conversion price used for the calculation of the amount of shares to be delivered in such instance is \$5.72.

The Loan and Security Agreement contains representations and warranties, affirmative, negative and financial covenants, and events of default customary for financings of this type, including, among other things, limitations on certain other indebtedness, loans and investments, liens, mergers, asset sales and transactions with affiliates.

In addition, the Company has issued a warrant to the Agent (the "Hercules Warrant") to purchase the number of shares of Common Stock determined by dividing \$2,400,000 by the warrant price of \$4.65 per share, subject to adjustment as set forth in the Hercules Warrant; provided, that such \$2,400,000 may be increased to \$2,900,000 in the event that the Company does not meet certain conditions set forth in the Hercules Warrant.

The foregoing descriptions of the Loan and Security Agreement and the Hercules Warrant do not purport to be complete, and are qualified in their entirety by reference to each such document (or form thereof, as applicable), filed as Exhibits attached hereto and incorporated herein by reference.

Private Placement of Senior Convertible Notes to Magna

On June 30, 2014, Amedica Corporation (the "Company") entered into a securities purchase agreement (the "Purchase Agreement"), with MG Partners II Ltd., an affiliate of Magna (the "Investor"). Pursuant to the Purchase Agreement, the Company sold the Investor an initial unsecured senior convertible note with an original principal amount of \$2.9 million (the "Initial Convertible Note"), for a purchase price of \$2.5 million. Additionally, the Investor is irrevocably bound to purchase, no later than ten (10) calendar days after the effective date of the Registration Statement (as defined below), an additional unsecured senior convertible note with an original principal amount of \$3.5 million (the "Additional Convertible Note" and, with the Initial Convertible Note, referred to herein collectively as, the "Convertible Notes"), for a fixed purchase price of \$3.5 million, subject only to conditions outside of the Investor's control or that the Investor cannot cause not to be satisfied, none of which are related to the market price of the Company's common stock, \$0.01 par value per share (the "Common Stock").

With respect to the Initial Convertible Note, \$150,000 of the outstanding principal amount (together with any accrued and unpaid interest with respect to such portion of the principal amount) will be automatically extinguished (without any cash payment by the Company) if (1) the Company has properly filed a registration statement (a "Registration Statement") with the United States Securities and Exchange Commission (the "SEC") on or prior to August 14, 2014 and (2) no event of default, or an event that with the passage of time or giving of notice would constitute an event of default, has occurred on or prior to such date. In addition, \$250,000 of the outstanding principal amount of the Initial Convertible Note (together with any accrued and unpaid interest with respect to such portion of the principal amount) will be automatically extinguished (without any cash payment by the Company) if (1) its Registration Statement is declared effective by the SEC on or prior to the earlier of (i) October 13, 2014 and (ii) the fifth trading day after the SEC has notified the Company that its Registration Statement is not subject to further review, and the prospectus contained therein is available for use by the Investor and (2) no event of default, or an event that with the passage of time or giving of notice would constitute an event of default, has occurred on or prior to such date.

The Convertible Notes mature on June 30, 2016 (subject to extension as provided in the Initial Convertible Note) and accrue interest at an annual rate of 6.0%. The Convertible Notes are convertible at any time after issuance, in whole or in part, at the Investor's option, into shares of Common Stock at an initial fixed conversion price equal to \$3.75 per share (the "Initial Fixed Price"). If, however, the closing sale price of the Common Stock is below 110% of the Initial Fixed Price for two consecutive trading days, either:

- (1) the Company has sixty (60) days to redeem the Convertible Notes in full at a 127.5% premium of the entire principal and interest remaining on the Convertible Notes; or
- (2) on the 61st day, the Investor shall be able to convert the Convertible Notes, in whole or in part, at the lesser of: (i) the Initial Fixed Price or (ii) a price equal to 80% of the lowest daily volume weighted average price ("VWAP") per share in the five (5) trading days prior to conversion.

In addition, the Company has issued the Investor a warrant (the "Warrant") to purchase up to 568,889 shares of Common Stock at an exercise price of \$4.65 per share. The Warrant terminates on June 30, 2016 and is exercisable as to 257,778 shares immediately and will become exercisable as of the date of issuance of the Additional Convertible Note with respect to the remaining 311,111 shares.

As long as the Convertible Notes are outstanding and for so long as the Investor or its affiliates beneficially own any of the shares of Common Stock issuable upon conversion of the Convertible Notes or exercise of the Warrant, they may not engage in any "short sale" transactions in the Common Stock. In addition, the Investor has agreed that unless otherwise mutually agreed upon, the Investor, upon conversion of the Convertible Notes, shall not sell more than the greater of: (i) \$125,000 of Common Stock, in any five (5) consecutive trading day period, or (ii) 15% of the daily trading volume of the Common Stock on any given trading day. If, however, on any given trading day more than \$250,000 of the Common Stock is traded, the Investor may trade up to 33% of the daily trading volume on that day (the "Investor Restrictions"). Furthermore, the Investor Restrictions will be removed on any day the price of the stock trades below \$2.50.

The Initial Convertible Note includes and, if issued, the Additional Convertible Note will include, customary event of default provisions. The Initial Convertible Note provides and, if issued, the Additional Convertible Note will provide for a default interest rate of 18%. Upon the occurrence of an event of default, Investor may require the Company to pay in cash the "Event of Default Redemption Price" which is defined in the Convertible Notes to mean the greater of (i) the product of (A) the amount to be redeemed multiplied by (B) 135% (or 100% if an insolvency related event of default) and (ii) the product of (X) the conversion price in effect at that time multiplied by (Y) the product of (1) 127.5% (or 100% if an insolvency related event of default) multiplied by (2) the greatest closing sale price of the common stock on any trading day during the period commencing on the date immediately preceding such event of default and ending on the date the Company makes the entire payment required to be made under the default provision.

The Company has the right to prepay the Convertible Notes, in whole or in part, for an amount equal to 127.5% of the outstanding principal remaining.

The Company paid the Investor a commitment fee for entering into the Purchase Agreement equal to 4% of the total purchase price for the Convertible Notes under the Purchase Agreement in the form of the issuance of 50,853 shares of Common Stock (the "Commitment Shares"), calculated using a per share price of \$4.7195, representing the VWAP of the Common Stock per share on June 27, 2014. The Company also agreed to pay up to \$50,000 of reasonable attorneys' fees and expenses incurred by the Investor in connection with the transaction.

Under the Purchase Agreement, if at any time the aggregate number of Commitment Shares, shares of Common Stock issuable upon conversion of the Convertible Notes (the "Conversion Shares"), and shares of Common Stock issuable upon exercise of the Warrants (the "Warrant Shares") is 15% or more of the total shares of the Common Stock outstanding on the date of the Purchase Agreement, then at the next special or annual meeting of stockholders of the Company, the Company is required to take all action necessary to obtain the approval of its stockholders of the issuance of all Commitment Shares, Conversion Shares and Warrant Shares in accordance with the rules of the NASDAQ Stock Market. If, despite the Company's commercially reasonable efforts such

stockholder approval is not obtained, the Company is required to seek to obtain stockholder approval at each special or annual meeting of stockholders of the Company convened such meeting until such stockholder approval is obtained. In addition, until stockholder approval is obtained, the Company may not issue any Commitment Shares, Conversion Shares and Warrant Shares in an aggregate amount that exceeds 19.99% of the issued and outstanding Common Stock on the date of the Purchase Agreement.

The Purchase Agreement contains customary representations, warranties and covenants by, among and for the benefit of the parties. The Purchase Agreement also provides for indemnification of the Investor and its affiliates in the event that the Investor incurs losses, liabilities, obligations, claims, contingencies, damages, costs and expenses related to the Company's breach of any of its representations, warranties or covenants under the Purchase Agreement. The Purchase Agreement is not intended to provide any factual information about the Company. The representations, warranties and covenants contained in the Purchase Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures exchanged between the parties in connection with the execution of the Purchase Agreement. The representations and warranties may have been made for the purposes of allocating contractual risk between the parties to the agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Purchase Agreement, and this subsequent information may or may not be fully reflected in the Company's public disclosure.

The issuance of the Initial Convertible Note, the Warrant and the Commitment Shares under the Purchase Agreement were, and, if issued, the issuance of the Additional Convertible Note under the Purchase Agreement will be, exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder.

In connection with the execution of the Purchase Agreement, on June 30, 2014, the Company and the Investor also entered into a registration rights agreement (the "Registration Rights Agreement"), pursuant to which the Company agreed to file an initial registration statement (the "Registration Statement") with the SEC to register the resale of the Commitment Shares, the Conversion Shares and the Warrant Shares, on or prior to August 14, 2014 and have it declared effective at the earlier of (i) October 13, 2014 and (ii) the fifth (5th) business day after the date the Company is notified by the SEC that the Registration Statement will not be reviewed or will not be subject to further review.

If at any time all of the Commitment Shares, the Conversion Shares and the Warrant Shares are not covered by the initial Registration Statement, the Company has agreed to file with the SEC one or more additional registration statements so as to cover all of the Commitment Shares, the Conversion Shares and the Warrant Shares not covered by such initial registration statement, in each case, as soon as practicable, but in no event later than the applicable filing deadline for such additional registration statements as provided in the Registration Rights Agreement; provided, however, that the Company shall not be required to file more than one such additional registration statement in any rolling six month period.

The Company also agreed, among other things, to indemnify the Investor from certain liabilities and fees and expenses of the Investor incident to the Company's obligations under the Registration Rights Agreement, including certain liabilities under the Securities Act. The Investor has agreed to indemnify and hold harmless the Company and each of its directors, officers and persons who control it against certain liabilities that may be based upon written information furnished by the Investor to the Company for inclusion in a Registration Statement pursuant to the Registration Rights Agreement, including certain liabilities under the Securities Act.

This Current Report on Form 8-K is neither an offer to sell nor the solicitation of an offer to buy any securities. The securities have not been registered under the Securities Act and may not be offered or sold in the United States of America absent registration or an exemption from registration under the Securities Act.

The foregoing descriptions of the Purchase Agreement, the Convertible Notes, the Warrant and the Registration Rights Agreement do not purport to be complete, and are qualified in their entirety by reference to each such document (or form thereof, as applicable), filed as Exhibits 10.1, 4.1, 4.2 and 10.2, respectively, and incorporated herein by reference.

Item 2.03 Creation of Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure set forth in Item 1.01 is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure set forth in Item 1.01 is incorporated herein by reference.

Item 8.01 Other Events.

On June 30, 2014, the Company issued a press release announcing the transactions described in Item 1.01. The Company's press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

- 4.1 Form of Magna Senior Convertible Note
- 4.2 Magna Warrant to Purchase Common Stock
- 4.3 Hercules Warrant to Purchase Common Stock
- 10.1 Securities Purchase Agreement, dated June 30, 2014, by and between the Company and MG Partners II Ltd.
- 10.2 Registration Rights Agreement, dated June 30, 2014, by and between the Company and MG Partners II Ltd.
- 10.3 Loan and Security Agreement, dated June 30, 2014, by and among the Company, its subsidiary, Hercules Technology Growth Capital, Inc., and Hercules Technology III, LP.
- 99.1 Press Release, dated July 1, 2014.

SIGNATURE

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.

AMEDICA CORPORATION

Date: July 1, 2014

/s/ Kevin Ontiveros

Kevin Ontiveros
Chief Legal Officer, Corporate Secretary

[FORM OF SENIOR CONVERTIBLE NOTE]

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES. ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTIONS 3(c)(iii) AND 17(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THIS NOTE.

AMEDICA CORPORATION

SENIOR CONVERTIBLE NOTE

Issuance Date: [], 2014

Original Principal Amount: U.S. \$[]

FOR VALUE RECEIVED, Amedica Corporation, a Delaware corporation (the "*Company*"), hereby promises to pay to the order of MG Partners II, Ltd. or its registered assigns ("*Holder*") the amount set out above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "*Principal*") when due, whether upon the Maturity Date (as defined below), acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("*Interest*") on any outstanding Principal (as defined below) (as such interest on any outstanding Principal may be reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise) at the applicable Interest Rate (as defined below) from the date set out above as the Issuance Date (the "*Issuance Date*") until the same becomes due and payable, whether upon the Maturity Date or acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Convertible Note (this "*Note*", including all Senior Convertible Notes issued in exchange, transfer or replacement hereof, collectively, the "*Notes*") is one of a series of Senior Convertible Notes issued pursuant to the pursuant to the Securities Purchase Agreement (as

defined below) either on the Initial Closing Date (as defined below) or, if applicable, on the Additional Closing Date (as defined below) (collectively, the “*Notes*” and such other Senior Convertible Notes, the “*Other Notes*”). Certain capitalized terms used herein are defined in Section 28.

1. PAYMENTS OF PRINCIPAL. On the Maturity Date, the Company shall pay to the Holder an amount in cash representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 23(c)) on such Principal and Interest (as adjusted with respect to any Note Reduction (as defined in Section 12)). Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any.

2. INTEREST; INTEREST RATE.

(a) Interest on this Note shall commence accruing on the Issuance Date and shall be computed on the basis of a 360-day year and twelve 30-day months and shall be payable in cash on the Maturity Date or any applicable Redemption Date, subject to adjustment with respect to any Note Reduction.

(b) Prior to the payment of Interest on the Maturity Date or any applicable Redemption Date, Interest on this Note shall accrue at the Interest Rate and be payable by way of inclusion of the Interest in the Conversion Amount on each Conversion Date in accordance with Section 3(b)(i). From and after the occurrence and during the continuance of any Event of Default, the Interest Rate shall automatically be increased to eighteen percent (18.0%) per annum. In the event that such Event of Default is subsequently cured, the adjustment referred to in the preceding sentence shall cease to be effective as of the calendar day immediately following the date of such cure; provided that the Interest as calculated and unpaid at such increased rate during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure of such Event of Default.

3. CONVERSION OF NOTES. This Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) Conversion Right. Subject to the provisions of Section 3(d), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 3(c), at the Conversion Rate (as defined below). The Company shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp, issuance and similar taxes that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(b) **Conversion Rate.** The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the “**Conversion Rate**”).

(i) “**Conversion Amount**” means the portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made, plus all accrued and unpaid Interest with respect to such portion of the Principal amount and accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest.

(ii) “**Conversion Price**” means, for any date of determination, \$[]¹, (as adjusted for stock splits, stock dividends, stock combinations or other similar transactions).

(c) **Mechanics of Conversion.**

(i) **Optional Conversion.** To convert any Conversion Amount into shares of Common Stock on any date (a “**Conversion Date**”), the Holder shall deliver (whether via facsimile or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as **Exhibit I** (the “**Conversion Notice**”) to the Company. If required by Section 3(c)(iii), the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 17(b)). On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile an acknowledgment of confirmation, in the form attached hereto as **Exhibit II**, of receipt of such Conversion Notice to the Holder and the Company’s transfer agent (the “**Transfer Agent**”). On or before the second (2nd) Trading Day following the date of receipt of a Conversion Notice, the Company shall (1) provided that the Transfer Agent is participating in The Depository Trust Company’s (“**DTC**”) Fast Automated Securities Transfer Program and such shares of Common Stock may be issued without restrictive legend in accordance with Section 4.4 of the Securities Purchase Agreement, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or such shares of Common Stock may not be issued without restrictive legend in accordance with Section 4.4 of the Securities Purchase Agreement, issue and deliver (via reputable overnight courier) to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If this Note is physically surrendered for conversion as required by Section 3(c)(iii) and the outstanding Principal of this Note is greater than the Principal portion of the

¹ Insert price equal to 80% of the lowest daily VWAP in the five trading day period prior to the execution date.

Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than three (3) Trading Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 17(d)) representing the outstanding Principal not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(ii) **Company's Failure to Timely Convert.** If the Company shall fail, for any reason or for no reason, to issue to the Holder within three (3) Trading Days after the Company's receipt of a Conversion Notice (whether via facsimile or otherwise) (the "**Share Delivery Deadline**"), a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company's share register or to credit the Holder's or its designee's balance account with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion of any Conversion Amount (as the case may be) (a "**Conversion Failure**") then, in addition to all other remedies available to the Holder, (1) the Company shall pay in cash to the Holder on each day after such Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to 2% of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on a timely basis and to which the Holder is entitled multiplied by (B) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the last possible date which the Company could have issued such shares of Common Stock to the Holder without violating Section 3(c)(i) and (2) the Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned (as the case may be) any portion of this Note that has not been converted pursuant to such Conversion Notice, provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline, the Company shall fail to issue and deliver a certificate to the Holder and register such shares of Common Stock on the Company's share register or credit the Holder's or its designee's balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be), and if on or after such Share Delivery Deadline the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such conversion that the Holder so anticipated receiving from the Company, then, in addition to all other remedies available to the Holder, the Company shall, within three (3) Business Days after receipt of the Holder's request and in the Holder's discretion, either: (I) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in

respect, or on behalf, of the Holder) (the “**Buy-In Price**”), at which point the Company’s obligation to so issue and deliver such certificate or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s conversion hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (II). This Section 3(c)(ii) shall not be applicable to a Conversion Failure due solely to an Authorized Share Failure (as defined in Section 8(b)), in which case the provisions of Section 8(b) shall be applicable.

(iii) Book-Entry. Notwithstanding anything to the contrary set forth in this Section 3, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3(c)(i)) or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal, Interest and Late Charges converted and/or paid and/or adjusted (as the case may be) and the dates of such conversions and/or payments and/or adjustments (as the case may be) or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion.

(iv) Pro Rata Conversion; Disputes. In the event of a dispute as to the number of shares of Common Stock issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 22.

(d) Limitations on Conversions. Notwithstanding anything to the contrary contained in this Note, this Note shall not be convertible by the Holder hereof, and the Company shall not effect any conversion of this Note or otherwise issue any shares of Common Stock pursuant hereto, to the extent (but only to the extent) that after giving effect to such conversion or other share issuance hereunder the Holder (together with its affiliates) would beneficially own in excess of 4.99% (the “**Maximum Percentage**”) of the Common Stock. To the extent the above limitation applies, the determination of whether this Note shall be convertible (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder or any of its

affiliates) and of which such securities shall be convertible, exercisable or exchangeable (as among all such securities owned by the Holder and its affiliates) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to convert this Note, or to issue shares of Common Stock, pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. For purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) shall be determined in accordance with Section 13(d) of the 1934 Act (as defined in the Securities Purchase Agreement) and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. The limitations contained in this paragraph shall apply to a successor Holder of this Note. The holders of Common Stock shall be third party beneficiaries of this paragraph and the Company may not waive this paragraph without the consent of holders of a majority of its Common Stock. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Note or securities issued pursuant to the Securities Purchase Agreement. By written notice to the Company, at any time the Holder may increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% specified in such notice; provided that (i) any such increase will not be effective until the 61st day after such notice is delivered to the Company, and (ii) any such increase or decrease will apply only to the Holder sending such notice and not to any other holder of Notes.

(e) Company Alternate Redemption/Holder Alternate Conversion.

(i) Company Alternate Redemption. Notwithstanding anything herein to the contrary, if at any time on or after the Issuance Date, the Closing Sale Price of the Common Stock is less than \$[]² (as adjusted for stock splits, stock dividends, recapitalizations and similar events) for a period of two (2) consecutive Trading Days (the “**Company Alternate Redemption Eligibility Date**”), the Company may, at its sole option, redeem all, but not less than all, of the outstanding Conversion Amount of this Note (the “**Company Alternate Redemption Amount**”) at a redemption price (the “**Company Alternate Redemption Price**”) equal to 127.5% of such Company Alternate Redemption Amount at anytime on or before the sixtieth (60th) day after the Company Alternate Redemption Eligibility Date. Redemptions required by this Section 3(e) shall be made in accordance with the provisions of Section 10. To the extent redemptions required by this Section 3(e) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be

² Insert price equal to 110% of the Conversion Price.

deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 3(e), but subject to Section 3(d), until the Company Alternate Redemption Price (together with any Late Charges thereon) is paid in full, the Company Alternate Redemption Amount (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. In the event of the Company's redemption of any portion of this Note under this Section 3(e), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 3(e) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

(ii) Holder Alternate Conversion. If on the sixtieth (60th) Trading Day after the Company Alternate Redemption Eligibility Date (the "**Alternate Conversion Eligibility Date**") the Company has not exercised its right pursuant to Section 3(e)(i) and paid the Company Alternate Redemption Price, the Holder may convert all, or any part, of the Conversion Amount of this Note (each, an "**Holder Alternate Conversion Amount**", and each such conversion, a "**Holder Alternate Conversion**") pursuant to Section 3(c) (with "Alternate Conversion Price" replacing "Conversion Price" for all purposes hereunder with respect to such Holder Alternate Conversion) by designating in the Conversion Notice delivered pursuant to Section 3(c) that the Holder is electing to use the Alternate Conversion Price for such conversion.

(f) NASDAQ Share Cap. Notwithstanding anything contained herein or in any other Transaction Document (as defined in the Securities Purchase Agreement) to the contrary, until Stockholder Approval (as defined in the Securities Purchase Agreement) is obtained, the Company shall not issue shares of Common Stock to the Holder pursuant to the Transaction Documents, including the issuance of Commitment Shares (as defined in the Securities Purchase Agreement), Warrant Shares (as defined in the Securities Purchase Agreement) and shares of Common Stock to which the Holder is entitled upon conversion of this Note in an aggregate amount in excess of 19.99% of the issued and outstanding Common Stock on the Issuance Date.

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**":

(i) the suspension from trading or the failure of the Common Stock to be trading or listed (as applicable) on an Eligible Market for a period of ten (10) consecutive days or for more than an aggregate of thirty (30) days in any 365-day period;

(ii) the Company's or any Subsidiary's (as defined in the Securities Purchase Agreement) failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without

limitation, the Company's or any Subsidiary's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least ten (10) days;

(iii) the occurrence of any default under, redemption of or acceleration prior to maturity of an aggregate of any Indebtedness (as defined in the Securities Purchase Agreement) of the Company or any of its Subsidiaries, in which case only if such failure remains uncured for a period of at least ten (10) days;

(iv) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within forty-five (45) days of their initiation;

(v) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(vi) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii)

a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

(vii) a final judgment or judgments for the payment of money aggregating in excess of \$100,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within forty-five (45) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the \$100,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(viii) the Company and/or any Subsidiary, individually or in the aggregate, either (i) fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness in excess of \$100,000 due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Company and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP) or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of \$100,000, which breach or violation permits the other party thereto to declare a default or otherwise accelerate amounts due thereunder, or (ii) suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Company or any Subsidiary, which default or event of default would or is likely to have a material adverse effect on the business, assets, operations (including results thereof), liabilities, properties, condition (including financial condition) or prospects of the Company or any of its Subsidiaries, individually or in the aggregate;

(ix) other than as specifically set forth in another clause of this Section 4(a), the Company or any Subsidiary breaches any representation, warranty, covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of three (3) consecutive Trading Days;

(x) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes;

(xi) any Material Adverse Effect (as defined in the Securities Purchase Agreement) occurs; or

(xii) any Change of Control occurs (other than a Fundamental Transaction in which all of the requirements set forth in Section 5(a) below have been met).

(b) Notice of an Event of Default: Redemption Right. Upon the occurrence of an Event of Default with respect to this Note, the Company shall within one (1) Business Day deliver written notice thereof via facsimile and overnight courier (with next day delivery specified) (an “*Event of Default Notice*”) to the Holder. At any time after the earlier of the Holder’s receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default, the Holder may require the Company to redeem, at any time during the period commencing on the date the Holder first becomes aware of such Event of Default through and including the twentieth Trading Day after the later of (x) the date the Holder receives the applicable Event of Default Notice with respect thereto and (y) the date such Event of Default has been cured, all or any portion of this Note by delivering written notice thereof (the “*Event of Default Redemption Notice*”) to the Company, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate with respect to the Conversion Amount in effect at such time as the Holder delivers an Event of Default Redemption Notice multiplied by (Y) the product of (1) the Redemption Premium multiplied by (2) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4(b) (the “*Event of Default Redemption Price*”). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 10. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 4, but subject to Section 3(d), until the Event of Default Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 4(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. In the event of the Company’s redemption of any portion of this Note under this Section 4(b), the Holder’s damages would be uncertain and difficult to estimate because of the parties’ inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder’s actual loss of its investment opportunity and not as a penalty.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION; OTHER CORPORATE EVENTS.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations

of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having similar conversion rights as the Notes and having similar ranking to the Notes, and satisfactory to the Holder and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note at any time after the consummation of such Fundamental Transaction, in lieu of the shares of the Company’s Common Stock (or other securities, cash, assets or other property (except such items still issuable under Section 14, which shall continue to be receivable thereafter) issuable upon the conversion or redemption of the Notes prior to such Fundamental Transaction, such shares of the publicly traded common stock (or their equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note.

(b) Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a “*Corporate Event*”), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon a conversion of this Note (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as the Holder would have been entitled to receive had this Note initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder.

(c) The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied without regard to any limitations on the conversion of this Note.

6. ADJUSTMENT OF CONVERSION PRICE. Without limiting any provision of Section 5, if the Company at any time on or after the Initial Closing Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Section 5, if the Company at any time on or after the Initial Closing Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 6 shall become effective immediately after the effective date of such subdivision or combination.

7. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the conversion of this Note, and (iii) shall, so long as any of the Notes are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Notes, the maximum number of shares of Common Stock as shall from time to time be necessary to effect the conversion of the Notes then outstanding (without regard to any limitations on conversion).

8. RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. So long as any of the Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Notes, a number of shares of Common Stock, as of any date of determination, for each of the Notes in accordance with the following formula:

$$\frac{P}{(T \times B)} \times 3 = \text{Share Reserve}$$

P = The aggregate outstanding Purchase Price (as defined the Securities Purchase Agreement) of the Notes issued on or prior to such date of determination;

T = The applicable Conversion Price as of such date of determination;

B = 0.85;

provided, that, the Share Reserve shall in no event be less than 150% of the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding (without regard to any limitations on conversions) (the “**Required Reserve Amount**”).

(b) Insufficient Authorized Shares. If, notwithstanding Section 8(a), and not in limitation thereof, at any time while any of the Notes remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an “**Authorized Share Failure**”), then the Company shall immediately take all action necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders’ approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal. In the event that the Company is prohibited from issuing shares of Common Stock upon any conversion due to the failure by the Company to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailability number of shares of Common Stock, the “**Authorization Failure Shares**”), in lieu of delivering such Authorization Failure Shares to the Holder, the Company shall pay cash in exchange for the redemption of such portion of the Conversion Amount convertible into such Authorized Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorization Failure Shares and (y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Conversion Notice with respect to such Authorization Failure Shares to the Company and ending on the date of such issuance and payment under this Section 8(b) and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorization Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection therewith. Nothing contained in Section 8(a) or this Section 8(b) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

9. COMPANY OPTIONAL REDEMPTION. At any time after the Issuance Date, the Company shall have the right to redeem all or any portion of the Conversion Amount then remaining under this Note (the “**Company Optional Redemption Amount**”) on the Company

Optional Redemption Date (as defined below) (a “**Company Optional Redemption**”). The portion of this Note subject to redemption pursuant to this Section 9 shall be redeemed by the Company in cash at a price (the “**Company Optional Redemption Price**”) equal to 127.5% of the Company Optional Redemption Amount. The Company may exercise its right to require redemption under this Section 9 by delivering an irrevocable written notice thereof by facsimile and overnight courier to the Holder (the “**Company Optional Redemption Notice**”) and the date the Holder receives such notice is referred to as the “**Company Optional Redemption Notice Date**”). The Company may deliver only one Company Optional Redemption Notice in any ninety (90) day period. The Company Optional Redemption Notice shall (x) state the date on which the Company Optional Redemption shall occur (the “**Company Optional Redemption Date**”) which date shall not be less than sixty (60) calendar days nor more than ninety (90) calendar days following the Company Optional Redemption Notice Date, and (y) state the aggregate Conversion Amount of the Notes which is being redeemed in such Company Optional Redemption from the Holder pursuant to this Section 9 on the Company Optional Redemption Date. Notwithstanding anything herein to the contrary, at any time prior to the date the Company Optional Redemption Price is paid, in full, the Company Optional Redemption Amount may be converted, in whole or in part, by the Holder into shares of Common Stock pursuant to Section 3. All Conversion Amounts converted by the Holder after the Company Optional Redemption Notice Date shall reduce the Company Optional Redemption Amount of this Note required to be redeemed on the Company Optional Redemption Date. Redemptions made pursuant to this Section 9 shall be made in accordance with Section 10.

10. REDEMPTIONS.

(a) Mechanics. The Company shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company’s receipt of the Holder’s Event of Default Redemption Notice. The Company shall deliver the applicable Company Optional Redemption Price to the Holder in cash on the applicable Company Optional Redemption Date and the Company shall deliver the Company Alternate Redemption Price to the Holder in cash on or before the Alternate Conversion Eligibility Date. In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal which has not been redeemed. The Holder’s delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company’s obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

11. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law (including, without limitation, the Delaware General Corporation Law) and as expressly provided in this Note.

12. [INSERT IN INITIAL NOTE ONLY: NOTE REDUCTIONS.

(a) Filing Date Reduction. As of the date of filing of the Initial Registration Statement (as such term is defined in the Registration Rights Agreement), if (i) the Company has properly filed the Initial Registration Statement with the SEC on or prior to July 30, 2014 in

accordance with the 1933 Act and the Registration Rights Agreement and (ii) no Event of Default or an event that with the passage of time or giving of notice would constitute an Event of Default has occurred on or prior to such date, then \$150,000 of the outstanding Principal hereunder (together with any accrued and unpaid Interest with respect to such portion of the Principal amount and accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest) shall be automatically extinguished and shall no longer remain outstanding hereunder without any payment thereof by the Company.

(b) Effective Date Reduction. As of the Trading Day immediately following the Effectiveness Deadline (as such term is defined in the Registration Rights Agreement), if (i) the Initial Registration Statement has been declared effective by the SEC on or prior to the Effectiveness Deadline and the prospectus contained therein is available for use by the Holder for the resale by the Holder of all of the shares of Common Stock issued or issuable upon conversion of this Note or otherwise pursuant to the terms of this Note and (ii) no Event of Default or an event that with the passage of time or giving of notice would constitute an Event of Default has occurred on or prior to such date, then \$250,000 of the outstanding Principal hereunder (together with any accrued and unpaid Interest with respect to such portion of the Principal amount and accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest) shall be automatically extinguished and shall no longer remain outstanding hereunder without any payment thereof by the Company.

(c) Disputes. In the event of a dispute as to the arithmetic calculation of any Note Reduction, the Company and the Holder shall resolve such dispute in accordance with Section 22.] [INSERT IN ADDITIONAL NOTE: Intentionally Omitted]

13. COVENANTS. Until all of the Notes have been converted, redeemed or otherwise satisfied in accordance with their terms, without the prior written consent of the Holder:

(a) Rank. All payments due under this Note (i) shall rank *pari passu* with all Other Notes and (ii) shall be senior to all other Indebtedness of the Company and its Subsidiaries other than the GE Secured Credit Facility.

(b) Incurrence of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than (i) the Indebtedness evidenced by this Note and the Other Notes and (ii) other Permitted Indebtedness).

(c) Existence of Liens. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, "*Liens*") other than Permitted Liens.

(d) Restricted Payments. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in

part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other than the GE Secured Credit Facility), whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness if at the time such payment is due or is otherwise made or, after giving effect to such payment, (i) an event constituting an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

(e) Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(f) Restriction on Redemption and Cash Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or distribution on any of its capital stock.

(g) Restriction on Transfer of Assets. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business; (ii) sales of inventory in the ordinary course of business and (iii) a Fundamental Transaction in which all of the requirements set forth in Section 5(a) below have been met.

(h) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of the Subsidiaries to mature or accelerate prior to the Maturity Date (other than the GE Secured Credit Facility).

(i) Change in Nature of Business. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by the Company and each of its Subsidiaries on the Issuance Date or any business substantially related or incidental thereto. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, modify its or their corporate structure or purpose.

(j) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

(k) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder.

(l) Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take all action necessary or advisable to maintain all of the Intellectual Property Rights (as defined in the Securities Purchase Agreement) of the Company and/or any of its Subsidiaries that are necessary or material to the conduct of its business in full force and effect.

(m) Maintenance of Insurance. The Company shall maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated.

(n) Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate, except in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof.

14. PARTICIPATION. Upon any conversion of this Note, the Holder shall be entitled to receive such dividends paid and distributions made to the holders of Common Stock from and after the initial Issuance Date to the same extent as if the Holder had effected such conversion and had held such shares of Common Stock (issued or to be issued in such conversion) on the record date for such dividends and distributions. Payments under the preceding sentence shall be made on or prior to the applicable Share Delivery Deadline with respect to such conversion.

15. AMENDING THE TERMS OF THIS NOTE. The prior written consent of the Holder shall be required for any change or amendment to this Note.

16. TRANSFER. This Note and any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 4.4 of the Securities Purchase Agreement.

17. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 17(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 17(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3(c)(iii) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 17(d) and in principal amounts of at least \$1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 17(a) or Section 17(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

18. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the

amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note.

19. **PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS.** If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

20. **CONSTRUCTION; HEADINGS.** This Note shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Terms used in this Note but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Initial Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

21. **FAILURE OR INDULGENCE NOT WAIVER.** No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

22. **DISPUTE RESOLUTION.** In the case of a dispute as to the determination of the Conversion Price (including, without limitation, any disputed adjustment thereto), the Company Conversion Price, any Redemption Price, the Closing Bid Price, the Closing Sale Price, the Bid Price or fair market value (as the case may be) or the arithmetic calculation of the Conversion Rate, any Note Reduction or the applicable Redemption Price (as the case may be), the Company or the Holder (as the case may be) shall submit the disputed determinations or arithmetic calculations (as the case may be) via facsimile (i) within two (2) Business Days after receipt of the applicable notice giving rise to such dispute to the Company or the Holder (as the case may be) or (ii) if no notice gave rise to such dispute, at any time after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to agree

upon such determination or calculation within two (2) Business Days of such disputed determination or arithmetic calculation (as the case may be) being submitted to the Company or the Holder (as the case may be), then the Company shall, within two (2) Business Days, submit via facsimile (a) the disputed determination of the Conversion Price, the Company Conversion Price, any Redemption Price, the Closing Bid Price, the Closing Sale Price, the Bid Price or fair market value (as the case may be) to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Conversion Rate, any Note Reduction or any Redemption Price (as the case may be) to an independent, outside accountant selected by the Holder that is reasonably acceptable to the Company. The investment bank or the accountant (as the case may be) to perform the determinations or calculations (as the case may be) and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives such disputed determinations or calculations (as the case may be). Such investment bank's or accountant's determination or calculation (as the case may be) shall be binding upon all parties absent demonstrable error. The party that initiates the dispute (the "**Initiating Party**") as to the determination of the Conversion Price (including, without limitation, any disputed adjustment thereto), the Company Conversion Price, any Redemption Price, the Closing Bid Price, the Closing Sale Price, the Bid Price or fair market value (as the case may be) or the arithmetic calculation of the Conversion Rate, any Note Reduction or the applicable Redemption Price (as the case may be) shall pay the expenses of the investment bank or the accountant (as the case may be) unless the investment bank or the accountant (as the case may be) determines that the Initiating Party was correct in its determination of the disputed Conversion Price (including, without limitation, any disputed adjustment thereto), the Company Conversion Price, any Redemption Price, the Closing Bid Price, the Closing Sale Price, the Bid Price or fair market value (as the case may be) or the arithmetic calculation of the Conversion Rate, any Note Reduction or the applicable Redemption Price (as the case may be).

23. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 12.4 of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Note shall be paid in U.S. Dollars.

All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. “**Exchange Rate**” means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Note, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing, provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder’s wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (solely to the extent such amount is not then accruing interest at the Default Rate) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full (“**Late Charge**”).

24. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

25. WAIVER OF NOTICE. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Purchase Agreement.

26. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of Illinois, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Illinois or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Illinois. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Chicago, Illinois, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. In the event that any provision of this Note is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to

conform with such statute or rule of law. Any such provision which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision of this Note. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

27. **MAXIMUM PAYMENTS.** Nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

28. **CERTAIN DEFINITIONS.** For purposes of this Note, the following terms shall have the following meanings:

(a) "**Additional Closing Date**" shall have the meaning ascribed to such term in the Securities Purchase Agreement, which date is the date the Company initially issued Additional Notes (as defined in the Securities Purchase Agreement) pursuant to the terms of the Securities Purchase Agreement.

(b) "**Alternate Conversion Price**" means, with respect to any Conversion Date with respect to a Holder Alternate Conversion, the lower of (i) the Conversion Price and (ii) a price equal to 80% of the lowest daily VWAP of the Common Stock during the five (5) consecutive Trading Day period prior to such Conversion Date (such period, the "**Alternate Conversion Price Measuring Period**"). All such determinations to be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such Alternate Conversion Price Measuring Period.

(c) "**Bid Price**" means, for any security as of the particular time of determination, the bid price for such security on the Principal Market as reported by Bloomberg as of such time of determination, or, if the Principal Market is not the principal securities exchange or trading market for such security, the bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg as of such time of determination, or if the foregoing does not apply, the bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg as of such time of determination, or, if no bid price is reported for such security by Bloomberg as of such time of determination, the average of the bid prices of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC) as of such time of determination. If the Bid Price cannot be calculated for a security as of the particular time of determination on any of the foregoing bases, the Bid Price of such security as of such time of determination shall be the fair market value as

mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 22. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(d) “**Bloomberg**” means Bloomberg, L.P.

(e) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(f) “**Change of Control**” means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly-owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the shares of Common Stock in which holders of the Company’s voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

(g) “**Closing Bid Price**” and “**Closing Sale Price**” means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC).

(h) “**Closing Date**” shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued the Note pursuant to the terms of the Securities Purchase Agreement.

(i) “**Common Stock**” means (i) the Company’s common stock, \$0.01 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(j) “**Convertible Securities**” means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(k) “**Eligible Market**” means the OTC Bulletin Board, The NASDAQ Global Market, The NASDAQ Global Select Market, The NASDAQ Capital Market, the New York Stock Exchange, NYSE Arca, the NYSE MKT, the OTCQX Marketplace or the OTCQB Marketplace operated by OTC Markets Group Inc. (or any successor to any of the foregoing).

(l) “**Fundamental Transaction**” means that (i) the Company or any of its Subsidiaries shall, directly or indirectly, in one or more related transactions, (1) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) any other Person, or (2) sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other Person, or (3) allow any other Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (4) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (ii) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the 1934 Act and the rules and regulations promulgated thereunder) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company.

(m) “**GAAP**” means United States generally accepted accounting principles, consistently applied.

(n) “**GE Secured Credit Facility**” means the secured credit facility of the Company established pursuant to that Loan and Security Agreement dated as of December 17, 2012, by and among General Electric Capital Corporation, as lender and administrative and collateral agent, the lenders thereto, and the Company (as the same has been amended prior to the date hereof and as it may be amended following the date hereof, and including any senior secured credit facility provided to the Company by one or more commercial lenders that shall replace the GE Secured Credit Facility).

(o) “**Initial Closing Date**” shall have the meaning ascribed to such term in the Securities Purchase Agreement, which date is the date the Company initially issued Initial Notes (as defined in the Securities Purchase Agreement) pursuant to the terms of the Securities Purchase Agreement.

(p) “**Interest Rate**” means six percent (6.0%) per annum, as may be adjusted from time to time in accordance with Section 2.

(q) “**Maturity Date**” shall mean June 30, 2016; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Fundamental Transaction Notice is delivered prior to the Maturity Date, provided further that if a Holder elects to convert some or all of this Note pursuant to Section 3 hereof, and the Conversion Amount would be limited pursuant to Section 3(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of this Note, provided that (x) the Maturity Date shall not be extended due to the applicability of Section 3(d) for more than nine (9) months from June 30, 2016 and (y) during the time that the Maturity Date is extended due to the applicability of Section 3(d) no Interest shall accrue on the Note.

(r) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(s) “**Parent Entity**” of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(t) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(u) “**Permitted Indebtedness**” means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness incurred pursuant to the GE Secured Credit Facility, (iii) Indebtedness described on Schedule 13(b) attached hereto and (iv) Indebtedness secured by Permitted Liens described in clauses (iv) and (v) of the definition of Permitted Liens, in an aggregate amount not to exceed \$100,000.

(v) “**Permitted Liens**” means (i) any Lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any Lien created by operation of law, such as materialmen’s liens, mechanics’ liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens (A) upon or in any equipment acquired or held by the Company or any of its Subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, or (B) existing on such equipment at the

time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment, (v) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clause (iv) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase and (vi) Liens securing the GE Secured Credit Facility.

(w) “**Principal Market**” means, as of any date of determination, the principal securities exchange or securities market on which the Common Stock is then traded.

(x) “**Redemption Notices**” means, collectively, the Event of Default Redemption Notices and the Company Optional Redemption Notices, and each of the foregoing, individually, a “**Redemption Notice**.”

(y) “**Redemption Premium**” means (i) in the case of the Events of Default described in Section 4(a) (other than Sections 4(a)(iv) through 4(a)(vi)), 127.5% or (ii) in the case of the Events of Default described in Sections 4(a)(iv) through 4(a)(vi), 100%.

(z) “**Redemption Prices**” means, collectively, Event of Default Redemption Prices, the Company Optional Redemption Prices and the Company Alternate Redemption Price and each of the foregoing, individually, a “**Redemption Price**.”

(aa) “**Registration Rights Agreement**” means that certain registration rights agreement, dated as of the Initial Closing Date, by and between the Company and the Holder relating to, among other things, the registration of the resale of the Common Stock issuable upon conversion of the Notes or otherwise pursuant to the terms of the Notes, as may be amended from time to time.

(bb) “**SEC**” means the United States Securities and Exchange Commission or the successor thereto.

(cc) “**Securities Purchase Agreement**” means that certain Securities Purchase Agreement, dated as of the Initial Closing Date, by and between the Company and the Holder pursuant to which the Company issued this Note, as may be amended from time to time.

(dd) “**Subsidiaries**” shall have the meaning as set forth in the Securities Purchase Agreement.

(ee) “**Successor Entity**” means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(ff) “**Trading Day**” means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the

Common Stock is then traded, provided that “*Trading Day*” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder.

(gg) “*Voting Stock*” of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers, trustees or other similar governing body of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(hh) “*VWAP*” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded) during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its “Volume at Price” function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC). If VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 22. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

29. DISCLOSURE. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to the Company or its Subsidiaries. Nothing contained in this Section 29 shall limit any obligations of the Company, or any rights of the Holder, under Section 4.3 of the Securities Purchase Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

AMEDICA CORPORATION

By: _____
Name:
Title:

Senior Convertible Note - Signature Page

EXHIBIT I

**AMEDICA CORPORATION
CONVERSION NOTICE**

Reference is made to the Senior Convertible Note (the "*Note*") issued to the undersigned by Amedica Corporation, a Delaware corporation (the "*Company*"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Stock, \$0.01 par value per share (the "*Common Stock*"), of the Company, as of the date specified below Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted: _____

Aggregate accrued and unpaid Interest and accrued and unpaid Late Charges with respect to such portion of the Aggregate Principal and such Aggregate Interest to be converted: _____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

If after an Alternate Conversion Eligibility Date, check here if Holder is electing to use the Alternate Conversion Price:

Please issue the Common Stock into which the Note is being converted in the following name and to the following address:

Issue to: _____

Facsimile Number: _____

Holder: _____

By: _____

Title: _____

Dated: _____

Account Number: _____
(if electronic book entry transfer)

Transaction Code Number: _____
(if electronic book entry transfer)

ACKNOWLEDGMENT

The Company hereby acknowledges this Conversion Notice and hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated June 30, 2014 from the Company and acknowledged and agreed to by American Stock Transfer & Trust Company, LLC.

AMEDICA CORPORATION

By: _____
Name:
Title:

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

AMEDICA CORPORATION

WARRANT TO PURCHASE COMMON STOCK

Warrant No.: C-164

Date of Issuance: June 30, 2014 (“**Issuance Date**”)

Amedica Corporation, a Delaware corporation (the “**Company**”), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MG Partners II Ltd., the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon exercise of this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the “**Warrant**”), at any time or times on or after the Issuance Date, but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), 568,889 (subject to adjustment as provided herein) fully paid and non-assessable shares of Common Stock (as defined below) (the “**Warrant Shares**”). Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 16. This Warrant is issued pursuant to Section 1 of that certain Securities Purchase Agreement, dated as of June 30, 2014, by and among the Company and the investor referred to therein (the “**Securities Purchase Agreement**”).

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder on any day on or after the Issuance Date, in whole or in part, by delivery (whether via e-mail, facsimile or otherwise) of a written notice, in the form attached hereto as **Exhibit A** (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant. Within one (1) Trading Day following an exercise of this Warrant as aforesaid, the Holder shall deliver payment to the Company of an amount equal to the Exercise Price in effect on the date of such exercise multiplied by the number of Warrant Shares as to which this Warrant was so exercised (the “**Aggregate Exercise Price**”) in cash or via wire transfer of immediately available funds if the Holder did not notify the Company in such Exercise Notice that such exercise was made pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original of this Warrant in order to effect an exercise hereunder. Execution and delivery of an Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original of this Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. Execution and delivery of an Exercise Notice for all of the then-remaining Warrant Shares shall have the same effect as cancellation of the original of this Warrant after delivery of the Warrant Shares in accordance with the terms hereof. On or before the first (1st) Trading Day following the date on which the Company has received an Exercise Notice and the Aggregate Exercise Price (if applicable), the Company shall transmit by e-mail or facsimile an acknowledgment of receipt of such Exercise Notice, in the form attached hereto as **Exhibit B**, the Company’s transfer agent (the “**Transfer Agent**”). On or before the third (3rd) Trading Day following the date on which the Company has received such Exercise Notice and the Aggregate Exercise Price (if applicable), the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit/ Withdrawal at Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the Holder or, at the Holder’s instruction pursuant to the Exercise Notice, the Holder’s agent or designee, in each case, sent by reputable overnight courier to the address as specified in the applicable Exercise Notice, a certificate, registered in the Company’s share register in the name of the Holder or its designee (as indicated in the applicable Exercise Notice), for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. Upon the Company’s receipt of an Exercise Notice and the Aggregate Exercise Price (if applicable), the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares (as the case may be). If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then, at the request of the Holder and upon delivery of the original of this Warrant, the Company shall as soon as practicable and in no event later than three (3) Business Days after any exercise and at its own expense, issue

and deliver to the Holder (or its designee) a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all taxes and fees which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant. Notwithstanding any provision of this Warrant to the contrary, no more than the Maximum Eligibility Number of Warrant Shares shall be exercisable hereunder.

(b) Exercise Price. For purposes of this Warrant, “**Exercise Price**” means \$4.65, subject to adjustment as provided herein.

(c) Company’s Failure to Timely Deliver Securities. If the Company shall fail, for any reason or for no reason, to issue to the Holder within three (3) Trading Days after receipt of the applicable Exercise Notice and the Aggregate Exercise Price (if applicable), a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company’s share register or to credit the Holder’s balance account with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise of this Warrant (as the case may be), then, in addition to all other remedies available to the Holder, the Company shall pay in cash to the Holder on each day after such third (3rd) Trading Day that the issuance of such shares of Common Stock is not timely effected an amount equal to 2% of the product of (A) the aggregate number of shares of Common Stock not issued to the Holder on a timely basis and to which the Holder is entitled and (B) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the last possible date on which the Company could have issued such shares of Common Stock to the Holder without violating Section 1(a). In addition to the foregoing, if within three (3) Trading Days after the Company’s receipt of the applicable Exercise Notice and the Aggregate Exercise Price (if applicable), the Company shall fail to issue and deliver a certificate to the Holder and register such shares of Common Stock on the Company’s share register or credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise hereunder (as the case may be), and if on or after such third (3rd) Trading Day the Holder (or any other Person in respect, or on behalf, of the Holder) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such exercise that the Holder so anticipated receiving from the Company, then, in addition to all other remedies available to the Holder, the Company shall, within three (3) Business Days after the Holder’s request and in the Holder’s discretion, either (i) pay cash to the Holder in an amount equal to the Holder’s total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the “**Buy-In Price**”), at which point the Company’s obligation to so issue and deliver such certificate or credit the

Holder's balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (ii) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the Holder's balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock multiplied by (B) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the Company's receipt of the applicable Exercise Notice and the Aggregate Exercise Price (if applicable) and ending on the date of such issuance and payment under this clause (ii).

(d) **Cashless Exercise.** Notwithstanding anything contained herein to the contrary (other than Section 1(f) below), if at the time of exercise hereof a Registration Statement (as defined in the Registration Rights Agreement (as defined in the Securities Purchase Agreement)) is not effective (or the prospectus contained therein is not available for use) for the resale by the Holder of all of the Warrant Shares issuable upon such conversion, then the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the "Net Number" of shares of Common Stock determined according to the following formula (a "**Cashless Exercise**"):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= as applicable: (i) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) the Bid Price of the Common Stock as of the time of the Holder's execution of the applicable Exercise Notice if such Exercise Notice is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter pursuant to Section 1(a) hereof or (iii) the Closing Sale Price of the Common Stock on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) hereof after the close of "regular trading hours" on such Trading Day.

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the number of Warrant Shares to be issued pursuant to the terms hereof, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 13.

(f) Limitations on Exercises. Notwithstanding anything to the contrary contained in this Warrant, this Warrant shall not be exercisable by the Holder hereof to the extent (but only to the extent) that the Holder or any of its affiliates would beneficially own in excess of 4.99% (the “**Maximum Percentage**”) of the Common Stock. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder or any of its affiliates) and of which such securities shall be exercisable (as among all such securities owned by the Holder) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) shall be determined in accordance with Section 13(d) of the 1934 Act (as defined in the Securities Purchase Agreement) and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. The limitations contained in this paragraph shall apply to a successor Holder of this Warrant. The holders of Common Stock shall be third party beneficiaries of this paragraph and the Company may not amend or waive this paragraph without the consent of holders of a majority of its Common Stock. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities Purchase Agreement. At any time the Holder may increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in a written notice by the Holder to the Company (subject to the Company’s consent to any such increase, not to be unreasonably withheld); provided that (i) any such increase will not be effective until the 61st day after such notice is delivered to the Company, and (ii) any such increase or decrease will apply only to the Holder sending such notice and not to any other Holder.

(g) **Insufficient Authorized Shares.** The Company shall at all times keep reserved for issuance under this Warrant a number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock hereunder (without regard to any limitation otherwise contained herein with respect to the number of shares of Common Stock that may be acquirable upon exercise of this Warrant). If, notwithstanding the foregoing, and not in limitation thereof, at any time while this Warrant remains outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of this Warrant at least a number of shares of Common Stock equal to the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of this Warrant in full (the "**Required Reserve Amount**") (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for this Warrant. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than ninety (90) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal. In the event that the Company is prohibited from issuing shares of Common Stock upon any exercise due to the failure by the Company to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailability number of shares of Common Stock, the "**Authorization Failure Shares**"), in lieu of delivering such Authorization Failure Shares to the Holder, the Company shall pay cash in exchange for the redemption of such portion of this Warrant exercisable into such Authorized Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorization Failure Shares and (y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Exercise Notice with respect to such Authorization Failure Shares to the Company and ending on the date of such issuance and payment under this Section 1(g) and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorization Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection therewith. Nothing contained in this Section 1(g) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement

(h) **NASDAQ Share Cap.** Notwithstanding anything contained herein or in any other Transaction Document (as defined in the Securities Purchase Agreement) to the contrary, until Stockholder Approval (as defined in the Securities Purchase Agreement) is obtained, the Company shall not issue shares of Common Stock to the Holder pursuant to the Transaction Documents, including the issuance Commitment Shares (as defined in the Securities Purchase Agreement), Conversion Shares (as defined in the Securities Purchase Agreement) and Warrant Shares, in an aggregate amount in excess of 19.99% of the issued and outstanding Common Stock on the Issuance Date.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 2.

(a) Stock Dividends and Splits. Without limiting any provision of Section 2(b) or Section 4, if the Company, at any time on or after the date of the Securities Purchase Agreement, (i) pays a stock dividend on one or more classes of its then outstanding shares of Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its then outstanding shares of Common Stock into a larger number of shares or (iii) combines (by combination, reverse stock split or otherwise) one or more classes of its then outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this paragraph occurs during the period that an Exercise Price is calculated hereunder, then the calculation of such Exercise Price shall be adjusted appropriately to reflect such event.

(b) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section 2, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment (without regard to any limitations on exercise contained herein). At the Additional Closing Date (as defined in the Securities Purchase Agreement) (without giving effect to any Exercise Notices delivered to the Company on or prior to the Additional Closing Date), the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased, as necessary, so that as of the Additional Closing Date the number of Warrant Shares that may be purchased upon exercise of this Warrant shall equal the Maximum Eligibility Number.

3. RIGHTS UPON DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 2 above, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction, but excluding any stock dividend or distribution covered by Section 2(a)(i) above) (a “**Distribution**”), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in

such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distributions would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (or the beneficial ownership of any such shares of Common Stock as a result of such Distribution to such extent) and such Distribution to such extent shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage).

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage).

(b) Fundamental Transactions. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Warrant and the other Transaction Documents (as defined in the Securities Purchase Agreement) in accordance with the provisions of this Section 4(b) pursuant to written agreements in form and substance satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the

exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction) and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the consummation of each Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to the applicable Fundamental Transaction, such shares of publicly traded common stock (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a “**Corporate Event**”), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). Provision made pursuant to the preceding sentence shall be in form and substance reasonably satisfactory to the Holder.

(c) Black Scholes Value. Notwithstanding the foregoing and the provisions of Section 4(b) above, at the request of the Holder delivered at any time commencing on the earliest to occur of (x) the public disclosure of any Fundamental Transaction, (y) the consummation of any Fundamental Transaction and (z) the Holder first becoming aware of any Fundamental Transaction through

the date that is sixty (60) days after the public disclosure of the consummation of such Fundamental Transaction by the Company pursuant to a Current Report on Form 8-K filed with the SEC, the Company or the Successor Entity (as the case may be) shall purchase this Warrant from the Holder on the date of such request by paying to the Holder cash in an amount equal to the Black Scholes Value.

(d) Application. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied as if this Warrant (and any such subsequent warrants) were fully exercisable and without regard to any limitations on the exercise of this Warrant (provided that the Holder shall continue to be entitled to the benefit of the Maximum Percentage, applied however with respect to shares of capital stock registered under the 1934 Act and thereafter receivable upon exercise of this Warrant (or any such other warrant)).

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant, and (iii) shall, so long as this Warrant is outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of this Warrant, the maximum number of shares of Common Stock as shall from time to time be necessary to effect the exercise of this Warrant in full (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in its capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in its capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which it is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, no warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. **NOTICES.** Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with the notice provisions of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon each adjustment of the Exercise Price and the number of Warrant Shares, setting forth in reasonable detail, and certifying, the calculation of such adjustment(s) and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder and (iii) at least ten (10) Trading Days prior to the consummation of any Fundamental Transaction. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its Subsidiaries, the Company shall simultaneously file such notice with the SEC (as defined in the Securities Purchase Agreement) pursuant to a Current Report on Form 8-K. It is expressly understood and agreed that the time of execution specified by the Holder in each Exercise Notice shall be definitive and may not be disputed or challenged by the Company.

9. **AMENDMENT AND WAIVER.** Except as otherwise provided herein, the provisions of this Warrant (other than Section 1(f)) may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder. The Holder shall be entitled, at its option, to the benefit of any amendment of (i) any other similar warrant issued under the Securities Purchase Agreement or (ii) any other similar warrant. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

10. **SEVERABILITY.** If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

11. **GOVERNING LAW.** This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of Illinois,

without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Illinois or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Illinois. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Chicago, Illinois, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall (i) be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder or to enforce a judgment or other court ruling in favor of the Holder or (ii) limit, or be deemed to limit, any provision of Section 13. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

12. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant. Terms used in this Warrant but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Closing Date (as defined in the Securities Purchase Agreement) in such other Transaction Documents unless otherwise consented to in writing by the Holder.

13. DISPUTE RESOLUTION.

(a) Disputes Over the Exercise Price, Closing Sale Price, Bid Price, Black Scholes Value or Fair Market Value.

(i) In the case of a dispute relating to the Exercise Price, the Closing Sale Price, the Bid Price, Black Scholes Value or fair market value (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute via e-mail or facsimile (I) within twenty (20) Business Days after delivery of the applicable notice giving rise to such dispute to the Company or the Holder (as the case may be) or (II) if no notice gave rise to such dispute, at any time after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to resolve such dispute relating to the Exercise Price, the Closing Sale Price, the Bid Price, Black Scholes Value or fair market value (as the case may be) by 5:00 p.m. (New York time) on the third (3rd) Business Day following such delivery by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder shall select an independent, reputable investment bank to resolve such dispute.

(ii) The Holder and the Company shall each deliver to such investment bank (x) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 13(a) and (y) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which the Holder selected such investment bank (the “**Dispute Submission Deadline**”) (the documents referred to in the immediately preceding clauses (x) and (y) are collectively referred to herein as the “**Required Dispute Documentation**”) (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. Such investment bank’s resolution of such dispute shall be final and binding upon all parties absent manifest error. The party that initiates the dispute (the “**Initiating Party**”) shall pay the fees and expenses of the investment bank unless the investment bank determines that the Initiating Party was correct in its determination of the disputed Exercise Price, Closing Sale Price, Bid Price, Black Scholes Value or fair market value (as the case may be).

(b) Disputes Over Arithmetic Calculation of Warrant Shares.

(i) In the case of a dispute as to the arithmetic calculation of the number of Warrant Shares, the Company or the Holder (as the case may be) shall submit the disputed arithmetic calculation via e-mail or facsimile (i) within twenty (20) Business Days after delivery of the applicable notice giving rise to such dispute to the Company or the Holder (as the case may be) or (ii) if no notice gave rise to such dispute, at any time after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to resolve such disputed arithmetic calculation of the number of Warrant Shares by 5:00 p.m. (New York time) on the third (3rd) Business Day following such delivery by the Company or the Holder (as the case may be) of such disputed arithmetic calculation of the number of Warrant Shares to the Company or the Holder (as the case may be), then the Holder shall select an independent, reputable accountant or accounting firm to perform such disputed arithmetic calculation of the number of Warrant Shares.

(ii) The Holder and the Company shall each deliver to such accountant or accounting firm (as the case may be) (x) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 13(b) and (y) written documentation supporting its position with respect to such disputed arithmetic calculation of the number of Warrant Shares, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which the Holder selected such accountant or accounting firm (as the case may be) (the “**Submission Deadline**”) (the documents referred to in the immediately preceding clauses (x) and (y) are collectively referred to herein as the “**Required Documentation**”) (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Documentation by the Submission Deadline, then the party who fails to so submit all of the Required Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such accountant or accounting firm (as the case may be) with respect to such disputed arithmetic calculation of the number of Warrant Shares and such accountant or accounting firm (as the case may be) shall perform such disputed arithmetic calculation of the number of Warrant Shares based solely on the Required Documentation that was delivered to such accountant or accounting firm (as the case may be) prior to the Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such accountant or accounting firm (as the case may be), neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such accountant or accounting firm (as the case may be) in connection with such disputed arithmetic calculation of the number of Warrant Shares (other than the Required Documentation).

(iii) The Company and the Holder shall cause such accountant or accounting firm (as the case may be) to perform such disputed arithmetic calculation and notify the Company and the Holder of the results no later than ten (10) Business Days immediately following the Submission Deadline. Such accountant’s or accounting firm’s (as the case may be) arithmetic calculation shall be final and binding upon all parties absent manifest error. The party that initiates the dispute (the “**Initiating Party**”) shall pay the fees and expenses of such accountant or accounting firm (as the case may be) unless the accountant or accounting firm (as the case may be) determines that the Initiating Party was correct in its determination of the disputed arithmetic calculation of the number of Warrant Shares.

(c) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 13 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under the Illinois Uniform Arbitration Act, as amended, (ii) the terms of this Warrant and each other applicable Transaction Document shall serve as the basis for the selected investment bank’s resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Warrant and any other applicable

Transaction Documents, (iii) the terms of this Warrant and each other applicable Transaction Document shall serve as the basis for the selected accountant's or accounting firm's performance of the applicable arithmetic calculation of the number of Warrant Shares, (iv) for clarification purposes and without implication that the contrary would otherwise be true, disputes relating to matters described in Section 13(a) shall be governed by Section 13(a) and not by Section 13(b), (v) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 13 to any state or federal court sitting in Chicago, Illinois in lieu of utilizing the procedures set forth in this Section 13 and (vi) nothing in this Section 13 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in Section 13(a) or Section 13(b)).

14. REMEDIES, CHARACTERIZATION, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Warrant. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, exercises and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant (including, without limitation, compliance with Section 2 hereof). The issuance of shares and certificates for shares as contemplated hereby upon the exercise of this Warrant shall be made without charge to the Holder or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the Holder or its agent on its behalf.

15. TRANSFER. This Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company, except as may otherwise be required by the terms of the Securities Purchase Agreement.

16. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) "**Bid Price**" means, for any security as of the particular time of determination, the bid price for such security on the Principal Market as reported by Bloomberg as of such time of determination, or, if the Principal Market is not the principal securities exchange or trading market for such security, the bid price of such security on the principal securities exchange or

trading market where such security is listed or traded as reported by Bloomberg as of such time of determination, or if the foregoing does not apply, the bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg as of such time of determination, or, if no bid price is reported for such security by Bloomberg as of such time of determination, the average of the bid prices of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC) as of such time of determination. If the Bid Price cannot be calculated for a security as of the particular time of determination on any of the foregoing bases, the Bid Price of such security as of such time of determination shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(b) “**Black Scholes Value**” means the value of the unexercised portion of this Warrant remaining on the date of the Holder’s request pursuant to Section 4(c), which value is calculated using the Black Scholes Option Pricing Model obtained from the “OV” function on Bloomberg utilizing (i) an underlying price per share equal to the greatest of (1) the highest Closing Sale Price of the Common Stock during the period beginning on the Trading Day immediately preceding the earliest to occur of (x) the public disclosure of the applicable Fundamental Transaction, (y) the consummation of the applicable Fundamental Transaction and (z) the date on which the Holder first became aware of the applicable Fundamental Transaction and ending on the later to occur of (A) the Trading Day of the Holder’s request pursuant to Section 4(c) and (B) the Trading Day on which the Company makes payment in full to the Holder pursuant to Section 4(c), (2) the sum of the price per share being offered in cash in the applicable Fundamental Transaction (if any) plus the value of the non-cash consideration being offered in the applicable Fundamental Transaction (if any) and (3) without limiting clauses (1) and (2) above, if the applicable Fundamental Transaction results from a sale of all or substantially all of the assets of the Company or any of its Subsidiaries, a price per share equal to the quotient of (A) the sum of (X) the total consideration (including, without limitation, cash and non-cash consideration, the assumption of indebtedness and other amounts, earn-outs and contingent consideration) offered in the applicable Fundamental Transaction plus (Y) the aggregate amount of cash then held by the Company and its Subsidiaries divided by (B) the total number of shares of Common Stock outstanding on the earlier to occur of the Trading Day of the Holder’s request pursuant to Section 4(c) and the date of consummation of the applicable Fundamental Transaction, (ii) a strike price equal to the Exercise Price in effect on the date of the Holder’s request pursuant to Section 4(c), (iii) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the greater of (1) the remaining term of this Warrant as of the date of the Holder’s request pursuant to Section 4(c) and (2) the remaining term of this Warrant as of the date of consummation of the applicable Fundamental Transaction or as of the date of the Holder’s request pursuant to Section 4(c) if such request is prior to the date of the consummation of the applicable Fundamental Transaction and (iv) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the earliest to occur of (x) the public disclosure of the applicable Fundamental Transaction, (y) the consummation of the applicable Fundamental Transaction and (z) the date on which the Holder first became aware of the applicable Fundamental Transaction.

(c) “**Bloomberg**” means Bloomberg, L.P.

(d) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(e) “**Closing Sale Price**” means, for any security as of any date, the last trade price for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing does not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the ask prices of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(f) “**Common Stock**” means (i) the Company’s shares of common stock, \$0.001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(g) “**Convertible Securities**” means any stock, note, debenture or other security (other than Options) that is, or may become, at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(h) “**Eligible Market**” means the OTC Bulletin Board, The NASDAQ Global Market, The NASDAQ Global Select Market, The NASDAQ Capital Market, the New York Stock Exchange, NYSE Arca, the NYSE MKT, the OTCQX Marketplace or the OTCQB Marketplace operated by OTC Markets Group Inc. (or any successor to any of the foregoing).

(i) “**Expiration Date**” means the date that is the second (2nd) anniversary of the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a “**Holiday**”), the next date that is not a Holiday.

(j) “**Fundamental Transaction**” means that (i) the Company or any of its Subsidiaries shall, directly or indirectly, in one or more related transactions, (1) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) any other Person, or (2) sell, lease, license, assign, transfer, convey or otherwise

dispose of all or substantially all of its respective properties or assets to any other Person, or (3) allow any other Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (4) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (ii) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the 1934 Act and the rules and regulations promulgated thereunder) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company.

(k) “**Maximum Eligibility Number**” means initially 257,778 and shall be increased, as necessary, upon the initial issuance of Additional Notes (as defined in the Securities Purchase Agreement) to the Holder (or its successor or designee, as applicable) by such aggregate number of shares of Common Stock equal to one-third (1/3) of the number of shares of Common Stock issuable upon exercise, in full, of such Additional Notes (assuming, for such purposes, that no limitations on conversion of such Additional Notes then exist and such conversion occurs as of the closing of the Principal Market immediately prior to the Additional Closing Date (as defined in the Securities Purchase Agreement)).

(l) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(m) “**Parent Entity**” of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(n) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(o) “**Principal Market**” means, as of any date of determination, the principal securities exchange or securities market on which the Common Stock is then traded.

(p) “**Successor Entity**” means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(q) “**Trading Day**” means, as applicable, (x) with respect to all price determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(r) “**Voting Stock**” of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

AMEDICA CORPORATION

By: /s/ Eric K. Olson

Name: Eric K. Olson

Title: Chief Executive Officer

Warrant – Signature Page

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS
WARRANT TO PURCHASE COMMON STOCK

AMEDICA CORPORATION

The undersigned holder hereby exercises the right to purchase _____ of the shares of Common Stock (“**Warrant Shares**”) of Amedica Corporation, a Delaware corporation (the “**Company**”), evidenced by Warrant No. _____ (the “**Warrant**”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

- a “Cash Exercise” with respect to _____ Warrant Shares; and/or
- a “Cashless Exercise” with respect to _____ Warrant Shares.

In the event that the Holder has elected a Cashless Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder hereby represents and warrants that (i) this Exercise Notice was executed by the Holder at _____ [a.m.][p.m.] on the date set forth below and (ii) if applicable, the Bid Price as of such time of execution of this Exercise Notice was \$ _____.

2. Payment of Exercise Price. In the event that the Holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder shall pay the Aggregate Exercise Price in the sum of \$ _____ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to Holder, or its designee or agent as specified below, _____ Warrant Shares in accordance with the terms of the Warrant. Delivery shall be made to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____

DTC Number: _____

Account Number: _____

Date: _____ , _____

Name of Registered Holder

By: _____

Name:

Title:

EXHIBIT B

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice and hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated June 30, 2014, from the Company and acknowledged and agreed to by American Stock Transfer & Trust Company, LLC.

AMEDICA CORPORATION

By: _____
Name:
Title:

WARRANT AGREEMENT

NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUBJECT TO SECTION 6 BELOW, AND EXCEPT IN COMPLIANCE WITH RULE 144 UNDER SAID ACT, NO SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR HOLDER, SATISFACTORY TO COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT OR RECEIPT OF A NO-ACTION LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION.

WARRANT TO PURCHASE SHARES OF COMMON STOCK

June 30, 2014

THIS CERTIFIES THAT, for value received, Hercules Technology III, L.P., a Delaware limited partnership (“Holder”), is entitled to subscribe for and purchase that certain number of fully paid and nonassessable shares of Common Stock of Ametica Corporation, a Delaware corporation (“Company”), as determined by dividing \$2,400,000 by the Warrant Price (as hereinafter defined), provided however, that if the Company has not received proceeds of at least \$6,000,000 by August 15, 2014, pursuant to the Convertible Debt Offering as defined in that certain Loan and Security Agreement dated as of June 30, 2014, by and between the Company, Holder and the other parties thereto, then the \$2,400,000 amount referred to above shall be increased to \$2,900,000, in all cases subject to the provisions and upon the terms and conditions hereinafter set forth. The exercise price shall be the Warrant Price. As used herein, the term “Common Stock” shall mean Company’s presently authorized common stock, \$0.01 par value per share, and any stock into which such shares may hereafter be converted or exchanged and the term “Warrant Shares” shall mean the shares of Common Stock which Holder may acquire pursuant to this Warrant and any other shares of stock into which such shares of Common Stock may hereafter be converted or exchanged.

1. Warrant Price. The “Warrant Price” shall initially be \$4.65 per share, subject to adjustment as provided in Section 7 below.
2. Conditions to Exercise. The purchase right represented by this Warrant may be exercised at any time, or from time to time, in whole or in part during the term commencing on the date hereof and ending at 5:00 P.M. (California time) on the fifth anniversary of the date of this Warrant (the “Expiration Date”).

3. Method of Exercise or Conversion; Payment; Issuance of Shares; Issuance of New Warrant.

(a) Cash Exercise. Subject to Section 2 hereof, the purchase right represented by this Warrant may be exercised by Holder hereof, in whole or in part, by the surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto) at the principal office of Company (as set forth in Section 18 below) and by payment to Company, by certified or bank check, or wire transfer of immediately available funds, of an amount equal to the then applicable Warrant Price per share multiplied by the number of Warrant Shares then being purchased. In the event of any exercise of the rights represented by this Warrant, certificates for the shares of stock so purchased shall be in the name of, and delivered to, Holder hereof, or as such Holder may direct (subject to the terms of transfer contained herein and upon payment by such Holder hereof of any applicable transfer taxes). Such delivery shall be made within 3 business days after exercise of this Warrant and at Company’s expense and, unless this Warrant has been fully exercised or expired, a new Warrant having terms and conditions substantially identical to this Warrant and representing the portion of the Warrant Shares, if any, with respect to which this Warrant shall not have been exercised, shall also be issued to Holder hereof within 3 business days after exercise of this Warrant. If the Warrant Shares can be issued electronically using the Fast Automated Securities Transfer Program of the Depository Trust Company (or similar program), upon Holder’s request at the time of exercise the Company shall issue the Warrant Shares electronically in accordance with Holder’s written instructions.

(b) Conversion. In lieu of exercising this Warrant as specified in Section 3(a), Holder may from time to time convert this Warrant, in whole or in part, into Warrant Shares by surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto) at the principal office of Company, in which event Company shall issue to Holder the number of Warrant Shares computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:

X = the number of Warrant Shares to be issued to Holder.

Y = the number of Warrant Shares requested to be purchased under this Warrant (at the date of such calculation).

A = the Fair Market Value of one share of Company's Common Stock (at the date of such calculation).

B = Warrant Price (as adjusted to the date of such calculation).

(c) Fair Market Value. For purposes of this Section 3, Fair Market Value of one share of Company's Common Stock shall mean:

(i) The average of the closing bid and asked prices of Common Stock quoted in the Over-The-Counter Market Summary, or the last reported sale price quoted on the Nasdaq Stock Market or on any other exchange on which the Common Stock is listed, whichever is applicable, as published in the Eastern Edition of the Wall Street Journal for the five (5) trading days prior to the date of determination of Fair Market Value, multiplied by the number of shares of Common Stock into which each share of Common Stock is then convertible; or

(ii) In the event of an exercise in connection with a merger, acquisition or other consolidation in which Company is not the surviving entity, the value to be received per share of Common Stock by all holders of the Common Stock in such transaction as determined in the reasonable good faith judgment of Company's Board of Directors; or

(iii) In any other instance, the value as determined in the reasonable good faith judgment of Company's Board of Directors.

In the event of Section 3(c)(ii) or 3(c)(iii) above, Company's Board of Directors shall prepare a certificate, to be signed by an authorized officer of Company, setting forth in reasonable detail the basis for and method of determination of the per share Fair Market Value of the Common Stock. In the event of Section 3(c)(ii) or 3(c)(iii) above, the Board of Directors will also certify to Holder that this per share Fair Market Value will be applicable to all holders of Company's Common Stock. Such certifications must be made to Holder, in the event of Section 3(c)(ii) above, at least ten (10) business days prior to the proposed effective date of the merger, acquisition or other consolidation, and in the event of Section 3(c)(iii), promptly after Holder requests a determination of the Fair Market Value of the Common Stock, but in no event more than 5 business days, which price shall be valid for not less than 3 business days after it is communicated to Holder. In all cases, delivery of the Warrant Shares to be issued on conversion shall be made within 3 business days after exercise of this Warrant and at Company's expense and, unless this Warrant has been fully exercised or expired, a new Warrant having terms and conditions substantially identical to this Warrant and representing the portion of the Warrant Shares, if any, with respect to which this Warrant shall not have been exercised, shall also be issued to Holder hereof within 3 business days after exercise of this Warrant. If the Warrant Shares can be issued electronically using the Fast Automated Securities Transfer Program of the Depository Trust Company (or similar program), upon Holder's request at the time of exercise the Company shall issue the Warrant Shares electronically in accordance with Holder's written instructions.

(d) Automatic Exercise. To the extent this Warrant is not previously exercised, it shall be deemed to have been automatically converted in accordance with Sections 3(b) and 3(c) hereof (even if not surrendered) as of immediately before its expiration, involuntary termination or cancellation (including, without limitation, pursuant to Section 3(e)(ii)) if the then-Fair Market Value of a Warrant Share exceeds the then-Warrant Price, unless Holder notifies Company in writing to the contrary prior to such automatic exercise. The Warrant Shares shall be delivered within 3 business days after such automatic conversion, and if the Warrant Shares can be issued electronically using the Fast Automated Securities Transfer Program of the Depository Trust Company (or similar program), upon Holder's request, the Company shall issue the Warrant Shares electronically in accordance with Holder's written instructions.

(e) Treatment of Warrant Upon Acquisition of Company.

(i) Certain Definitions. For the purpose of this Warrant: “Acquisition” means any sale, license, assignment, or other disposition of all or substantially all of the assets of Company, or any reorganization, consolidation, or merger of Company, or sale of outstanding Company securities by holders thereof, where the holders of Company’s securities as of immediately before the transaction beneficially own less than a majority of the outstanding voting securities of the successor or surviving entity as of immediately after the transaction. For purposes of this Section 3(e), “Affiliate” shall mean any person or entity that owns or controls directly or indirectly ten percent (10%) or more of the voting capital stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person’s or entity’s officers, directors, joint venturers or partners, as applicable. Company shall provide Holder with written notice of any proposed Acquisition not later than ten (10) business days prior to the closing thereof setting forth the material terms and conditions thereof, and shall provide Holder with copies of the draft transaction agreements and other documents in connection therewith and with such other information respecting such proposed Acquisition as may reasonably be requested by Holder.

(ii) Acquisition for Cash. Holder agrees that, in the event of an Acquisition in which the sole consideration is cash, this Warrant shall be automatically exercised (or terminate) as provided in Section 3(d) on and as of the closing of such Acquisition to the extent not previously exercised.

(iii) Asset Sale. In the event of an Acquisition that is an arms length sale of all or substantially all of Company’s assets (and only its assets) to a third party that is not an Affiliate of Company (a “True Asset Sale”), Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition, or (b) permit the Warrant to continue until the Expiration Date if Company continues as a going concern following the closing of any such True Asset Sale.

(iv) Assumption of Warrant. Upon the closing of any Acquisition other than as particularly described in Section 3(e)(ii) or 3(e)(iii) above, Company shall, unless Holder requests otherwise, cause the surviving or successor entity to assume this Warrant and the obligations of Company hereunder, and this Warrant shall, from and after such closing, be exercisable for the same class, number and kind of securities, cash and other property as would have been paid for or in respect of the shares issuable (as of immediately prior to such closing) upon exercise in full hereof as if such shares had been issued and outstanding on and as of such closing, at an aggregate Warrant Price equal to the aggregate Warrant Price in effect as of immediately prior to such closing; and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant.

(v) Delivery of Consideration. The cash and/or property received in connection with the exercise or conversion of this Warrant as provided in this Subsection 3(e) shall be delivered to Holder promptly, but in no event longer than 3 business days after the closing of the Acquisition.

4. Representations and Warranties of Holder and Company.

(a) Representations and Warranties by Holder. Holder represents and warrants to Company as of the date hereof with respect to this Warrant as follows:

(i) Evaluation. Holder has substantial experience in evaluating and investing in private placement transactions of securities of companies similar to Company so that Holder is capable of evaluating the merits and risks of its investment in Company and has the capacity to protect its interests.

(ii) Resale. Except for transfers to an affiliate of Holder, Holder is acquiring this Warrant and the Warrant Shares issuable upon exercise of this Warrant (collectively the “Securities”) for investment for its own account and not with a view to, or for resale in connection with, any distribution thereof. Holder understands that the Securities have not been registered by reason of a specific exemption from the registration provisions of the Securities Act of 1933, as amended (the “Act”) and such Securities have not been registered or qualified under any applicable state securities laws, each of which depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

(iii) Rule 144. Holder acknowledges that the Securities must be held indefinitely unless subsequently registered under the Act or an exemption from such registration is available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

(iv) Accredited Investor. Holder is an “accredited investor” within the meaning of Regulation D promulgated under the Act.

(v) Opportunity To Discuss. Holder has had an opportunity to discuss Company’s business, management and financial affairs with its management and an opportunity to review Company’s facilities. Holder understands that such discussions, as well as the written information issued by Company, were intended to describe the aspects of Company’s business and prospects which Company believes to be material but were not necessarily a thorough or exhaustive description.

(b) Representations and Warranties by Company. Company hereby represents and warrants to Holder that the statements in the following paragraphs of this Section 4(b) are true and correct as of the date hereof.

(i) Corporate Organization and Authority. Company (a) is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, (b) has the corporate power and authority to own and operate its properties and to carry on its business as now conducted and as proposed to be conducted; and (c) is qualified as a foreign corporation in all jurisdictions where such qualification is required.

(ii) Corporate Power. Company has all requisite legal and corporate power and authority to execute, issue and deliver this Warrant, to issue the Warrant Shares issuable upon exercise or conversion of this Warrant, and to carry out and perform its obligations under this Warrant and any related agreements.

(iii) Authorization; Enforceability. All corporate action on the part of Company, its officers, directors and shareholders necessary for the authorization, execution, delivery and performance of its obligations under this Warrant and for the authorization, issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise of this Warrant has been taken and this Warrant constitutes the legally binding and valid obligation of Company enforceable in accordance with its terms.

(iv) Valid Issuance of Warrant and Warrant Shares. This Warrant has been validly issued and is free of restrictions on transfer other than restrictions on transfer set forth herein and under applicable state and federal securities laws. The Warrant Shares issuable upon exercise or conversion of this Warrant, when issued, sold and delivered in accordance with the terms of this Warrant for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Warrant and under applicable state and federal securities laws. Subject to applicable restrictions on transfer, the issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise or conversion of this Warrant are not subject to any preemptive or other similar rights or any liens or encumbrances except as specifically set forth in Company’s Certificate of Incorporation (“Certificate of Incorporation”) or this Warrant. The offer, sale and issuance of the Warrant Shares, as contemplated by this Warrant, are exempt from the prospectus and registration requirements of applicable United States federal and state security laws, and neither Company nor any authorized agent acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

(v) No Conflict. The execution, delivery, and performance of this Warrant will not result in (a) any violation of, be in conflict with, or constitute a default under, with or without the passage of time or the giving of notice (1) any provision of Company’s Certificate of Incorporation or by-laws; (2) any provision of any judgment, decree, or order to which Company is a party, by which it is bound, or to which any of its material assets are subject; (3) any contract, obligation, or commitment to which Company is a party or by which it is bound; or (4) any statute, rule, or governmental regulation applicable to Company, or (b) the creation of any lien, charge or encumbrance upon any assets of Company.

(vi) Capitalization. The capitalization table of Company attached hereto as Annex A is complete and accurate as of the date hereof (after giving effect to the issuance of this Warrant) and reflects (a) all outstanding capital stock of Company and (b) all outstanding warrants, options, conversion privileges, preemptive rights or

other rights or agreements to purchase or otherwise acquire or issue any equity securities or convertible securities of Company. Company has initially reserved 618,336 shares of Common Stock for issuance upon exercise of the Warrant.

5. Legends.

(a) Legend. If required by the Act, each certificate representing the Warrant Shares shall be endorsed with substantially the following legend:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED (UNLESS SUCH TRANSFER IS TO AN AFFILIATE OF HOLDER) UNLESS COVERED BY AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT, A "NO ACTION" LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO SUCH TRANSFER, A TRANSFER MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES ACT OF 1933, OR (IF REASONABLY REQUIRED BY COMPANY) AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY SUCH TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

Company need not enter into its stock records a transfer of Warrant Shares unless the conditions specified in the foregoing legend are satisfied. Company may also instruct its transfer agent not to allow the transfer of any of the Warrant Shares unless the conditions specified in the foregoing legend are satisfied.

(b) Removal of Legend and Transfer Restrictions. The legend relating to the Act endorsed on a certificate pursuant to paragraph 5(a) of this Warrant shall be removed and Company shall issue a certificate without such legend to Holder if (i) the Securities are registered under the Act and a prospectus meeting the requirements of Section 10 of the Act is available or (ii) Holder provides to Company an opinion of counsel for Holder reasonably satisfactory to Company, a no-action letter or interpretive opinion of the staff of the Securities and Exchange Commission ("SEC") reasonably satisfactory to Company, or other evidence reasonably satisfactory to Company, to the effect that public sale, transfer or assignment of the Securities may be made without registration and without compliance with any restriction such as Rule 144. If certificates representing the Warrant Shares can be issued electronically using Fast Automated Securities Transfer Program of the Depository Trust Company, on request of Holder, Company shall issue the Warrant Shares electronically as Holder requests.

6. Transfers of Warrant. In connection with any transfer by Holder of this Warrant, Company may require the transferee to provide Company with written representations and warranties that transferee is acquiring this Warrant and the shares of Common Stock to be issued upon exercise in compliance with the Act, and may require a legal opinion, in form and substance satisfactory to Company and its counsel, stating that such transfer is exempt from the registration and prospectus delivery requirements of the Act and any applicable state securities laws; provided, that Company shall not require an opinion of counsel if the transfer is to an affiliate of Holder. Following any transfer of this Warrant, at the request of either Company or the transferee, the transferee shall surrender this Warrant to Company in exchange for a new warrant of like tenor and date, executed by Company. Upon any partial transfer, Company will also execute and deliver to Holder a new warrant of like tenor with respect to the portion of this Warrant not so transferred. Subject to the foregoing, this Warrant is transferable on the books of Company at its principal office by the registered Holder hereof upon surrender of this Warrant properly endorsed.

7. Adjustment for Certain Events. The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification or Merger. In case of (i) any reclassification or change of securities of the class issuable upon exercise of this Warrant (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any merger of Company with or into another corporation (other than a merger with another corporation in which Company is the acquiring and the surviving corporation and which does not result in any reclassification or change of outstanding securities issuable upon exercise of this Warrant), or (iii) any sale of all or substantially all of the assets of Company, Company, or such successor or purchasing corporation, as the case may be, shall duly execute and deliver to Holder a new Warrant (in form and substance satisfactory to Holder of this Warrant), or Company shall make appropriate provision without the issuance of a new Warrant, so that Holder shall have the right to receive, at a total purchase price not to exceed that payable upon the exercise of the unexercised portion of this

Warrant, and in lieu of the Warrant Shares theretofore issuable upon exercise or conversion of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification, change, merger or sale by a holder of the number of shares of Common Stock then purchasable under this Warrant, or in the case of such a merger or sale in which the consideration paid consists all or in part of assets other than securities of the successor or purchasing corporation, at the option of Holder, the securities of the successor or purchasing corporation having a value at the time of the transaction equivalent to the value of the Warrant Shares purchasable upon exercise of this Warrant at the time of the transaction. Any new Warrant shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 7. The provisions of this subparagraph (a) shall similarly apply to successive reclassifications, changes, mergers and transfers.

(b) Subdivision or Combination of Shares. If Company at any time while this Warrant remains outstanding and unexpired shall subdivide or combine its outstanding shares of Common Stock, the Warrant Price shall be proportionately decreased and the number of Warrant Shares issuable hereunder shall be proportionately increased in the case of a subdivision and the Warrant Price shall be proportionately increased and the number of Warrant Shares issuable hereunder shall be proportionately decreased in the case of a combination.

(c) Stock Dividends and Other Distributions. If Company at any time while this Warrant is outstanding and unexpired shall (i) pay a dividend with respect to Common Stock payable in Common Stock, then the Warrant Price shall be adjusted, from and after the date of determination of shareholders entitled to receive such dividend or distribution, to that price determined by multiplying the Warrant Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Common Stock outstanding immediately after such dividend or distribution; or (ii) make any other distribution with respect to Common Stock (except any distribution specifically provided for in Sections 7(a) and 7(b)), then, in each such case, provision shall be made by Company such that Holder shall receive upon exercise of this Warrant a proportionate share of any such dividend or distribution as though it were Holder of the Warrant Shares as of the record date fixed for the determination of the shareholders of Company entitled to receive such dividend or distribution.

(d) Adjustment of Number of Shares. Upon each adjustment in the Warrant Price, the number of Warrant Shares purchasable hereunder shall be adjusted, to the nearest whole share, to the product obtained by multiplying the number of Warrant Shares purchasable immediately prior to such adjustment in the Warrant Price by a fraction, the numerator of which shall be the Warrant Price immediately prior to such adjustment and the denominator of which shall be the Warrant Price immediately thereafter.

(e) Adjustment for Dilutive Issuance. The Warrant Price and the number of Warrant Shares issuable upon exercise of this Warrant or, if the Warrant Shares are Common Stock, the number of shares of Common Stock issuable upon conversion of the Warrant Shares, shall be subject to adjustment, from time to time in the manner set forth in Company's Certificate of Incorporation as if the Warrant Shares were issued and outstanding on and as of the date of any such required adjustment (but in no case shall a single set of circumstances resulting in an adjustment in accordance with the Company's Certificate of Incorporation result in a duplicative adjustment). The provisions set forth for the Warrant Shares in Company's Certificate of Incorporation relating to adjustment of the number of shares of Common Stock issuable upon conversion of the Warrant Shares in effect as of the date hereof may not be amended, modified or waived, without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Warrant Shares in the same manner as such amendment, modification or waiver affects the rights associated with all other shares of the same series and class as the Warrant Shares. Subject to the foregoing, the Company may, subject to applicable law, amend its Certificate of Incorporation without the consent of Holder.

(f) Pay-to-Play Transaction. In the event that the Company's Certificate of Incorporation provides, or is amended to so provide, for the amendment or modification of the rights, preferences or privileges of the Common Stock, or the reclassification, conversion or exchange of the Common Stock, on account of the failure of a holder of the Common Stock to participate in an equity financing transaction (a "Pay-to-Play Provision"), such Pay-to-Play Provision shall not apply to the Holder and this Warrant shall remain exercisable for the same number and type of shares of equity securities for which it was exercisable immediately prior to such equity financing transaction.

(g) Price Protection. If after the date hereof but on or before June 30, 2015, or if in connection with the PIPE Financing (defined below), the Company sells or issues Common Stock at a per share price less than the Warrant Price, or

sells or issues options, warrants or securities convertible into Common Stock with an exercise or conversion per share price less than the then current Warrant Price, the Warrant Price shall automatically adjust to such lower price, provided however, that the sale or issuance of Common Stock, or options to purchase Common Stock, to employees or consultants pursuant to a board and stockholder approved equity incentive plan shall not be considered a sale or issuance of Common Stock for the purposes of this Section 7(g). For the purposes of this Section 7(g), the term "PIPE Financing" means the Company's sale or issuance of its equity securities after the date hereof for gross proceeds of not less than \$4,000,000, where the holders of such securities are provided with rights to require the Company to register such equity securities, or any part thereof, for resale, but in all cases excluding the Convertible Debt Offering as defined in that certain Loan and Security Agreement dated as of June 30, 2014, by and between the Company, Holder and the other parties thereto.

8. Notice of Adjustments; Redemption. Whenever any Warrant Price or the kind or number of securities issuable under this Warrant shall be adjusted pursuant to Section 7 hereof, Company shall prepare a certificate signed by an officer of Company setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Warrant Price and number or kind of shares issuable upon exercise of this Warrant after giving effect to such adjustment, and within thirty (30) days of such adjustment shall cause copies of such certificate to be delivered to Holder in accordance with Section 18 hereof.

9. Financial and Other Reports.

(a) Financial Statements. From time to time up to the earlier of the Expiration Date or the complete exercise of this Warrant, Company shall furnish to Holder, (i) as soon as available and in any event within 30 days after the end of each fiscal month, unaudited consolidated (and if available, consolidating) balance sheets, statements of income or operations and cash flow statements of Company and its Subsidiaries as of the end of such fiscal month and that portion of the fiscal year ending as of the close of such fiscal month, in a form acceptable to Holder and certified by Company's president, chief executive officer or chief financial officer, (ii) as soon as available and in any event within 45 days after the end of each fiscal quarter, unaudited consolidated (and if available, consolidating) balance sheets, statements of income or operations and cash flow statements of Company and its Subsidiaries as of the end of such fiscal quarter and that portion of the fiscal year ending as of the close of such fiscal quarter, in a form acceptable to Holder and certified by Company's president, chief executive officer or chief financial officer and (iii) as soon as available and in any event within ninety (90) days after the end of each fiscal year, audited consolidated (and if available, consolidating) balance sheets, statements of income or operations and cash flow statements of Company and its Subsidiaries as of the end of such fiscal year, together with a report of an independent certified public accounting firm reasonably acceptable to Holder, which report shall contain an unqualified opinion stating that such audited financial statements fairly present in all material respects the financial position of Company and its Subsidiaries for the periods indicated therein in conformity with GAAP applied on a basis consistent with prior years without qualification as to the scope of the audit or as to going concern and without any similar qualification. All such financial statements are to be prepared using GAAP (subject, in the case of unaudited financial statements, to the absence of footnotes and normal year end audit adjustments).

(b) Capitalization Table. Within 30 days of the end of each calendar quarter, if the Company is a private company, Company shall also deliver to Holder an updated capitalization table of Company in the form attached hereto as Annex A.

(c) Additional Documents. The Company shall supply documentation Holder requests in writing to evaluate whether to exercise (in cash or a net issuance basis) this Warrant, including without limitation, (i) any merger/purchase/asset sale agreement and related documents and estimated payout allocations to each of the respective stockholders, warrant and option holders in connection with an Acquisition, (ii) the most recent capitalization tables, 409A valuations (if any), and board determination of share value (including any waterfall or per share allocations provided to the equity interest holders), and (iii) most recent certificate of incorporation or organizational documentation, provided that Company shall not be obligated to provide any such information if and to the extent it is subject to confidentiality provisions preventing such disclosure or to attorney-client privilege.

10. Registration Rights. At all times prior to the Expiration Date and thereafter so long as Holder owns any Warrant Shares, Company shall take all actions necessary to cause the Warrant Shares to be freely tradable pursuant to Rule 144. In addition, if after the date hereof up through the Expiration Date Company files a registration statement under the Act to register the sale of any of its securities, Company shall include in such registration statement the Warrant Shares remaining available under this Warrant together with all Warrant Shares then held by Holder. Company shall provide Holder immediate notice of such registration statement having been declared effective, and once effective, Company shall keep such registration statement continuously

effective until all Warrant Shares have been sold or can be sold without restriction under Rule 144, provided however, Company may declare “blackout” periods during which resales of the Warrants Shares under the registration statement cannot be made provided that such blackout periods do not exceed twenty (20) trading days for every 12 consecutive month period. Not less than ten (10) days prior to filing any such registration statement, Company shall contact Holder to determine the number of Warrant Shares to include in such registration statement. Holder shall have 5 business days to respond. Holder’s failure to respond shall constitute a waiver of Holder’s right under this Section 10 for the registration statement for which it was contacted if such registration statement is in fact filed with the SEC within thirty (30) days of Company first contacting Holder to determine its number of Warrant Shares to include. Such waiver shall not apply to any subsequent registration statement or if the registration statement is filed after such thirty (30) period, in which case the provisions of this Section 10 shall apply to any such subsequent registration statement.

11. No Fractional Shares. No fractional share of Common Stock will be issued in connection with any exercise or conversion hereunder, but in lieu of such fractional share Company shall make a cash payment therefor upon the basis of the Warrant Price then in effect.

12. Charges, Taxes and Expenses. Issuance of certificates for shares of Common Stock upon the exercise or conversion of this Warrant shall be made without charge to Holder for any United States or state of the United States documentary stamp tax or other incidental expense with respect to the issuance of such certificate, all of which taxes and expenses shall be paid by Company, and such certificates shall be issued in the name of Holder.

13. No Shareholder Rights Until Exercise. Except as expressly provided herein, this Warrant does not entitle Holder to any voting rights or other rights as a shareholder of Company prior to the exercise hereof.

14. Registry of Warrant. Company shall maintain a registry showing the name and address of the registered Holder of this Warrant. This Warrant may be surrendered for exchange or exercise, in accordance with its terms, at such office or agency of Company, and Company and Holder shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

15. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft, or destruction, of indemnity reasonably satisfactory to it, and, if mutilated, upon surrender and cancellation of this Warrant, Company will execute and deliver a new Warrant, having terms and conditions substantially identical to this Warrant, in lieu hereof.

16. Miscellaneous.

(a) Issue Date. The provisions of this Warrant shall be construed and shall be given effect in all respect as if it had been issued and delivered by Company on the date hereof.

(b) Successors. This Warrant shall be binding upon any successors or assigns of Company.

(c) Headings. The headings used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant.

(d) Saturdays, Sundays, Holidays. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday or shall be a legal holiday in the State of California, then such action may be taken or such right may be exercised on the next succeeding day not a Saturday, Sunday or a legal holiday.

17. No Impairment. Company will not, by amendment of its Certificate of Incorporation or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of Holder hereof against impairment.

18. Addresses. All notices or other communications given in connection with this Warrant shall be in writing, shall be addressed to the parties at their respective addresses set forth below (unless and until a different address may be specified in a

Warrant Agreement - Amedica

written notice to the other party delivered in accordance with this Section 18), and shall be deemed given (a) on the date of receipt if delivered by hand, (b) on the next business day after being sent by a nationally-recognized overnight courier, or (c) on the fourth business day after being sent by registered or certified mail, return receipt requested and postage prepaid.

If to Company: Amedica Corporation
1885 West 2100 South
Salt Lake City, UT 84119
Attn: Kevin Ontiveros

If to Holder: Hercules Technology III, L.P.
Legal Department
Attention: Chief Legal Officer
400 Hamilton Avenue, Suite 310
Palo Alto, CA 94301
Facsimile: 650-473-9194
Telephone: 650-289-3060

With a copy to: PremierCounsel, LLP
Attention: Steven O. Gasser
49 Stevenson Street, Fourth Floor
San Francisco, CA 94105
Facsimile: 415-357-1414
Telephone: 415-409-1790

19. Governing Law. This Warrant has been negotiated and delivered to Holder in the State of California, and shall have been accepted by Holder in the State of California. Delivery of Common Stock to Holder by the Company (or its transfer agent) under this Agreement is due in the State of California. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

20. Consent to Jurisdiction and Venue. All judicial proceedings arising in or under or related to this Warrant may be brought in any state or federal court of competent jurisdiction located in the State of California. By execution and delivery of this Agreement, each party hereto generally and unconditionally: (a) consents to personal jurisdiction in Santa Clara County, State of California; (b) waives any objection as to jurisdiction or venue in Santa Clara County, State of California; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Service of process on any party hereto in any action arising out of or relating to this Agreement shall be effective if given in accordance with the requirements for notice set forth in Section 18, and shall be deemed effective and received as set forth in Section 18. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of either party to bring proceedings in the courts of any other jurisdiction.

21. Mutual Waiver of Jury Trial. Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. EACH OF THE COMPANY AND HOLDER SPECIFICALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY THE COMPANY AGAINST HOLDER OR ITS ASSIGNEE OR BY HOLDER OR ITS ASSIGNEE AGAINST THE COMPANY. This waiver extends to all such Claims, including Claims that involve Persons other than Company and Holder; Claims that arise out of or are in any way connected to the relationship between the Company and Holder; and any Claims for damages, breach of contract, specific performance, or any equitable or legal relief of any kind, arising out of this Agreement.

22. Judicial Reference. If the waiver of jury trial set forth above is ineffective or unenforceable, the parties agree that all Claims shall be resolved by reference to a private judge sitting without a jury, pursuant to Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of Santa Clara County, California. Such proceeding shall be conducted in Santa Clara County, California, with California rules of evidence and discovery applicable to such proceeding.

Warrant Agreement - Amedica

23. Prejudgment Relief. In the event Claims are to be resolved by arbitration, either party may seek from a court of competent jurisdiction identified in Section 20, any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by law notwithstanding that all Claims are otherwise subject to resolution by judicial reference.

[Remainder of page intentionally left blank]

Warrant Agreement - Amedica

IN WITNESS WHEREOF, Company has caused this Warrant to be executed by its officer thereunto duly authorized.

AMEDICA CORPORATION

By: _____
Name: _____
Title: _____

Agreed and Accepted:

HERCULES TECHNOLOGY III, L.P.,
a Delaware limited partnership

By: Hercules Technology SBIC
Management, LLC, its General Partner

By: Hercules Technology Growth Capital, Inc.,
its Manager

By: _____
Name: Ben Bang
Its: Senior Counsel

Warrant Agreement - Amedica

NOTICE OF EXERCISE

To:
Amedica Corporation
1885 West 2100 South
Salt Lake City, UT 84119
Attn: Legal Department

1. The undersigned Warrantholder (“Holder”) elects to acquire shares of the Common Stock (the “Common Stock”) of Amedica Corporation (the “Company”), pursuant to the terms of the Warrant Agreement dated June 30, 2014 (the “Warrant”).
2. Holder exercises its rights under the Warrant as set forth below:
 - () Holder elects to purchase _____ shares of Common Stock as provided in Section 3(a) and tenders herewith a check in the amount of \$ _____ as payment of the purchase price.
 - () Holder elects to convert the purchase rights into shares of Common Stock as provided in Section 3(b) of the Warrant.
3. Holder surrenders the Warrant with this Notice of Exercise.

Holder represents that it is acquiring the aforesaid shares of Common Stock for investment and not with a view to or for resale in connection with distribution and it has no present intention of distributing or reselling the shares.

Please issue a certificate representing the shares of the Common Stock in the name of Holder or in such other name as is specified below:

Name: _____
Address: _____
Taxpayer I.D.: _____
Electronic Share Delivery Destination:

[NAME OF HOLDER]

By: _____
Name: _____
Title: Duly Authorized Signatory

Date: _____, 20

ANNEX A

CAPITALIZATION TABLE

[SEE ATTACHED]

Warrant Agreement - Amedica

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (the “*Agreement*”) is made as of the 30th day of June, 2014 by and between Amedica Corporation, a Delaware corporation (the “*Company*”), and MG Partners II Ltd., a company with limited liability organized under the laws of Gibraltar (the “*Investor*”).

WHEREAS, the Company and the Investor are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the “*1933 Act*”), and Rule 506 of Regulation D (“*Regulation D*”) as promulgated by the United States Securities and Exchange Commission (the “*Commission*”) under the 1933 Act (without limiting any other such exemption which may apply to the transactions contemplated by this Agreement);

WHEREAS, the Company has authorized the issuance of senior convertible notes, in the aggregate original principal amount of \$6,400,000, in the form attached hereto as Exhibit A (the “*Notes*”), which Notes shall be convertible into shares of the Company’s common stock, \$0.01 par value per share (the “*Common Stock*”), in accordance with the terms of the Notes;

WHEREAS, in consideration for the Investor’s execution and delivery of this Agreement, the Company is concurrently causing its transfer agent to issue to the Investor the Commitment Shares (as defined below), upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, Investor wishes to purchase, and the Company wishes to sell at the Initial Closing (as defined below), upon the terms and conditions stated in this Agreement, (i) a Note in the aggregate original principal amount as set forth in column (3) on Schedule I hereto (the “*Initial Note*”) (and the shares of Common Stock issuable upon conversion thereof, collectively, the “*Initial Conversion Shares*”) and (ii) a warrant to initially acquire up to the aggregate number of additional shares of Common Stock set forth opposite such Investor’s name in column (4) on Schedule I hereto, in the form attached hereto as Exhibit B (the “*Warrants*”) (as exercised, collectively, the “*Warrant Shares*”).

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Company may require the Investor to participate in an Additional Closing (as defined below) for the purchase by the Investor, and the sale by the Company, of a Note in an original principal amount as set forth in column (5) on Schedule I hereto (the “*Additional Note*”) (and the shares of Common Stock issuable upon conversion thereof, collectively, the “*Additional Conversion Shares*” and, collectively with the Initial Conversion Shares, the “*Conversion Shares*”);

WHEREAS, the Notes, the Conversion Shares, the Commitment Shares, the Warrants and the Warrant Shares are collectively referred to herein as the “*Securities*” and the offering contemplated hereby is referred to herein as the “*Offering*”;

WHEREAS, the parties have agreed that the obligation to repay the Notes shall be an unsecured obligation of the Company; and

WHEREAS, at the Initial Closing, the parties hereto shall execute and deliver a Registration Rights Agreement, in the form attached hereto as Exhibit C (the “**Registration Rights Agreement**”), pursuant to which the Company has agreed to provide certain registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement), under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the premises and the mutual agreements, representations and warranties, provisions and covenants contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Issuance of Commitment Shares; Purchase and Sale of Notes and Warrants.

1.1 Issuance of Commitment Shares. In consideration for the Investor’s execution and delivery of this Agreement, concurrently with the execution and delivery of this Agreement on the Initial Closing Date (as defined below), the Company shall deliver irrevocable instructions to its transfer agent (the “**Transfer Agent**”), substantially in the form of Exhibit D attached hereto, to issue to the Investor, not later than 4:00 p.m. (New York City time) on the third (3rd) Trading Day (as defined in the Notes) immediately following the Initial Closing Date, a certificate representing an aggregate of 50,853 shares of duly authorized, validly issued, fully paid and nonassessable shares of Common Stock (collectively, the “**Commitment Shares**”), in the name of the Investor or its designee (in which case such designee name shall have been provided to the Company prior to the Closing Date). Such certificate shall be delivered to the Investor by overnight courier at its address set forth in Section 12.4 hereof. For the avoidance of doubt, all of the Commitment Shares shall be fully earned as of the Initial Closing Date regardless of whether the Additional Closing (as defined below) shall occur.

1.2 Purchase and Sale of Initial Notes and Warrants. Subject to the satisfaction (or, where legally permissible, the waiver) of the conditions set forth in Section 4.1, the Company shall issue and sell to the Investor, and the Investor shall purchase from the Company on the Initial Closing Date (as defined below), an Initial Note in the aggregate original principal amount as set forth in column (3) on Schedule I hereto along with Warrants to initially acquire up to the aggregate number of Warrant Shares as is set forth in column (4) on Schedule I hereto (the “**Initial Closing**”).

1.3 Purchase and Sale of Additional Notes. Subject to the satisfaction (or, where legally permissible, the waiver) of the conditions set forth in Sections 3.2(b) and 4.2 below, the Company shall issue and sell to the Investor, and the Investor shall purchase from the Company on the Additional Closing Date (as defined below), an Additional Note in the aggregate original principal amount as set forth in column (5) on Schedule I hereto (the “**Additional Closing**”).

1.4 Form of Payment.

(a) On the Initial Closing Date, (i) the Investor shall pay the Initial Purchase Price (as defined below) (less the amounts withheld pursuant to Section 12.12) to the Company for the Initial Note and Warrants to be issued and sold to the Investor at the Initial Closing, by wire transfer of immediately available funds in accordance with the Company's written wire instructions and (ii) immediately following the Company's receipt of such amount, the Company shall deliver to the Investor (x) an Initial Note in the aggregate original principal amount as set forth in column (3) on Schedule I hereto and (y) Warrants to initially acquire up to the aggregate number of Warrant Shares as is set forth in column (4) on Schedule I hereto, in each case, duly executed on behalf of the Company and registered in the name of the Investor or its designee.

(b) On the Additional Closing Date, (i) the Investor shall pay the Additional Purchase Price (as defined below) to the Company for the Additional Note to be issued and sold to the Investor at the Additional Closing, by wire transfer of immediately available funds in accordance with the Company's written wire instructions and (ii) immediately following the Company's receipt of such amount, the Company shall deliver to the Investor an Additional Note in the aggregate original principal amount as set forth in column (5) on Schedule I hereto, duly executed on behalf of the Company and registered in the name of the Investor or its designee.

(c) Rank. The parties hereto acknowledge that the Initial Note and the Additional Note shall be part of a single series of notes and shall rank *pari passu* with each other.

2. Purchase Price. The purchase price for the Initial Note and Warrants to be purchased by the Investor (the "**Initial Purchase Price**") shall be the amount as set forth in column (6) on Schedule I hereto. The purchase price for the Additional Note to be purchased by the Investor (the "**Additional Purchase Price**", and together with the Initial Purchase Price, each, a "**Purchase Price**") shall be the amount as set forth in column (7) on Schedule I hereto. As indicated on Schedule I, the Initial Note will be issued with an original issue discount of approximately 13.79%.

3. Closings. The Initial Closing and the Additional Closing are each sometimes referred to in this Agreement as a "**Closing**". Each Closing shall occur at the offices of Greenberg Traurig, LLP, MetLife Building, 200 Park Avenue, New York, NY 10166.

3.1 Initial Closing. The date and time of the Initial Closing (the "**Initial Closing Date**") shall be 10:00 a.m. (New York City time), on the first (1st) Trading Day (as defined below) (and including the date hereof if a Trading Day) on which the conditions to the Initial Closing set forth in Section 4.1 below are satisfied or waived.

3.2 Additional Closing.

(a) Additional Closing Date. If the Company delivers an Additional Closing Notice (as defined below), the date and time of the Additional Closing shall be 10:00 a.m. (New York City time), on a date that is no later than the tenth (10th) calendar day after the Effective Date (the “**Additional Closing Date**,” and the Initial Closing Date and the Additional Closing Date are each sometimes referred to in this Agreement as a “**Closing Date**”).

(b) Additional Closing Mechanics. Subject to the satisfaction (or waiver) of the conditions set forth in this Section 3.2(b) and Section 4.2 below, the Company shall have the right to require the Investor to purchase the Additional Note on the Additional Closing Date by delivering to the Investor on the Effective Date, by facsimile and overnight courier at its address set forth in Section 12.4 hereof, an irrevocable written notice that the Company has exercised its right to require the Investor to purchase the Additional Note (the “**Additional Closing Notice**,” and such date, the “**Additional Closing Notice Date**”). For the avoidance of doubt, the Company shall not be entitled to effect an Additional Closing if there shall exist an Additional Note Conditions Failure (as defined below).

4. Closing Conditions: Certain Covenants.

4.1 Conditions to the Initial Closing.

(a) Conditions of the Company to the Initial Closing. The obligation of the Company to sell and issue the Initial Note and the Warrants to the Investor at the Initial Closing is subject to the fulfillment, to the Company’s reasonable satisfaction, prior to or at the Initial Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Investor contained in this Agreement (x) that are not qualified by “materiality” shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Initial Closing Date with the same force and effect as if made on such dates, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct in all material respects as of such other date and (y) that are qualified by “materiality” shall have been true and correct when made and shall be true and correct as of the Initial Closing Date with the same force and effect as if made on such dates, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct as of such other date.

(ii) Registration Rights Agreement. The Investor shall have duly executed and delivered the Registration Rights Agreement to the Company.

(iii) Initial Purchase Price. The Company shall have received the Initial Purchase Price.

(iv) No Injunction. No statute, regulation, order, decree, writ, ruling or injunction shall have been enacted, entered, promulgated, threatened or endorsed by any court or governmental authority of competent jurisdiction which prohibits the consummation of or which would materially modify or delay any of the transactions contemplated by the Transaction Documents.

(b) Conditions to the Investor to the Initial Closing. The obligation of the Investor to purchase the Initial Note and the Warrants to be issued to the Investor at the Initial Closing is subject to the satisfaction, or (where legally permissible) the waiver by the Investor, on the Initial Closing Date, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Company contained in this Agreement (x) that are not qualified by “materiality” or “Material Adverse Effect” shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Initial Closing Date with the same force and effect as if made on such dates, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct in all material respects as of such other date and (y) that are qualified by “materiality” or “Material Adverse Effect” shall have been true and correct when made and shall be true and correct as of the Initial Closing Date with the same force and effect as if made on such dates, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct as of such other date.

(ii) Performance of the Company. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement and the Registration Rights Agreement to be performed, satisfied or complied with by the Company at or prior to the Initial Closing Date. The Company shall have delivered to the Investor on the Initial Closing Date a written certification by an executive officer of the Company to the foregoing substantially in the form attached hereto as Exhibit E.

(iii) No Suspension of Trading in or Notice of Delisting of Common Stock. Trading in the Common Stock shall not have been suspended by the Commission, the Trading Market or the FINRA (except for any suspension of trading of less than fourteen (14) days, which suspension shall be terminated prior to the Initial Closing Notice Date), the Company shall not have received any final and non-appealable notice that the listing or quotation of the Common Stock on the Trading Market shall be terminated on a date certain (unless, prior to such date certain, the Common Stock is listed or quoted on any other Trading Market), trading in securities generally as reported on the Trading Market shall not have been suspended or limited, nor shall a banking moratorium have been declared either by the U.S. or New York State authorities (except

for any suspension, limitation or moratorium which shall be terminated prior to the Initial Closing Notice Date), there shall not have been imposed any suspension of electronic trading or settlement services by the Depository Trust Company (“**DTC**”) with respect to the Common Stock that is continuing, the Company shall not have received any notice from DTC to the effect that a suspension of electronic trading or settlement services by DTC with respect to the Common Stock is being imposed or is contemplated (unless, prior to such suspension, DTC shall have notified the Company in writing that DTC has determined not to impose any such suspension), nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity or crisis that has had or would reasonably be expected to have a material adverse change in any U.S. financial, credit or securities market that is continuing.

(iv) Compliance with Laws. The Company shall have complied with all applicable federal, state and local governmental laws, rules, regulations and ordinances in connection with the execution, delivery and performance of this Agreement and the other Transaction Documents (as defined below) to which it is a party and the consummation of the transactions contemplated hereby and thereby, including, without limitation, the Company shall have obtained all permits and qualifications required by any applicable state securities or “Blue Sky” laws for the offer and sale of the Securities by the Company to the Investor.

(v) No Injunction. No statute, regulation, order, decree, writ, ruling or injunction shall have been enacted, entered, promulgated, threatened or endorsed by any court or governmental authority of competent jurisdiction which prohibits the consummation of or which would materially modify or delay any of the transactions contemplated by the Transaction Documents.

(vi) No Proceedings or Litigation. No action, suit or proceeding before any arbitrator or any court or governmental authority shall have been commenced or threatened, and no inquiry or investigation by any governmental authority shall have been commenced or threatened, against the Company or any Subsidiary, or any of the officers, directors or affiliates of the Company or any Subsidiary, seeking to restrain, prevent or change the transactions contemplated by the Transaction Documents, or seeking material damages in connection with such transactions.

(vii) Listing of Securities. All of the Conversion Shares and Warrant Shares that may be issued pursuant to the Notes and Warrants, respectively, and all of the Commitment Shares shall have been approved for listing or quotation on the Trading Market as of the Initial Closing Date, in each case, without regard to any limitations on conversion or exercise set forth in the Notes or Warrants, respectively, subject only to notice of issuance.

(viii) No Material Adverse Effect. No condition, occurrence, state of facts or event constituting a Material Adverse Effect shall have occurred and be continuing.

(ix) Opinion of Counsel. On the Initial Closing Date, the Investor shall have received an opinion from outside counsel to the Company, dated the Initial Closing Date, in the form mutually agreed to by the parties hereto prior to the date hereof.

(x) Initial Note and Warrants; Delivery of Transfer Agent Instructions. At the Initial Closing, the Company shall have (x) tendered to the Investor the Initial Note and Warrants and (y) delivered irrevocable instructions to the Transfer Agent, substantially in the form of Exhibit D attached hereto, to issue the Commitment Shares to the Investor in accordance with Section 1.1 of this Agreement.

(xi) Registration Rights Agreement. The Company shall have duly executed and delivered the Registration Rights Agreement to the Investor.

(xii) Current Public Information. All reports, schedules, registrations, forms, statements, information and other documents required to have been filed by the Company with the Commission pursuant to the reporting requirements of the 1934 Act, including all material required to have been filed pursuant to Section 13(a) or 15(d) of the 1934 Act, shall have been filed with the Commission under the 1934 Act.

4.2 Conditions to the Additional Closing.

(a) Conditions of the Company to the Additional Closing. The obligation of the Company to sell and issue the Additional Note to the Investor at the Additional Closing is subject to the fulfillment, to the Company's reasonable satisfaction, prior to or at the Additional Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Investor contained in this Agreement (x) that are not qualified by "materiality" shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Additional Closing Date with the same force and effect as if made on such dates, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct in all material respects as of such other date and (y) that are qualified by "materiality" shall have been true and correct when made and shall be true and correct as of the Additional Closing Date with the same force and effect as if made on such dates, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct as of such other date.

(ii) No Injunction. No statute, regulation, order, decree, writ, ruling or injunction shall have been enacted, entered, promulgated, threatened or endorsed by any court or governmental authority of competent jurisdiction which prohibits the consummation of or which would materially modify or delay any of the transactions contemplated by the Transaction Documents.

(b) Conditions of the Investor to the Additional Closing. The obligation of the Investor to purchase the Additional Note to be issued to the Investor at the Additional Closing is subject to the satisfaction, or (where legally permissible) the waiver by the Investor, on the Additional Closing Date, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Company contained in this Agreement (x) that are not qualified by “materiality” or “Material Adverse Effect” shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Additional Closing Notice Date and the Additional Closing Date with the same force and effect as if made on such dates, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct in all material respects as of such other date and (y) that are qualified by “materiality” or “Material Adverse Effect” shall have been true and correct when made and shall be true and correct as of the Additional Closing Notice Date and the Additional Closing Date with the same force and effect as if made on such dates, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct as of such other date.

(ii) Performance of the Company. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement, the Initial Note, the Warrants and the Registration Rights Agreement to be performed, satisfied or complied with by the Company at or prior to the Additional Closing Notice Date and the Additional Closing Date (as applicable). The Company shall have delivered to the Investor on the Additional Closing Date a written certification by an executive officer of the Company to the foregoing substantially in the form attached hereto as Exhibit E.

(iii) Registration Statement Effective. The Initial Registration Statement (as defined in the Registration Rights Agreement) covering the resale by the Investor of the Registrable Securities covered thereby shall have been declared effective under the Securities Act by the Commission and shall remain effective, and the Investor shall be permitted to utilize the Prospectus therein to resell such Registrable Securities.

(iv) No Material Notices. None of the following events shall have occurred and be continuing: (a) receipt of any request by the Commission or any other federal or state governmental authority for any additional information relating to the Registration Statement, the Prospectus (as defined in the Registration Rights Agreement) or any supplement to the Prospectus (each, a “*Prospectus Supplement*”), or for any amendment of or supplement to the Registration Statement, the Prospectus, or any Prospectus Supplement; (b) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or prohibiting or suspending the use of the Prospectus or any Prospectus Supplement, or of the suspension of qualification or exemption from qualification of the Securities for offering or sale in any jurisdiction, or the initiation or contemplated initiation of any proceeding for such purpose; or (c) the occurrence of any event or the existence of any condition or state of facts, which makes any statement of a material fact made in the Registration Statement, the Prospectus or any Prospectus Supplement untrue

or which requires the making of any additions to or changes to the statements then made in the Registration Statement, the Prospectus or any Prospectus Supplement in order to state a material fact required by the Securities Act to be stated therein or necessary in order to make the statements then made therein (in the case of the Prospectus or any Prospectus Supplement, in light of the circumstances under which they were made) not misleading, or which requires an amendment to the Registration Statement or a supplement to the Prospectus or any Prospectus Supplement to comply with the Securities Act or any other law (other than the transactions contemplated by the Additional Closing Notice and the settlement thereof). The Company shall have no knowledge of any event that could reasonably be expected to have the effect of causing the suspension of the effectiveness of the Registration Statement or the prohibition or suspension of the use of the Prospectus or any Prospectus Supplement in connection with the resale of the Registrable Securities by the Investor.

(v) No Suspension of Trading in or Notice of Delisting of Common Stock. Trading in the Common Stock shall not have been suspended by the Commission, the Trading Market or the FINRA (except for any suspension of trading of less than fourteen (14) days, which suspension shall be terminated prior to the Additional Closing Notice Date), the Company shall not have received any final and non-appealable notice that the listing or quotation of the Common Stock on the Trading Market shall be terminated on a date certain (unless, prior to such date certain, the Common Stock is listed or quoted on any other Trading Market), trading in securities generally as reported on the Trading Market shall not have been suspended or limited, nor shall a banking moratorium have been declared either by the U.S. or New York State authorities (except for any suspension, limitation or moratorium which shall be terminated prior to the Additional Closing Notice Date), there shall not have been imposed any suspension of electronic trading or settlement services by DTC with respect to the Common Stock that is continuing, the Company shall not have received any notice from DTC to the effect that a suspension of electronic trading or settlement services by DTC with respect to the Common Stock is being imposed or is contemplated (unless, prior to such suspension, DTC shall have notified the Company in writing that DTC has determined not to impose any such suspension), nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity or crisis that has had or would reasonably be expected to have a material adverse change in any U.S. financial, credit or securities market that is continuing.

(vi) Compliance with Laws. The Company shall have complied with all applicable federal, state and local governmental laws, rules, regulations and ordinances in connection with the execution, delivery and performance of this Agreement and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby, including, without limitation, the Company shall have obtained all permits and qualifications required by any applicable state securities or "Blue Sky" laws for the offer and sale of the Securities by the Company to the Investor and the subsequent resale of the Registrable Securities by the Investor (or shall have the availability of exemptions therefrom).

(vii) No Injunction. No statute, regulation, order, decree, writ, ruling or injunction shall have been enacted, entered, promulgated, threatened or endorsed by any court or governmental authority of competent jurisdiction which prohibits the consummation of or which would materially modify or delay any of the transactions contemplated by the Transaction Documents.

(viii) No Proceedings or Litigation. No action, suit or proceeding before any arbitrator or any court or governmental authority shall have been commenced or threatened, and no inquiry or investigation by any governmental authority shall have been commenced or threatened, against the Company or any Subsidiary, or any of the officers, directors or affiliates of the Company or any Subsidiary, seeking to restrain, prevent or change the transactions contemplated by the Transaction Documents, or seeking material damages in connection with such transactions.

(ix) Listing of Securities. All of the Conversion Shares and Warrant Shares that may be issued pursuant to the Notes and Warrants, respectively, and all of the Commitment Shares shall have been approved for listing or quotation on the Trading Market as of the Closing Date, in each case, without regard to any limitations on conversion or exercise set forth in the Notes or Warrants, respectively, subject only to notice of issuance.

(x) No Material Adverse Effect. No condition, occurrence, state of facts or event constituting a Material Adverse Effect shall have occurred and be continuing.

(xi) Delivery of Commitment Shares, Initial Conversion Shares and Warrant Shares. The Company shall have delivered on a timely basis all of the Commitment Shares required to be delivered pursuant to this Agreement, all of the Initial Conversion Shares issuable upon any conversion of the Initial Note by the Investor, as applicable, and all of the Warrant Shares issuable upon any exercise of the Warrants by the Investor, as applicable.

(xii) No Restrictive Legends. If requested by the Investor from and after the Effective Date, the Company shall have either (i) issued and delivered (or caused to be issued and delivered) to the Investor one or more certificates representing the Commitment Shares, the Initial Conversion Shares that have been issued upon any conversion of the Initial Note by the Investor and the Warrant Shares that have been issued upon any exercise of the Warrants by the Investor, as applicable, that are free from all restrictive and other legends or (ii) caused the Company's transfer agent to credit the Investor's or its designee's account at DTC through its Deposit/Withdrawal at Custodian (DWAC) system with a number of shares of Common Stock equal to the number of Commitment Shares, Initial Conversion Shares and/or Warrant Shares, as applicable, represented by the certificate(s) delivered by the Investor to the Company in accordance with Section 4.4 of this Agreement.

(xiii) Opinion of Counsel. On the Additional Closing Date, the Investor shall have received an opinion from outside counsel to the Company, dated the Additional Closing Date, in the form mutually agreed to by the parties hereto prior to the date hereof.

(xiv) Additional Note. At the Additional Closing, the Company shall have tendered to the Investor the Additional Note.

(xv) Current Public Information. The Current Report (as defined below) shall have been filed with the Commission as required pursuant to Section 4.3, and the Initial Press Release and the Additional Press Release (each as defined below) shall have been issued by the Company in accordance with Section 4.3. All reports, schedules, registrations, forms, statements, information and other documents required to have been filed by the Company with the Commission pursuant to the reporting requirements of the 1934 Act, including all material required to have been filed pursuant to Section 13(a) or 15(d) of the 1934 Act, shall have been filed with the Commission under the 1934 Act.

(xvi) No Additional Note Conditions Failure. No Additional Note Conditions Failure shall exist.

4.3 Securities Law Disclosure; Publicity. The Company shall (a) by 9:00 a.m. (New York City time) on the Trading Day immediately following the Initial Closing Date, issue a press release in form and substance reasonably acceptable to the Investor disclosing the material terms of the transactions contemplated hereby (the “**Initial Press Release**”) and (b) issue a Current Report on Form 8-K (the “**Current Report**”) disclosing the material terms of the transactions contemplated hereby, and including the Transaction Documents as exhibits thereto, within the time required by the 1934 Act. From and after the issuance of the Initial Press Release, the Company represents to the Investor that the Company shall have publicly disclosed all material, non-public information delivered to the Investor as of such time by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. The Company shall, on or before 9:00 a.m. (New York City time) on the Trading Day immediately following the Additional Closing Notice Date, issue a press release in form and substance reasonably acceptable to the Investor disclosing that the Company has elected to deliver an Additional Closing Notice to the Investor (the “**Additional Press Release**”). From and after the issuance of the Additional Press Release, the Company represents to the Investor that the Company shall have publicly disclosed all material, non-public information delivered to the Investor as of such time by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. The Company shall afford the Investor and its counsel with a reasonable opportunity to review and comment upon, shall consult with the Investor and its counsel on the form and substance of, and shall give due consideration to all such comments from the Investor or its counsel on, any press release, Commission filing or any other public disclosure made by or on behalf of the Company relating to the Investor, its purchases hereunder or any aspect of the Transaction Documents or the transactions contemplated thereby, prior to the issuance, filing or public disclosure thereof, and the Company shall not issue, file or publicly disclose any such information to which the Investor shall object. For the avoidance of doubt, the Company shall not be required to submit for review any such disclosure contained in periodic reports filed with the Commission under the Exchange Act if it shall have previously provided the same disclosure for review in connection with a previous filing.

4.4 Legends. The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144 (as defined below), to the Company or to an affiliate of the Investor or in connection with a pledge, the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the 1933 Act. The Investor understands that the certificate or other instrument representing the Notes and the Warrants and the stock certificates representing the Commitment Shares, the Conversion Shares and the Warrant Shares, except as set forth below, shall bear any legends as required by applicable state securities or “Blue Sky” laws in addition to a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

[NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE [CONVERTIBLE][EXERCISABLE] HAVE BEEN] [THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

The Company shall use its reasonable best efforts to cause its transfer agent to remove the legend set forth above and to issue a certificate without such legend to the holder of the Securities upon which it is stamped, or to issue to such holder by electronic delivery at the applicable balance account at DTC, unless otherwise required by state securities or “Blue Sky” laws, at such time as (i) such Securities are registered for resale under the 1933 Act, (ii) in connection with a sale, assignment or other transfer (other than under Rule 144 or Rule 144A), such holder provides the Company with an opinion of counsel, in a form generally acceptable to the Company’s legal counsel and the Transfer Agent, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the 1933 Act, or (iii) if such Securities are eligible to be sold under Rule 144 or Rule 144A, such holder provides the Company and its legal counsel with reasonable assurance in writing that the Securities are being sold, assigned or transferred pursuant to Rule 144 or Rule 144A (which shall not include an opinion of Investor’s counsel). In furtherance of the foregoing, the Company agrees that,

following the Effective Date or at such time as such legend is not required pursuant to this Section 4.4, the Company shall, no later than three Trading Days following the delivery by the Investor to the Company or the Transfer Agent (with a copy delivered to the Company) of a certificate representing Conversion Shares, Warrant Shares or Commitment Shares issued with a restrictive legend (such third Trading Day, the “**Legend Removal Date**”), either: (A) issue and deliver (or cause to be issued and delivered) to the Investor a certificate representing such Conversion Shares, Warrant Shares or Commitment Shares, as applicable, that is free from all restrictive and other legends or (B) cause the Transfer Agent to credit the Investor’s or its designee’s account at DTC through its Deposit/Withdrawal at Custodian (DWAC) system with a number of shares of Common Stock equal to the number of Conversion Shares, Warrant Shares or Commitment Shares, as applicable, represented by the certificate so delivered by the Investor. If the Company fails on or prior to the Legend Removal Date to either (i) issue and deliver (or cause to be issued and delivered) to the Investor a certificate representing the Conversion Shares, Warrant Shares or Commitment Shares, as applicable, that is free from all restrictive and other legends or (ii) cause the Transfer Agent to credit the balance account of the Investor or its designee at DTC through its Deposit/Withdrawal at Custodian (DWAC) system with a number of shares of Common Stock equal to the number of the Conversion Shares, Warrant Shares or Commitment Shares, as applicable, represented by the certificate delivered by the Investor pursuant hereto (a “**Delivery Failure**”), and if on or after the Legend Removal Date the Investor purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Investor of shares of Common Stock that the Investor anticipated receiving from the Company without any restrictive legend, then the Company shall, within three Trading Days after the Investor’s request, pay cash to the Investor in an amount equal to the Investor’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased, at which point the Company’s obligation to deliver a certificate or credit the Investor’s or its designee’s account at DTC for such shares of Common Stock shall terminate and such shares shall be cancelled (the “**Buy-In Remedy**”). For the avoidance of doubt, with respect to any given Delivery Failure, the Investor shall be entitled, at the election of the Investor, to recovery either pursuant to this Buy-In Remedy or Section 3(c)(ii) of the Notes, but not both.

4.5 **No Short Sales.** So long as the Notes remain outstanding, neither the Investor nor any of its affiliates nor any entity managed or controlled by the Investor (collectively, the “**Restricted Persons**” and each of the foregoing is referred to herein as a “**Restricted Person**”) shall, directly or indirectly, engage in any Short Sales involving the Company’s securities. Notwithstanding the foregoing, it is expressly understood and agreed that nothing contained herein shall (without implication that the contrary would otherwise be true) prohibit any Restricted Person from: (1) selling “long” (as defined under Rule 200 promulgated under Regulation SHO) the Securities; or (2) selling a number of shares of Common Stock equal to the number of Conversion Shares and/or Warrant Shares, as applicable, that such Restricted Person is entitled to receive under a pending Conversion Notice (as defined in the Notes) and/or Exercise Notice (as defined in the Warrants) but has not yet taken possession of so long as such Restricted Person delivers the Conversion Shares purchased pursuant to such Conversion Notice and/or the Warrant Shares purchased pursuant to such Exercise Notice, as applicable, to the purchaser thereof; provided, however, such Restricted Person shall not be required to so deliver any such Conversion Shares

subject to such Conversion Notice or the Warrant Shares purchased pursuant to such Exercise Notice, as applicable, if the Company fails for any reason to deliver such Conversion Shares to the Investor on the applicable settlement date upon the terms and subject to the provisions of the Notes and/or such Warrant Shares to the Investor on the applicable settlement date upon the terms and subject to the provisions of the Warrants, as applicable.

4.6 Volume Restriction. Unless otherwise mutually agreed by the Company and the Investor, the Investor shall not sell Conversion Shares, Warrant Shares or Commitment Shares in an amount, in the aggregate, exceeding the greater of (i) \$125,000 worth of Common Stock during any five consecutive Trading Day period or (ii) 15% of the composite aggregate dollar trading volume of the Common Stock as reported on Bloomberg, L.P. on any Trading Day; provided, however, that if the composite aggregate dollar trading volume of the Common Stock as reported on Bloomberg, L.P. for any Trading Day exceeds \$250,000, then the Investor may sell Conversion Shares, Warrant Shares or Commitment Shares on such Trading Day in an amount, in the aggregate, not exceeding 33% of the composite aggregate dollar trading volume of the Common Stock as reported on Bloomberg, L.P. for such Trading Day; provided, further, however, that the volume restrictions contained in this Section 4.6 shall not apply with respect to any Trading Day on which any sale price for a share of Common Stock is below \$2.50. If the Investor sells any Conversion Shares, Warrant Shares or Commitment Shares on any Trading Day, the Investor shall provide a trading activity report to the Company with respect to sales of Conversion Shares, Warrant Shares and Commitment Shares on such Trading Day.

4.7 Stockholder Approval; NASDAQ Share Cap.

(a) Stockholder Approval. If at any time (such time, the “*Market Cap Threshold Time*”) the aggregate number of Conversion Shares, Warrant Shares and Commitment Shares issuable under this Agreement, the Notes and the Warrants, as applicable, in each case, without regard to any limitations on conversion or exercise set forth in the Notes or Warrants, would equal or exceed 15% of the total outstanding shares of the Common Stock outstanding on the date of this Agreement, then at the next special or annual meeting of stockholders of the Company with a record date after the date of this Agreement (the “*First Stockholder Meeting*”), the Company shall take all action necessary to obtain the approval of its stockholders of the issuance of all of the Conversion Shares, Warrant Shares and Commitment Shares issuable under this Agreement, the Notes and the Warrants, as applicable, in each case, without regard to any limitations on conversion or exercise set forth in the Notes or Warrants, pursuant to and in accordance with the applicable rules and regulations of the Trading Market (such affirmative approval being referred to herein as the “*Stockholder Approval*”, and the date such Stockholder Approval is obtained, the “*Stockholder Approval Date*”). In connection therewith, the Company shall provide each stockholder entitled to vote at the First Stockholder Meeting a proxy statement soliciting the affirmative vote of the Company’s stockholders necessary to obtain the Stockholder Approval at the First Stockholder Meeting, and the Company shall use its commercially reasonable efforts to solicit and obtain the Stockholder Approval at the First Stockholder Meeting and to cause the Board of Directors of the Company to recommend, to the extent possible consistent with its fiduciary duties under Delaware law, to the Company’s stockholders that they vote to approve the Stockholder Approval proposal at the First Stockholder Meeting. If, despite the Company’s commercially reasonable efforts the Stockholder Approval is not obtained at the First Stockholder Meeting, the Company shall seek

to obtain the Stockholder Approval at each special or annual meeting of stockholders of the Company convened after the First Stockholder Meeting (each such meeting, a “**Subsequent Stockholder Meeting**”) until such Stockholder Approval is obtained. In connection therewith, the Company shall provide each stockholder entitled to vote at a Subsequent Stockholder Meeting a proxy statement soliciting the affirmative vote of the Company’s stockholders necessary to obtain the Stockholder Approval at such Subsequent Stockholder Meeting, and the Company shall use its commercially reasonable efforts to solicit and obtain the Stockholder Approval at such Subsequent Stockholder Meeting and to cause the Board of Directors of the Company to recommend, to the extent possible consistent with its fiduciary duties under Delaware law, to the Company’s stockholders that they vote to approve the Stockholder Approval proposal at such Subsequent Stockholder Meeting.

(b) NASDAQ Share Cap. Notwithstanding anything contained herein or in any other Transaction Document to the contrary, until Stockholder Approval is obtained, the Company shall not issue shares of Common Stock to the Investor pursuant to the Transaction Documents, including the issuance Commitment Shares, Conversion Shares and Warrant Shares, in an aggregate amount in excess of 19.99% of the issued and outstanding Common Stock on the date hereof.

5. Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to the Investor as of the Initial Closing Date, the Additional Closing Notice Date and the Additional Closing Date (each a “**Representation Date**”):

5.1 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a Material Adverse Effect.

5.2 Capitalization and Voting Rights. The authorized capital stock of the Company and the shares thereof issued and outstanding were as set forth in the Public Reports as of the dates reflected therein. All of the outstanding shares of Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable. Except as set forth in the Public Reports, this Agreement and the Registration Rights Agreement, there are no agreements or arrangements under which the Company is obligated to register the sale of any securities under the Securities Act. Except as set forth in the Public Reports, no shares of Common Stock are entitled to preemptive rights and there are no outstanding debt securities and no contracts, commitments, understandings, or arrangements by which the Company is or may become bound to issue additional shares of the capital stock of the Company or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or

exchangeable for, any shares of capital stock of the Company other than those issued or granted in the ordinary course of business pursuant to the Company's equity incentive and/or compensatory plans or arrangements. Except for customary transfer restrictions contained in agreements entered into by the Company to sell restricted securities or as set forth in the Public Reports, the Company is not a party to, and it has no knowledge of, any agreement restricting the voting or transfer of any shares of the capital stock of the Company. Except as set forth in the Public Reports, the offer and sale of all capital stock, convertible or exchangeable securities, rights, warrants or options of the Company issued prior to the applicable Representation Date complied with all applicable federal and state securities laws, and no stockholder has any right of rescission or damages or any "put" or similar right with respect thereto that would have a Material Adverse Effect. Except as set forth in the Public Reports, there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the Notes, the Warrants, this Agreement or the Registration Rights Agreement or the consummation of the transactions described herein or therein.

5.3 Authorization; Enforcement. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement, the Notes, the Warrants and the Registration Rights Agreement (the "**Transaction Documents**") and the performance of all obligations of the Company hereunder and thereunder, and the authorization (or reservation for issuance), sale and issuance of the Notes and the Warrants, and the Common Stock into which the Notes and the Warrants are convertible or exercisable, as applicable, have been taken on or prior to the date hereof. Each of the Transaction Documents has been duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

5.4 Valid Issuance of the Conversion Shares, Warrant Shares and Commitment Shares; Reservation of Shares. Each of the Notes and Warrants has been duly authorized and, when issued and paid for in accordance with this Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer under this Agreement and under applicable state and federal securities laws. Upon conversion in accordance with the Notes or exercise in accordance with the Warrants (as the case may be), the Conversion Shares and the Warrant Shares, respectively, when issued and delivered in accordance with the terms of this Agreement and the Notes or the Warrants, as applicable, for the consideration expressed herein and therein, will be duly and validly issued, fully paid and non-assessable, free and clear of all Liens imposed by the Company, other than restrictions on transfer under this Agreement and under applicable state and federal securities laws. The Commitment Shares, when issued and delivered in accordance with the terms of this Agreement, will be duly and validly issued, fully paid and non-assessable and free and clear of all Liens imposed by the Company, other than restrictions on transfer under this Agreement and under

applicable state and federal securities laws. The Company has reserved from its duly authorized capital stock a sufficient number of shares of Common Stock for issuance of the Conversion Shares as required by Section 8 of the Notes and Warrant Shares as required by Section 1(g) of the Warrants.

5.5 Offering. Subject to the truth and accuracy of the Investor's representations set forth in Section 6 of this Agreement, the offer and issuance of the Securities as contemplated by this Agreement are exempt from the registration requirements of the Securities Act of 1933, as amended (the "**1933 Act**"), and the qualification or registration requirements of state securities laws or other applicable "Blue Sky" laws. Neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemptions.

5.6 Public Reports. The Company is current in its filing obligations under the 1934 Act, including without limitation as to its filings of Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K (collectively, the "**Public Reports**"). The Public Reports do not contain any untrue statement of a material fact or omit to state any fact necessary to make any statement therein not misleading. The financial statements included within the Public Reports for the fiscal year ended December 31, 2013 and for each quarterly period thereafter (the "**Financial Statements**") have been prepared in accordance with generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods indicated and with each other, except that unaudited Financial Statements may not contain all footnote required by generally accepted accounting principles. The Financial Statements fairly present, in all material respects, the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of unaudited Financial Statements to normal year-end audit adjustments.

5.7 Compliance With Laws. The Company has not violated any law or any governmental regulation or requirement which violation has had or would reasonably be expected to have a Material Adverse Effect on its business and the Company has not received written notice of any such violation.

5.8 Violations. The consummation of the transactions contemplated by the Transaction Documents and all other documents and instruments required to be delivered in connection therewith will not result in or constitute any of the following: (a) a violation of any provision of the certificate of incorporation, bylaws or other governing documents of the Company; (b) a violation of any provisions of any applicable law or of any writ or decree of any court or governmental instrumentality; (c) a default or an event that, with notice or lapse of time or both, would be a default, breach, or violation of a lease, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust, or other agreement, instrument, or arrangement to which the Company is a party or by which the Company or its property is bound;

(d) an event that would permit any party to terminate any agreement or to accelerate the maturity of any indebtedness or other obligation of the Company; or (e) the creation or imposition of any lien, pledge, option, security agreement, equity, claim, charge, encumbrance or other restriction or limitation on the capital stock or on any of the properties or assets of the Company.

5.9 Consents; Waivers. Except for Stockholder Approval, no consent, waiver, approval or authority of any nature, or other formal action, by any Person, firm or corporation, or any agency, bureau or department of any government or any subdivision thereof, not already obtained, is required in connection with the execution and delivery of the Transaction Documents by the Company or the consummation by the Company of the transactions provided for herein and therein.

5.10 Sarbanes-Oxley Act. The Company is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof.

5.11 Absence of Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company, the Common Stock or any of the Company's officers or directors in their capacities as such.

5.12 Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the Public Reports, except as specifically disclosed in a subsequent Public Report filed prior to the date hereof: (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or affiliate, except pursuant to existing Company equity compensation, employee stock purchase or other employee benefit plans or any product sales agent/distributor equity incentive program. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement, no event, liability, fact, circumstance, occurrence or development has occurred or exists or, to the knowledge of the Company, is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least one Trading Day prior to the date that this representation is made.

5.13 Intellectual Property. The Company has, or has rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights as described in the Public Reports as necessary or required for use in connection with their respective businesses and which the failure to so have could have a Material Adverse Effect (collectively, the “*Intellectual Property Rights*”). None of, and the Company has not received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. The Company has not received, since the date of the latest audited financial statements included within the Public Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company has taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.14 Registration Rights. Other than the Investor or as set forth in the Public Reports, no Person has any right to cause the Company to effect the registration under the 1933 Act of any securities of the Company.

5.15 Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor, to the Company’s knowledge, any other Person acting on its behalf has provided the Investor or its agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Investor will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Investor regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company since February 12, 2014 taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that the Investor does not make nor has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 6 hereof.

5.16 No Integrated Offering. Assuming the accuracy of the Investor’s representations and warranties set forth in Section 6, neither the Company, nor any of its affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that

would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the 1933 Act which would require the registration of any such securities under the 1933 Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

5.17 Seniority. Except for the GE Secured Credit Facility, as of the applicable Representation Date, no Indebtedness or other claim against the Company is senior to the Notes in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

5.18 Bankruptcy Status: Indebtedness. The Company has no current intention or expectation to file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the applicable Representation Date. Schedule 5.18 sets forth as of the date hereof all outstanding secured and unsecured Indebtedness (as defined below) of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, “**Indebtedness**” means (x) any liabilities for borrowed money or amounts owed in excess of \$100,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company’s consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$100,000 due under leases required to be capitalized in accordance with GAAP. The Company is not in default with respect to any Indebtedness.

5.19 Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

5.20 No Disqualification Events. None of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering contemplated hereby, any beneficial owner of 20% or more of the Company’s outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale (each, an “**Issuer Covered Person**”) is subject to any of the “Bad Actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act (a “**Disqualification Event**”), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event.

6. Representations and Warranties of the Investor. The Investor hereby represents, warrants and covenants that:

6.1 Authorization. The Investor has full power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby and has taken all action necessary to authorize the execution and delivery of this Agreement and the Registration Rights Agreement, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby.

6.2 No Public Sale or Distribution. The Investor is (i) acquiring the Commitment Shares, the Notes and the Warrants, and (ii) upon conversion of the Notes will acquire the Conversion Shares and (iii) upon exercise of the Warrants will acquire the Warrant Shares for its own account, not as a nominee or agent, and not with a view towards, or for resale in connection with, the public sale or distribution of any part thereof, except pursuant to sales registered or exempted under the 1933 Act. The Investor is acquiring the Securities hereunder in the ordinary course of its business. The Investor does not presently have any contract, agreement, undertaking, arrangement or understanding, directly or indirectly, with any Person to sell, transfer, pledge, assign or otherwise distribute any of the Securities.

6.3 Accredited Investor Status; Investment Experience. The Investor is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D. The Investor can bear the economic risk of its investment in the Securities, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Securities.

6.4 Reliance on Exemptions. The Investor understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Investor’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Securities.

6.5 Information. The Investor and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities which have been requested by the Investor. The Investor and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by the Investor or its advisors, if any, or its representatives shall modify, amend or affect the Investor’s right to rely on the Company’s representations and warranties contained herein. The Investor understands that its investment in the Securities involves a high degree of risk. The Investor has sought such

accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities. The Investor is relying solely on its own accounting, legal and tax advisors, and not on any statements of the Company or any of its agents or representatives, for such accounting, legal and tax advice with respect to its acquisition of the Securities and the transactions contemplated by this Agreement.

6.6 No Governmental Review. The Investor understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

6.7 Validity; Enforcement; No Conflicts. This Agreement and each Transaction Document to which the Investor is a party have been duly and validly authorized, executed and delivered on behalf of the Investor and shall constitute the legal, valid and binding obligations of the Investor enforceable against the Investor in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies. The execution, delivery and performance by the Investor of this Agreement and each Transaction Document to which the Investor is a party and the consummation by the Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Investor or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Investor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities or "Blue Sky" laws) applicable to the Investor, except in the case of clause (ii) above, for such conflicts, defaults or rights which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Investor to perform its obligations hereunder.

6.8 Organization and Standing. The Investor is a limited liability company duly organized, validly existing and in good standing under the laws of Gibraltar.

6.9 Brokers or Finders. The Investor represents and warrants, to the best of its knowledge, that no finder, broker, agent, financial advisor or other intermediary, nor any purchaser representative or any broker-dealer acting as a broker, is entitled to any compensation in connection with the transactions contemplated by this Agreement or the transactions contemplated hereby.

6.10 Ability to Perform. There are no actions, suits, proceedings or investigations pending against Investor or Investor's assets before any court or governmental agency (nor is there any threat thereof) which would impair in any way Investor's ability to enter into and fully perform its commitments and obligations under this Agreement or the transactions contemplated hereby.

7. Use of Proceeds. The Investor acknowledges that the Company will use the proceeds received from the purchase of the Notes and Warrants for, among other things, (i) costs and expenses relating to the sale of the Notes and Warrants to the Investor and (ii) general working capital purposes, including, but not limited to, the payment of liabilities of the Company, including payments to its senior secured lenders.

8. Rule 144 Availability; Public Information. At all times during the period commencing on the six (6) month anniversary of the Initial Closing Date and ending at such time that all of the Securities can be sold without the requirement to be in compliance with Rule 144(c)(1) under the 1933 Act and otherwise without restriction or limitation pursuant to Rule 144 under the 1933 Act, the Company shall use its reasonable best efforts to ensure the availability of Rule 144 under the 1933 Act to the Investor with regard to the Commitment Shares, the Conversion Shares and the Warrant Shares (assuming a cashless exercise of the Warrants), including compliance with Rule 144(c)(1) under the 1933 Act. If, (i) at any time during the period commencing from the six (6) month anniversary of the Initial Closing Date and ending on the first anniversary of the Additional Closing Date, the Company shall fail for any reason to satisfy the current public information requirement under Rule 144(c) under the 1933 Act (a “**Public Information Failure**”), or (ii) the Company shall fail to take such action as is reasonably requested by the Investor to enable the Investor to sell the Commitment Shares, the Conversion Shares and the Warrant Shares (assuming a cashless exercise of the Warrants) pursuant to Rule 144 under the 1933 Act (including, without limitation, delivering all such legal opinions, consents, certificates, resolutions and instructions to the Company’s transfer agent as may be reasonably requested from time to time by the Investor and otherwise fully cooperate with Investor and Investor’s broker to effect such sale of securities pursuant to Rule 144 under the 1933 Act) (a “**Process Failure**”), then, in either case, in addition to the Investor’s other available remedies, the Company shall pay to a Investor, in cash, as liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Securities, an amount in cash equal to two percent (2.0%) of the aggregate Purchase Price of the Investor’s Securities on the day of a Public Information Failure or Process Failure, as applicable, and on every thirtieth (30th) day (pro rated for periods totaling less than thirty days) thereafter until (a) in the case of a Process Failure, the date such Process Failure is cured, or (b) in the case of a Public Information Failure, the earlier of (1) the date such Public Information Failure is cured and (2) such time that such public information is no longer required for the Investor to transfer the Commitment Shares, the Conversion Shares or the Warrant Shares (assuming a cashless exercise of the Warrants) pursuant to Rule 144 under the 1933 Act. The payments to which the Investor shall be entitled pursuant to this Section 8 are referred to herein as “**Rule 144 Failure Payments**.” Rule 144 Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Rule 144 Failure Payments are incurred and (ii) the third (3rd) Trading Day after the event or failure giving rise to the Rule 144 Failure Payments is cured.

9. **Indemnification.** In consideration of the Investor's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless the Investor and each holder of any Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary in any of the Transaction Documents, (b) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (c) any cause of action, suit or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) and arising out of or resulting from (i) the execution, delivery, performance or enforcement of any of the Transaction Documents, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, or (iii) the status of the Investor or holder of the Securities as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 9 shall be the same as those set forth in Section 6 of the Registration Rights Agreement. Notwithstanding anything to the contrary in this Section 9, the Company shall not be obligated to pay an Indemnitee any sums otherwise due under this Section 9 if the Company has already paid the Indemnitee such sums for the same Indemnified Liabilities under Section 6 of the Registration Rights Agreement.

10. **Participation Rights.** From and after the date hereof through and including the second (2nd) anniversary of the date of this Agreement, neither the Company nor any of its Subsidiaries shall, directly or indirectly, effect any Subsequent Placement (as defined below) unless the Company shall have first complied with this Section 10.

10.1 At least three (3) Trading Days prior to any proposed or intended Subsequent Placement, the Company shall deliver to the Investor a written notice of its proposal or intention to effect a Subsequent Placement (each such notice, a "**Pre-Notice**"), which Pre-Notice shall not contain any information (including, without limitation, material, non-public information) other than: either (A) (i) a statement that the Company proposes or intends to effect a Subsequent Placement, (ii) a statement that the statement in clause (i) above does not constitute material, non-public information and (iii) a statement informing the Investor that it is entitled to receive an Offer Notice (as defined below) with respect to such Subsequent Placement upon its written request or (B) if the existence of such Subsequent Placement is, as of the date of such Pre-Notice, material, non-public information, a statement that the Investor is entitled to receive material, non-public information. Upon the written request of the Investor within three (3)

Trading Days after the Company's delivery to the Investor of such Pre-Notice, and only upon a written request by the Investor, the Company shall promptly, but no later than one (1) Trading Day after such request, deliver to the Investor an irrevocable written notice (the "**Offer Notice**") of any proposed or intended issuance or sale or exchange (the "**Offer**") of the securities being offered (the "**Offered Securities**") in a Subsequent Placement, which Offer Notice shall (w) identify and describe the Offered Securities, (x) describe the price and other terms upon which they are to be issued, sold or exchanged, and the aggregate number or amount of the Offered Securities to be issued, sold or exchanged, (y) identify the Persons (if known) to which or with which the Offered Securities are to be offered, issued, sold or exchanged and (z) offer to issue and sell to or exchange with the Investor in accordance with the terms of the Offer up to 30% of the Offered Securities (the "**Participation Securities**").

10.2 To accept an Offer, in whole or in part, the Investor must deliver a written notice to the Company prior to the end of the third (3rd) Business Day after the Investor's receipt of the Offer Notice (the "**Offer Period**"), setting forth the portion of the Participation Securities that the Investor elects to purchase (in either case, the "**Notice of Acceptance**"). Notwithstanding the foregoing, if the Company desires to modify or amend the terms and conditions of the Offer prior to the expiration of the Offer Period, the Company may deliver to the Investor a new Offer Notice and the Offer Period shall expire on the third (3rd) Business Day after the Investor's receipt of such new Offer Notice.

10.3 The Company shall have five (5) Business Days from the expiration of the Offer Period above (i) to offer, issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by the Investor (the "**Refused Securities**") pursuant to a definitive agreement(s) (the "**Subsequent Placement Agreement**") (or, if the closing of such Offer is to occur more than five (5) Business Days from the expiration of the Offer Period, to enter into the Subsequent Placement Agreement), but only to the offerees described in the Offer Notice (if so described therein) and only upon terms and conditions (including, without limitation, unit prices and interest rates) that are not more favorable to the acquiring Person or Persons or less favorable to the Company than those set forth in the Offer Notice and (ii) to publicly announce the execution of such Subsequent Placement Agreement, which shall be filed with the Commission on a Current Report on Form 8-K with such Subsequent Placement Agreement and any documents contemplated therein filed as exhibits thereto.

10.4 In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 10.3 above), then the Investor may, at its sole option and in its sole discretion, reduce the number or amount of the Participation Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Participation Securities that the Investor elected to purchase pursuant to Section 10.2 above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Company actually proposes to issue, sell or exchange (including Participation Securities to be issued or sold to the Investor pursuant to this Section 10 prior to such reduction) (the "**Reduced Offered Securities**") and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that the Investor so elects to reduce the number or amount of Participation Securities specified in its Notice of Acceptance, the Company may not issue, sell or exchange more than the reduced number or amount of the Reduced Offered Securities unless and until such securities have again been offered to the Investor in accordance with Section 10.1 above.

10.5 Upon the closing of the Subsequent Placement, the Investor shall acquire from the Company, and the Company shall issue to the Investor, the number or amount of Participation Securities specified in its Notice of Acceptance. The purchase by the Investor of any Participation Securities is subject in all cases to the execution and delivery by the Investor of the Subsequent Placement Agreement with respect to such Offer and any other transaction documents related thereto (collectively, the “**Subsequent Placement Documents**”).

10.6 Any Offered Securities not acquired by the Investor or other Persons in accordance with this Section 10 may not be issued, sold or exchanged until they are again offered to the Investor under the procedures specified in this Agreement.

10.7 The Company and the Investor agree that if the Investor elects to participate in the Offer, the Subsequent Placement Documents shall not include any term or provision whereby the Investor shall be required to agree to any restrictions on trading as the Securities or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, any agreement previously entered into with the Company or any instrument received from the Company.

10.8 Notwithstanding anything to the contrary in this Section 10 and unless otherwise agreed to by the Investor, the Company shall either confirm in writing to the Investor that the transaction with respect to the Subsequent Placement has been abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case, in such a manner such that the Investor will not be in possession of any material, non-public information, by the fifth (5th) Business Day following delivery of the Offer Notice. If by such fifth (5th) Business Day, no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by the Investor, such transaction shall be deemed to have been abandoned and the Investor shall not be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries. Should the Company decide to pursue such transaction with respect to the Offered Securities, the Company shall provide the Investor with another Offer Notice and the Investor will again have the right of participation set forth in this Section 10.

10.9 The restrictions contained in this Section 10 shall not apply in connection with the issuance of any Excluded Securities (as defined below).

10.10 For purposes of this Section 10 and for all other purposes of this Agreement, the following definitions shall apply:

(a) “**Approved Stock Plan**” means, collectively, any (a) employee benefit plan which has been approved by the board of directors of the Company prior to or subsequent to the date hereof pursuant to which shares of Common Stock, options to purchase Common Stock, restricted shares of Common Stock, restricted stock units, or other form of equity compensation (collectively, “**Employee Equity Compensation Awards**”) may be issued to any employee, officer, consultant or director for services provided to the Company in their capacity as such, and (b) any program or plan approved by the board of directors of the company prior to or

subsequent to the date hereof pursuant to which shares of Common Stock, options to purchase Common Stock, restricted shares of Common Stock, restricted stock units, other forms of equity compensation and credit for the foregoing (collectively, “*Sales Agent Equity Awards*”; Employee Equity Compensation Awards and Sales Agent Equity Awards being referred to herein collectively as “*Equity Compensation Awards*”).

(b) “*Business Day*” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(c) “*Convertible Securities*” means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

(d) “*Excluded Securities*” means (A) Equity Compensation Awards to directors, officers, consultants or employees of the Company in their capacity as such pursuant to an Approved Stock Plan (as defined above), provided that (1) all such issuances (taking into account the shares of Common Stock issuable upon exercise of such options) after the date hereof pursuant to this clause (A) do not, in the aggregate, exceed more than 15% of the Common Stock issued and outstanding immediately prior to the date hereof and (2) the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects the Investor; (B) the Securities; (C) shares of Common Stock issuable upon conversion of Convertible Securities that are either (1) outstanding as of the date hereof or (2) issued in accordance with the provisions of this Section 10 and (D) shares of Common Stock or Convertible Securities issued or issuable in connection with transactions with strategic industry, business or operating partners that provide benefits to the Company other than the investment of funds, provided, that (1) the primary purpose of such issuance is not to raise capital, (2) the purchasers or acquirers of the securities in such issuance does not include any affiliate of the Company or any of its Subsidiaries and solely consists of either (x) the actual strategic industry, business or operating partners or (y) the stockholders, partners or members of such strategic industry, business or operating partners, and (3) any such shares of Common Stock and/or Convertible Securities (and all shares of Common Stock issuable upon conversion or exercise of such Convertible Securities) are issued at a fixed price and not as a result of a Variable Rate Transaction.

(e) “*Variable Rate Transaction*” means a transaction in which the Company or any Subsidiary (i) issues or sells any Convertible Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such Convertible Securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock, including, without limitation, pursuant to any “weighted average” or “full-ratchet” anti-dilution provision, or (ii) enters into any agreement (including, without limitation, an equity line of credit or an “at-the-market” offering) whereby the Company or any Subsidiary may sell securities at a future determined price.

(f) “**Subsequent Placement**” means any, direct or indirect, issuance, offer, sale, grant of any option or right to purchase, or otherwise dispose of (or announcement of any issuance, offer, sale, grant of any option or right to purchase or other disposition of) any equity or debt security or any equity-linked or related security (including, without limitation, any “equity security” (as that term is defined under Rule 405 promulgated under the 1933 Act), any Convertible Securities, any debt, any preferred stock or any purchase rights) of the Company or any of its Subsidiaries, including, without limitation, pursuant to Section 3(a)(9) or Section 3(a)(10) of the 1933 Act.

11. Exclusivity. From and after the date hereof and so long as the Notes and Warrant remain outstanding, neither the Company nor any of its affiliates or Subsidiaries, nor any of its or their respective officers, employees, directors, agents or other representatives, will, without the prior written consent of the Investor (which consent may be withheld, delayed or conditioned in the Investor’s sole discretion), directly or indirectly: (a) solicit, initiate, encourage or accept any other inquiries, proposals or offers from any Person (other than the Investor) relating to any exchange (i) of any security of the Company or any of its Subsidiaries for any other security of the Company or any of its Subsidiaries, except to the extent (x) consummated pursuant to an exchange registered under a registration statement of the Company filed pursuant to the 1933 Act and declared effective by the Commission or (y) such exchange is exempt from registration pursuant to an exemption provided under the 1933 Act (other than Section 3(a)(10) of the 1933 Act) or (ii) of any indebtedness or other securities of, or claim against, the Company or any of its Subsidiaries relying on the exemption provided by Section 3(a)(10) of the 1933 Act (any such transaction described in clauses (i) or (ii), an “**Exchange Transaction**”); (b) enter into, effect, alter, amend, announce or recommend to its stockholders any Exchange Transaction with any Person (other than the Investor); or (c) participate in any discussions, conversations, negotiations or other communications with any Person (other than the Investor) regarding any Exchange Transaction, or furnish to any Person (other than the Investor) any information with respect to any Exchange Transaction, or otherwise cooperate in any way, assist or participate in, facilitate or encourage any effort or attempt by any Person (other than the Investor) to seek an Exchange Transaction involving the Company or any of its Subsidiaries. Notwithstanding the foregoing or anything contained herein to the contrary, neither the Company nor any of its affiliates or Subsidiaries, nor any of its or their respective officers, employees, directors, agents or other representatives, will, without the prior written consent of the Investor (which consent may be withheld, delayed or conditioned in the Investor’s sole discretion), directly or indirectly, cooperate in any way, assist or participate in, facilitate or encourage any effort or attempt by any Person (other than the Investor) to effect any acquisition of securities or indebtedness of, or claim against, the Company by such Person from an existing holder of such securities, indebtedness or claim in connection with a proposed exchange of such securities or indebtedness of, or claim against, the Company (whether pursuant to Section 3(a)(9) or 3(a)(10) of the 1933 Act or otherwise) (a “**Third Party Exchange Transfer**”). The Company, its affiliates and Subsidiaries, and each of its and their respective officers, employees, directors, agents or other representatives shall immediately cease and cause to be terminated all existing discussions, conversations, negotiations and other communications with any Persons (other than the Investor) with respect to any of the foregoing. The Company shall promptly (and in no event later than 24

hours after receipt) notify (which notice shall be provided orally and in writing and shall identify the Person making the inquiry, request, proposal or offer and set forth the material terms thereof) the Investor after receipt of any inquiry, request, proposal or offer relating to any Exchange Transaction or Third Party Exchange Transfer, and shall promptly (and in no event later than 24 hours after receipt) provide copies to the Investor of any written inquiries, requests, proposals or offers relating thereto. The Company agrees that it and its affiliates and Subsidiaries, and each of its and their respective officers, employees, directors, agents or other representatives Subsidiaries will not enter into any agreement with any Person subsequent to the date hereof which prohibits the Company from providing any information to the Investor in accordance with this provision. As used in this Agreement, "**Person**" means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act. For all purposes of this Agreement, violations of the restrictions set forth in this Section 11 by any Subsidiary or affiliate of the Company, or any officer, employee, director, agent or other representative of the Company or any of its Subsidiaries or affiliates shall be deemed a direct breach of this Section 11 by the Company.

12. Miscellaneous

12.1 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of the Securities), but excluding any Person to whom the Investor sells Conversion Shares, Warrant Shares or Commitment Shares. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

12.2 Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Illinois, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Illinois or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Illinois. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Chicago, Illinois, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY**

TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

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

12.4 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next Trading Day, (c) five (5) Trading Days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to (a) in the case of the Company, to Amedica Corporation, 1885 West 2100 South, Salt Lake City, UT 84119, Telephone Number: (801) 839-3500, Fax: (801) 503-9255, Attention: Eric K. Olson, Chief Executive Officer, with a copy (which shall not constitute notice) to Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, Telephone Number (617) 542-6000, Fax: (617) 542-2241, Attention: Anthony E. Hubbard, Esq., or (b) in the case of the Investor, to MG Partners II Ltd., c/o Magna Group, 5 Hanover Square, New York, NY 10004, Telephone Number: (347) 491-4240, Fax: (646) 737-9948, Attention: Marc Manuel, with a copy (which shall not constitute notice) to Greenberg Traurig, LLP, The MetLife Building, 200 Park Avenue, New York, New York 10166, Telephone Number (212) 801-9200, Fax: (212) 801-6400, Attention: Anthony J. Marsico, Esq.

12.5 Finder's Fees. Each party represents that it neither is nor will be obligated for any finders' fee or commission in connection with this transaction. The Company shall indemnify and hold harmless each Investor from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

12.6 Amendments and Waivers. No provision of this Agreement may be amended other than by a written instrument signed by both parties hereto. No provision of this Agreement may be waived other than in a written instrument signed by the party against whom enforcement of such waiver is sought. No failure or delay in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercises thereof or of any other right, power or privilege.

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

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

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

12.10 Interpretation. Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender include all genders, (c) “including” has the inclusive meaning frequently identified with the phrase “but not limited to” and (d) references to “hereunder” or “herein” relate to this Agreement.

12.11 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, the Investor and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

12.12 Fees and Expenses. Each party shall bear its own fees and expenses related to the transactions contemplated by the Transaction Documents; provided, however, that \$50,000 (less \$15,000 heretofore paid by the Company to the Investor) shall be withheld by the Investor from its applicable Initial Purchase Price at the Initial Closing as a non-accountable and non-refundable document preparation fee (the “*Document Preparation Fee*”) in connection with the preparation, negotiation, execution and delivery of the Transaction Documents and legal due diligence of the Company, and shall be paid directly to the Investor’s counsel on the Initial Closing Date by wire transfer of immediately available funds. For the avoidance of doubt, the Document Preparation Fee (and any portion thereof) shall be non-refundable when paid. The Company shall pay all transfer agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion or exercise notice delivered by a Investor), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Investor.

12.13 No Frustration. So long as the Investor or its affiliates remain the record holders of at least 20% of the original face amount of either of the Notes, neither the Company nor any of its affiliates or Subsidiaries, nor any of its or their respective officers, employees, directors, agents or other representatives, will, without the prior written consent of the Investor (which consent may be withheld, delayed or conditioned in the Investor's sole discretion), effect, enter into, announce or recommend to its stockholders any agreement, plan, arrangement or transaction (or issue, amend or waive any security) that would or would reasonably be expected to (i) constitute or involve a Variable Rate Transaction or (ii) restrict, delay, conflict with or impair the ability or right of the Company to timely perform its obligations under this Agreement, the Notes or the Warrants, including, without limitation, the obligation of the Company to timely deliver shares of Common Stock to the Investor or its affiliates in accordance with this Agreement, the Notes or the Warrants.

12.14 No Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act), or any person acting on behalf of the Company or such affiliate will sell, offer for sale, or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the 1933 Act) which will be integrated with the sale of the Securities in a manner which would require the registration of the Securities under the 1933 Act or require stockholder approval under the rules and regulations of the Trading Market and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of the Trading Market, with the issuance of Securities contemplated hereby.

13. Additional Defined Terms. In addition to the terms defined elsewhere in this Agreement, the Notes or the Warrants the following terms have the meanings set forth in this Section 11:

13.1 "**1934 Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

13.2 "**Additional Note Conditions**" means, as of any given date of determination: (i) all the Conversion Shares may be issued in full without violating the rules or regulations of the Trading Market on which the Common Stock is then listed or designated for quotation (as applicable); (ii) no public announcement of a pending, proposed or intended Fundamental Transaction shall have occurred which has not been abandoned, terminated or consummated; (iii) the Company shall have no knowledge of any fact that would reasonably be expected to cause any Registration Statement required to be filed pursuant to the Registration Rights Agreement to not be effective or the prospectus contained therein to not be available for the resale of all of the Registrable Securities in accordance with the terms of the Registration Rights Agreement; (iv) the Investor shall not be in possession of any material, non-public information provided to it by the Company, any of its affiliates or any of their respective employees, officers, representatives, agents or the like (other than any material, non-public information that will be disclosed in the Additional 8-K); (v) there shall not have occurred any suspension of electronic trading or settlement services by the DTC with respect to the Common Stock occurs which is continuing or any receipt by the Company of any notice from DTC to the effect that a suspension of electronic trading or settlement services by DTC with respect to the Common Stock is being imposed or is contemplated (unless, prior to such suspension, DTC shall have notified the Company in writing that DTC has determined not to impose any such

suspension); (vi) no Public Information Failure shall exist and (vii) there shall not have occurred an Event of Default (as defined in the Initial Note) or an event that with the passage of time or giving of notice would constitute an Event of Default (as defined in the Initial Note).

13.3 “**Additional Note Conditions Failure**” means that on any day during the period commencing on the Additional Closing Notice Date through the Additional Closing Date, the Additional Note Conditions have not been satisfied (or waived in writing by the Investor).

13.4 “**Commission**” means the United States Securities and Exchange Commission.

13.5 “**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any Convertible Security, Option or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

13.6 “**Effective Date**” means the date that the Initial Registration Statement (as defined in the Registration Rights Agreement) filed pursuant to the Registration Rights Agreement has been declared effective by the Commission.

13.7 “**GE Secured Credit Facility**” means the secured credit facility of the Company established pursuant to that Loan and Security Agreement dated as of December 17, 2012, by and among General Electric Capital Corporation, as lender and administrative and collateral agent, the lenders thereto, and the Company (as the same has been amended prior to the date hereof and as it may be amended following the date hereof, and including any senior secured credit facility provided to the Company by one or more commercial lenders that shall replace the GE Secured Credit Facility).

13.8 “**Liens**” means a lien, charge pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

13.9 “**Material Adverse Effect**” means (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company’s ability to perform in any material respect on a timely basis its obligations under any Transaction Document.

13.10 “**Registrable Securities**” shall have the meaning set forth in the Registration Rights Agreement.

13.11 “**Short Sales**” shall mean “short sales” as defined in Rule 200 promulgated under Regulation SHO under the 1934 Act.

13.12 “**Subsidiary**” shall mean any corporation or other entity of which at least a majority of the securities or other ownership interest having ordinary voting power for the election of directors or other persons performing similar functions are at the time owned directly or indirectly by the Company and/or any of its other Subsidiaries.

13.13 “**Trading Day**” means any day on which the Common Stock is traded on the Trading Market, provided that “**Trading Day**” shall not include any day on which the Common Stock is scheduled to trade on the Trading Market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on the Trading Market (or if the Trading Market does not designate in advance the closing time of trading on the Trading Market, then during the hour ending at 4:00:00 p.m., New York City time) unless such day is otherwise designated as a Trading Day in writing by the Investor.

13.14 “**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the OTC Bulletin Board, The NASDAQ Global Market, The NASDAQ Global Select Market, The NASDAQ Capital Market, the New York Stock Exchange, NYSE Arca, the NYSE MKT, or the OTCQX Marketplace or the OTCQB Marketplace operated by OTC Markets Group Inc. (or any successor to any of the foregoing).

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Securities Purchase Agreement to be duly executed and delivered as of the date provided above.

THE COMPANY

AMEDICA CORPORATION

By: /s/ Eric K. Olson

Name: Eric K. Olson

Title: Chief Executive Officer

Securities Purchase Agreement – Signature Page

IN WITNESS WHEREOF, the parties have caused this Securities Purchase Agreement to be duly executed and delivered as of the date provided above.

THE INVESTOR:

MG PARTNERS II LTD.

By: /s/ Joshua Sason

Name: Joshua Sason

Title: Managing Member

Securities Purchase Agreement – Signature Page

Schedule I

(1)	(2)	(3)	(4)	(5)	(6)	(7)
<u>Investor</u>	<u>Address and Facsimile Number</u>	<u>Original Principal Amount of Initial Notes</u>	<u>Number of Warrant Shares</u>	<u>Original Principal Amount of Additional Notes</u>	<u>Initial Purchase Price</u>	<u>Additional Purchase Price</u>
MG Partners II Ltd.	c/o Magna Group 5 Hanover Square New York, NY 10004 Tel: (347) 491-4240 Fax: (646) 737-9948 Attention: Marc Manuel with a copy (which shall not constitute notice) to Greenberg Traurig, LLP The MetLife Building 200 Park Avenue New York, New York 10166 Tel: (212) 801-9200 Fax: (212) 801-6400 Attention: Anthony J. Marsico, Esq.	\$2,900,000	568,889	\$ 3,500,000	\$ 2,500,000	\$ 3,500,000

EXHIBIT A
FORM OF NOTES

EXHIBIT B

FORM OF WARRANTS

EXHIBIT C

FORM OF REGISTRATION RIGHTS AGREEMENT

EXHIBIT D

FORM OF TRANSFER AGENT INSTRUCTION LETTER

EXHIBIT E

FORM OF OFFICER'S CERTIFICATE

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "*Agreement*") is made and entered into as of June 30, 2014, between **AMEDICA CORPORATION**, a Delaware corporation (the "*Company*"), and **MG PARTNERS II LTD.**, a company with limited liability organized under the laws of Gibraltar (the "*Investor*").

In connection with the Securities Purchase Agreement, dated as of June 30, 2014, entered into by the Company and the Investor (the "*Securities Purchase Agreement*"), the Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, to issue and sell to the Investor (i) certain notes of the Company (collectively, the "*Notes*"), which will, among other things, be convertible into shares of the Company's common stock, \$0.01 par value per share (the "*Common Stock*") issuable to the Investor (as converted, the "*Conversion Shares*") in accordance with the terms of the Notes and (ii) certain Warrants, which will be exercisable to purchase shares of Common Stock (the "*Warrant Shares*") in accordance with the terms of the Warrants.

Pursuant to the terms of, and in consideration for the Investor entering into, the Securities Purchase Agreement, the Company has issued to the Investor the Commitment Shares (as defined in the Securities Purchase Agreement) in accordance with the terms of the Securities Purchase Agreement.

To induce the Investor to consummate the transactions contemplated by the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "*1933 Act*"), and applicable state securities laws.

The Company and the Investor hereby agrees as follows:

Section 1. Definitions. Capitalized terms used and not otherwise defined herein that are defined in the Securities Purchase Agreement shall have the meanings given such terms in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Initial Registration Statement" means the initial Registration Statement filed pursuant to this Agreement.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Prospectus" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the SEC pursuant to the 1933 Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Effectiveness Deadline” means, (i) with respect to the Initial Registration Statement required to be filed hereunder, the earlier of (A) the 105th calendar day after the date of hereof in the event that such Registration Statement is subject to a limited or full review by the SEC and (B) the fifth Trading Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review, and (ii) with respect to any additional Registration Statements which may be required pursuant to Section 2, the earlier of (A) the 90th calendar day following the date on which an additional Registration Statement is required to be filed hereunder in the event that such Registration Statement is subject to a limited or full review by the SEC and (B) the fifth Trading Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review.

“Filing Deadline” means, with respect to the Initial Registration Statement required hereunder, the 45th calendar day after the date of hereof, and, with respect to any additional Registration Statements which may be required pursuant to Section 2, the earliest practicable date following the date on which the Company is permitted to file such additional Registration Statement related to the Registrable Securities (taking into account any Staff position with respect to date on which the Staff will permit such additional Registration Statement to be filed with the SEC).

“Registrable Securities” means, as of any date of determination, (a) all Conversion Shares then issuable upon conversion in full of the Notes (assuming on such date the Notes are converted in full without regard to any conversion limitations therein), (b) all Warrant Shares then issuable upon exercise in full of the Warrants (assuming on such date the Warrants are exercised in full without regard to any exercise limitations therein), (c) all of the Commitment Shares and (d) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities for so long as (x) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the SEC under the 1933 Act and such Registrable Securities have been disposed of in accordance with such effective Registration Statement, or (y) such Registrable Securities have been previously sold in accordance with Rule 144; provided, however, that the Company shall not be required to maintain the effectiveness, or file another Registration Statement hereunder with respect to any Registrable Securities that are not subject to the current public information requirement under Rule 144 and that are eligible for resale without volume or manner-of-sale restrictions without current public information pursuant to Rule 144.

“Registration Statement” means any registration statement required to be filed hereunder pursuant to Section 2, including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

“Rule 144” means Rule 144 promulgated by the SEC pursuant to the 1933 Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such rule.

“Rule 415” means Rule 415 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same purpose and effect as such Rule.

“SEC” means the United States Securities and Exchange Commission.

Section 2. Registration Statement Requirements.

(a) The Company shall prepare and, as soon as practicable, but in no event later than the Filing Deadline, file with the SEC the Initial Registration Statement on Form S-1, or such other form reasonably acceptable to the Investor, covering the resale by the Investor of all or such portion of the Registrable Securities (as determined on the date of such filing and the effective date of such Registration Statement, as applicable) as permitted by the SEC (provided that the Company shall use diligent efforts to advocate with the SEC for the registration of all of the Registrable Securities) pursuant to Rule 415. In no event shall the Company include any securities other than Registrable Securities on any Registration Statement pursuant to this Section 2 without the prior written consent of the Investor. The Company shall use its commercially reasonable efforts to have such Initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms hereof, declared effective by the SEC as soon as practicable, but in no event later than the applicable Effectiveness Deadline. If at any time all Registrable Securities are not covered by the Initial Registration Statement filed pursuant to this Section 2, the Company shall file with the SEC one or more additional Registration Statements so as to cover all of the Registrable Securities not covered by the Initial Registration Statement, in each case, as soon as practicable (taking into account any Staff position with respect to date on which the Staff will permit such additional Registration Statement(s) to be filed with the SEC), but in no event later than the applicable Filing Deadline for such additional Registration Statement(s); provided, however, that the Company shall not be required to file more than one additional Registration Statement in any rolling six (6) month period. By 9:30 a.m. New York time on the business day following the effective date of each Registration Statement filed in accordance herewith, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Initial Registration Statement. By 9:30 a.m. New York time on the Business Day following the effective date of each Registration Statement filed in accordance herewith, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Initial Registration Statement.

(b) If the staff of the SEC (the **“Staff”**) or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities that does not permit such Registration Statement to become effective and be used

for resales by the Investor on a delayed or continuous basis under Rule 415 at then-prevailing market prices (and not fixed prices) (or as otherwise may be reasonably acceptable to the Investor), or if after the filing of the Initial Registration Statement with the SEC pursuant to this Section 2, the Company is otherwise required by the Staff or the SEC to reduce the number of Registrable Securities included in such Initial Registration Statement, then the Company shall reduce the number of Registrable Securities to be included in such Initial Registration Statement (with the prior consent, not to be unreasonably withheld, of the Investor as to the specific Registrable Securities to be removed therefrom) until such time as the Staff and the SEC shall so permit such Registration Statement to become effective and be used as aforesaid. Notwithstanding anything in this Agreement to the contrary, if after giving effect to the actions referred to in the immediately preceding sentence, the Staff or the SEC does not permit such Registration Statement to become effective and be used for resales by the Investor on a delayed or continuous basis under Rule 415 at then-prevailing market prices (and not fixed prices) (or as otherwise may be reasonably acceptable to the Investor), the Company shall not request acceleration of the effective date of such Registration Statement, the Company shall promptly (but in no event later than 48 hours) request the withdrawal of such Registration Statement pursuant to Rule 477 under the 1933 Act, and the Effectiveness Deadline shall automatically be deemed to have elapsed with respect to such Registration Statement at such time as the Staff or the SEC has made a final and non-appealable determination that the SEC will not permit such Registration Statement to be so utilized (unless prior to such time the Company and the Investor have received indications from the Staff or the SEC reasonably acceptable to the Investor that a new Registration Statement filed by the Company with the SEC promptly thereafter may be so utilized). In the event of any reduction in Registrable Securities pursuant to this paragraph, the Company shall file additional Registration Statements as permitted by the Staff or the SEC in accordance with this Section 2 until such time as all Registrable Securities have been included in Registration Statements that have been declared effective and the prospectus contained therein is available for use by the Investor; provided, however, that the Company shall not be required to file more than one additional Registration Statement in any rolling six (6) month period.

(c) In addition, in the event that the Staff or the SEC requires the Investor seeking to resell securities under a Registration Statement filed pursuant to this Agreement to be specifically identified as an “underwriter” in order to permit such Registration Statement to become effective, and the Investor does not consent to being so named as an underwriter in such Registration Statement, then, in each such case, the Company shall reduce the total number of Registrable Securities to be registered on behalf of the Investor, until such time as the Staff or the SEC does not require such identification or until the Investor accepts such identification and the manner thereof. If notwithstanding any such reduction, the Staff or the SEC still requires that the Investor be specifically identified as an “underwriter” in order to permit such Registration Statement to be declared effective, the Investor may, at its option, elect to have no Registrable Securities of the Investor be included in such Registration Statement; provided, that solely for purposes of Section 12(b) of the Initial Notes (as defined in the Securities Purchase Agreement), such Registration Statement shall be deemed to have been declared effective as of the date of such election by the Investor (or, if the Company has resolved all other comments of the Staff and the SEC to the Registration Statement on or prior to the Effectiveness Deadline, as of the date of such election by the Investor, such Registration Statement shall be deemed to have been declared effective as of the Effectiveness Deadline).

Section 3. Registration Procedures. If and whenever the Company is required by the provisions of Section 2 to effect the registration of any Registrable Securities under the 1933 Act, the Company will, as expeditiously as possible:

(a) subject to the timelines provided in this Agreement, prepare and file the Registration Statement with the SEC, with respect to such Registrable Securities and use its reasonable best efforts to cause such Registration Statement to become and remain effective for the period of the distribution contemplated thereby (determined as herein provided), respond as promptly as commercially practicable to any comments received from the SEC with respect to a Registration Statement or any amendment thereto and file any pre-effective amendments with respect to a Registration Statement as promptly as reasonable possible;

(b) promptly provide to Investors copies of all filings and SEC letters of comment (provided that the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any subsidiary) and notify the Investors (by telecopier or by e-mail addresses provided by the Investors) on or before the second business day thereafter that the Company receives notice that (i) the SEC has no comments or no further comments on the registration statement, and (ii) the registration statement has been declared effective;

(c) prepare and file with the SEC such amendments and supplements to such Registration Statement and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and prepare and file with the SEC such additional Registration Statements as may be required hereunder and to keep each additional Registration Statement effective;

(d) furnish to the Investor such number of copies of the Registration Statement and the prospectus included therein (including each preliminary prospectus) as the Investor reasonably may request in order to facilitate the public sale or their disposition of the Registrable Securities covered by such Registration Statement or make them electronically available;

(e) use its commercially reasonable efforts to register or qualify the Registrable Securities covered by such Registration Statement under the securities or "Blue Sky" laws of such jurisdictions as the Investor shall request in writing, provided, however, that the Company shall not for any such purpose be required to qualify to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to service of process in any such jurisdiction;

(f) if applicable, list the Registrable Securities covered by such Registration Statement with the principal market or exchange on which the Common Stock is then listed;

(g) promptly notify the Investor of the Company's becoming aware that a prospectus relating thereto is required to be delivered under the 1933 Act, of the happening of any event or passage of time of which the Company has knowledge as a result of which the prospectus contained 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 in light of the circumstances then existing or the financial

statements included therein ineligible for inclusion or which becomes subject to a SEC, state or other governmental order suspending the effectiveness of the Registration Statement covering any of the Registrable Securities. The Investor hereby covenants that it will not sell any Registrable Securities pursuant to such prospectus during the period commencing at the time at which the Company gives the Investor notice of the suspension of the use of such prospectus in accordance with this Section 3(g) and ending at the time the Company gives the Investor notice that the Investor may thereafter effect sales pursuant to the prospectus, or until the Company delivers to the Investor or files with the SEC an amended or supplemented prospectus.

(h) The Company shall cooperate with any broker-dealer through which the Investor proposes to resell its Registrable Securities in effecting a filing with the FINRA Corporate Financing Department pursuant to FINRA Rule 5110, as requested by the Investor, and the Company shall pay the filing fee required by such filing within two (2) business days of request therefor.

Section 4. Provision of Documents. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of the Investor that the Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and its intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

Section 5. Expenses. All expenses incurred by the Company in complying with Section 2, including, without limitation, all registration and filing fees, printing expenses (if required), fees and disbursements of counsel and independent public accountants for the Company, fees and expenses (including reasonable counsel fees) incurred in connection with complying with state securities or "Blue Sky" laws, fees of the Financial Industry Regulatory Authority, Inc. ("**FINRA**") in connection with any filing with FINRA pursuant to FINRA Rule 5110 that may be required to be made by any broker through which the Investor intends to make sales of Registrable Securities, transfer taxes, and fees of transfer agents and registrars, are called "**Registration Expenses**." The Company will pay all Registration Expenses in connection with any Registration Statement described in Section 2; provided, however, the Company shall not be responsible for paying or reimbursing any underwriting discounts, selling commissions or legal fees or expenses of legal counsel for the Investor (except to the extent expressly provided in the Securities Purchase Agreement).

Section 6. Indemnification.

(a) In the event any Registrable Securities are included in any Registration Statement under this Agreement, to the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend the Investor, each of its directors, officers, shareholders, members, partners, employees, agents, advisors, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) and each Person, if any, who controls the Investor within the meaning of Section 15 of the 1933 Act or Section 20 of the Securities Exchange Act of 1934 Act, as

amended (the “*1934 Act*”) and each of the directors, officers, shareholders, members, partners, employees, agents, advisors, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) of such controlling Persons (each, an “*Investor Party*” and collectively, the “*Investor Parties*”), against any losses, obligations, claims, damages, liabilities, judgments, fines, penalties, damages associated with charges, costs (including, without limitation, court costs, reasonable attorneys’ fees, costs of defense and investigation), amounts paid in settlement or expenses, joint or several, (collectively, “*Claims*”) incurred in investigating, preparing or defending any action, claim, lawsuit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an Investor Party is or may be a party thereto (“*Indemnified Damages*”), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other “Blue Sky” laws of any jurisdiction in which Registrable Securities are offered (“*Blue Sky Filing*”), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) any untrue statement or alleged untrue statement of a material fact contained in any prospectus (as amended or supplemented) or in any prospectus supplement or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading (the matters in the foregoing clauses (i) and (ii) being, collectively, “*Violations*”). Subject to Section 6(c), the Company shall reimburse the Investor Parties, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Investor Party arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Investor Party for such Investor Party expressly for use in connection with the preparation of such Registration Statement, prospectus or prospectus supplement or any such amendment thereof or supplement thereto; (ii) shall not be available to the Investor to the extent such Claim is based on a failure of the Investor to deliver or to cause to be delivered the prospectus (as amended or supplemented) made available by the Company (to the extent applicable), including, without limitation, a corrected prospectus, if such prospectus (as amended or supplemented) or corrected prospectus was timely made available by the Company pursuant to Section 3 and then only if, and to the extent that, following the receipt of the corrected prospectus no grounds for such Claim would have existed; and (iii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Investor Party and shall survive the transfer of any of the Registrable Securities by the Investor pursuant to Section 8(f).

(b) In connection with any Registration Statement in which the Investor is participating, the Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company,

each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an “**Company Party**”), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case, to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information relating to the Investor furnished to the Company by the Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(c) and the below provisos in this Section 6(b), the Investor will reimburse a Company Party any legal or other expenses reasonably incurred by such Company Party in connection with investigating or defending any such Claim; provided, however, the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Investor, which consent shall not be unreasonably withheld or delayed, provided further that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to the Investor as a result of the applicable sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Company Party and shall survive the transfer of any of the Registrable Securities by the Investor pursuant to Section 8(f).

(c) Promptly after receipt by an Investor Party or Company Party (as the case may be) under this Section 6 of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving a Claim, such Investor Party or Company Party (as the case may be) shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Investor Party or the Company Party (as the case may be); provided, however, an Investor Party or Company Party (as the case may be) shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Claim and to employ counsel reasonably satisfactory to such Investor Party or Company Party (as the case may be) in any such Claim; or (iii) the named parties to any such Claim (including, without limitation, any impleaded parties) include both such Investor Party or Company Party (as the case may be) and the indemnifying party, and such Investor Party or such Company Party (as the case may be) shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Investor Party or such Company Party and the indemnifying party (in which case, if such Investor Party or such Company Party (as the case may be) notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof on behalf of the indemnified party and such counsel shall be at the expense of the indemnifying party, provided further that in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for all Investor Parties or Company Parties (as the case may

be). The Company Party or Investor Party (as the case may be) shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Company Party or Investor Party (as the case may be) which relates to such action or Claim. The indemnifying party shall keep the Company Party or Investor Party (as the case may be) reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Company Party or Investor Party (as the case may be), consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Company Party or Investor Party (as the case may be) of a release from all liability in respect to such Claim or litigation, and such settlement shall not include any admission as to fault on the part of the Company Party. For the avoidance of doubt, the immediately preceding sentence shall apply to Sections 6(a) and 6(b) hereof. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Company Party or Investor Party (as the case may be) with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Investor Party or Company Party (as the case may be) under this Section 6, except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action.

(d) No Person involved in the sale of Registrable Securities who is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to indemnification from any Person involved in such sale of Registrable Securities who is not guilty of fraudulent misrepresentation.

(e) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred; provided that the Investor shall promptly reimburse the Company for all such payments to the extent a court of competent jurisdiction determines that any Investor Party was not entitled to such payments.

(f) The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Company Party or Investor Party against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law; provided, however, that the Company shall not be obligated to pay an Investor Party for Indemnified Damages associated with a particular Claim under this Section 6 if the Company has already paid the Investor Party such Indemnified Damages under Section 9 of the Securities Purchase Agreement.

Section 7. Contribution. To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under

Section 6 to the fullest extent permitted by law; provided, however: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6 of this Agreement, (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to such Registration Statement. Notwithstanding the provisions of this Section 7, the Investor shall not be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by the Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that the Investor has otherwise been required to pay, or would otherwise be required to pay under Section 6(b), by reason of such untrue or alleged untrue statement or omission or alleged omission.

Section 8. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by the Investor of any of their respective obligations under this Agreement, the Investor or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and the Investor agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert the defense that a remedy at law would be adequate.

(b) Compliance. The Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to a Registration Statement.

(c) Piggy-Back Registrations. If, at any time prior to the six month anniversary of the date hereof and in each such case subject to Section 2(b) hereof, there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the SEC a registration statement relating to an offering for its own account or the account of others under the 1933 Act of any of its equity securities, other than a registration statement on Form S-4 or Form S-8 (each as promulgated under the 1933 Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's equity compensation, employee stock purchase, other employee benefit plans or sales agent/distributor equity incentive programs, then the Company shall deliver to the Investor a written notice of such determination and, if within fifteen days after the date of the delivery of such notice, the Investor shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities the Investor requests to be registered; provided, however, that the Company shall not be required to register any Registrable Securities pursuant to this Section 8(c) that are the subject of a then effective Registration Statement.

(d) Amendments and Waivers. No provision of this Agreement may be (i) amended other than by a written instrument signed by both parties hereto or (ii) waived other than in a written instrument signed by the party against whom enforcement of such waiver is sought. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(e) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Securities Purchase Agreement.

(f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of the Investor. The Investor may assign its rights hereunder if: (i) the Investor agrees in writing with such transferee or assignee (as the case may be) to assign all or any portion of such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such transfer or assignment (as the case may be); (ii) the Company is, within a reasonable time after such transfer or assignment (as the case may be), furnished with written notice of (a) the name and address of such transferee or assignee (as the case may be), and (b) the securities with respect to which such registration rights are being transferred or assigned (as the case may be); (iii) immediately following such transfer or assignment (as the case may be) the further disposition of such securities by such transferee or assignee (as the case may be) is restricted under the 1933 Act or applicable state securities laws if so required; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence such transferee or assignee (as the case may be) agrees in writing with the Company to be bound by all of the provisions contained herein; (v) such transfer or assignment (as the case may be) shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement and the Notes or the Warrants, as applicable; and (vi) such transfer or assignment (as the case may be) shall have been conducted in accordance with all applicable federal and state securities laws. The term "Investor" in this Agreement shall also include all such transferees and assignees.

(g) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

(h) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Securities Purchase Agreement.

(i) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(j) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(Signature Pages Follow)

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

AMEDICA CORPORATION

By: /s/ Eric K. Olson

Name: Eric K. Olson

Title: Chief Executive Officer

Registration Rights Agreement – Signature Page

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

MG PARTNERS II LTD.

By: /s/ Joshua Sason _____

Name: Joshua Sason

Title: Managing Member

Registration Rights Agreement – Signature Page

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT, dated as of June 30, 2014 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), is among Hercules Technology Growth Capital, Inc., a Maryland corporation ("HTGC"), in its capacity as administrative and collateral agent for Lenders (together with its successors and assigns in such capacity, "Agent"), the financial institutions who are or hereafter become parties to this Agreement as lenders (together with HTGC, collectively the "Lenders", and each individually, a "Lender"), Amedica Corporation, a Delaware corporation ("Borrower"), and the other Persons (as defined below), if any, who are or hereafter become parties to this Agreement as guarantors (each a "Guarantor" and collectively, the "Guarantors", and together with Borrower, each a "Loan Party" and collectively, "Loan Parties").

Loan Parties, Agent and Lenders agree as follows:**1. DEFINITIONS.**

1.1 **Defined Terms.** Capitalized terms used herein shall have the meanings set forth in Section 11. All other capitalized terms used but not defined herein shall have the meaning given to such terms in the UCC. Any accounting term used but not defined herein shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. The term "financial statements" shall include the accompanying notes and schedules.

1.2 **Section References.** Any section, subsection, schedule or exhibit references are to this Agreement unless otherwise specified.

2. THE LOAN.**2.1 Loan Commitments.**

(a) Term Loan Commitment.

(i) Subject to the terms and conditions of this Agreement and the occurrence of the Funding Condition, and in reliance upon the representations and warranties of the Loan Parties contained herein, each Lender with a Term Loan Commitment severally and not jointly agrees to make a loan (the "Term Loan") in Dollars to Borrower on the Closing Date, in an amount equal to such Lender's Term Loan Commitment. Upon the funding of such Term Loan, the Term Loan Commitment shall terminate.

(ii) Once the Term Loan is repaid or prepaid, it cannot be reborrowed.

(iii) The Term Loan made by each Lender is evidenced by this Agreement, and if requested by such Lender, a Note payable to such Lender.

2.2 Reserved.**2.3 Interest.**

(a) Term Loan. The Term Loan shall accrue interest in arrears from the date made until such Term Loan is fully repaid at the Term Loan Interest Rate.

(b) Computation. All computations of interest and fees calculated on a per annum basis shall be made by Agent on the basis of a three hundred sixty (360) day year, in each case for the actual number of days occurring in the period for which such interest and fees are payable. Such method of calculation will result in an effective rate that exceeds the rate stated in this Section. Each determination of an interest rate or the amount of a fee under the Loan Documents shall be made by Agent and shall be conclusive, binding and final for all purposes, absent manifest error.

(c) Default Rate. In the event any payment is not paid on the scheduled payment date, an amount equal to five percent (5%) of the past due amount shall be payable on demand. In addition, all Loans and other Obligations shall bear interest from and after the occurrence and during the continuation of an Event of Default at a rate equal to the Default Rate. The application of the Default Rate shall not be interpreted or deemed to extend any cure period or waive any Default or Event of Default or otherwise limit Agent's or any Lender's right or remedies hereunder. All interest payable at the Default Rate shall be payable on demand. In the event any interest is not paid when due hereunder, delinquent interest shall be added to principal and shall bear interest on interest, compounded at the rate set forth in Section 2.3(a) or Section 2.3(d), as applicable

(d) Maximum Lawful Rate. Anything herein or any other Loan Document to the contrary notwithstanding, the obligations of Loan Parties hereunder and thereunder shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by Agent and Lenders would be contrary to the provisions of any Requirement of Law applicable to Agent and Lenders limiting the highest rate of interest which may be lawfully contracted for, charged or received by Agent and Lenders, and in such event Loan Parties shall pay Agent and Lenders interest at the highest rate permitted by applicable Requirements of Law ("Maximum Lawful Rate"); provided, however, that if at any time thereafter the rate of interest payable hereunder or thereunder is less than the Maximum Lawful Rate, Loan Parties shall continue to pay interest hereunder and thereunder at the Maximum Lawful Rate until such time as the total interest received by Agent and Lenders is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the making of the Term Loan as otherwise provided in this Agreement or any other Loan Document.

2.4 Payments.

(a) Interest Payments. For the Term Loan, Borrower shall pay interest to Agent, for the benefit of Lenders in accordance with their Pro Rata Shares, at the rate of interest determined in accordance with Section 2.3 in arrears on each Scheduled Payment Date, commencing on July 1, 2014.

(b) Principal Payments. For the Term Loan, Borrower shall pay principal to Agent, for the benefit of Lenders in accordance with their Pro Rata Shares, in thirty (30) (the "Number of Payments") equal consecutive payments (mortgage style where the monthly amount is the same but the amount of principal and interest will vary) of principal and interest (the "Monthly Amortization Amount") on each Scheduled Payment Date, commencing on August 1, 2015 (the "Initial Principal Payment Date") and one final payment in an amount equal to the entire remaining principal balance of the Term Loan and accrued but unpaid interest on the Final Maturity Date; provided, however, if the Interest Only Extension Conditions are satisfied, the "Number of Payments" shall be reduced to twenty four (24) and the "Initial Principal Payment Date" shall be extended to February 1, 2016, but periodic payments of principal and interest will continue to be in equal consecutive payments (mortgage style where the monthly amount is the same but the amount of principal and interest will vary) of principal and interest with one final payment in an amount equal to the entire remaining principal balance of the Term Loan and accrued but unpaid interest on the Final Maturity Date.

(c) Maturity. Notwithstanding the foregoing provisions of Section 2.4(b), all outstanding Obligations are due and payable in full on the earlier of (i) the Final Maturity Date or (ii) the date that the Loans otherwise become due and payable hereunder, whether by acceleration of the Obligations pursuant to Section 8.2 or otherwise.

(d) Method of Payments. All payments (including prepayments) to be made by any Loan Party under any Loan Document shall be made by ACH transfer in immediately available funds (which shall be the exclusive means of payment hereunder) in Dollars, without setoff, recoupment, counterclaim or deduction of any kind. Lender will initiate debit entries to the Borrower's account as authorized in the Automatic Payment Authorization Agreement on each Scheduled Payment Date. Whenever any payment required under any Loan Document would otherwise be due on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees and interest (including late fees and default interest), as the case may be, shall not accrue and be payable for the period of such extension. Borrower shall not revoke the Automatic Payment Authorization Agreement without Agent's prior written consent.

(e) Withholdings and Increased Costs.

(i) All payments by any Loan Party under any Loan Document shall be made free and clear of all Indemnified Taxes. If any Indemnified Taxes shall be required by any Requirement of Law to be withheld or deducted from or in respect of any sum payable under any Loan Document to Agent or any Lender, (A) an additional amount shall be payable as may be necessary so that, after making all required withholdings or deductions (including withholdings or deductions applicable to additional sums payable under this Section), Agent or such Lender receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (B) Loan Parties shall make such withholdings or deductions, (C) Loan Parties shall pay the full amount withheld or deducted to the relevant taxing authority or other authority in accordance with any applicable Requirement of Law, and (D) Loan Parties shall deliver to Agent or such Lender evidence of such payment.

(ii) If the introduction of or any change in, after the Closing Date, any Requirement of Law increases Agent's or any Lender's costs or reduces its income for any Loan, then Borrower shall upon provision of reasonable evidence of such increase or decrease and ten (10) days written notice by Agent or such Lender (with a copy of such demand to Agent) promptly pay to Agent for its own account or for the account of such Lender, as the case may be, the increase in cost or reduction in income or additional expense; provided that all requests, rules, guidelines or directives issued or promulgated under, in connection with or pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or Basel III shall be deemed to be a change in a Requirement of Law, regardless of the date enacted, adopted or issued. The Agent or such Lender (with a copy to Agent) shall submit a certificate as to the amount of such reduction or such increased cost to Borrower, provided that, neither Agent nor any Lender shall be entitled to payment of any amounts under this Section 2.4(e) relating to periods prior to 180 days before the date Agent or such Lender sends the Certificate. Agent and each Lender agrees that it shall allocate any such increased costs among its customers similarly affected in good faith and in a manner consistent with Agent's or such Lender's customary practice.

(f) Loan Account. Agent, on behalf of the Lenders, shall record on its books and records the amount of the Term Loan made, the interest rate applicable, all payments of principal and interest thereon and the principal balance thereof from time to time outstanding. Such record shall, absent manifest error, be conclusive evidence of the amount of the Loans made by the Lenders to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder (and under any Note) to pay any amount owing with respect to the Loans or provide the basis for any claim against Agent.

(g) Payment of Obligations. Without limiting Section 2.4(d), Agent is authorized to, and at its sole election may, debit funds from Borrower's operating account specified in the Automatic Payment Authorization Agreement to pay all Obligations under any Loan Document if and to the extent Borrower fails to promptly pay any such amounts as and when due.

(h) Optional Payment in Common Stock.

(i) Borrower Election for Payment in Common Stock. Subject to satisfaction of the Conversion Conditions and compliance with the other terms and conditions of this Section 2.4(h), Borrower may elect to pay, in whole or in part, any regularly scheduled installment of principal (a "Principal Installment Payment") up to an aggregate maximum amount of \$1,500,000 by converting a portion of the principal of the Term Loan into shares of Common Stock that are free of any transfer restrictions in lieu of payment in cash (such option, the "Conversion Option"). In order to validly exercise a Conversion Option, (A) Borrower must deliver written notice thereof, in the form attached hereto as Exhibit F, to Lender (a "Borrower Conversion Election Notice") five (5) days prior to the applicable due date of the Principal Installment Payment (the "Principal Installment Due Date"), (B) Borrower shall transfer (or cause to be transferred) to the applicable Lender the shares of Common Stock to be issued as provided in the Borrower Conversion Election Notice via the Fast Automated Securities Transfer Program of the Depository

Trust Company no later than the first trading day following the applicable Principal Installment Due Date (such date, the “Delivery Date”), and (C) all Conversion Conditions must be satisfied in respect of such payment. A Borrower Conversion Election Notice, once delivered by Borrower, shall be irrevocable unless otherwise agreed, in writing, by Agent. The number of such shares of Common Stock to be issued in respect of such Borrower Conversion Election Notice shall be equal to the number determined by dividing (x) the principal amount to be paid in shares of Common Stock by (y) the Fixed Conversion Price. The aggregate principal amount to be paid in shares of Common Stock pursuant to this Section 2.4(h)(i) shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000). Any shares of Common Stock issued pursuant to a Borrower Conversion Election Notice shall be deemed to be issued upon conversion of the Note should a Note have been issued by Borrower.

(ii) Conversion Conditions. Notwithstanding Section 2.4(h)(i) or 2.4(h)(iii), Borrower’s right to deliver, and Lender’s obligation to accept, shares of Common Stock in lieu of payment in cash of a Principal Installment Payment is conditioned on the satisfaction of each of the following conditions (collectively, the “Conversion Conditions”) as of such Delivery Date: (A) the closing price of the shares of Common Stock as reported by Bloomberg, L.P. on the Nasdaq stock market (the “Nasdaq”) or other national securities exchange for each of the seven (7) consecutive trading days immediately preceding the Delivery Date shall be greater than or equal to the Fixed Conversion Price; (B) the Common Stock issued in connection with any such payment does not exceed 15% of the total trading volume of the Common Stock for the twenty-two (22) consecutive trading days immediately prior to and including such Delivery Date; (C) only one Borrower Conversion Election Notice and Agent Conversion Election Notice may be given in any calendar month during the amortization period; (D) the Common Stock is (and was on each of the thirty (30) consecutive trading days immediately preceding such Delivery Date) quoted or listed on the Nasdaq or other national securities exchange; (E) a registration statement is effective and available for the resale of all of the shares of Common Stock to be delivered on such Delivery Date so that the shares of Common Stock can be sold without restriction by the Delivery Date and Lender shall not be subject to any lock-up or market standoff agreement which prohibits or restricts its ability to sell such shares of Common Stock; (F) after giving effect to the issuance of such shares of Common Stock to Lender, Lender would not (1) beneficially own, together with its Affiliates, Common Stock in excess of the limitations specified in subsection (h)(iv) below and (2) have been issued shares of Common Stock pursuant to all Borrower Conversion Election Notices and Agent Conversion Election Notices in an aggregate amount in excess of the Cap, as defined in subsection (h)(iv) below; (G) as of such Delivery Date, there is no outstanding Event of Default and there is no breach or default that, if left uncured, would result in an Event of Default; and (H) Borrower shall have sufficient authorized but unissued shares of Common Stock to provide for the issuance of the shares of Common Stock pursuant to the Borrower Conversion Election Notice or Agent Conversion Election Notice, as applicable. If any of the Conversion Conditions are not satisfied as of a Delivery Date, Borrower shall not be permitted to pay, and Lender shall not be obligated to accept, the Principal Installment Payment in shares of Common Stock, and Borrower shall instead pay such principal amount in cash; provided, however, that the Conversion Conditions set forth in clauses (A), (B), (C), (D), (E) and (G) above may be waived by a writing executed by both Borrower and Agent. In the event the Borrower is relying upon an effective registration statement to satisfy clause (E) of the Conversion Conditions, each of the Borrower and Lender shall provide customary indemnification to one another with respect to such registration statement in a form acceptable to the Borrower and Lender.

(iii) Lender Election for Payment in Cash or Conversion to Common Stock. Subject to satisfaction of the Conversion Conditions and compliance with the other terms and conditions of this Section 2.4(h), with respect to any Principal Installment Payment scheduled from Borrower, Agent may elect to have Borrower make payment in Common Stock by requiring Borrower to effect a Conversion Option. In order to effect such a Conversion Option, Agent shall (A) deliver a written notice thereof in the form attached hereto as Exhibit G (an “Agent Conversion Notice”) to Borrower five (5) days prior to (i) the applicable Principal Installment Due Date. Borrower shall transfer (or cause to be transferred) to the applicable Lender the shares of Common Stock to be issued as provided in the Agent Conversion Election Notice via the Fast

Automated Securities Transfer Program of the Depository Trust Company no later than the Delivery Date, which shares of Common Stock shall be free of any restrictions on transfer. An Agent Conversion Election Notice, once delivered by Agent, shall be irrevocable unless otherwise agreed, in writing, by Borrower. The number of such shares of Common Stock to be issued in respect of such Principal Installment Payment shall be equal to the number determined by dividing (x) the principal amount to be paid in shares of Common Stock by (y) the Fixed Conversion Price. Any shares of Common Stock issued pursuant to an Agent Conversion Election Notice shall be deemed to be issued upon partial conversion of the principal of the Note should a Note have been issued by Borrower. Notwithstanding the foregoing, Lender's right to receive, and Borrower's obligation to issue, shares of Common Stock in lieu of payment in cash of a Principal Installment Payment is conditioned on the satisfaction of the following condition as of such Delivery Date: the aggregate principal amount to be paid in shares of Common Stock pursuant to Section 2.4(h)(iii) of this Agreement shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000).

(iv) Beneficial Ownership Limitation. Notwithstanding any provision herein to the contrary, Lenders, together with their Affiliates, shall not be permitted to beneficially own a number of shares of Common Stock (other than shares that may be deemed beneficially owned except for being subject to a limitation analogous to the limitation contained in this Section 2.4(h)(iv)) in excess of 9.99% of the number of shares of Common Stock then issued and outstanding, it being the intent of Borrower and Lenders that Lenders, together with their Affiliates, not be deemed at any time to have the power to vote or dispose of greater than 9.99% of the number of shares of Common Stock issued and outstanding at any time; provided, however, that Agent shall have the right, upon 61 days' prior written notice to Borrower, to waive the 9.99% limitation of this subsection. Notwithstanding anything contained herein to the contrary, Borrower shall not be permitted to issue to Lenders, and Lenders shall not be required to accept, shares of Common Stock pursuant to either a Borrower Conversion Election Notice or an Agent Conversion Election Notice if and to the extent such issuance, when taken together with all other issuances pursuant to prior such notices, would result in (A) the issuance of more than 19.99% of the Common Stock outstanding as of the date of this Agreement or (B) Lenders, together with their Affiliates, beneficially owning in excess of 19.99% of the outstanding Common Stock (each of clauses (A) and (B) are referred to herein as the "Cap"). As used herein, beneficial ownership shall be determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act"). For any reason at any time, upon written or oral request of Agent, Borrower shall within one business day confirm orally and in writing to Agent the number of shares of Common Stock then issued and outstanding as of any given date.

(v) Reserved.

(vi) Stock Reservation. Borrower covenants and agrees to reserve from its duly authorized capital stock not less than the number of shares of Common Stock that may be issuable upon payment of any Principal Installment Payment pursuant to Section 2.4(h) of this Agreement. Borrower further represents, warrants and covenants that, upon issuance of any shares of Common Stock pursuant to Section 2.4(h) of this Agreement, such shares of Common Stock shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof.

(vii) Authorization. For so long as a Lender holds any shares of Common Stock issued pursuant to Section 2.4(h) of this Agreement, Borrower shall maintain the Common Stock's authorization for listing on Nasdaq (or on another national securities exchange) and Borrower shall not take any action which would reasonably be expected to result in the delisting or suspension of the Common Stock on Nasdaq (or other national securities exchange on which the Common Stock is listed).

(viii) If the shares of Common Stock purportedly issued pursuant to this Section 2.4(h) are not issued timely and/or the Conversion Conditions were not satisfied and Agent did not waive such noncompliance in writing, Agent may, at any time prior to thirty (30) days after the

applicable Principal Installment Payment was due, reject the delivery of such shares and require payment in Cash together with any late fees, default interest or other applicable charges. On receipt of such Cash payment, Agent shall cooperate with Borrower to return such shares.

2.5 Prepayments and Commitment Terminations.

(a) Voluntary Prepayments and Commitment Terminations. After the first anniversary of the Closing Date, Borrower may, without premium or penalty, upon five (5) Business Days' prior written notice to Agent, voluntarily prepay the Term Loan in full, but not in part. Prior to the first anniversary of the Closing Date, Borrower may prepay the Term Loan in full, but not in part, by paying the entire principal balance, all accrued and unpaid interest thereon, together with a prepayment charge equal to 6% of the principal amount of the Term Loan being repaid (the "Prepayment Charge"). Borrower agrees that the Prepayment Charge is a reasonable calculation of Lender's lost profits in view of the difficulties and impracticality of determining actual damages resulting from an early repayment of the Term Loan.

(b) Term Loan Prepayment Amounts. Upon the date of (i) any voluntary prepayment of the Term Loan in accordance with Section 2.5(a) or (ii) any mandatory prepayment of the Term Loan required under this Agreement (whether by acceleration of the Obligations pursuant to Section 8.2 or otherwise), Borrower shall pay to Agent, for the benefit of Lenders in accordance with their Pro Rata Shares, a sum equal to all outstanding principal and all accrued interest thereon and other Obligations with respect to the Term Loan. In addition, Borrower shall pay the Prepayment Charge if the prepayment of the Term Loan is made within the first anniversary of the Closing Date.

2.6 Lender Fees.

(a) Closing Fee. On the Closing Date, Borrower shall pay to Agent, for the benefit of Lenders in accordance with their Pro Rata Shares, a non-refundable closing fee in an amount equal to \$200,000, which fee shall be fully earned when paid regardless of the early termination of this Agreement.

(b) End of Term Fee. On the earliest to occur of (i) the Final Maturity Date, (ii) the date that Borrower prepays the outstanding Obligations, or (iii) the date that the Obligations become due and payable, Borrower shall pay to Agent, for the benefit of Lenders in accordance with their Pro Rata Shares, a non-refundable end of term fee in an amount equal to \$1,450,000, provided, however, if the Financing Condition is not satisfied, such fee shall be \$1,950,000. Notwithstanding the required payment date of fee, it shall be deemed fully earned as of the Closing Date regardless of the early termination of this Agreement.

2.7 Authorization and Issuance of the Warrants. Borrower has duly authorized the issuance to each Term Loan Lender (or its respective Affiliate or designee) of Warrants evidencing each Term Loan Lender's (or its respective Affiliate's or designee's) right to acquire its respective Pro Rata Share of Borrower's Common Stock pursuant to such Warrants. The exercise period shall expire five (5) years from the date such Warrants are issued.

3. CREATION OF SECURITY INTEREST.

3.1 Grant of Security Interest. As security for the prompt and complete payment and performance when due, whether at the Final Maturity Date, by acceleration or otherwise, of all Obligations, and as security for the prompt and complete payment and performance when due by each Guarantor of the Guaranteed Obligations (as defined in the Guaranty), each Loan Party hereby grants to Agent, for the benefit of Agent and Lenders, a lien on and security interest in all of its right, title and interest in, to and under the following Property:

All of such Loan Party's personal property of every kind and nature whether now owned or hereafter acquired by, or arising in favor of, such Loan Party, and regardless of where located, including, without limitation, all of such Loan Party's Accounts, Chattel Paper (whether tangible or electronic), Commercial Tort Claims, Deposit Accounts, Documents, Equipment, Financial Assets, Fixtures, Goods, Instruments, Investment Property (including, without limitation, all Securities Accounts), Inventory, Letter-of-Credit Rights, letters of credit, Securities, Supporting Obligations, cash, Cash Equivalents, any other contract rights (including, without limitation, rights

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under any license agreements, leases, and franchise agreements or rights to the payment of money), General Intangibles (including, without limitation, Intellectual Property), all books and records of such Loan Party relating to each of the foregoing, and all additions, attachments, accessories, accessions and improvements to such Property, all substitutions, replacements or exchanges therefor, and all Proceeds, insurance claims, products, profits and other rights to payments not otherwise included in the foregoing; provided, that, the grant of security interest herein shall not extend to and the term “Collateral” shall not include equipment subject to liens permitted pursuant to Section 7.1 where the agreements governing the capital lease obligations or purchase money Indebtedness related thereto prohibit such security interest, for so long as such prohibition exists.

Each Loan Party hereby represents and covenants that such security interest constitutes a valid, first priority perfected security interest in the Collateral in existence on the Closing Date, and will constitute a valid, first priority perfected security interest in Collateral acquired after the Closing Date. Each Loan Party hereby covenants that it shall give written notice to Agent promptly upon the acquisition by such Loan Party or creation in favor of such Loan Party of any commercial tort claim. In order to perfect or protect Agent’s security interest and other rights in each Loan Party’s Intellectual Property, each Loan Party hereby authorizes Agent to file, as applicable and in each case in form and substance reasonably satisfactory to Agent, a patent security agreement and/or a trademark security agreement, to be filed with the United States Patent and Trademark Office, and a copyright security agreement to be filed with the United States Copyright Office (each of the foregoing, an “Intellectual Property Security Agreement”).

3.2 Financing Statements. Each Loan Party hereby authorizes Agent to file UCC financing statements in all appropriate jurisdictions and amendments thereto describing the Collateral as “all assets of the debtor” or words of similar import and containing any other information required by the applicable UCC to perfect Agent’s security interest (for the benefit of itself and the Lenders) granted hereby.

3.3 Termination of Security Interest. Upon the Termination Date, (a) Agent’s lien on and security interest in the Collateral shall be automatically terminated without delivery of any instrument or performance of any act and (b) at the request of any Loan Party, Agent shall, at the Loan Parties’ sole cost and expense and without any recourse, representation or warranty, execute and deliver to such Loan Party such documents as such Loan Party shall reasonably request to evidence such termination.

4. CONDITIONS OF CREDIT EXTENSIONS.

4.1 Conditions Precedent to Term Loan. No Lender shall be obligated to make its Pro Rata Share of the Term Loan, or to take, fulfill, or perform any other action hereunder, until the following have been delivered to Agent, in form and substance satisfactory to Agent and Lenders (the date on which Lenders make the Term Loan, the “Closing Date”):

(a) a counterpart of this Agreement duly executed by each Loan Party, each Lender and Agent;

(b) a certificate duly executed by the Secretary or Assistant Secretary of each Loan Party, the form of which is attached as Exhibit A, providing verification of incumbency and certifying as to and attaching (i) such Loan Party’s board resolutions approving the transactions contemplated by the Loan Documents and (ii) such Loan Party’s formation documents certified by the Secretary of State of such Loan Party’s state of formation as of a recent date acceptable to Agent and such Loan Party’s governing documents;

(c) Notes duly executed by Borrower in favor of each Lender that has requested a Note;

(d) filed copies of UCC financing statements, collateral assignments, and termination statements, with respect to the Collateral, as Agent shall request;

(e) certificates of insurance evidencing the insurance coverage and satisfactory additional insured and lender loss payable endorsements, in each case as required pursuant to Section 6.4;

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(f) certified copies, dated as of a recent date acceptable to Agent, of UCC, judgment, bankruptcy and tax lien search results demonstrating that there are no Liens on the Collateral other than Permitted Liens;

(g) a certificate of status/good standing of each Loan Party from the jurisdiction of such Loan Party's organization and a certificate of foreign qualification from each jurisdiction where such Loan Party's failure to be so qualified could reasonably be expected to have a Material Adverse Effect, in each case certified as of a recent date acceptable to Agent;

(h) an executed legal opinion of Loan Parties' counsel, in form and substance satisfactory to Agent;

(i) an Automatic Payment Authorization Agreement, duly executed by Borrower;

(j) a Perfection Certificate completed and duly executed by each Loan Party;

(k) a Disbursement Letter, duly executed by each Loan Party, Agent and Lenders;

(l) one or more Account Control Agreements, duly executed by the applicable Loan Parties and the applicable depository or financial institution, to the extent required pursuant to Section 6.10;

(m) a Pledge Agreement, duly executed by each Loan Party, together with the certificates and instruments required to be delivered in connection therewith and related undated powers and endorsements duly executed in blank;

(n) a Guaranty Agreement, duly executed by each Guarantor;

(o) a Warrant in favor of each Term Loan Lender (or its Affiliate or designee) for such Term Loan Lender's Pro Rata Share of the number of shares of Stock of Borrower described in Section 2.7, duly executed by Borrower;

(p) the Intellectual Property Security Agreement required by Section 3.1, duly executed by each Loan Party;

(q) a pay-off letter satisfactory to Agent and duly executed by GECC, for itself and in its capacity as administrative and collateral agent for all lenders under the Existing Indebtedness, confirming that all of the Indebtedness and other obligations owed under the Existing Indebtedness will be repaid in full from the proceeds of the Term Loan and all Liens upon any Loan Party's property in favor of GECC and the lenders under the Existing Indebtedness shall be terminated immediately upon such payment;

(r) all fees required to be paid by Borrower under the Loan Documents, and Borrower shall have reimbursed Agent and Lenders for all fees, costs and expenses presented as of the Closing Date; and

(s) all other documents and instruments as Agent or any Lender may reasonably deem necessary or appropriate to effectuate the intent and purpose of this Agreement.

5. REPRESENTATIONS AND WARRANTIES OF LOAN PARTIES.

Each Loan Party, jointly and severally, represents and warrants to Agent and each Lender that:

5.1 Due Organization and Authorization. Each Loan Party's exact legal name is as set forth in the Perfection Certificate, and each Loan Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization as specified in the Perfection Certificate, has its chief executive office at the location specified in the Perfection Certificate, and is duly qualified and licensed in every jurisdiction wherever necessary to carry on its business and operations, except where the failure to be so qualified and licensed could not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, all information set forth on the Perfection Certificate pertaining to each of the Loan Parties is accurate and complete. This Agreement and the other

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Loan Documents have been duly authorized, executed and delivered by each Loan Party and constitute the legal, valid and binding obligations of each such Person that is a party thereto, enforceable against such Person in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability. Each Loan Party has all requisite power and authority to own its assets, carry on its business and execute, deliver and perform its obligations under the Loan Documents to which it is a party.

5.2 No Conflicts. The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party will not (a) contravene any of the organizational documents of such Loan Party, (b) violate any material Requirement of Law, (c) require any action by, filing, registration, qualification with, or approval, consent or withholding of objections from, any Governmental Authority or any other Person, except those which have been obtained and are in full force and effect, (d) result in the creation of any Lien on any of such Loan Party's Property (except for Liens in favor of Agent, on behalf of itself and Lenders), or (e) result in any breach of or constitute a default under, or permit the termination or acceleration of, any Material Agreement to which such Loan Party is a party. A list of all Material Agreements as of the Closing Date is set forth on Schedule 5.2 hereto. No Loan Party is in default under any agreement to which it is a party or by which it is bound which could reasonably be expected to have a Material Adverse Effect.

5.3 Litigation. There are no actions, suits, proceedings or investigations pending (or to the knowledge of any Loan Party, threatened) against any Loan Party or any of its Subsidiaries or their respective properties, which (a) could reasonably be expected to result in monetary judgment(s) or relief, individually or in the aggregate, in excess of \$500,000, (b) seek an injunction or other equitable relief that could reasonably be expected to have a Material Adverse Effect, or (c) affect or pertain to the Loan Documents or any transaction contemplated hereby or thereby.

5.4 Financial Statements. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Agent or Lenders have been prepared in accordance with GAAP (subject, in the case of unaudited financial statements, to the absence of footnotes and normal year-end audit adjustments) and fairly present in all material respects Borrower's consolidated financial condition and consolidated results of operations. Since the date of the most recent audited financial statements, no event has occurred which has had or could reasonably be expected to have a Material Adverse Effect. There has been no material adverse deviation from the most recent annual operating plan of Borrower delivered to Agent.

5.5 Use of Proceeds; Margin Stock. The proceeds of the Loans shall be used to repay the Existing Indebtedness and for working capital and general corporate purposes. No Loan Party and no Subsidiary of any Loan Party is engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. As of the Closing Date, no Loan Party and no Subsidiary of any Loan Party owns any Margin Stock.

5.6 Collateral.

(a) Each Loan Party has good title to, has rights in, and the power to grant a Lien on and to Transfer each item of the Collateral upon which it purports to grant a Lien under any Loan Document, free and clear of any and all Liens except Permitted Liens. As of the Closing Date, all tangible Collateral (other than inventory or equipment in transit) is located at a location specified on the Perfection Certificate.

(b) No Loan Party owns any Stock or Stock Equivalents, except for Permitted Investments.

(c) As of the Closing Date, no Loan Party has any Deposit Accounts, Securities Accounts, commodity accounts or other investment accounts other than those described in the Perfection Certificate.

(d) As of the Closing Date, no Loan Party owns any real property.

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5.7 Compliance with Laws.

(a) Each Loan Party is in compliance with all Requirements of Law applicable to it, except to the extent that any such non-compliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Without limiting the generality of the immediately preceding clause (a), each Loan Party and each Subsidiary of a Loan Party is in compliance in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations as promulgated by OFAC, and all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Loan Party nor any Affiliate of a Loan Party (i) is a Person designated by the U.S. Government on the list of the Specially Designated Nationals and Blocked Persons (the “SDN List”) with which a U.S. Person cannot deal with or otherwise engage in business transactions, (ii) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person, or (iii) is controlled by (including without limitation by virtue of such Person being a director or owning voting Stock), or acts, directly or indirectly, for or on behalf of, any Person on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, any Loan Document would be prohibited under U.S. law.

(c) Each Loan Party and each of its Affiliates is in compliance with (i) the Trading with the Enemy Act of 1917, Ch. 106, 40 Stat. 411, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (ii) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56, as amended (the “Patriot Act”), and (iii) other federal or state laws relating to “know your customer” and anti-money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

(d) No Loan Party is an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940.

(e) No Property of any Loan Party has been used by any Loan Party or, to any Loan Party’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable Requirements of Law.

5.8 Intellectual Property. A list of all of each Loan Party’s owned Intellectual Property (limited to clause (a) of the definition thereof, and further limited to only such Intellectual Property which is registered or for which there is an application) and all license agreements (including all in-bound license agreements, but excluding over-the-counter software that is commercially available to the public) as of the Closing Date is set forth on Schedule 5.8 hereto, which indicates, for each such item of Property: (a) the name of the Loan Party owning such Intellectual Property or licensing such Intellectual Property, (b) the Loan Party’s identifier for such property (e.g., name of patent, license, etc.), (c) whether such Property is Intellectual Property (or application therefor) that is owned by such Loan Party or is licensed by such Loan Party, (d) the expiration date of such Intellectual Property or license agreement, and (e) whether such Intellectual Property is material to the condition (financial or otherwise), business or operations of any Loan Party. In the case of any Intellectual Property described in the foregoing clause (e) that is an in-bound license agreement, Schedule 5.8 further indicates, for each: (i) the name and address of the licensor, (ii) the name and date of the agreement pursuant to which such item of Intellectual Property is licensed, (iii) whether or not such license agreement grants an exclusive license to a Loan Party, (iv) whether there are any purported restrictions in such license agreement as to the ability of a Loan Party to grant a security interest in, or to Transfer any of its rights as a licensee under, such license agreement, and (v) whether a default under or termination of such license agreement could interfere with Agent’s right to sell or assign such license or any other Collateral. Except as specified on Schedule 5.8, each Loan Party’s Intellectual Property is valid and enforceable and each Loan Party owns or has rights to use all Intellectual Property material to the conduct of its business as now or heretofore conducted by it or proposed to be conducted by it, without such Loan Parties’ Knowledge of any actual or threatened infringement, upon the rights of third parties. Except as specified on Schedule 5.8, as of the Closing Date, each Loan Party is the sole owner of its Intellectual Property, and such Intellectual Property is free and clear of all Liens, except for Liens securing the Obligations and non-exclusive licenses of Intellectual Property granted by a

Loan and Security Agreement - Amedica

Loan Party to third parties in the ordinary course of its business. Except as specified on Schedule 5.8, no Loan Party has entered into any agreement or financing arrangement (other than any Loan Document) prohibiting or otherwise restricting the existence of any Lien upon any of its Intellectual Property. Upon filing of the Intellectual Property Security Agreements with the United States Patent and Trademark Office and the United States Copyright Office, as applicable, and the filing of appropriate financing statements, all action necessary to perfect Agent's Lien on each Loan Party's owned Intellectual Property in the United States shall have been duly taken.

5.9 Solvency. Both before and after giving effect to each Loan, the transactions contemplated herein, and the payment and accrual of all transaction costs in connection with the foregoing, each Loan Party is Solvent.

5.10 Taxes; Pension. Each Loan Party and its Subsidiaries has timely filed all required material tax returns and reports with the appropriate Governmental Authority and timely paid all federal and state, and all material local and foreign taxes, assessments, deposits and contributions owed by such Person, excluding such amounts that are the subject of a Permitted Contest. No Loan Party is aware of any claims or adjustments proposed for any prior tax year that could result in additional material taxes becoming due and payable by a Loan Party or any of its Subsidiaries. Proper and accurate amounts have been withheld by each Loan Party from its respective employees for all periods in compliance with applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities. Each Loan Party has paid all amounts necessary to fund all pension, profit sharing, deferred compensation and other retirement plans in accordance with their terms and as may be required under ERISA or other applicable Requirements of Law, and no Loan Party has withdrawn from participation in, or has permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of a Loan Party, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

5.11 Full Disclosure. No representation, warranty or other statement made by or on behalf of a Loan Party to Agent or any Lender (including in any certificate, instrument, agreement or document delivered pursuant to any Loan Document) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein not misleading (it being recognized by Agent and Lenders that the projections and forecasts provided by Loan Parties in good faith and based upon reasonable and stated assumptions are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results). Additionally, any and all financial or business projections provided by Borrower to Agent, whether prior to or after the Closing Date, shall be (i) provided in good faith and based on the most current data and information available to Borrower, and (ii) the most current of such projections provided to Borrower's Board of Directors, it being understood that projections are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results.

5.12 Regulatory Compliance.

(a) Each Loan Party has, and it and its products are in conformance with, all Registrations that are required to conduct its business as currently conducted, or as proposed to be conducted, except to the extent that any such non-compliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. To the knowledge of each Loan Party, the FDA is not considering limiting, suspending, or revoking such Registrations or changing the marketing classification or labeling or other significant parameter affecting the products of any Loan Party. To the knowledge of each Loan Party, any third party that is a manufacturer or contractor for any Loan Party is in compliance, and has been in compliance for the previous three years, with all Registrations required by the FDA and all Public Health Laws insofar as they reasonably pertain to the manufacture of product components or products regulated as drugs or medical devices and marketed or distributed by such Loan Party.

(b) All products designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold or marketed by or, to the Knowledge of a Loan Party, on behalf of any Loan Party that are subject to the jurisdiction of the FDA have been and are being designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold and marketed in compliance with the Public Health Laws and have been for the previous six years. All activities conducted by the Loan Parties are conducted in compliance in all material respects with the Public Health Laws.

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(c) No Loan Party is subject to any obligation arising under a Regulatory Action and no such obligation has been threatened. There is no Regulatory Action or other civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, proceeding or written request for information pending against any Loan Party or an officer, director, or employee of any Loan Party and, to each Loan Party's knowledge, no Loan Party has any liability (whether actual or contingent) for failure to comply with any Public Health Laws.

(d) As of the Closing Date, no Loan Party is undergoing any FDA inspection related to any activities or products of any Loan Party that are subject to Public Health Laws, or any other comparable Governmental Authority investigation.

(e) No Loan Party has received any notice or communication from the FDA alleging material noncompliance with any Public Health Law. No product has been seized, withdrawn, recalled, detained, or subject to a suspension (other than in the ordinary course of business) of research, manufacturing, distribution or commercialization activity. No proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, revocation, suspension, import detention, or seizure of any product are pending or threatened in writing against any Loan Party.

(f) No Loan Party, and to the Knowledge of any Loan Party, any of its respective officers, directors, employees, agents or contractors (i) has been excluded or debarred from any federal healthcare program (including without limitation Medicare or Medicaid) or any other federal program or (ii) has received notice from the FDA with respect to debarment or disqualification of any Person that could reasonably be expected to have a Material Adverse Effect.

5.13 Government Contracts. Except as set forth on Schedule 5.13, as of the Closing Date, no Loan Party is a party to any contract or agreement with any Governmental Authority and no Loan Party's Accounts are subject to the Federal Assignment of Claims Act (31 U.S.C. Section 3727) or any similar state, county or municipal law.

5.14 Customer and Trade Relations. As of the Closing Date, there exists no actual or, to the knowledge of any Loan Party, overtly threatened termination or cancellation of, or any material adverse modification or change in (a) the business relationship of any Loan Party with any customer or group of customers whose purchases during the preceding 12 calendar months caused them to be ranked among the ten largest customers of such Loan Party or (b) the business relationship of any Loan Party with any supplier essential to its operations.

5.15 Bonding. As of the Closing Date, no Loan Party is a party to or bound by any surety bond agreement, indemnification agreement therefor or bonding requirement with respect to products or services sold by it.

6. AFFIRMATIVE COVENANTS.

6.1 Good Standing. Each Loan Party shall maintain, and shall cause each of its Subsidiaries to maintain, its existence and good standing in its jurisdiction of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect. Each Loan Party shall maintain, and shall cause each of its Subsidiaries to maintain, in full force all permits, licenses, approvals and agreements, the loss of which could reasonably be expected to have a Material Adverse Effect.

6.2 Notice to Agent and the Lenders.

(a) Loan Parties shall promptly (but in any event within five (5) days after a Responsible Officer of a Loan Party obtains Knowledge) provide Agent and each Lender with written notice of (i) the occurrence of any Default or Event of Default, (ii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any of its Subsidiaries or its respective Property (A) in which the amount of damages claimed is \$250,000 or more, (B) which could reasonably be expected to have a Material Adverse Effect or (C) in which the relief sought is an injunction or other stay of performance of any Loan Document, and (iii) any amendments to (and copies of all statements, reports and notices (other than non-material

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statements, reports and notices delivered in the ordinary course of business) delivered to or by a Loan Party in connection with) any Material Agreement or any Loan Party entering into any Material Agreement or any termination or material breach thereof.

(b) Each Loan Party shall promptly (but in any event within three (3) Business Days) after the receipt or occurrence thereof notify Agent of (i) any written notice received by a Loan Party or any Subsidiary of Loan Party alleging potential or actual violations of any Public Health Law, (ii) any notice that the FDA is limiting, suspending or revoking any Registration, changing the market classification, distribution pathway or parameters, or labeling of the products of any Loan Party, or considering any of the foregoing, (iii) any notice that any Loan Party has become subject to any Regulatory Action, (iv) any inspections by FDA that results in an FDA Form 483, warning letter or other formal notice of serious deficiencies, (v) the exclusion or debarment from any federal healthcare program or debarment or disqualification by FDA of any Loan Party or any of its respective officers, directors, employees, agents, or contractors, or (vi) any notice that any product of any Loan Party has been seized, withdrawn, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any product are pending or threatened in writing against any Loan Party.

6.3 Financial Statements; Reports; Collateral Reporting.

(a) Borrower shall deliver to Agent and Lenders (i) as soon as available and in any event within 30 days after the end of each fiscal month, unaudited consolidated (and if available, consolidating) balance sheets, statements of income or operations and cash flow statements of Borrower and its Subsidiaries as of the end of such fiscal month and that portion of the fiscal year ending as of the close of such fiscal month, in a form acceptable to Agent and certified by Borrower's president, chief executive officer or chief financial officer, (ii) as soon as available and in any event within 45 days after the end of each fiscal quarter, unaudited consolidated (and if available, consolidating) balance sheets, statements of income or operations and cash flow statements of Borrower and its Subsidiaries as of the end of such fiscal quarter and that portion of the fiscal year ending as of the close of such fiscal quarter, in a form acceptable to Agent and certified by Borrower's president, chief executive officer or chief financial officer and (iii) as soon as available and in any event within ninety (90) days after the end of each fiscal year, audited consolidated (and if available, consolidating) balance sheets, statements of income or operations and cash flow statements of Borrower and its Subsidiaries as of the end of such fiscal year, together with a report of an independent certified public accounting firm reasonably acceptable to Agent, which report shall contain an unqualified opinion (other than a going concern statement with respect to fiscal year 2013 based solely on the amount of cash and Cash Equivalents held by Borrower and its Subsidiaries) stating that such audited financial statements fairly present in all material respects the financial position of Borrower and its Subsidiaries for the periods indicated therein in conformity with GAAP applied on a basis consistent with prior years without qualification as to the scope of the audit or as to going concern (other than a going concern statement with respect to fiscal year 2013 based solely on the amount of cash and Cash Equivalents held by Borrower and its Subsidiaries) and without any similar qualification. All such financial statements are to be prepared using GAAP (subject, in the case of unaudited financial statements, to the absence of footnotes and normal year end audit adjustments).

(b) Concurrently with the delivery of the financial statements specified in this Section 6.3, Borrower shall deliver to Agent and Lenders a compliance certificate, signed by the chief financial officer of Borrower, in the form attached hereto as Exhibit B.

(c) Borrower shall deliver to Agent and Lenders (i) copies of all statements, reports and notices made available generally by any Loan Party to the holders of its Stock or Stock Equivalents or to any holders of Subordinated Indebtedness, all notices sent to any Loan Party by the holders of such Subordinated Indebtedness, and all material documents filed with the SEC or any securities exchange or Governmental Authority exercising a similar function, promptly (but in any event within three (3) Business Days) after delivering or receiving such information to or from such Persons, (ii) an annual operating plan for Borrower, on a consolidated (and if available, consolidating) basis, for the current fiscal year within five (5) days after such plan is approved by the Board of Directors of Borrower (but in any event not later than sixty (60) days after the end of the immediately preceding fiscal year of Borrower), and (iii) such budgets, sales projections, or other business, financial, corporate affairs and other information as Agent or any Lender may reasonably request from time to time.

Notwithstanding anything herein to the contrary, documents required to be delivered pursuant to this Section 6.3 may be delivered by (x) electronic mail in accordance with Section 10.2 or (y) Borrower posting such documents, or providing a link thereto, on Borrower's website on the Internet at www.amedica.com, and such documents shall be deemed delivered in the case of clause (y) on the date on which Agent receives written notification of such posting (which notification may be made by electronic mail in accordance with Section 10.2).

6.4 Insurance. Each Loan Party, at its expense, shall maintain, and shall cause each Subsidiary to maintain, insurance (including, without limitation, comprehensive general liability, hazard, and business interruption insurance) with respect to all of its properties and businesses (including, the Collateral), in such amounts and covering such risks as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and in any event with deductible amounts, insurers and policies that shall be reasonably acceptable to Agent. Borrower shall deliver to Agent certificates of insurance evidencing such coverage, together with endorsements to such policies naming Agent as a lender loss payee or additional insured, as appropriate, in form and substance satisfactory to Agent. Each policy shall provide that coverage may not be canceled or altered by the insurer except upon thirty (30) days prior written notice to Agent and shall not be subject to co-insurance. Each Loan Party appoints Agent as its attorney-in-fact, if an Event of Default has occurred and is continuing, to make, settle and adjust all claims under and decisions with respect to such Loan Party's policies of insurance, and to receive payment of and execute or endorse all documents, checks or drafts in connection with insurance payments, provided that, Agent shall not act as such Loan Party's attorney-in-fact unless an Event of Default has occurred and is continuing. The appointment of Agent as any Loan Party's attorney in fact is a power coupled with an interest and is irrevocable until the Termination Date. Proceeds of insurance shall be applied, at the option of Agent, to repair or replace the Collateral or to reduce any of the Obligations. Notwithstanding the foregoing, if a Loan Party delivers to Agent a certificate, signed by such Loan Party's chief financial officer, that it intends within one hundred twenty (120) days of receipt of such insurance proceeds (the "**Reinvestment Period**") to use all or a portion of such proceeds to purchase assets used or useful in the ordinary course of business, then so long as no Default or Event of Default shall have occurred and be continuing on the date such Loan Party receives such insurance proceeds or at any point during such Reinvestment Period, such Loan Party may use all or such portion of such proceeds in the manner set forth in such certificate; provided that (a) the aggregate amount of such insurance proceeds so used shall not exceed \$500,000 in the aggregate in any fiscal year and (ii) any such proceeds not so used or committed to such use pursuant to a binding agreement within the Reinvestment Period shall, on the first Business Day immediately following such period, be applied in accordance with the immediately preceding sentence. Further, prior to an Event of Default, any Loan Party may retain all insurance proceeds it receives which are for the reimbursement of legal costs and expenses relating to litigation that is pending at the time of the Closing Date and is disclosed on the Perfection Certificate.

6.5 Taxes; Pension. Each Loan Party shall, and shall cause each Subsidiary to, timely file all tax reports and returns with the appropriate Governmental Authority and pay and discharge all federal, state, local and foreign taxes, assessments, deposits and contributions owed by such Person, excluding such amounts that are the subject of a Permitted Contest. Each Loan Party shall pay all amounts necessary to fund all present pension, profit sharing, deferred compensation and other retirement plans in accordance with their terms and as may be required under ERISA or other applicable Requirements of Law.

6.6 Access Agreements. Unless otherwise agreed to by Agent in writing, each Loan Party shall obtain and maintain an Access Agreement with respect to any real property (other than real property owned by such Loan Party) (a) that is such Loan Party's principal place of business (other than Borrower's current principal place of business located at 1885 West 2100 South, Salt Lake City, UT 84119, (b) where such Loan Party's books or records are maintained or (c) where any Collateral is stored or maintained; provided, however, that the Loan Parties shall not be required to obtain an Access Agreement with respect to one or more locations described in the foregoing clause (c) if (1) the value of the Collateral at all such locations is less than \$100,000 in the aggregate and Borrower gives written notice to Agent of the existence of each such location or (2) such Collateral is in the possession of (or in transit to or from) a distributor in the ordinary course of such Loan Party's business and such distributor has executed a distributor agreement with such Loan Party. Without limiting the obligations above, if a Loan Party is not able to obtain an Access Agreement with respect to any real property that is required pursuant to the immediately preceding sentence or Borrower's current principal place of business located at 1885 West 2100 South, Salt Lake City, UT 84119, then within ten (10) Business Days after the due date for any rental payments with respect to such real property, Borrower shall deliver to Agent (i) evidence in form reasonably satisfactory to Agent that such rental payment was made and (ii) a certification that no default or event of default exists under any such lease.

6.7 Protection of Intellectual Property. Each Loan Party shall (a) protect, defend and maintain the validity and enforceability of any Intellectual Property material to the conduct of its business, (b) promptly advise Agent in writing of material infringements of any Intellectual Property material to such Loan Party's business of which any Responsible Officer of any Loan Party has knowledge, (c) not allow any Intellectual Property material to such Loan Party's business to be abandoned, forfeited or dedicated to the public without Agent's written consent (which decision regarding consent or non-consent by Agent shall not be unreasonably delayed after such Loan Party delivers written notice to Agent of such proposed abandonment, forfeiture or dedication to the public), and (d) notify Agent promptly, but in any event within three (3) Business Days, if it knows or has reason to know that any application or registration relating to any patent, trademark or copyright (now or hereafter existing) material to its business is reasonably likely to become abandoned or dedicated, or if it knows or has reason to know of any adverse determination or the occurrence of any development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) regarding such Loan Party's ownership of any Intellectual Property material to its business, or its right to register the same or to keep and maintain the same. Each Loan Party shall at all times conduct its business without knowingly infringing, misappropriating, diluting, violating, or otherwise impairing the Intellectual Property of any other Person. Each Loan Party shall remain liable under each of its Intellectual Property licenses pursuant to which it is a licensee that are material to such Loan Party's business, and shall observe and perform all of the conditions and obligations to be observed and performed by it thereunder. None of Agent or any Lender shall have any obligation or liability under any such license by reason of or arising out of any Loan Document, the granting of a Lien, if any, in such license or the receipt by Agent (on behalf of itself and Lenders) of any payment relating to any such license. If after the Closing Date any Loan Party (i) obtains any patent, registered trademark or service mark, registered copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any patent or the registration of any trademark, service mark, copyright or mask work, then such Loan Party shall concurrently with delivery of the next Compliance Certificate provide written notice thereof to Agent and shall promptly execute an Intellectual Property Security Agreement (or updates to the Exhibits to the Intellectual Property Security Agreement previously delivered if not filed at such time by Agent) and other documents and take such other actions as Agent shall request in its good faith business judgment to protect or perfect and maintain a first priority perfected security interest (which will be effective as provided herein) in favor of Agent, for the benefit of Lenders, in such Property. If requested by Agent, each Loan Party shall promptly provide to Agent copies of all applications that it files for patents or for the registration of trademarks, service marks, copyrights or mask works.

6.8 Collateral/Audit/Management Rights.

(a) Each Loan Party shall maintain all of the tangible Collateral (including cash and Cash Equivalents) in the continental United States. Notwithstanding the foregoing, Loan Parties shall be permitted to maintain Inventory and Equipment outside the United States if such Inventory and Equipment is in the possession of (or in transit to or from) a distributor in the ordinary course of such Loan Party's business and such distributor has executed a distributor agreement with such Loan Party, and the aggregate value thereof does not exceed \$1,500,000.

(b) Each Loan Party shall maintain and preserve in good working order and condition all of its Property necessary in the conduct of its business, ordinary wear and tear excepted.

(c) Each Loan Party shall maintain proper books of record and account, in which full, true and correct entries shall be made in accordance with GAAP and all other applicable Requirements of Law of all financial transactions and matters involving the assets and business of such Loan Party.

(d) Each Loan Party shall, during normal business hours and upon reasonable prior notice (unless a Default or Event of Default has occurred and is continuing in which event no notice shall be required and Agent and Lenders shall have access at all times during the continuance thereof), as frequently as Agent reasonably determines to be appropriate, permit Agent (who may be accompanied by representatives of any Lender) and any of its Related Persons (i) to have access to the properties, facilities, and employees (including officers) of each Loan Party and to the Collateral, (ii) to conduct field examinations and to inspect, audit and make extracts and copies of any Loan Party's books and records (or at the request of Agent, deliver true and correct copies of such books and records to Agent), and (iii) to inspect, audit, appraise, review, evaluate or make test verifications and counts of the Accounts and any other Collateral. The Loan Parties shall only be required to reimburse Agent and any applicable Lender for the expenses of two (2) such field examinations, inspections and audits per calendar year (unless a

Default or Event of Default has occurred and is continuing in which case Loan Parties shall be responsible for all such expenses). Upon Agent's request, each Loan Party will promptly notify Agent in writing of the location of any Collateral. In addition, any such representative shall have the right to meet with management and officers of Borrower to discuss such books of account and records. In addition, Agent or Lender shall be entitled at reasonable times and intervals to consult with and advise the management and officers of Borrower concerning significant business issues affecting Borrower. Such consultations shall not unreasonably interfere with Borrower's business operations. The parties intend that the rights granted Agent and Lender shall constitute "management rights" within the meaning of 29 C.F.R Section 2510.3-101(d)(3)(ii), but that any advice, recommendations or participation by Agent or Lender with respect to any business issues shall not be deemed to give Agent or Lender, nor be deemed an exercise by Agent or Lender of, control over Borrower's management or policies.

6.9 Compliance with Law. Each Loan Party shall comply with all applicable Requirements of Law except where the failure to comply could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Without limiting the generality of the foregoing, each Loan Party shall comply in all material respects with all Public Health Laws and their implementation by any applicable Governmental Authority and all lawful requests of any Governmental Authority applicable to its products. Each Loan Party shall continue to operate all facilities, locations, and processes in compliance in all material respects with all Registrations and Public Health Laws. All products designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold or marketed by or on behalf of any Loan Party that are subject to the jurisdiction of the FDA shall be designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold and marketed in compliance in all material respects with the Public Health Laws.

6.10 Deposit Accounts and Securities Accounts; Cash Management Procedures.

(a) Each Loan Party shall hold all of its cash and Cash Equivalents in a Deposit Account or Securities Account, and each Loan Party shall enter into, and cause each depository or securities intermediary to enter into, a deposit account control agreement or securities account control agreement, as the case may be, in form and substance reasonably satisfactory to Agent (an "Account Control Agreement") with respect to each Deposit Account and Securities Account maintained by such Person, prior to or concurrently with the establishment of such Deposit Account or Securities Account (or in the case of any such Deposit Account or Securities Account maintained as of the Closing Date, on or before the Closing Date). Such Account Control Agreement shall provide for "springing" cash dominion with respect to each such account. With respect to each Deposit Account or Securities Account providing for "springing" cash dominion, Agent will not deliver to the relevant institution a notice or other instruction which provides for exclusive control over such account by Agent until an Event of Default has occurred and is continuing. Upon Agent's written request, the Loan Parties shall create or designate a dedicated deposit account or accounts to be used exclusively for payroll or withholding tax purposes.

6.11 Further Assurances. Each Loan Party shall, upon request of Agent, furnish to Agent such further information, execute and deliver to Agent such documents and instruments (including, without limitation, UCC financing statements) and shall do such other acts and things as Agent may at any time reasonably request relating to the perfection or protection of the security interest created by any Loan Document or for the purpose of carrying out the intent of the Loan Documents. If any Loan Party acquires any real property, such Loan Party shall notify Agent in writing and simultaneously with such acquisition, execute and/or deliver to Agent a mortgage or such other agreements and documents as Agent shall require to grant to Agent a security interest over such real property as security for the Obligations, and shall satisfy such other requirements as Agent shall reasonably request (including, without limitation, appraisal, insurance, environmental and survey requirements).

6.12 SBA Provisions. Agent and HT III have received a license from the U.S. Small Business Administration ("SBA") to extend loans as a small business investment company ("SBIC") pursuant to the Small Business Investment Act of 1958, as amended, and the associated regulations (collectively, the "SBIC Act"). Portions of the Loan to Borrower will be made under the SBA license and the SBIC Act. Addendum 1 to this Agreement outlines various responsibilities of Agent, HT III and Borrower associated with an SBA loan, and such Addendum 1 is hereby incorporated in this Agreement.

6.13 Post Closing Deliverables. Not later than ten (10) Business Days after the date of this Agreement, Borrower shall deliver Agent fully executed copies of the documents listed on Schedule 6.13

Loan and Security Agreement - Amedica

7. NEGATIVE COVENANTS.

7.1 Liens. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, (a) create, incur, assume or permit to exist any Lien on any of its Property, other than Permitted Liens, or (b) enter into, assume or become subject to any agreement or other contractual obligation (other than this Agreement) prohibiting or otherwise restricting the existence of any Lien upon any of its Property (including, without limitation, any of its Intellectual Property), whether now owned or hereafter acquired, except in this clause (b), (i) limitations on Liens on any Property whose acquisition, repair, improvement or construction is financed by capitalized lease obligations or purchase money Indebtedness (permitted under clause (c) of the definition of Permitted Indebtedness) set forth in the agreement governing such Indebtedness with respect thereto and (ii) any such restriction customarily contained in any real property lease or sublease of any Loan Party.

7.2 Indebtedness. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly create, incur, assume, permit to exist, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except for Permitted Indebtedness.

7.3 Dispositions. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, Transfer any of its Property, except for Permitted Dispositions.

7.4 Change in Name, Location or Executive Office; Change in Business; Change in Fiscal Year. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, (a) without Agent's prior written consent, change its legal name, its jurisdiction of organization, its organizational structure or type, or any organizational identification number (if any) assigned by its jurisdiction of organization, (b) relocate its chief executive office without thirty (30) days prior written notification to Agent, (c) engage in any business other than or reasonably related or incidental to the businesses currently engaged in by such Person, (d) cease to conduct business substantially in the manner conducted by such Person as of the date of this Agreement (including, without limitation, terminating the employment of all or substantially all of its employees) or (e) change its fiscal year end.

7.5 Mergers and Investments. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly, (a) merge or consolidate with or into any other Person (other than mergers of a Subsidiary of Borrower into Borrower so long as Borrower is the surviving entity), or (b) acquire, own or make any Investment in or to any Person other than Permitted Investments.

7.6 Restricted Payments. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, (a) declare or pay any dividends or make any other distribution or payment on account of or redeem, retire, defease or purchase any Stock or Stock Equivalent (other than (i) the payment of dividends to Borrower, (ii) the payment of dividends or distributions payable solely in such Loan Party's Stock or Stock Equivalents, (iii) the issuance of Stock upon the exercise or conversion of Stock Equivalents, and (iv) so long as no Default or Event of Default is then continuing or would result therefrom, the repurchase of Borrower's Stock and Stock Equivalents from current or former officers, employees, surgeon advisors or directors (or their permitted transferees or estates) upon their death, disability or termination of employment in an aggregate amount not to exceed \$250,000 in any fiscal year), (b) purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness (other than with respect to the Obligations as described in [Section 2.5](#)) prior to its scheduled maturity, (c) purchase or make any payment on or with respect to any Subordinated Indebtedness, except as expressly permitted by the applicable Subordination Agreement, (d) pay any management, consulting or similar fees to any Affiliate or holder of Stock or Stock Equivalents of a Loan Party (other than (i) director's fees and reimbursement of actual out of pocket expenses incurred in connection with attending board of director meetings not to exceed in the aggregate, with respect to all such items, \$400,000 in any fiscal year, and (ii) bona fide consulting fees on arm's-length terms paid to such Affiliates for actual services rendered to the Loan Parties in the ordinary course of business in an aggregate amount not to exceed \$300,000 in any fiscal year) or (e) be a party to or bound by an agreement that restricts a Loan Party or any Subsidiary of a Loan Party from paying dividends or otherwise making any payments or distributions to any Loan Party.

7.7 Transactions with Affiliates. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly enter into or permit to exist any transaction with or for the benefit of any Affiliate of a Loan Party except for (a) Permitted Investments described in clauses (f) and (j) of such definition, (b) transactions that are in the ordinary course of such Loan Party's or such Subsidiary's business, upon fair and

reasonable terms that are no more favorable to such Affiliate than would be obtained in an arm's length transaction, (c) sales of equity securities of Borrower in bona fide equity financings for the purpose of raising capital to the extent such equity financing is not otherwise prohibited under the Loan Documents; (d) Investments by a Loan Party in another Loan Party to the extent permitted under Section 7.5 and (e) transactions among Loan Parties.

7.8 Compliance. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, (a) fail to comply with the laws and regulations described in clauses (b) or (c) of Section 5.7, (b) use any portion of the Loans to purchase or carry, become engaged in the business of purchasing or selling, or extend credit for the purpose of purchasing or carrying Margin Stock, or (c) fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, fail to comply in any material respect with the Federal Fair Labor Standards Act, withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of any Loan Party, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

7.9 Amendments to Other Agreements. No Loan Party shall amend, modify or waive any provision of (a) any Material Agreement (except as provided in clause (b) below) or any of such Loan Party's organizational documents, unless the net effect of such amendment, modification or waiver is not adverse to any Loan Party, Agent or Lenders, or (b) any document relating to any Subordinated Indebtedness.

7.10 Financial Covenants.

(a) Unrestricted Cash. From the Closing Date through August 15, 2014, Loan Parties shall not allow at any time Unrestricted Cash to be less than \$6,000,000, and thereafter, Loan Parties shall not allow at any time Unrestricted Cash to be less than \$9,000,000.

8. DEFAULT AND REMEDIES.

8.1 Events of Default. Each of the following shall be an "Event of Default":

(a) any Loan Party shall fail to pay any principal when due, provided, however, that an Event of Default shall not occur on account of a failure to pay due solely to administrative or operational error of Agent if Borrower had the funds to make the payment when due and makes the payment the Business Day following Borrower's knowledge of such failure to pay;

(b) any Loan Party breaches any of its obligations under Section 6.1 (solely as it relates to maintaining its existence), Section 6.2, Section 6.3, Section 6.4, Section 6.8(a) and (d), Section 6.10, Section 6.12 or Article 7;

(c) any Loan Party breaches any of its other obligations under any of the Loan Documents and fails to cure such breach within thirty (30) days after the earlier of (i) the date on which an officer of such Loan Party becomes aware, or through the exercise of reasonable diligence should have become aware, of such failure and (ii) the date on which notice shall have been given to any Loan Party from Agent or the Requisite Lenders;

(d) any representation, warranty or statement made or deemed made by or on behalf of any Loan Party in any of the Loan Documents or otherwise in connection with any of the Obligations shall be incorrect or misleading in any material respect (or in any respect if qualified by "material" or "Material Adverse Effect") when made or deemed made;

(e) (i) service of process is made that seeks to attach any funds of a Loan Party on deposit in any Deposit Account or Securities Account, (ii) a notice of Lien, levy, or assessment is filed against any Loan Party's assets by any Governmental Authority, and the same under the preceding subclauses (i) and (ii) are not, within twenty (20) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise), or (iii) any portion of the assets of the Loan Parties with an aggregate value in excess of \$50,000 is attached, seized, levied on, or comes into possession of a trustee or receiver;

Loan and Security Agreement - Amedica

(f) one or more judgments, orders or decrees shall be rendered against any Loan Party or any Subsidiary of a Loan Party that exceeds by more than \$250,000 any insurance coverage applicable thereto (to the extent the relevant insurer has been notified of such claim and has not denied coverage therefor) or one or more non-monetary judgments, orders or decrees shall be rendered against any Loan Party or any Subsidiary of a Loan Party that could reasonably be expected to result in a Material Adverse Effect, and in either case (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order or decree or (ii) such judgment, order or decree shall not have been satisfied, vacated or discharged for a period of thirty (30) consecutive days and there shall not be in effect (by reason of a pending appeal or otherwise) any stay of enforcement thereof;

(g) (i) any Loan Party or any Subsidiary of a Loan Party shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally, shall make a general assignment for the benefit of creditors, or shall cease doing business as a going concern, (ii) any proceeding shall be instituted by or against any Loan Party or any Subsidiary of a Loan Party seeking to adjudicate it as bankrupt or insolvent or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, composition of it or its debts or any similar order, in each case under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee, conservator, liquidating agent, liquidator, other similar official or other official with similar powers, in each case for it or for any substantial part of its Property and, in the case of any such proceedings instituted against (but not by or with the consent of) such Loan Party or such Subsidiary, either such proceedings shall remain undismissed or unstayed for a period of forty-five (45) days or more or any action sought in such proceedings shall occur, (iii) any Loan Party or any Subsidiary of a Loan Party shall take any corporate or similar action or any other action to authorize any action described in clauses (i) or (ii) above, or (iv) if Borrower is a public company, Borrower's Stock ceases to be traded on a major United States stock exchange;

(h) a Material Adverse Effect has occurred;

(i) (i) any provision of any Loan Document shall fail to be valid and binding on, or enforceable against, a Loan Party that is a party thereto, (ii) any Loan Document purporting to grant a security interest to secure any Obligation shall fail to create a valid and enforceable security interest on any Collateral purported to be covered thereby or such security interest shall fail or cease to be a perfected Lien with the priority required in the relevant Loan Document, or (iii) the holder of any Subordinated Indebtedness shall breach the terms of the applicable Subordination Agreement, or any subordination provision set forth in the Subordination Agreement or any other document evidencing or relating to any Subordinated Indebtedness shall, in whole or in part, terminate or otherwise fail or cease to be valid and binding on, or enforceable against, any agent for or holder of the Subordinated Indebtedness (or such Person shall so state in writing), or any Loan Party shall state in writing that any of the events described in clauses (i), (ii) or (iii) above shall have occurred;

(j) (i) any Loan Party or any Subsidiary of a Loan Party defaults under any Material Agreement (after any applicable grace period contained therein), and as a result of such default the other party thereto has the right to terminate such Material Agreement, (ii) (A) any Loan Party or any Subsidiary of a Loan Party fails to make (after any applicable grace period) any payment when due (whether due because of scheduled maturity, required prepayment, acceleration, demand or otherwise) on any Material Indebtedness, (B) any other event shall occur or condition shall exist under any contractual obligation relating to any Material Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of (without regard to any subordination terms with respect thereto), the maturity of such Material Indebtedness or (C) any Material Indebtedness shall become or be declared to be due and payable, or be required to be prepaid, redeemed, defeased or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof, or (iii) any Loan Party defaults (beyond any applicable grace period) under any obligation for payments due or otherwise under any lease agreement that meets the criteria for the requirement of an Access Agreement under Section 6.6 and, as a result thereof, the landlord thereunder has the right to terminate such lease agreement;

(k) (i) any of the chief executive officer, the chief financial officer or the chief technology officer of Borrower shall cease to be involved in the day to day operations (including research development) or management of the business of Borrower, unless a successor of such officer (including an interim replacement) is appointed by the Board of Directors of Borrower and employed within ninety (90) days of such cessation of involvement, and such successor is in compliance with OFAC, money-laundering, anti-terrorism, SEC, drug/device laws and regulations, and other similar regulations (in each case, to the extent applicable to a natural Person), (ii)

Loan and Security Agreement - Amedica

during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors of Borrower (together with any new directors whose election or appointment by the then current members of the Board of Directors of Borrower, or whose nomination for election by the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved was approved by a vote of at least a majority of the Board of Directors of Borrower or by a plurality of votes cast by the stockholders of Borrower) cease for any reason other than death or disability to constitute a majority of the directors then in office; (iii) the acquisition, directly or indirectly, by any Person or group (as such term is used in Section 13(d)(3) of the 1934 Act) of more than thirty-five percent (35%) of the voting Stock of Borrower, or (iv) the occurrence of any “change of control” or any term of similar effect under any Subordinated Indebtedness document;

(l) Any event occurs, that is not insured or insurable, as a result of which revenue-producing activities cease or are substantially curtailed at facilities of any Loan Party generating more than 33% of the Loan Parties’ consolidated revenues for the fiscal year preceding such event and such cessation or curtailment continues for more than one hundred twenty (120) days; or

(m) (i) The FDA initiates a Regulatory Action or any other enforcement action against any Loan Party or any supplier of a Loan Party that causes any Loan Party to recall, withdraw, remove or discontinue marketing any of its products; (ii) the FDA issues a warning letter to any Loan Party with respect to any of its activities or products which could reasonably be expected to have a Material Adverse Effect; (iii) any Loan Party conducts a mandatory or voluntary recall which could reasonably be expected to result in liability and expense to the Loan Parties of \$250,000 or more; (iv) any Loan Party enters into a settlement agreement with the FDA that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of \$250,000 or more, or that could reasonably be expected to have a Material Adverse Effect; or (v) the FDA revokes any authorization or permission granted under any Registration, or any Loan Party withdraws any Registration, that could reasonably be expected to have a Material Adverse Effect.

8.2 Lender Remedies. Upon the occurrence and during the continuance of any Event of Default, upon the written request of the Requisite Lenders, Agent shall terminate or suspend any Commitment (if outstanding) and/or declare any or all of the Obligations to be immediately due and payable, without demand or notice to any Loan Party, and the accelerated Obligations shall bear interest at the Default Rate, provided that, upon the occurrence of any Event of Default specified in Section 8.1(g), the Obligations shall be automatically accelerated. After the occurrence and during the continuance of an Event of Default, Agent shall have (on behalf of itself and Lenders) all of the rights and remedies of a secured party under the UCC and under any other applicable Requirement of Law. Without limiting the foregoing, upon the occurrence and during the continuance of an Event of Default, (a) at the written request of the Requisite Lenders, Agent shall, or (b) upon the termination of the Commitments or the acceleration of the Obligations pursuant to this Section 8.2, or upon receipt of written request of the Requisite Lenders to exercise remedies generally, Agent may, (w) notify any Account Debtor or any obligor on any instrument which constitutes part of the Collateral to make payments to Agent (for the benefit of itself and Lenders), (x) with or without legal process, enter any premises where the Collateral may be and take possession of and remove the Collateral from the premises or store it on the premises, (y) sell the Collateral at public or private sale, in whole or in part, and have the right to bid and purchase at such sale, or (z) lease or otherwise dispose of all or part of the Collateral, applying proceeds from such disposition to the Obligations in accordance with Section 8.3. If requested by Agent, Loan Parties shall promptly assemble the Collateral and make it available to Agent at a place to be designated by Agent. Agent may also render any or all of the Collateral unusable at a Loan Party’s premises and may dispose of such Collateral on such premises without liability for rent or costs. Any notice that Agent is required to give to a Loan Party under the UCC of the time and place of any public sale or the time after which any private sale or other intended disposition of the Collateral is to be made shall be deemed to constitute reasonable notice if such notice is given in accordance with this Agreement at least ten (10) days prior to such action. Effective only upon the occurrence and during the continuance of an Event of Default, each Loan Party hereby irrevocably appoints Agent (and any of Agent’s Related Persons) as such Loan Party’s true and lawful attorney to: (i) take any of the actions specified above in this paragraph; (ii) endorse such Loan Party’s name on any checks or other forms of payment or security that may come into Agent’s possession; (iii) settle and adjust disputes and claims respecting the Accounts directly with Account Debtors, for amounts and upon terms which Agent determines to be reasonable; and (iv) do such other and further acts and deeds in the name of such Loan Party that Agent may deem necessary or desirable to enforce its rights in or to any of the Collateral or to perfect or better perfect Agent’s security interest (on behalf of itself and Lenders) in any of the Collateral. For the purpose of enabling Agent to exercise rights and

Loan and Security Agreement - Amedica

remedies under this Section 8.2 at such time as Agent shall be lawfully entitled to exercise such rights and remedies, each Loan Party hereby grants to Agent (on behalf of itself and Lenders), (A) an irrevocable, nonexclusive, worldwide license (exercisable without payment of royalty or other compensation to such Loan Party), to use or sublicense any Intellectual Property now owned or hereafter acquired by such Loan Party and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof and (B) an irrevocable license (without payment of rent or other compensation to such Loan Party) to use, operate and occupy all real property owned, operated, leased, subleased or otherwise occupied by such Loan Party. The appointment of Agent as each Loan Party's attorney in fact is a power coupled with an interest and is irrevocable until the Termination Date. Notwithstanding anything to the contrary contained in this Section 8.2, Agent shall not be required to obtain the consent of any Lender to take any action to protect, preserve or take possession of any Collateral that is subject to an Exigent Circumstance.

8.3 Application of Proceeds. Proceeds from any Transfer of the Collateral, including, without limitation, the Intellectual Property (other than Permitted Dispositions) and all payments made to or Proceeds of Collateral, including, without limitation, Intellectual Property received by Agent during the continuance of an Event of Default shall be applied as follows: (a) first, to pay all fees, costs, indemnities, reimbursements and expenses then due to Agent under the Loan Documents in its capacity as Agent under the Loan Documents, until paid in full in cash, (b) second, to pay all fees, costs, indemnities, reimbursements and expenses then due to Lenders under the Loan Documents in accordance with their respective Pro Rata Shares, until paid in full in cash, (c) third, to pay all interest on the Loans then due to Lenders in accordance with their respective Pro Rata Shares (other than interest, fees, expenses and other amounts accrued after the commencement of any proceeding referred to in Section 8.1(g) if a claim for such amounts is not allowable in such proceeding), until paid in full in cash, (d) fourth, to pay all principal on the Loans then due to Lenders in accordance with their respective Pro Rata Shares, until paid in full in cash, (e) fifth, to pay all other Obligations then due to Agent and Lenders in accordance with their respective Pro Rata Shares (including, without limitation, all interest, fees, expenses and other amounts accrued after the commencement of any proceeding referred to in Section 8.1(g) whether or not a claim for such amounts is allowable in such proceeding), until paid in full in cash, and (f) sixth, to Borrower or as otherwise required by any Requirement of Law. Borrower shall remain fully liable for any deficiency. Each Loan Party irrevocably waives the right to direct the application during the continuance of an Event of Default of any and all payments in respect of any Obligation and any proceeds of Collateral, including, without limitation, the Intellectual Property.

9. THE AGENT.

9.1 Appointment of Agent.

(a) Each Lender hereby appoints HTGC (together with any successor Agent pursuant to Section 9.7) as Agent under the Loan Documents and authorizes Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Loan Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) Without limiting the generality of clause (a) above, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Lender is hereby authorized to make such payment to Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of Agent and Lenders with respect to any Obligation in any bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Lender), (iii) act as collateral agent for Agent and each Lender for purposes of the perfection of all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Agent and the other Lenders with respect to the Loan Parties and/or the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however,

Loan and Security Agreement - Amedica

that Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any Deposit Account maintained by a Loan Party with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed. Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). Any such Person shall benefit from this Article 9 to the extent provided by Agent.

(c) Under the Loan Documents, Agent (i) is acting solely on behalf of the Lenders, with duties that are entirely administrative in nature, notwithstanding the use of the defined term “Agent”, the terms “agent”, “Agent” and “collateral agent” and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above. Except as expressly set forth in the Loan Documents, Agent shall not have any duty to disclose, and shall not be liable for failure to disclose, any information relating to any Loan Party or any of its Subsidiaries that is communicated to or obtained by HTGC or any of its Affiliates in any capacity.

9.2 Binding Effect; Use of Discretion; E-Systems.

(a) Each Lender, by accepting the benefits of the Loan Documents, agrees that (i) any action taken by Agent or Requisite Lenders (or, if expressly required in any Loan Document, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Agent in reliance upon the instructions of Requisite Lenders (or, where so required, such greater proportion) and (iii) the exercise by Agent or Requisite Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of Lenders.

(b) If Agent shall request instructions from Requisite Lenders or all affected Lenders with respect to any act or action (including failure to act) in connection with any Loan Document, then Agent shall be entitled to refrain from such act or taking such action unless and until Agent shall have received instructions from Requisite Lenders or all affected Lenders, as the case may be, and Agent shall not incur liability to any Person by reason of so refraining. Agent shall be fully justified in failing or refusing to take any action under any Loan Document (i) if such action would, in the opinion of Agent, be contrary to any Requirement of Law or any Loan Document, (ii) if such action would, in the opinion of Agent, expose Agent to any potential liability under any Requirement of Law or (iii) if Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under any Loan Document in accordance with the instructions of Requisite Lenders or all affected Lenders, as applicable.

(c) Agent is hereby authorized by each Loan Party and each Lender to establish procedures (and to amend such procedures from time to time) to facilitate administration and servicing of the Loans and other matters incidental thereto. Without limiting the generality of the foregoing, Agent is hereby authorized to establish procedures to make available or deliver, or to accept, notices, documents and similar items on, by posting to or submitting and/or completion, on E-Systems. Each Loan Party and each Lender acknowledges and agrees that the use of transmissions via an E-System or electronic mail is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse, and each Loan Party and each Lender assumes and accepts such risks by hereby authorizing the transmission via E-Systems or electronic mail. Each “e-signature” on any such posting shall be deemed sufficient to satisfy any requirement for a “signature”, and each such posting shall be deemed sufficient to satisfy any requirement for a “writing”, in each case including pursuant to any Loan Document, any applicable provision of any UCC, the federal Uniform Electronic Transactions Act, the Electronic

Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter. All uses of an E-System shall be governed by and subject to, in addition to this Section, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related contractual obligations executed by Agent, Loan Parties and/or Lenders in connection with the use of such E-System. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED "AS IS" AND "AS AVAILABLE". NO REPRESENTATION OR WARRANTY OF ANY KIND IS MADE BY AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E-SYSTEMS.

9.3 Agent's Reliance, Etc. Agent may, without incurring any liability hereunder, (a) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 10.1, (b) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Loan Party) and (c) rely and act upon any document and information (including those transmitted by electronic transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties. None of Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and each Loan Party hereby waives and shall not assert (and each Loan Party shall cause its Subsidiaries to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment of a court of competent jurisdiction) in connection with the duties of Agent expressly set forth herein. Without limiting the foregoing, Agent: (i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Requisite Lenders or for the actions or omissions of any of its Related Persons, except to the extent that a court of competent jurisdiction determines in a final non-appealable judgment that Agent acted with gross negligence or willful misconduct in the selection of such Related Person; (ii) shall not be responsible to any Lender or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document; (iii) makes no warranty or representation, and shall not be responsible, to any Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of any Loan Party or any Related Person of any Loan Party in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Loan Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Agent in connection with the Loan Documents; and (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Loan Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default, and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from Borrower or any Lender describing such Default or Event of Default that is clearly labeled "notice of default" (in which case Agent shall promptly give notice of such receipt to all Lenders, provided that Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction); and, for each of the items set forth in clauses (i) through (iv) above, each Lender and each Loan Party hereby waives and agrees not to assert (and each Loan Party shall cause its Subsidiaries to waive and agree not to assert) any right, claim or cause of action it might have against Agent based thereon.

9.4 Agent Individually. Agent and its Affiliates may make loans and other extensions of credit to, acquire Stock and Stock Equivalents of, engage in any kind of business with, any Loan Party or Affiliate thereof as though it were not acting as Agent and may receive separate fees and other payments therefor. To the extent Agent or any of its Affiliates makes any Loans or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Requisite Lender" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Agent or such Affiliate, as the case may be, in its individual capacity as Lender, or as one of the Requisite Lenders.

Loan and Security Agreement - Amedica

9.5 Lender Credit Decision; Agent Report. Each Lender acknowledges that it shall, independently and without reliance upon Agent, any Lender or any of their Related Persons or upon any document solely or in part because such document was transmitted by Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Loan Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Agent to the Lenders, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, Property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party that may come in to the possession of Agent or any of its Related Persons. Each Lender agrees that it shall not rely on any field examination, audit or other report provided by Agent or its Related Persons (an "Agent Report"). Each Lender further acknowledges that any Agent Report (a) is provided to the Lenders solely as a courtesy, without consideration, and based upon the understanding that such Lender will not rely on such Agent Report, (b) was prepared by Agent or its Related Persons based upon information provided by the Loan Parties solely for Agent's own internal use, and (c) may not be complete and may not reflect all information and findings obtained by Agent or its Related Persons regarding the operations and condition of the Loan Parties. Neither Agent nor any of its Related Persons makes any representations or warranties of any kind with respect to (i) any existing or proposed financing, (ii) the accuracy or completeness of the information contained in any Agent Report or in any related documentation, (iii) the scope or adequacy of Agent's and its Related Persons' due diligence, or the presence or absence of any errors or omissions contained in any Agent Report or in any related documentation, and (iv) any work performed by Agent or Agent's Related Persons in connection with or using any Agent Report or any related documentation. Neither Agent nor any of its Related Persons shall have any duties or obligations in connection with or as a result of any Lender receiving a copy of any Agent Report. Without limiting the generality of the forgoing, neither Agent nor any of its Related Persons shall have any responsibility for the accuracy or completeness of any Agent Report, or the appropriateness of any Agent Report for any Lender's purposes, and shall have no duty or responsibility to correct or update any Agent Report or disclose to any Lender any other information not embodied in any Agent Report, including any supplemental information obtained after the date of any Agent Report. Each Lender releases, and agrees that it will not assert, any claim against Agent or its Related Persons that in any way relates to any Agent Report or arises out of any Lender having access to any Agent Report or any discussion of its contents, and agrees to indemnify and hold harmless Agent and its Related Persons from all claims, liabilities and expenses relating to a breach by any Lender arising out of such Lender's access to any Agent Report or any discussion of its contents.

9.6 Indemnification. Each Lender agrees to reimburse Agent and each of its Related Persons (to the extent not reimbursed by any Loan Party) promptly upon demand for its Pro Rata Share of any out-of-pocket costs and expenses (including, without limitation, fees, charges and disbursements of financial, legal and other advisors and any taxes or insurance paid in the name of, or on behalf of, any Loan Party) incurred by Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, amendment, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including, without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to, its rights or responsibilities under, any Loan Document. Each Lender further agrees to indemnify Agent and each of its Related Persons (to the extent not reimbursed by any Loan Party), ratably according to its Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, to the extent not indemnified by the applicable Lender, taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by, or asserted against Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Agent or any of its Related Persons under or with respect to the foregoing; provided that no Lender shall be liable to Agent or any of its Related Persons under this Section 9.6 to the extent such liability has resulted from the gross negligence or willful misconduct of Agent or, as the case may be, such Related Person, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent required by any applicable Requirement of Law, Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that Agent did not properly withhold tax from amounts paid to or for the account of any Lender for any reason, or if Agent reasonably

determines that it was required to withhold taxes from a prior payment to or for the account of any Lender but failed to do so, such Lender shall promptly indemnify Agent fully for all amounts paid, directly or indirectly, by Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by Agent. Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Agent is entitled to indemnification from such Lender under the immediately preceding sentence of this Section 9.6.

9.7 Successor Agent. Agent may resign at any time by delivering notice of such resignation to the Lenders and Borrower, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective, in accordance with the terms of this Section 9.7. If Agent delivers any such notice, the Requisite Lenders shall have the right to appoint a successor Agent. If, after 30 days after the date of the retiring Agent's notice of resignation, no successor Agent has been appointed by the Requisite Lenders that has accepted such appointment, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent from among the Lenders. Effective immediately upon its resignation, (a) the retiring Agent shall be discharged from its duties and obligations under the Loan Documents, (b) the Lenders shall assume and perform all of the duties of Agent until a successor Agent shall have accepted a valid appointment hereunder, (c) the retiring Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Agent under the Loan Documents, and (iv) subject to its rights under Section 9.2(b), the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent, a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents.

9.8 Release of Collateral. Each Lender hereby consents to the release and hereby directs Agent to release (or in the case of (b)(ii) below, release or subordinate) the following:

(a) any Guarantor if all of the Stock of such Subsidiary owned by any Loan Party is sold or transferred in a transaction permitted under the Loan Documents (including pursuant to a valid waiver or consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to any Loan Document; and

(b) any Lien held by Agent for the benefit of itself and the Lenders against (i) any Collateral that is sold or otherwise disposed of by a Loan Party in a transaction permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any Collateral subject to a Lien that is expressly permitted under clause (d) of the definition of the term "Permitted Lien" and (iii) all of the Collateral and all Loan Parties, upon (A) termination of all of the Commitments, (B) payment in full in cash of all of the Obligations (other than contingent indemnity obligations that survive termination of this Agreement and for which no claim has been asserted) that Agent has theretofore been notified in writing by the holder of such Obligation are then due and payable, and (C) to the extent requested by Agent, receipt by Agent and Lenders of liability releases from the Loan Parties in form and substance reasonably acceptable to Agent (the satisfaction of the conditions in this clause (iii), the "Termination Date").

9.9 Setoff and Sharing of Payments. In addition to any rights now or hereafter granted under any applicable Requirement of Law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default and subject to Section 9.10(d), each Lender is hereby authorized at any time or from time to time upon the direction of Agent, without notice to any Loan Party or any other Person, any such notice being hereby expressly waived, to setoff and to appropriate and to apply any and all balances held by it at any of its offices for the account of the Loan Parties (regardless of whether such balances are then due to the Loan Parties) and any other properties or assets at any time held or owing by that Lender or that holder to or for the credit or for the account of any Loan Party against and on account of any of the Obligations that are not paid when due. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lenders or holders shall sell) such participations in each such other Lender's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so offset or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares of the Obligations. Each Loan Party agrees, to the fullest extent permitted by law, that

Loan and Security Agreement - Amedica

(a) any Lender may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations and may purchase participations in accordance with the preceding sentence and (b) any Lender so purchasing a participation in the Loans made or other Obligations held by other Lenders or holders may exercise all rights of offset, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Lender or holder were a direct holder of the Loans and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the offset amount or payment otherwise received is thereafter recovered from the Lender that has exercised the right of offset, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

9.10 Advances; Payments; Actions in Concert.

(a) Advances; Payments. If Agent receives any payment with respect to a Term Loan for the account of Lenders on or prior to 2:00 p.m. (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on such Business Day. If Agent receives any payment with respect to a Term Loan for the account of Lenders after 2:00 p.m. (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on the next Business Day.

(b) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Loan Party and such related payment is not received by Agent, then Agent will be entitled to recover such amount (including interest accruing on such amount at the rate otherwise applicable to such Obligation) from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Agent determines at any time that any amount received by Agent under any Loan Document must be returned to a Loan Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of any Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to a Loan Party or such other Person, without setoff, counterclaim or deduction of any kind and Agent will be entitled to setoff against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(c) Actions in Concert. Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of any Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of Agent or Requisite Lenders, it being the intent of Lenders that any such action to protect or enforce rights under any Loan Document shall be taken in concert and at the direction or with the consent of Agent or Requisite Lenders.

10. MISCELLANEOUS.

10.1 Assignment.

(a) Each Lender may sell, transfer or assign, at any time or times, all or a portion of its rights and obligations hereunder and under the other Loan Documents (including, without limitation, all or a portion of its Commitments and its rights and obligations with respect to its Loans) to any Qualified Assignee; provided, however, that any such sale, transfer or assignment shall (i) require the execution of an assignment agreement in form and substance reasonably satisfactory to, and acknowledged by, Agent (an "Assignment Agreement"), (ii) be in an amount of not less than \$1,000,000, unless such assignment is made to an existing Lender or an Affiliate of an existing Lender or is of the assignor's (together with its Affiliates') entire interest in such facility or is made with the prior written consent of Agent, (iii) unless otherwise agreed to by Agent, be in an equal proportion of such Lender's Terms Loan and Term Loan Commitment, and (iv) include a payment to Agent of an assignment fee of \$3,500 (unless otherwise agreed by Agent). In the case of an assignment by a Lender under this Section 10.1(a), the

Loan and Security Agreement - Amedica

assignee shall have, to the extent of such assignment, the same rights, benefits and obligations as all other Lenders hereunder. The assigning Lender shall be relieved of its obligations hereunder with respect to the assigned portion of its Commitments and Loans from and after the date of such assignment. Borrower hereby acknowledges and agrees that any assignment shall give rise to a direct obligation of Borrower to the assignee and that the assignee shall be considered to be a "Lender". In the event any Lender assigns or otherwise transfers all or any part of the Commitments or Loans, Borrower shall, upon the assignee's or the assignor's request, execute new Notes in exchange for the Notes, if any, being assigned. Agent may amend Schedule A to this Agreement to reflect assignments made in accordance with this Section 10.1.

(b) In addition to the other rights provided in this Section 10.1, each Lender may, without notice to or consent from any other Person, sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Loan Documents (including all of its rights and obligations with respect to the Loans); provided, however, that, whether as a result of any term of any Loan Document or of such participation, (i) no such participant shall have a commitment, or be deemed to have made an offer to commit, to make any Loan hereunder, and, no such participant shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of the Loan Parties and Agent and other Lenders towards such Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations, and in no case shall a participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (ii), (iii) and (iv) of Section 10.6(a).

(c) In addition to the other rights provided in this Section 10.1, each Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board), without notice to Agent or (B) any holder of, or trustee for the benefit of the holders of, such Lender's Indebtedness or equity securities, by notice to Agent; provided, however, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in accordance with clause (a) above), shall be entitled to any rights of such Lender hereunder and no such Lender shall be relieved of any of its obligations hereunder.

10.2 Notices. All notices or other communications given in connection with the Loan Documents shall be in writing, shall be addressed to the parties at their respective addresses set forth on the signature pages hereto below such parties' name or in the most recent Assignment Agreement executed by any Lender (unless and until a different address may be specified in a written notice to the other party delivered in accordance with this Section 10.2), and shall be deemed given (a) on the date of receipt if delivered by hand, (b) on the date of sender's receipt of confirmation of proper transmission if sent by facsimile transmission, (c) on the next Business Day after being sent by a nationally-recognized overnight courier, (d) on the fourth Business Day after being sent by registered or certified mail, postage prepaid, (e) on the date of proper transmission if sent by electronic mail, provided that transmissions may be made by electronic mail only for notices or other communications if such transmission is specifically authorized in a Loan Document and such transmission is delivered in compliance with procedures of Agent applicable at the time and previously communicated to Borrower, or (f) on the later of the Business Day of such posting and the Business Day access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E-System, if posted to any E-System approved by or set-up by or at the direction of Agent.

10.3 Payment of Fees and Expenses. Loan Parties agree, jointly and severally, to pay or reimburse upon demand all reasonable fees, costs and expenses incurred by Agent and Lenders in connection with (a) the investigation, preparation, negotiation, execution, administration of, or any amendment, modification, waiver or termination of, any Loan Document, (b) any legal advice relating to Agent's rights or responsibilities under any Loan Document, (c) the administration of the Loans and the facilities hereunder and any other transaction contemplated under any Loan Document and (d) the enforcement, assertion, defense or preservation of Agent's and Lenders' rights and remedies under the Loan Documents, including, without limitation, preparation for and/or

response to any subpoena or request for document production relating thereto, in each case of clauses (a) through (d), including, without limitation, reasonable attorneys' fees and expenses, reasonable fees and expenses of consultants, auditors (including internal auditors) and appraisers, internal audit reviews and field examinations (subject to the terms of this Agreement) and UCC and other corporate search and filing fees and wire transfer fees. Each Loan Party further agrees that such fees, costs and expenses shall constitute Obligations. The Agent acknowledges receipt of a \$37,500 commitment charge from the Borrower prior to the Closing Date which shall be applied towards Agent and Lender's transaction costs and non-legal expenses.

10.4 Indemnity. Each Loan Party agrees, jointly and severally, to indemnify, hold harmless and defend Agent, each Lender, and each of their respective Related Persons (each an "Indemnitee") from and against all liabilities, losses, damages, expenses, penalties, claims, actions and suits (including, without limitation, related reasonable attorneys' fees and expenses) of any kind whatsoever arising, directly or indirectly, that may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with any Loan Documents, any E-System, or any of the transactions contemplated hereby or thereby, including, without limitation, any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnitee or any of its Related Persons or whether or not any such Person is a party thereto (the "Indemnified Liabilities"); provided that, no Loan Party shall have any obligation to any Indemnitee with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of such Indemnitee as determined by a final non-appealable judgment of a court of competent jurisdiction. In no event shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or anticipated savings). Each Loan Party waives, releases and agrees (and shall cause each other Loan Party to waive, release and agree) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

10.5 Rights Cumulative. Agent's and Lenders' rights and remedies under the Loan Documents or otherwise arising are cumulative and may be exercised singularly or concurrently. Neither the failure nor any delay on the part of Agent or any Lender to exercise any right, power or privilege under any Loan Document shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of that or any other right, power or privilege. NEITHER AGENT NOR ANY LENDER SHALL BE DEEMED TO HAVE WAIVED ANY OF ITS RESPECTIVE RIGHTS UNDER ANY LOAN DOCUMENT OR UNDER ANY OTHER AGREEMENT, INSTRUMENT OR PAPER SIGNED BY A LOAN PARTY UNLESS SUCH WAIVER IS EXPRESSED IN WRITING AND SIGNED BY AGENT, REQUISITE LENDERS OR ALL LENDERS, AS APPLICABLE. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

10.6 Amendments, Waivers.

(a) No amendment or waiver of any provision of any Loan Document, and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by Agent, Requisite Lenders (or by Agent with the consent of Requisite Lenders) and Borrower; provided that no such amendment, waiver or consent shall, unless in writing and signed by all Lenders directly affected thereby (or by Agent with the consent of all Lenders directly affected thereby), in addition to Agent, Requisite Lenders (or by Agent with the consent of Requisite Lenders) and Borrower, do any of the following: (i) increase or decrease the amount of, or extend the term of, any Commitment (which shall be deemed to affect all Lenders), (ii) reduce the principal of or rate of interest on (other than waiving the imposition of the Default Rate) any Loan or reduce the amount of any fees payable under any Loan Document, (iii) postpone the date fixed for or reduce or waive any scheduled installment of principal or any payment of interest or fees due to any Lender under the Loan Documents, (iv) release or subordinate the Lien on all or substantially all of the Collateral, except as otherwise may be provided in any Loan Document (which shall be deemed to affect all Lenders), (v) release a Loan Party from, or consent to a Loan Party's assignment or delegation of, such Loan Party's obligations under the Loan Documents (which shall be deemed to affect all Lenders), except as otherwise may be provided in any Loan Document, (vi) amend, modify, terminate or waive Sections 8.3, 9.9, or 10.6(a), or (vii) amend or modify the definition of "Requisite Lenders" or any provision providing for the consent or other action by all Lenders.

(b) Notwithstanding any provision in this Section 10.6 to the contrary, (i) no amendment, modification, termination or waiver affecting or modifying the rights or obligations of Agent under any Loan

Document shall be effective unless signed by Borrower, Agent and Requisite Lenders, (ii) Agent may amend Schedule A to reflect assignments permitted hereunder, and (iii) Agent and Borrower may amend or modify any Loan Document to grant a new Lien, extend an existing Lien over additional Property or join additional Persons as Loan Parties, in each case for the benefit of Agent and Lenders.

10.7 Performance. Time is of the essence of the Loan Documents.

10.8 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that any assignment by any Lender shall be subject to the provisions of Section 10.1, and provided further that no Loan Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Agent and each Lender. No other Person shall be deemed a third party beneficiary of this Agreement. This Agreement shall continue in full force and effect until the Termination Date; provided, however, that the provisions of this Section 10.8 and Sections 2.4(e), 9.6, 10.3, 10.4, 10.11, 10.12 and 10.13 and the other indemnities contained in the Loan Documents shall survive the Termination Date. The surrender, upon payment or otherwise, of any Note or any other Loan Document evidencing any of the Obligations shall not affect the right of Agent to retain the Collateral for such other Obligations as may then exist or as it may be reasonably contemplated will exist in the future. To the extent Agent or any Lender receives any payment in respect of the Obligations and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or otherwise required to be paid to any other Person, then to the extent of such recovery, the Obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

10.9 Creditor-Debtor Relationship. The relationship between Agent and each Lender, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. Neither Agent nor any Lender has any fiduciary relationship or duty to any Loan Party arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between Agent or Lenders and Loan Parties by virtue of, any Loan Document or any transaction contemplated herein or therein.

10.10 Tombstones and Related Matters. Each Loan Party consents to the publication by Agent or any Lender of any press releases, tombstone, advertising or other promotional materials (including, without limitation, via any electronic transmission) relating to the financing transaction contemplated by this Agreement using such Loan Party's name, product, photographs, logo or trademark. No Loan Party shall, and no Loan Party shall permit any of its Affiliates to, issue any press release or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of the securities of any Loan Party) using the name, logo or otherwise referring to HTGC or of any of its Affiliates, the Loan Documents or any transaction contemplated herein or therein to which any of them is a party without the prior written consent of Agent except to the extent required to do so under applicable Requirements of Law and then, only after consulting with Agent.

10.11 Governing Law. This Agreement and the other Loan Documents have been negotiated and delivered to Agent and Lender in the State of California, and shall have been accepted by Agent and Lender in the State of California. Payment to Agent and Lender by Borrower of the Obligations is due in the State of California. This Agreement and the other Loan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

10.12 Consent to Jurisdiction and Venue. All judicial proceedings (to the extent that the reference requirement of Section 10.13 is not applicable) arising in or under or related to this Agreement or any of the other Loan Documents may be brought in any state or federal court located in the State of California. By execution and delivery of this Agreement, each party hereto generally and unconditionally: (a) consents to nonexclusive personal jurisdiction in Santa Clara County, State of California; (b) waives any objection as to jurisdiction or venue in Santa Clara County, State of California; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement or the other Loan Documents. Service of process on any party hereto in any action arising out of or relating to this Agreement shall be effective if given in accordance with the requirements for notice set forth in Section 10.2, and shall be deemed effective and received as set forth in Section 10.2. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of either party to bring proceedings in the courts of any other jurisdiction.

Loan and Security Agreement - Amedica

10.13 Mutual Waiver of Jury Trial / Judicial Reference.

(a) Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert Person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. EACH OF BORROWER, AGENT AND EACH LENDER SPECIFICALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY BORROWER AGAINST AGENT, LENDER OR THEIR RESPECTIVE ASSIGNEE OR BY AGENT, LENDER OR THEIR RESPECTIVE ASSIGNEE AGAINST BORROWER. This waiver extends to all such Claims, including Claims that involve Persons other than Agent, Borrower and Lender; Claims that arise out of or are in any way connected to the relationship among Borrower, Agent and Lender; and any Claims for damages, breach of contract, tort, specific performance, or any equitable or legal relief of any kind, arising out of this Agreement or any other Loan Document.

(b) If the waiver of jury trial set forth in Section 10.13(a) is ineffective or unenforceable, the parties agree that all Claims shall be resolved by reference to a private judge sitting without a jury, pursuant to Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of Santa Clara County, California. Such proceeding shall be conducted in Santa Clara County, California, with California rules of evidence and discovery applicable to such proceeding.

(c) In the event Claims are to be resolved by judicial reference, either party may seek from a court identified in Section 10.12, any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by law notwithstanding that all Claims are otherwise subject to resolution by judicial reference.

10.14 Confidentiality. Each Lender and Agent agrees to use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Loan Document and designated in writing by any Loan Party as confidential, except that such information may be disclosed (a) with Borrower's consent, (b) to such Lender's or Agent's Related Persons, as the case may be, that are advised of the confidential nature of such information and are instructed to keep such information confidential in accordance with the terms hereof, (c) to the extent such information presently is or hereafter becomes (i) publicly available other than as a result of a breach of this Section 10.14 or (ii) available to such Lender or Agent or any of their Related Persons, as the case may be, from a source (other than any Loan Party) not known by them to be subject to disclosure restrictions, (d) to the extent disclosure is required by any applicable Requirements of Law, or other legal, administrative, governmental or regulatory request, order or proceeding or otherwise requested or demanded by any Governmental Authority, (e) to the extent necessary or customary for inclusion in league table measurements, (f) (i) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency or (ii) otherwise to the extent consisting of general portfolio information that does not identify Loan Parties, (g) to current or prospective assignees or participants and to their respective Related Persons, in each case to the extent such assignees, participants or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 10.14 (and such Persons may disclose information to their respective Related Persons in accordance with clause (b) above), (h) to any other party hereto, and (i) in connection with the exercise or enforcement of any right or remedy under any Loan Document, in connection with any litigation or other proceeding to which such Lender or Agent or any of their Related Persons is a party or bound, or to the extent necessary to respond to public statements or disclosures by Loan Parties or their Related Persons referring to a Lender or Agent or any of their Related Persons. In the event of any conflict between the terms of this Section 10.14 and those of any other contractual obligation entered into with any Loan Party (whether or not a Loan Document), the terms of this Section 10.14 shall govern.

10.15 USA Patriot Act. Each Lender that is subject to the Patriot Act hereby notifies Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act.

10.16 **Severability.** Any provision of any Loan Document being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of any Loan Document or any part of such provision in any other jurisdiction.

10.17 **Entire Agreement; Counterparts; Construction.** The Loan Documents constitute the entire agreement of the parties and supersede all prior agreements and understandings (whether written, verbal or implied) with respect to the subject matter thereof (including, without limitation, any proposal letter or confidentiality agreement between the parties hereto or any of their respective Affiliates relating to a financing of substantially similar form, purpose or effect). Section headings contained in this Agreement have been included for convenience only, and shall not affect the construction or interpretation of this Agreement. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart hereof. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement

10.18 **Duty of Agent With Respect to Collateral; Marshaling.** Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in a reasonable manner and as Agent deals with similar property for its own account. The powers conferred on Agent hereunder are solely to protect Agent's interest in the Collateral and shall not impose any duty upon Agent to exercise any such powers. Agent shall be accountable only for amounts that it receives as a result of the exercise of such powers, and neither Agent nor any Indemnitee shall be responsible to any Loan Party for any act or failure to act hereunder, except for their own gross negligence or willful misconduct as finally determined by a non-appealable judgment of a court of competent jurisdiction. In addition, Agent shall not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehousemen, carrier, forwarding agency, consignee or other bailee if such Person has been selected by Agent in good faith. Agent may (but shall not be obligated to) pay taxes on behalf of any Loan Party, satisfy any Liens against the Collateral (other than Permitted Liens), purchase insurance to protect Agent's and Lenders' interest if Loan Parties fail to maintain the insurance required hereunder and may pay for the maintenance, insurance, protection and preservation of the Collateral and effect compliance with the terms of any Loan Document. Each Loan Party agrees to reimburse Agent, on demand, for all costs and expenses incurred by Agent in connection with such payment or performance and agrees that such amounts shall constitute Obligations. Each Loan Party hereby (a) waives any right under the UCC or any other applicable Requirement of Law to receive notice and/or copies of any filed or recorded financing statements, amendments thereto, continuations thereof or termination statements and (b) releases and excuses Agent and each Lender from any obligation under the UCC or any other applicable law to provide notice or a copy of any such filed or recorded documents. Neither Agent nor any Lender shall be under any obligation to marshal any property in favor of any Loan Party or any other Person or against or in payment of any Obligation.

10.19 **Joint and Several; Waiver of Defense.** The obligations of the Loan Parties under the Loan Documents are joint and several. Each Loan Party waives (a) any suretyship defenses available to it under the UCC or any other applicable Requirement of Law, and (b) any right to require Agent and Lenders to proceed against any other Loan Party or any other Person, proceed against or exhaust any security, or pursue any other remedy. Agent and Lenders may exercise or not exercise any right or remedy they have against any Loan Party, any Collateral or any other security (including the right to foreclose by judicial or non-judicial sale) without affecting any other Loan Party's liability. Notwithstanding any other provision of any Loan Document, each Loan Party irrevocably waives all rights that it may have under any Requirement of Law or in equity (including, without limitation, any Requirement of Law subrogating any Loan Party to the rights of Agent and Lenders under any Loan Document) to seek contribution, indemnification or any other form of reimbursement from any other Loan Party, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by any Loan Party with respect to the Obligations in connection with any Loan Document or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by any Loan Party with respect to the Obligations in connection with any Loan Document or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is made to a Loan Party in contravention of this Section, such Loan Party shall hold such payment in trust for Agent and Lenders and such payment shall be promptly delivered to Agent for application to the Obligations, whether matured or unmatured.

Loan and Security Agreement - Amedica

10.20 Revival of Obligations. This Agreement and the Loan Documents shall remain in full force and effect and continue to be effective if any petition is filed by or against Borrower for liquidation or reorganization, if Borrower becomes insolvent or makes an assignment for the benefit of creditors, if a receiver or trustee is appointed for all or any significant part of Borrower's assets, or if any payment or transfer of Collateral is recovered from Agent or Lender. The Loan Documents and the Obligations and Collateral security shall continue to be effective, or shall be revived or reinstated, as the case may be, if at any time payment and performance of the Obligations or any transfer of Collateral to Agent, or any part thereof is rescinded, avoided or avoidable, reduced in amount, or must otherwise be restored or returned by, or is recovered from, Agent, Lender or by any obligee of the Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment, performance, or transfer of Collateral had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, avoided, avoidable, restored, returned, or recovered, the Loan Documents and the Obligations shall be deemed, without any further action or documentation, to have been revived and reinstated except to the extent of the full, final, and indefeasible payment to Agent or Lender in cash.

10.21 No Third Party Beneficiary. No provisions of the Loan Documents are intended, nor will be interpreted, to provide or create any third-party beneficiary rights or any other rights of any kind in any Person other than Agent, Lender and Borrower unless specifically provided otherwise herein, and, except as otherwise so provided, all provisions of the Loan Documents will be personal and solely among Agent, the Lender and the Borrower.

11. Defined Terms. The following terms are defined in the Sections or subsections referenced opposite such terms:

"1934 Act"	Section 2.4(h)(iv)
" <u>Account Control Agreement</u> "	Section 6.10
" <u>Agent</u> "	Preamble
" <u>Agent Conversion Election Notice</u> "	Section 2.4(h)(iii)
" <u>Agreement</u> "	Preamble
" <u>Assignment Agreement</u> "	Section 10.1(a)
" <u>Borrower</u> "	Preamble
" <u>Borrower Conversion Election Notice</u> "	Section 2.4(h)(i)
" <u>Closing Date</u> "	Section 4.1
" <u>Conversion Conditions</u> "	Section 2.4(h)(ii)
" <u>Conversion Option</u> "	Section 2.4(h)(i)
" <u>Delivery Date</u> "	Section 2.4(h)(i)
" <u>Event of Default</u> "	Section 8.1
" <u>Guarantor</u> " and " <u>Guarantors</u> "	Preamble
" <u>HTGC</u> "	Preamble
" <u>Indemnitee</u> "	Section 10.4
" <u>Indemnified Liabilities</u> "	Section 10.4
" <u>Intellectual Property Security Agreements</u> "	Section 3.1
" <u>Intercompany Note</u> "	Definition of "Permitted Indebtedness"
" <u>Lender</u> " and " <u>Lenders</u> "	Preamble
" <u>Loan Party</u> " and " <u>Loan Parties</u> "	Preamble
" <u>Maximum Lawful Rate</u> "	Section 2.3(d)
" <u>Nasdaq</u> "	Section 2.4(h)(ii)
" <u>Patriot Act</u> "	Section 5.7(c)
" <u>Prepayment Charge</u> "	Section 2.5(a)
" <u>Principal Installment Due Date</u> "	Section 2.4(h)(i)
" <u>Principal Installment Payment</u> "	Section 2.4(h)(i)
" <u>SBA</u> "	Section 6.12

“ <u>SBIC</u> ”	Section 6.12
“ <u>SBIC Act</u> ”	Section 6.12
“ <u>SDN List</u> ”	Section 5.7(b)
“ <u>Term Loan</u> ”	Section 2.1(a)
“ <u>Termination Date</u> ”	Section 9.8(b)

In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

“Access Agreement” means a landlord consent and/or bailee letter, substantially in the forms of Exhibit C-1 and C-2 respectively, in favor of Agent executed by the applicable landlord or bailee and the applicable Loan Party.

“Account” means, as at any date of determination, all “accounts” (as such term is defined in the UCC) of the Loan Parties, including, without limitation, the unpaid portion of the obligation of a customer of a Loan Party in respect of Inventory purchased by and shipped to such customer and/or the rendition of services by a Loan Party, as stated on the respective invoice of a Loan Party, net of any credits, rebates or offsets owed to such customer.

“Account Debtor” means the customer of a Loan Party who is obligated on or under an Account.

“Affiliate” means, with respect to any Person, (a) each Responsible Officer, director, partner or joint-venturer of such Person (and in the case of any Person that is a limited liability company, each manager and member of such Person), and (b) any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person.

“Automatic Payment Authorization Agreement” means an automatic payment authorization agreement, substantially in the form of Exhibit D, executed by Borrower.

“Business Day” means and includes any day other than Saturdays, Sundays, or other days on which commercial banks in New York, New York are required or authorized to be closed.

“Cash Equivalents” means (a) any readily-marketable securities (i) issued by, or directly, unconditionally and fully guaranteed or insured by the United States federal government or (ii) issued by any agency of the United States federal government the obligations of which are fully backed by the full faith and credit of the United States federal government, (b) any readily-marketable direct obligations issued by any other agency of the United States federal government, any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case having a rating of at least “A-1” from S&P or at least “P-1” from Moody’s, (c) any commercial paper rated at least “A-1” by S&P or “P-1” by Moody’s and issued by any Person organized under the laws of any state of the United States, (d) any Dollar-denominated time deposit, insured certificate of deposit, overnight bank deposit or bankers’ acceptance issued or accepted by (i) Agent or (ii) any commercial bank that is (A) organized under the laws of the United States, any state thereof or the District of Columbia, (B) “adequately capitalized” (as defined in the regulations of its primary federal banking regulators) and (C) has Tier 1 capital (as defined in such regulations) in excess of \$250,000,000 or (e) shares of any United States money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clause (a), (b), (c) or (d) above with maturities as set forth in the proviso below, (ii) has net assets in excess of \$500,000,000 and (iii) has obtained from either S&P or Moody’s the highest rating obtainable for money market funds in the United States; provided, however, that the maturities of all obligations specified in any of clauses (a), (b), (c) and (d) above shall not exceed 365 days. For the avoidance of doubt, “Cash Equivalents” does not include (and each Loan Party is prohibited from purchasing or purchasing participations in) any auction rate securities or other corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a Dutch auction.

“Collateral” means all Property and interests in Property and proceeds thereof now owned or hereafter acquired by any Loan Party in or upon which a Lien is granted or purported to be granted in favor of Agent for the benefit of Agent and Lenders pursuant to any Loan Document.

“Commitments” means the Term Loan Commitments.

“Common Stock” means Borrower’s common stock, par value \$0.01 per share.

Loan and Security Agreement - Amedica

“Convertible Debt Offering” means the sale by Borrower of Stock Equivalents to MG Partners II, Ltd. or its Affiliates in two tranches which results in Borrower’s receipt of not less than \$6,000,000, the terms of which are substantially in accordance with Exhibit H, hereto.

“Default” means any event, which with the giving of notice or the passage of time, or both, would constitute an Event of Default.

“Default Rate” means a rate of interest equal to 5.0% per annum above the rate of interest otherwise in effect for the applicable Obligation.

“Disbursement Letter” means a disbursement instruction letter, in form and substance satisfactory to Agent, among each Loan Party, Agent and each Lender.

“Dollars” and “\$” each mean lawful money of the United States of America.

“EBITDA” means, with respect to Borrower and its consolidated Subsidiaries for any period, the total of the following, which shall be determined in accordance with GAAP: (a) the consolidated net income (loss) of Borrower and its consolidated Subsidiaries for such period, plus (b) without duplication, to the extent included in the calculation of consolidated net income of Borrower and its consolidated Subsidiaries for such period, the sum of the following amounts of Borrower and its consolidated Subsidiaries for such period, (i) income taxes paid or accrued (excluding any amounts Borrower or any of its consolidated Subsidiaries includes in its sales, general and administrative expenses), (ii) interest expense (net of interest income), paid or accrued, (iii) amortization and depreciation expense, (iv) compensation paid in Stock, and (v) other non-cash charges as approved by Agent in its reasonable discretion. EBITDA shall be measured on an accrued accounting basis.

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended.

“E-System” means any electronic system approved by Agent, including any Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

“Exigent Circumstance” means any event or circumstance that, in the reasonable judgment of Agent, imminently threatens the ability of Agent to realize upon all or any material portion or material piece of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of any Loan Party after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Agent, could result in a material diminution in value of the Collateral (including, for the avoidance of doubt and without limitation, circumstances where Agent reasonably believes the Loan Parties’ remaining cash and Cash Equivalents are being, or are likely to be, significantly and imminently diminished).

“Existing Indebtedness” means all of the Indebtedness and other obligations owed immediately prior to the Closing Date under that certain Loan and Security Agreement dated as of December 12, 2012, by and among Borrower, GECC and the other lender parties thereto, as such agreement has been amended from time to time.

“FDA” means the U.S. Food and Drug Administration or any successor thereto or any other comparable Governmental Authority.

“Final Maturity Date” means January 1, 2018.

“Financing Condition” means Borrower’s receipt of not less than \$6,000,000 pursuant to the Convertible Debt Offering on or before August 15, 2014, proof of which has been provided by such date to Lender’s reasonable satisfaction.

“Fixed Conversion Price” means \$5.721825, provided, however, that upon the occurrence of any stock split, stock dividend, combination of shares or reverse stock split pertaining to the Common Stock, the Fixed Conversion Price shall be proportionately increased or decreased as necessary to reflect the proportionate change in the shares of Common Stock issued and outstanding as a result of such stock split, stock dividend, combination of shares or reverse stock split.

“Funding Condition” means the closing of the first tranche of the Convertible Debt Offering which results in Borrower’s receipt of not less than \$2,500,000, proof of which has been provided to Lender’s reasonable satisfaction.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time.

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“GECC” means General Electric Credit Corporation and its Affiliates.

“Governmental Authority” means any nation, sovereign or government, any state or other political subdivision thereof, any agency, authority or instrumentality thereof and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity and any self-regulatory organization.

“Guaranty Agreement” means a guaranty agreement, in form and substance satisfactory to Agent, made by Guarantors in favor of Agent, for the benefit of Agent and Lenders.

“HT III” means Hercules Technology III, L.P., a Delaware limited partnership which is an affiliate of Agent.

“Indebtedness” means, with respect to any Person, at any date, without duplication, (a) all indebtedness for borrowed money, (b) all obligations evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations to pay the deferred purchase price of Property or services, including earnouts or similar payments (other than trade payables incurred in the ordinary course of business), (d) all capital lease obligations, (e) the principal balance outstanding under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product, (f) all contingent or non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, surety bond or other similar instrument, (g) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (h) all indebtedness secured by a Lien on any asset of such Person, whether or not such indebtedness is an obligation of such Person, (i) all obligations under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured, and (j) all indebtedness, obligations or liabilities of others guaranteed, endorsed (other than in the ordinary course of business), co-made, discounted with recourse or sale with recourse by such Person or for which such Person is otherwise directly or indirectly liable.

“Indemnified Taxes” means any and all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto (other than taxes measured by net income and franchise taxes imposed in lieu of net income taxes, in each case imposed on Agent or any Lender as a result of a present or former connection between Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein, except for such connection arising solely from Agent or such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, any Loan Document).

“Intellectual Property” means (a) all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, and (b) the goodwill of the business of any Person connected with and symbolized thereby, know-how, operating manuals, trade secret rights, clinical and non-clinical data, and rights to unpatented inventions.

“Interest Only Extension Conditions” means the satisfaction of each of the following events: (a) no default or Event of Default shall have occurred and be continuing; and (b) Borrower’s trailing six month Operating Revenue as of June 30, 2015, shall be not less than \$15,000,000.

“Operating Revenue” means the gross revenue Borrower receives from its operations in the ordinary course of business, less refunds, returns and credits issued that correspond to any such revenue.

“Interest Period” means, as applicable, (a) the period commencing on the Closing Date and ending on the day immediately preceding the first Business Day of the next succeeding calendar month, or (b) subsequent to the period described in clause (a), the period commencing on the first Business Day of the calendar month and ending on the day immediately preceding the first Business Day of the next succeeding calendar month.

“Investment” means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any Stock or Stock Equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or commit to make any acquisition of all or substantially all of the assets of another Person, or of any business, division or other unit operation of any Person or (c) make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any Person.

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“Knowledge” means, as to any Person, such Person has knowledge or should have had knowledge after using reasonable diligence.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or otherwise), security interest or other security arrangement and any other preference, priority or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a capital lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

“Loan” means the Term Loan and any other loan made or deemed made by any Lender hereunder.

“Loan Documents” means this Agreement, the Notes (if any), the Warrants, the Intellectual Property Security Agreements, the Account Control Agreements, the Access Agreements, the Perfection Certificate, the Pledge Agreement, the Guaranty (if any), any Subordination Agreement, the Disbursement Letter and all other agreements, instruments, documents and certificates delivered to Agent or any Lender from time to time in connection with any of the foregoing.

“Margin Stock” means “margin stock” within the meaning of Regulations T, U and X of the Board of Governors of the Federal Reserve System.

“Material Adverse Effect” means a material adverse effect on any of (a) the operations, business, assets, properties, or condition (financial or otherwise) of Borrower, individually, or the Loan Parties, taken as a whole, (b) the ability of a Loan Party to perform any of its obligations under any Loan Document to which it is a party, (c) the legality, validity or enforceability of any Loan Document, (d) the rights and remedies of Agent or Lenders under any Loan Document or (e) the validity, perfection or priority of any Lien in favor of Agent, on behalf of itself and Lenders, on any of the Collateral.

“Material Agreement” means (a) any agreement or contract to which a Loan Party is a party and involving the receipt or payment of amounts in the aggregate exceeding \$250,000 per year, (b) any agreement or contract to which a Loan Party is a party of which the breach, nonperformance, termination or failure to renew could reasonably be expected to have a Material Adverse Effect, or (c) each agreement relating to any Subordinated Indebtedness.

“Material Indebtedness” means (a) any Subordinated Indebtedness and (b) any other Indebtedness (other than the Obligations) of a Loan Party or any of its Subsidiaries having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$250,000.

“Note” means a promissory note of Borrower, in form and substance satisfactory to Agent, payable to a Lender in a principal amount equal to the amount of such Lender’s Term Loan Commitment.

“OFAC” means U.S. Treasury Department’s Office of Foreign Assets Control.

“Obligations” means all Loans and all other debts, obligations and liabilities of any kind whatsoever owing by the Loan Parties to Agent and Lenders under the Loan Documents (other than the Warrants), whether for principal, interest, fees, expenses, prepayment premiums, indemnities, reimbursements or other sums, and whether or not such amounts accrue after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not allowed in such case or proceeding, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and howsoever acquired, and whether or not evidenced by any instrument or for the payment of any money.

“Perfection Certificate” means a perfection certificate in the form provided by Agent, completed and duly executed by each Loan Party.

“Permitted Contest” means the contesting in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves or other appropriate provisions are maintained on the books of the applicable Loan Party in accordance with GAAP and which do not involve, in the judgment of Agent, any risk of the sale, forfeiture or loss of any of the Collateral.

“Permitted Dispositions” means (a) sales of inventory in the ordinary course of business, (b) sales of obsolete or worn out equipment or tangible assets that are no longer used or useful in the business of a Loan Party for cash and fair value so long as no Default or Event of Default has occurred and is continuing at the time of such sale or would result after giving effect thereto, (c) licenses of the Intellectual Property of a Loan Party in the ordinary course of business of the applicable Loan Party, provided that (i) any such license is non-exclusive (but may be exclusive in

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respects other than territory and may be exclusive as to territory only as to discreet geographical areas outside of the United States, provided further that in the case of any such permitted exclusive license, such license shall be approved by the Board of Directors of the applicable Loan Party) and does not result in a legal transfer of title of the licensed Intellectual Property, (ii) no Default or Event of Default has occurred and is continuing at the time of such license or would result after giving effect thereto, and (iii) the terms of such license do not restrict the applicable Loan Party's ability to grant a Lien on, assign or otherwise Transfer such license or any Intellectual Property; provided further, that in the case of a license that does not comply with clause (c)(i) above, but otherwise is in compliance with the other terms of this Agreement, Agent agrees that its decision regarding consent or non-consent to such license will not be unreasonably withheld or delayed after such Loan Party delivers written notice to Agent and Lenders summarizing the proposed licensing transaction, provides a copy of the term sheet and when available the licensing documents and provides all others documents and instruments reasonably requested by Agent or any Lender, and (d) transfers of Intellectual Property listed on Schedule 11.1 which is not material to any Loan Party's business.

"Permitted Indebtedness" means (a) the Obligations, (b) Indebtedness existing on the Closing Date and set forth on Schedule 7.2, (c) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by any Loan Party or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such Person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed \$300,000 at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value (plus taxes, shipping and installation expenses) of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made), (d) Indebtedness owing by any Loan Party to another Loan Party, provided that (i) each Loan Party shall have executed and delivered to each other Loan Party a demand note (each, an "Intercompany Note") to evidence such intercompany loans or advances owing at any time by each Loan Party to the other Loan Parties, which Intercompany Note shall be in form and substance reasonably satisfactory to Agent and shall be pledged and delivered to Agent pursuant to a Pledge Agreement as additional Collateral for the Obligations, (ii) any and all Indebtedness of any Loan Party to another Loan Party shall be subordinated to the Obligations pursuant to the subordination terms set forth in each Intercompany Note, and (iii) no Default or Event of Default shall result after giving effect to any such Indebtedness, (e) Subordinated Indebtedness, (f) guaranties by one or more Loan Parties of the Indebtedness of another Loan Party, so long as such Indebtedness is otherwise permitted pursuant to Section 7.2, (g) reimbursement obligations in connection with letters of credit in an amount not to exceed \$100,000, and (h) obligations owing to trade creditors incurred in the ordinary course of business and past due by more than 90 days in an amount not to exceed \$50,000 in the aggregate.

"Permitted Investments" means (a) Investments existing on the Closing Date and set forth on Schedule 7.5, (b) subject to Section 6.10, Investments in cash and Cash Equivalents, (c) endorsements for collection or deposit in the ordinary course of business consistent with past practice, (d) extensions of trade credit (other than to Affiliates of a Loan Party) in the ordinary course of business, (e) Investments received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business, (f) loans and advances to employees of any Loan Party to finance travel, entertainment and relocation expenses and other business purposes in the ordinary course of business in an aggregate outstanding principal amount not to exceed \$150,000 at any time, (g) Investments consisting of non-cash loans made by Borrower to officers, directors and employees of a Loan Party which are used by such Persons to purchase simultaneously the Stock of Borrower, (h) advances by a Loan Party to another Loan Party in accordance with the terms and conditions described in clause (d) of the definition of "Permitted Indebtedness", (i) joint ventures or strategic alliances in the ordinary course of business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support, but in no event consisting of Investments of cash, Cash Equivalents or tangible assets, and (j) non-recourse equity capital contributions made by Borrower to any of its Subsidiaries that constitutes a Loan Party.

"Permitted Liens" means each of the following: (a) Liens created pursuant to any Loan Document, (b) Liens existing on the Closing Date and set forth on Schedule 7.1, (c) Liens (i) with respect to the payment of taxes, assessments or other governmental charges or (ii) of suppliers, carriers, materialmen, warehousemen, workmen or mechanics and other similar Liens, in each case imposed by law and arising in the ordinary course of business, and securing amounts that are not yet due or that are subject to a Permitted Contest, (d) Liens securing Indebtedness permitted under clause (c) of the definition of "Permitted Indebtedness", provided that (i) such Liens exist prior to the acquisition of, or attach substantially simultaneous with, or within 20 days after, the acquisition, repair, improvement or construction of, such property financed by such Indebtedness and (ii) such Liens do not extend to any Property of a Loan Party other than the Property (and proceeds thereof) acquired or built, or the improvements

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or repairs, financed by such Indebtedness, (e) Liens of a collection bank on items in the course of collection arising under Section 4-208 of the UCC, (f) pledges or cash deposits made in the ordinary course of business (i) in connection with workers' compensation, unemployment insurance or other types of social security benefits (other than any Lien imposed by ERISA), (ii) to secure the performance of bids, tenders, leases (other than capital leases), sales or other trade contracts (other than for the repayment of borrowed money) or (iii) made in lieu of, or to secure the performance of, surety, customs, reclamation or performance bonds (in each case not related to judgments or litigation), (g) judgment liens (other than for the payment of taxes, assessments or other governmental charges) securing judgments and other proceedings not constituting an Event of Default under Section 8.1(f) and pledges or cash deposits made in lieu of, or to secure the performance of, judgment or appeal bonds in respect of such judgments and proceedings, (h) Liens arising by reason of zoning restrictions, easements, licenses, reservations, restrictions, covenants, rights-of-way, encroachments, minor defects or irregularities in title (including leasehold title) and other similar encumbrances on the use of real property that do not materially (i) impair the value or marketability of such real property or (ii) interfere with the ordinary conduct of the business conducted and proposed to be conducted at such real property, and (i) licenses described in clause (c) of the definition of "Permitted Disposition."

"Person" means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority.

"Pledge Agreement" means a pledge agreement in form and substance satisfactory to Agent executed by each Loan Party and Agent.

"Prime Rate" means the prime rate as reported in The Wall Street Journal from time to time.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

"Pro Rata Share" means:

(a) with respect to the Warrants in any respect, or with respect to a Lender's obligation to make the Term Loan and right to receive payments of interest, fees and principal with respect thereto, the percentage obtained by dividing (a) the aggregate outstanding principal amount of the Term Loan owing to such Lender at such time by (b) the aggregate outstanding principal amount of the Term Loan owing to all Lenders at such time;

(b) with respect to all other matters at any time, the percentage obtained by dividing (i) such Lender's Commitments at such time (or if any Commitment of such Lender is terminated at such time, the aggregate outstanding principal amount of the applicable Loan at such time owing to such Lender), by (ii) the Commitments of all Lenders at such time (or, if any Commitments of all such Lenders are terminated at such time, the aggregate outstanding principal amount of the applicable Loan owing to all Lenders at such time).

"Public Health Laws" means all Requirements of Law relating to the procurement, development, clinical and non-clinical evaluation, product approval or clearance, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, sale, labeling, promotion, or postmarket requirements of any drug, medical device, food, dietary supplement, or other product (including, without limitation, any ingredient or component of the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.) and similar state laws, controlled substances laws, pharmacy laws, or consumer product safety laws.

"Qualified Assignee" means (a) any Lender, (b) any Affiliate of any Lender, (c) any commercial bank, savings and loan association or savings bank or any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act of 1933, as amended) which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case of this clause (c), which either (i) has a rating of BBB or higher from Standard & Poor's Rating Group and a rating of Baa2 or higher from Moody's Investor Service, Inc. at the date that it becomes a Lender, or (ii) together with its Affiliated entities, holds loan assets in excess of \$250,000,000 or (d) any other Person (other than a natural person) approved by Agent, provided however, that notwithstanding the foregoing, unless approved by Agent, "Qualified Assignee" shall not include (A) any Person who is not capable of lending to Borrower without the imposition of any withholding or similar taxes, (B) any Loan Party or any Affiliate of a Loan Party or any Person or Affiliate of such Person that holds any subordinated debt or Stock or Stock Equivalents issued by any Loan Party or its Affiliates (other than any Person that is a Lender on the Closing Date or any Affiliate thereof) or (C) any Person acting in the capacity of a vulture fund or distressed debt purchaser.

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“Registrations” means registrations, authorizations, approvals, licenses, permits, clearances, certificates, and exemptions issued or allowed by the FDA (including, without limitation, new drug applications, abbreviated new drug applications, biologics license applications, investigational new drug applications, over-the-counter drug monograph, device pre-market approval applications, device pre-market notifications, investigational device exemptions, product recertifications, manufacturing approvals and authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, controlled substance registrations, and wholesale distributor permits).

“Regulatory Action” means an administrative or regulatory action, proceeding, investigation or inspection, FDA Form 483 inspectional observation, warning letter, untitled letter, notice of violation letter, recall, alert, seizure, Section 305 notice or other similar communication, or consent decree, issued by the FDA.

“Related Persons” means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

“Requirement of Law” means, with respect to any Person, any law (statutory or common), ordinance, treaty, rule, regulation, order, policy, judgment, writ, injunction, decree, or other legal requirement or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Requisite Lenders” means Lenders whose Pro Rata Shares aggregate more than 60%; provided, however, that so long as a Lender on the Closing Date does not assign any portion of its Commitments or Loans (other than an assignment to any Affiliate of such Lender or another Lender existing on the Closing Date), the “Requisite Lenders” shall include such Lender; provided, further, that when more than one Lender exists, “Requisite Lenders” shall include at least two (2) Lenders.

“Responsible Officer” shall mean, each to the extent such exists, the chief executive officer, president, chief financial officer, chief operating officer, chief technology officer, vice president of finance, general counsel, chief scientific officer, vice president of regulatory affairs and compliance, and any other officer with substantially the same responsibility as any of the above.

“Scheduled Payment Date” means the first day of each calendar month.

“SEC” means the Securities and Exchange Commission.

“Solvent” means, with respect to any Person as of any date of determination, that, as of such date, (a) the value of the assets of such Person (both at fair value and present fair saleable value) is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to pay all liabilities of such Person as such liabilities mature and (c) such Person does not have unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Stock” means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting.

“Stock Equivalents” means all securities convertible into or exchangeable for Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

“Subordinated Indebtedness” means any unsecured Indebtedness owing by any Loan Party to any Person that is not a holder of any Stock or Stock Equivalents of any Loan Party on the date such Indebtedness is incurred, which Indebtedness is subordinated to the Obligations pursuant to a Subordination Agreement.

“Subordination Agreement” means, with respect to any Subordinated Indebtedness, a subordination agreement in form and substance satisfactory to Agent executed by Agent, the Loan Parties and each holder of such Subordinated Indebtedness.

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“Subsidiary” means, with respect to any Person, any entity the management of which is, directly or indirectly controlled by, or of which an aggregate of more than 50% of the outstanding voting Stock is, at the time, owned or controlled, directly or indirectly by, such Person or one or more Subsidiaries of such Person.

“Term Loan Commitment” means, with respect to each Lender, the amount set forth opposite such Lender’s name on Schedule A hereto under the caption “Term Loan Commitment”, as amended from time to time to reflect any permitted assignments and as such amount may be reduced or terminated pursuant to this Agreement. “Term Loan Commitments” means the Term Loan Commitments of all Lenders with a Term Loan Commitment.

“Term Loan Interest Rate” means for any day a per annum rate of interest equal to the greater of either (i) the Prime Rate plus 7.7%, and (ii) 10.95%.

“Term Loan Lender” means each Lender with a Term Loan Commitment, or if the Term Loan Commitment is no longer in effect, each Lender owning a Term Loan.

“Transfer” means, with respect to any Property, to sell, convey, transfer, assign, license, rent, lease, sublease, mortgage, transfer or otherwise dispose of any interest therein or to permit any Person to acquire any such interest.

“UCC” means the Uniform Commercial Code as from time to time in effect in the State of New York; provided, however, that, in the event that, by reason of mandatory provisions of any applicable Requirement of Law, any of the attachment, perfection or priority of Agent’s or any other Lender’s security interest in any Collateral is governed by the Uniform Commercial Code of a jurisdiction other than the State of New York, “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of the definitions related to or otherwise used in such provisions.

“Unrestricted Cash” means the amount of Cash held in Deposit Accounts or the market value of accounts holding Investment Property, all of which are subject to an Account Control Agreement in favor of Agent, less (i) the amount of any Indebtedness which has been due for 30 or more days, and (ii) any funds for which there are any restrictions on use other than restrictions provided in this Agreement. Cash or Investment Property held in accounts not subject to an Account Control Agreement shall not be included in determining Unrestricted Cash.

“Warrants” means the common stock purchase warrants issued to each Term Loan Lender (or its Affiliate or designee) substantially in the form of the warrant attached as Exhibit E.

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first written above.

BORROWER:

AMEDICA CORPORATION

By: _____
Name: _____
Title: _____

GUARANTOR:

US SPINE, INC.

By: _____
Name: _____
Title: _____

Address For Notices For All Loan Parties:

c/o Amedica Corporation
1885 West 2100 South
Salt Lake City, UT 84119
Attention: Gordon G. Esplin, CPA
Phone: (801) 839-3516
Facsimile: (801) 683-2805

Loan and Security Agreement – Amedica signature page

With a copy to:

AGENT AND LENDER:

**HERCULES TECHNOLOGY GROWTH
CAPITAL, INC.**

By: _____
Name: Ben Bang
Title: Senior Counsel

Address For Notices (except in the case of notices under Section 6.3):

HERCULES TECHNOLOGY GROWTH CAPITAL, INC.
Legal Department
Attention: Chief Legal Officer and Chad Norman
400 Hamilton Avenue, Suite 310
Palo Alto, CA 94301
Facsimile: 650-473-9194
Telephone: 650-289-3060

LENDER:

HERCULES TECHNOLOGY III, L.P.,
a Delaware limited partnership

By: Hercules Technology SBIC
Management, LLC, its General
Partner

By: Hercules Technology Growth
Capital, Inc., its Manager

By: _____
Name: Ben Bang
Its: Senior Counsel

Loan and Security Agreement – Amedica signature page

Address For Notices (except in the case of notices under Section 6.3):

HERCULES TECHNOLOGY III, L.P.
Legal Department
Attention: Chief Legal Officer and Chad Norman
400 Hamilton Avenue, Suite 310
Palo Alto, CA 94301
Facsimile: 650-473-9194
Telephone: 650-289-3060

Loan and Security Agreement - Amedica

ADDENDUM 1 to LOAN AND SECURITY AGREEMENT

(a) *Borrower's Business.* For purposes of this Addendum 1, Borrower shall be deemed to include its "affiliates" as defined in Title 13 Code of Federal Regulations Section 121.103. Borrower represents and warrants to Agent and Lender as of the Closing Date and covenants to Agent and Lender for a period of one year after the Closing Date with respect to subsections 2, 3, 4, 5, 6 and 7 below, as follows:

1. **Size Status.** Borrower does not have tangible net worth in excess of \$18 million or average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years in excess of \$6 million;
2. **No Relender.** Borrower's primary business activity does not involve, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair;
3. **No Passive Business.** Borrower is engaged in a regular and continuous business operation (excluding the mere receipt of payments such as dividends, rents, lease payments, or royalties). Borrower's employees are carrying on the majority of day to day operations. Borrower will not pass through substantially all of the proceeds of the Loan to another entity;
4. **No Real Estate Business.** Borrower is not classified under Major Group 65 (Real Estate) or Industry No. 1531 (Operative Builders) of the SIC Manual. The proceeds of the Loan will not be used to acquire or refinance real property unless Borrower (x) is acquiring an existing property and will use at least 51 percent of the usable square footage for its business purposes; (y) is building or renovating a building and will use at least 67 percent of the usable square footage for its business purposes; or (z) occupies the subject property and uses at least 67 percent of the usable square footage for its business purposes.
5. **No Project Finance.** Borrower's assets are not intended to be reduced or consumed, generally without replacement, as the life of its business progresses, and the nature of Borrower's business does not require that a stream of cash payments be made to the business's financing sources, on a basis associated with the continuing sale of assets (e.g., real estate development projects and oil and gas wells). The primary purpose of the Loan is not to fund production of a single item or defined limited number of items, generally over a defined production period, where such production will constitute the majority of the activities of Borrower (e.g., motion pictures and electric generating plants).
6. **No Farm Land Purchases.** Borrower will not use the proceeds of the Loan to acquire farm land which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.
7. **No Foreign Investment.** The proceeds of the Loan will not be used substantially for a foreign operation. At the time of the Loan, Borrower will not have more than 49 percent of its employees or tangible assets located outside the United States. The representation in this subsection (7) is made only as of the date hereof and shall not continue for one year as contemplated in the first sentence of this Section 1.

(b) *Small Business Administration Documentation.* Agent and Lender acknowledge that Borrower completed, executed and delivered to Agent SBA Forms 480, 652 and 1031 (Parts A and B) together with a business plan showing Borrower's financial projections (including balance sheets and income and cash flows statements) for the period described therein and a written statement (whether included in the purchase agreement or pursuant to a separate statement) from Agent regarding its intended use of proceeds from the sale of securities to Lender (the "Use of Proceeds Statement"). Borrower represents and warrants to Agent and Lender that the information regarding Borrower and its affiliates set forth in the SBA Form 480, Form 652 and Form 1031 and the Use of Proceeds Statement delivered as of the Closing Date is accurate and complete.

(c) *Inspection.* The following covenants contained in this Section (c) are intended to supplement and not to restrict the related provisions of the Loan Documents. Subject to the preceding sentence, Borrower will permit, for so long as Lender holds any debt or equity securities of Borrower, Agent, Lender or their representative, at Agent's or Lender's expense, and examiners of the SBA to visit and inspect the properties and assets of Borrower, to examine its books of account and records, and to discuss Borrower's affairs, finances and accounts with Borrower's officers, senior management and accountants, all at such reasonable times as may be requested by Agent or Lender or the SBA.

(d) *Annual Assessment.* Promptly after the end of each calendar year (but in any event prior to February 28 of each year) and at such other times as may be reasonably requested by Agent or Lender, Borrower will deliver to Agent a written assessment of the economic impact of Lender's investment in Borrower, specifying the full-time equivalent jobs created or retained in connection with the investment, the impact of the investment on the businesses of Borrower in terms of expanded revenue and taxes, other economic benefits resulting from the investment (such as technology development or commercialization, minority business development, or expansion of exports) and such other information as may be required regarding Borrower in connection with the filing of Lender's SBA Form 468. Lender will assist Borrower with preparing such assessment. In addition to any other rights granted hereunder, Borrower will grant Agent and Lender and the SBA access to Borrower's books and records for the purpose of verifying the use of such proceeds. Borrower also will furnish or cause to be furnished to Agent and Lender such other information regarding the business, affairs and condition of Borrower as Agent or Lender may from time to time reasonably request.

(e) *Use of Proceeds.* Borrower will use the proceeds from the Loan only for purposes set forth in Section 7.16. Borrower will deliver to Agent from time to time promptly following Agent's request, a written report, certified as correct by Borrower's Chief Financial Officer, verifying the purposes and amounts for which proceeds from the Loan have been disbursed. Borrower will supply to Agent such additional information and documents as Agent reasonably requests with respect to its use of proceeds and will permit Agent and Lender and the SBA to have access to any and all Borrower records and information and personnel as Agent deems necessary to verify how such proceeds have been or are being used, and to assure that the proceeds have been used for the purposes specified in Section 7.16.

(f) *Activities and Proceeds.* Neither Borrower nor any of its affiliates (if any) will engage in any activities or use directly or indirectly the proceeds from the Loan for any purpose for which a small business investment company is prohibited from providing funds by the SBIC Act, including 13 C.F.R. §107.720. Without obtaining the prior written approval of Agent, Borrower will not change within 1 year of the date hereof, Borrower's current business activity to a business activity which a licensee under the SBIC Act is prohibited from providing funds by the SBIC Act.

(g) *Redemption Provisions.* Notwithstanding any provision to the contrary contained in the Certificate of Incorporation of Borrower, as amended from time to time (the "Charter"), if, pursuant to the redemption provisions contained in the Charter, Lender is entitled to a redemption of its Warrant, such redemption (in the case of Lender) will be at a price equal to the redemption price set forth in the Charter (the "Existing Redemption Price"). If, however, Lender delivers written notice to Borrower that the then current regulations promulgated under the SBIC Act prohibit payment of the Existing Redemption Price in the case of an SBIC (or, if applied, the Existing Redemption Price would cause the Common Stock to lose its classification as an "equity security" and Lender has determined that such classification is unadvisable), the amount Lender will be entitled to receive shall be the greater of (i) fair market value of the securities being redeemed taking into account the rights and preferences of such securities plus any costs and expenses of the Lender incurred in making or maintaining the Warrant, and (ii) the Existing Redemption Price where the amount of accrued but unpaid dividends payable to the Lender is limited to Borrower's earnings plus any costs and expenses of the Lender incurred in making or maintaining the Warrant; provided, however, the amount calculated in subsections (i) or (ii) above shall not exceed the Existing Redemption Price.

(h) *Compliance and Resolution.* Borrower agrees that a failure to comply with Borrower's obligations under this Addendum, or any other set of facts or circumstances where it has been asserted by any governmental regulatory agency (or Agent or Lender believes that there is a substantial risk of such assertion) that Agent, Lender and their affiliates are not entitled to hold, or exercise any significant right with respect to, any securities issued to Lender by Borrower, will constitute a breach of the obligations of Borrower under the financing agreements among Borrower, Agent and Lender. In the event of (i) a failure to comply with Borrower's obligations under this Addendum; or (ii) an assertion by any governmental regulatory agency (or Agent or Lender believes that there is a substantial risk of such assertion) of a failure to comply with Borrower's obligations under this Addendum, then (i) Agent, Lender and Borrower will meet and resolve any such issue in good faith to the satisfaction of Borrower, Agent, Lender, and any governmental regulatory agency, and (ii) upon request of Lender or Agent, Borrower will cooperate and assist with any assignment of the financing agreements among Hercules Technology III, L.P. and Hercules Technology Growth Capital, Inc.

Loan and Security Agreement - Amedica

SCHEDULE A
COMMITMENTS

<u>Name of Lender</u>	<u>Term Loan Commitment</u>	<u>Pro Rata Share of Term Loan Commitments</u>	<u>Total Commitments</u>	<u>Pro Rata Share of Commitments</u>
Hercules Technology Growth Capital, Inc.	\$10,000,000	50.0%	\$10,000,000	50.0%
Hercules Technology III, L.P.	\$10,000,000	50.0%	\$10,000,000	50.0%
TOTAL	\$20,000,000	100%	\$20,000,000	100%

Loan and Security Agreement - Amedica

DISCLOSURES

SCHEDULE 5.2 MATERIAL AGREEMENTS

1. Underwriting Agreement between Borrower and JMP Securities.
2. Restated Certificate of Incorporation, as amended and as currently in effect.
3. Amended and Restated By-Laws, as currently in effect.
4. Fifth Amended and Restated Registration Rights Agreement by and among Borrower and certain of its stockholders, dated as of July 27, 2010.
5. Warrant Agreement by and between Borrower and Creation Capital LLC, dated as of February 24, 2006.
6. Series D Warrant Agreement by and between Borrower and Creation Capital LLC, dated as of April 27, 2007.
7. Common Stock Warrant Agreement by and between Borrower and Creation Capital LLC, dated as of April 30, 2008.
8. Series E Warrant Agreement by and between Borrower and Creation Capital LLC, dated as of September 14, 2010.
9. Warrant to Purchase 156,978 Shares of Series F Convertible Preferred Stock by and between Borrower and GE Capital Equity Investments, Inc., dated as of December 17, 2012.
10. Warrant to Purchase 113,022 Shares of Series F Convertible Preferred Stock by and between Borrower and Zions First National Bank, dated as of December 17, 2012.
11. Warrant to Purchase Shares of Common Stock of Borrower by and between Borrower and the University of Utah Research Foundation, dated as of February 17, 2010.
12. Warrant to Purchase Shares of Common Stock of Borrower by and between Borrower and Zions First National Bank, dated as of March 17, 2011.
13. Series E Warrant Agreement by and between Borrower and Zions First National Bank, dated as of April 7, 2010.
14. Warrant to Purchase Shares of Common Stock of Borrower, issued to TGP Securities, Inc. on August 30, 2013 and September 20, 2013, as amended.
15. Amendment to Warrant to Purchase Shares of Common Stock of Borrower, issued to TGP Securities, Inc., dated as of December 23, 2013.
16. Joint Development and License Agreement by and between Borrower and Orthopaedic Synergy, Inc., dated as of February 8, 2010.
17. Distribution Agreement by and between Borrower and Orthopaedic Synergy, Inc., dated as of February 22, 2010, and First Amendment and Addendum thereto, dated as of November 1, 2012.
18. CentrepoinTE Business Park Lease Agreement Net by and between Borrower and CentrepoinTE Properties, LLC, dated as of April 21, 2009.

Loan and Security Agreement – Amedica signature page

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19. First Addendum to Centrepointe Business Park Lease Agreement Net by and between Borrower and Centrepointe Properties, LLC, dated as of January 31, 2012.
 20. Employment Term Sheet by and between Borrower and Jay M. Moyes, dated as of October 29, 2013.
 21. Restricted Stock Unit Agreement by and between Borrower and Jay Moyes, dated as of October 30, 2013.
 22. Indemnification Agreement by and between Borrower and its directors and officers.
 23. Amedica Corporation Amended and Restated 2012 Equity Incentive Plan.
 24. 2012 Stock Option Grant Notices and Stock Option Agreements.
 25. 2012 Restricted Stock Awards and Restricted Stock Unit Agreements.
 26. Amedica Corporation 2003 Stock Option Plan.
 27. 2003 Non-Qualified Stock Option Agreements and Notices of Exercise of Non-Qualified Stock Options thereunder.
 28. 2003 Incentive Stock Option Agreements and Notices of Exercise of Incentive Stock Options thereunder.
 29. The Loan Documents executed as of the date hereof.

Loan And Security Agreement - Amedica

SCHEDULE 5.8
INTELLECTUAL PROPERTY

Attached

Loan And Security Agreement - Amedica

SCHEDULE 5.13
GOVERNMENT CONTRACTS; GOVERNMENT ACCOUNTS

None.

Loan And Security Agreement - Amedica

SCHEDULE 6.13
POST CLOSING REQUIREMENTS

1. A termination letter dated on or about June 30, 2014, relating to that certain Lockbox Account Agreement dated December 17, 2012, among Zions First National Bank, a national banking association, Amedica Corporation, and General Electric Capital Corporation, as agent.
2. That certain Termination And Release Of Security Interest In Patents And Trademarks dated on or about June 30, 2014, executed by General Electric Capital Corporation, in its capacity as administrative and collateral agent.
3. A termination letter dated on or about June 30, 2014, relating to that certain Deposit Account Control Agreement, dated December 17, 2012, among Zions First National Bank, a national banking association, Amedica Corporation, US Spine, Inc., and General Electric Capital Corporation, as agent.
4. A termination letter agreement for that certain agreement dated December 17, 2012, among Western National Trust Company, a non-deposit trust company regulated by the office of the Comptroller of the Currency,, General Electric Capital Corporation, in its capacity as administrative and collateral agent and Amedica Corporation.
5. A termination letter agreement for that certain letter agreement dated December 7, 2012 among Millstone Medical Outsourcing), Amedica Corporation, and General Electric Capital Corporation, as agent.

SCHEDULE 7.1
LIENS IN EXISTENCE ON THE CLOSING DATE

None.

SCHEDULE 7.2
INDEBTEDNESS IN EXISTENCE ON THE CLOSING DATE

None.

SCHEDULE 7.7
INVESTMENTS IN EXISTENCE ON THE CLOSING DATE

None.

SCHEDULE 11.1
PERMITTED DISPOSITIONS (PATENTS)

<u>ML Ref</u>	<u>US Patent / Publication #</u>	<u>Application #</u>	<u>Issue Date</u>	<u>Filing Date</u>	<u>Title</u>	<u>Status</u>
517001AU	AU 755174	AU 19980086635	3/20/2003	7/27/1998	CEMENTED PROSTHETIC COMPONENT	Granted
517001CA	CA 2304677	CA 2304677	4/17/2007	7/27/1998	CEMENTED PROSTHETIC COMPONENT	Granted
517001EP	EP 1023009	EP 98938019.1	3/26/2008	7/27/1998	CEMENTED PROSTHETIC COMPONENT	Granted
517001CH	EP 1023009	EP 98938019.1	3/26/2008	7/27/1998	CEMENTED PROSTHETIC COMPONENT	Granted
517001DE	DE 69839308	EP 98938019.1	3/26/2008	7/27/1998	CEMENTED PROSTHETIC COMPONENT	Granted
517001GB	EP 1023009	EP 98938019.1	3/26/2008	7/27/1998	CEMENTED PROSTHETIC COMPONENT	Granted
517001JP	JP 2002-521129	JP 2000-0561913	n/a	7/27/1998	CEMENTED PROSTHETIC COMPONENT	Abandoned
517001KR	KR 0638949	KR 2000- 7003286	10/19/2006	7/27/1998	CEMENTED PROSTHETIC COMPONENT	Granted
517D01KR		KR 2006- 7013931	n/a	7/27/1998	CEMENTED PROSTHETIC COMPONENT	Abandoned
517001US	5876460	08/709186	3/2/1999	9/6/1996	CEMENTED PROSTHETIC COMPONENT AND PLACEMENT METHOD	Active
517N01US	6355067	09/509282	3/12/2002	3/22/2000	CEMENTED PROSTHETIC COMPONENT AND PLACEMENT METHOD	Active

SECRETARY'S CERTIFICATE OF AUTHORITY

[DATE]

Reference is made to the Loan and Security Agreement, dated as of June 30, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), among Amedica Corporation, a Delaware corporation (the "Borrower"), the guarantors from time to time party thereto, Hercules Technology Growth Capital, Inc., a Maryland corporation ("HTGC"), as a lender and as agent (in such capacity, together with its successors and assigns in such capacity, "Agent"), and the other lenders signatory thereto from time to time (HTGC and such other lenders, the "Lenders"). Capitalized terms used but not defined herein are used with the meanings assigned to such terms in the Agreement.

I, [], do hereby certify that:

- (i) I am the duly elected, qualified and acting [**Assistant**] Secretary of [**INSERT NAME OF LOAN PARTY**] (the "Company");
- (ii) attached hereto as Exhibit A are true, complete and correct copies of the Company's [**Restated Certificate/Articles of Incorporation or Articles of Organization/Certificate of Formation**] and the [**Bylaws/LLC Agreement/Partnership Agreement**], each of which is in full force and effect on and as of the date hereof;
- (iii) each of the following named individuals is a duly elected or appointed, qualified and acting officer of the Company who holds the offices set opposite such individual's name, and such individual is authorized to sign the Loan Documents to which the Company is a party and all other notices, documents, instruments and certificates to be delivered pursuant thereto, and the signature written opposite the name and title of such officer is such officer's genuine signature:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(iv) attached hereto as Exhibit B are true, complete and correct copies of resolutions adopted by the Board of Directors/Members of the Company (the "Board") authorizing the execution, delivery and performance of the Loan Documents to which the Company is a party, which resolutions were duly adopted by the Board on **[DATE]** and all such resolutions are in full force and effect on the date hereof in the form in which adopted without amendment, modification, rescission or revocation;

(v) the Company is organized and in good standing in the State of Delaware and is duly qualified to do business and in good standing in the State of Utah, as evidenced by the Certificates of Good Standing attached hereto as Exhibit C.

(vi) the foregoing authority shall remain in full force and effect, and Agent and each Lender shall be entitled to rely upon same, until written notice of the modification, rescission or revocation of same, in whole or in part, has been delivered to Agent and each Lender, but no such modification, rescission or revocation shall, in any event, be effective with respect to any documents executed or actions taken in reliance upon the foregoing authority before such written notice is delivered to Agent and each Lender; and

(vii) no Default or Event of Default has occurred and is continuing or will result from the making of the Loan, and all representations and warranties of the Company in the Loan Documents are true, accurate and complete in all material respects (but in all respects if such representation or warranty is qualified by “material” or “Material Adverse Effect”) on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true, accurate and complete in all material respects (but in all respects if such representation or warranty is qualified by “material” or “Material Adverse Effect”) on and as of such earlier date.

[Signature Page Follows]

IN WITNESS WHEREOF, I have hereunto set my hand as of the first date written above

Name: _____
Title: **[Assistant]** Secretary

The undersigned does hereby certify on behalf of the Company that he/she is the duly elected or appointed, qualified and acting **[TITLE]** of the Company and that **[NAME FROM ABOVE]** is the duly elected or appointed, qualified and acting **[Assistant]** Secretary of the Company, and that the signature set forth immediately above is his/her genuine signature.

Name: _____
Title: _____

EXHIBIT B TO SECRETARY'S CERTIFICATE OF AUTHORITY

[FORM OF] RESOLUTIONS

BOARD RESOLUTIONS

, 20

WHEREAS, Amedica Corporation, a Delaware corporation ("Borrower") has requested that Hercules Technology Growth Capital, Inc., a Maryland corporation ("HTGC"), as agent (in such capacity, together with its successors and assigns in such capacity, the "Agent") and lender, and certain other lenders (HTGC and such other lenders, collectively, the "Lenders") provide a credit facility in a maximum principal amount not to exceed \$20,000,000 (the "Credit Facility"); and

WHEREAS, the terms of the Credit Facility are set forth in a loan and security agreement by and among Borrower, the guarantors from time to time party thereto, Agent, and the Lenders and certain related agreements, documents and instruments described in detail below; and

[WHEREAS, as a subsidiary of Borrower, _____, the "Company"] will benefit from the making of the loan(s) to Borrower under the Credit Facility; and]

WHEREAS, the Board of Directors of **[Borrower] [Company]** (the "Directors") deems it advisable and in the best interests of **[Borrower] [Company]** to execute, deliver and perform its obligations under those transaction documents described and referred to below.

NOW, THEREFORE, be it

RESOLVED, that the Credit Facility be, and it hereby is, approved; and further

RESOLVED, that the form of Loan and Security Agreement (the "Loan and Security Agreement"), by and among **[Borrower]**, **[Company]**, the **[other]** guarantors from time to time party thereto, Agent and the Lenders, as presented to the Directors, be and it hereby is, approved and the **[President, the Chief Executive Officer, Chief Financial Officer, the Vice President or Treasurer]** of **[Borrower] [Company]** (collectively, the "Proper Officers") be, and each of them hereby is, authorized and directed on behalf of **[Borrower] [Company]** to execute and deliver to Agent the Loan and Security Agreement, in substantially the form as presented to the Directors, with such changes as the Proper Officers may approve, such approval to be conclusively evidenced by execution and delivery thereof; and further

[RESOLVED, that the form of Promissory Note (the "Note"), as presented to the Directors, be, and it hereby is, approved and the Proper Officers be, and each of them hereby is, authorized and directed on behalf of Borrower to execute and deliver to Lender one or more promissory Notes, in substantially the form as presented to the Directors, with such changes as the Proper Officers may approve, such approval to be conclusively evidenced by execution and delivery thereof; and further]

[RESOLVED, that the form(s) of [Intellectual Property Security Agreements] [Pledge Agreement] [and] [Account Control Agreement] [(collectively, the "Security Documents")]] [and the form of the Common Stock Warrants ("Lender Warrants"),] [Disbursement Letter,] [Fee Letter,] [Guaranty,] [INCLUDE OTHER DOCUMENTS AS APPROPRIATE] (together with the Security Documents, the "Ancillary Documents"), each as presented to the Directors, be, and each of them hereby is, approved and the Proper Officers be, and each of them hereby is, authorized and directed on behalf of Borrower to execute and deliver to Agent each of the Ancillary Documents, in

substantially the form as presented to the Directors, with such changes as the Proper Officers may approve, such approval to be conclusively evidenced by execution and delivery thereof; and further]

RESOLVED, that the Proper Officers be, and each of them hereby is, authorized and directed to execute and deliver any and all other agreements, certificates, security agreements, financing statements, indemnification agreements, instruments and documents (together with the Loan and Security Agreement, **[the Notes] [, and the Ancillary Documents]**, the "Loan Documents") and take any and all other further action, in each case, as may be required or which they may deem appropriate, on behalf of **[Borrower] [Company]**, in connection with the Credit Facility and carrying into effect the foregoing resolutions, transactions and matters contemplated thereby; and further

RESOLVED, that **[Borrower] [Company]** is hereby authorized to perform its obligations under the Loan Documents **[including, without limitation, the borrowing of any advances made under the Credit Facility and]** the granting of any security interest in **[Borrower's] [Company's]** assets contemplated thereby to secure **[Borrower's] [Company's]** obligations in connection therewith; and further

RESOLVED, that the issuance and delivery of shares of the Company's Common Stock issuable upon exercise of the Lender Warrants pursuant to their terms be, and it hereby is, authorized and approved in all respects and the shares of the Company's Common Stock (and any additional shares of Common Stock issuable upon operation of any anti-dilution or other adjustment provisions provided for under the Lender Warrants or the Company's Certificate of Incorporation then in effect) be, and they hereby are, reserved for issuance;

RESOLVED, that upon exercise of the Lender Warrants pursuant to its terms, the shares of Common Stock issuable upon exercise of the Lender Warrants shall be duly and validly issued, fully paid and nonassessable;

RESOLVED, that the officers of the Company be, and each of them hereby is, authorized and directed, for and on behalf of the Company, to execute and deliver one or more certificates for the Common Stock to be issued upon exercise of the Lender Warrants, in such form as may be approved by such officers;

RESOLVED, that the (a) Lender Warrants, and (b) the Common Stock issuable upon exercise of the Lender Warrants shall be offered, sold and issued in reliance on any applicable exemption from registration provided by the Securities Act of 1933, as amended, and any applicable exemption under applicable state blue sky laws, and that the officers of the Company be, and each of them hereby is, authorized and directed, for and on behalf of the Company, to execute and file any forms, certificates, notices or other documents that are necessary or appropriate pursuant to federal or state securities laws;

RESOLVED, that in addition to executing any documents approved in the preceding resolutions, the Secretary or any Assistant Secretary of **[Borrower] [Company]** may attest to such Loan Documents, the signature thereon or the corporate seal of **[Borrower] [Company]** thereon; and further

RESOLVED, that any actions taken by the Proper Officers prior to the date of these resolutions in connection with the transactions contemplated by these resolutions are hereby ratified and approved; and further

RESOLVED, that these resolutions shall be valid and binding upon **[Borrower] [Company]**.

COMPLIANCE CERTIFICATE

[DATE]

Reference is made to the Loan and Security Agreement, dated as of June 30, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the “Agreement”), among Amedica Corporation, a Delaware corporation (the “Borrower”), the guarantors from time to time party thereto, Hercules Technology Growth Capital, Inc., a Maryland corporation (“HTGC”), in its capacity as agent (in such capacity, together with its successors and assigns, in such capacity, the “Agent”) and lender, and the other lenders signatory thereto (HTGC and such other lenders, the “Lenders”). Capitalized terms used but not defined herein are used with the meanings assigned to such terms in the Agreement.

I, [], do hereby certify that:

- (i) I am the duly elected, qualified and acting chief financial officer of Borrower;
- (ii) attached hereto as Exhibit A are the financial statements required to be delivered in accordance with Section 6.3(a) of the Agreement, which financial statements fairly present, in all material respects, in accordance with GAAP the financial position and the results of operations of Borrower and its Subsidiaries as of the dates of and for the periods covered by such financial statements (subject, in the case of interim financial statements, to normal year-end adjustments and the absence of footnote disclosure);
- (iii) no Default or Event of Default has occurred under the Agreement which has not been previously disclosed, in writing, to Agent;
- (iv) all representations and warranties of the Loan Parties stated in the Loan Documents are true and correct in all material respects (but in all respects if such representation or warranty is qualified by “material” or “Material Adverse Effect”) on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects (but in all respects if such representation or warranty is qualified by “material” or “Material Adverse Effect”) on and as of such earlier date;
- (v) the Loan Parties own no Margin Stock;
- (vi) attached is a list of new applications or registrations that any Loan Party has made or filed (or acquired) in respect of any Intellectual Property of a Loan Party or any material change in status of any outstanding application or registration since the date of the last Compliance Certificate delivered to Agent; and
- (vii) set forth below is a list of all Deposit Accounts and Securities Accounts maintained in the name of each Loan Party and whether such account has been opened since the date of the last Compliance Certificate.

<u>Bank/Financial Institution</u>	<u>Account Number</u>	<u>New Account?</u>	
1)		Yes	No
2)		Yes	No
3)		Yes	No
4)		Yes	No

IN WITNESS WHEREOF, I have hereunto set my hand as of the first date written above

Name: _____

Title: _____

FORM OF LANDLORD CONSENT

**[Landlord]
[Address]**

[,]

Ladies and Gentlemen:

Hercules Technology Growth Capital, Inc. (together with its successors and assigns, if any, "Agent") and certain other lenders (the "Lenders") have entered into, or are about to enter into, a Loan and Security Agreement, dated as of June 30, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement") with Amedica Corporation ("Borrower") **and**

("Company")], pursuant to which **[Borrower] [Company]** has granted, or will grant, to Agent, on behalf of itself and the Lenders, a security interest in certain assets of **[Borrower] [Company]**, including, without limitation, all of **[Borrower's] [Company's]** cash, cash equivalents, accounts, books and records, goods, inventory, machinery, equipment, furniture and trade fixtures (such as equipment bolted to floors), together with all additions, substitutions, replacements and improvements to, and proceeds, including, insurance proceeds, of the foregoing, but excluding any and all building fixtures (such as plumbing, lighting and HVAC systems that are permanently attached to the Premises) (collectively, the "Collateral"). Some or all of the Collateral is, or will be, located at certain premises known as [] in the City or Town of [, County of and State of] ("Premises"), and **[Borrower] [Company]** occupies the Premises pursuant to a lease, dated as of **[DATE]**, between **[Borrower] [Company]**, as tenant, and you, **[NAME]**, as **[owner/landlord/mortgagee/realty manager]** (as amended, restated, supplemented or otherwise modified from time to time, the "Lease").

By your signature below, you hereby agree that: (i) the Lease is in full force and effect and you are not aware of any existing defaults thereunder, (ii) the Collateral is, and shall remain, personal property regardless of the method by which it may be, or become, affixed to the Premises; (iii) you agree to use your best efforts to provide Agent with written notice of any default by **[Borrower] [Company]** under the Lease resulting in a termination of the Lease ("Default Notice") and Agent shall have the right, but not the obligation to cure such default within 15 days following Agent's receipt of such Default Notice, (iv) any security interest, landlord's lien or other lien or interest that you may have in the Collateral and any proceeds thereof (including, without limitation, proceeds of any insurance therefor) shall be, and remain, subject and subordinate to the security interest of Agent in the Collateral, and you agree not to levy upon any Collateral or to assert any landlord lien, right of distraint or other claim against the Collateral for any reason; (v) Agent, and its employees and agents, shall have the right, from time to time, to enter into the Premises for the purpose of inspecting the Collateral; and (vi) Agent, and its employees and agents, shall have the right, upon any default by **[Borrower] [Company]** under the Agreement, to enter into the Premises and to remove or otherwise deal with the Collateral, including, without limitation, by way of public auction or private sale (provided that, if Agent conducts a public auction or private sale of the Collateral at the Premises, Agent shall use reasonable efforts to notify Landlord first and to hold such auction or sale in a manner that would not unduly disrupt Landlord's or any other tenant's use of the Premises). Agent agrees to repair or reimburse you for any physical damage actually caused to the Premises by Agent, or its employees or agents, during any such removal or inspection (other than ordinary wear and tear), provided that it is understood by the parties hereto that Agent shall not be liable for any diminution in value of the Premises caused by the removal or absence of the Collateral therefrom. You hereby acknowledge that Agent shall have no obligation to remove or dispose of the Collateral from

the Premises and no action by Agent pursuant to this Consent shall be deemed to be an assumption by Agent of any obligation under the Lease and, except as provided in the immediately preceding sentence, Agent shall not have any obligation to you.

You hereby acknowledge and agree that **[Borrower's] [Company's]** granting of a security interest in the Collateral in favor of Agent, on behalf of itself and the Lenders, shall not constitute a default under the Lease nor permit you to terminate the Lease or re-enter or repossess the Premises or otherwise be the basis for the exercise of any remedy available to you.

This Consent and the agreements contained herein shall be binding upon, and shall inure to the benefit of, any successors and assigns of the parties hereto (including any transferees of the Premises). This Consent shall terminate upon the indefeasible payment of Borrower's indebtedness in full in immediately available funds and the satisfaction in full of Borrower's **[and Company's]** performance of its obligations under the Agreement and the related documents.

This Consent and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page of this Consent or any delivery contemplated hereby by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart thereof.

We appreciate your cooperation in this matter of mutual interest.

Hercules Technology Growth Capital, Inc., as Agent

By: _____
Name: _____
Title: _____

Legal Department
Attention: Chief Legal Officer and Chad Norman
400 Hamilton Avenue, Suite 310
Palo Alto, CA 94301
Facsimile: 650-473-9194
Telephone: 650-289-3060

AGREED TO AND ACCEPTED BY:

[NAME], as [owner/landlord/mortgagee/realty manager]

By: _____
Name: _____
Title: _____

Address:

AGREED TO AND ACCEPTED BY:

AMEDICA CORPORATION

By: _____
Name: _____
Title: _____

Interest in the Premises (check applicable box)

- Owner
- Mortgagee
- Landlord
- Realty Manager

Address: 1885 West 2100 South
Salt Lake City, UT 84119
Attn.: Kevin Ontiveros

FORM OF BAILEE CONSENT

[Letterhead of Hercules]

, 20

[NAME OF BAILEE]

Re: [Name of the Loan Party] (the "Company")

Dear Sirs:

Please accept this letter as notice that we have entered into or may enter into financing arrangements with the Company under which the Company has granted to us continuing security interests in substantially all personal property and assets of the Company and the proceeds thereof, including, without limitation, certain **[equipment/inventory/goods]** owned by the Company held by you at the **[manufacturing/warehouse]** facility (the "Premises") owned by you and located at [](the "Personal Property").

Please acknowledge that as a result of such arrangements, you are holding all of the Personal Property solely for our benefit and subject only to the terms of this letter and our instructions; provided, however, that until you receive further written notice from us, you are authorized to use and/or release any and all of the Personal Property in your possession as directed by the Company in the ordinary course of business. The foregoing instructions shall continue in effect until we modify them in writing, which we may unilaterally do without any consent or approval from the Company. Upon receipt of our instructions, you agree that (a) you will release the Personal Property only to us or our designee; (b) you will cooperate with us in our efforts to assemble, sell (whether by public or private sale), take possession of, and remove all of the Personal Property located at the Premises; (c) you will permit the Personal Property to remain on the Premises for forty-five (45) days after your receipt of our instructions or at our option, to have the Personal Property removed from the Premises within a reasonable time, not to exceed forty-five (45) days after your receipt of our instructions; (d) you will not hinder our actions in enforcing our liens on the Personal Property; and (e) after receipt of our instructions, you will abide solely by our instructions with respect to the Personal Property, and not those of the Company.

You hereby waive and release in our favor: (a) any contractual lien, security interest, charge or interest and any other lien which you may be entitled to whether by contract, or arising at law or in equity against any Personal Property; (b) any and all rights granted under any present or future laws to levy or distrain for rent or any other charges which may be due to you against the Personal Property; and (c) any and all other claims, liens, rights of offset, deduction, counterclaim and demands of every kind which you have or may hereafter have against the Personal Property.

You agree that (i) you have not and will not commingle the Personal Property with any other property of a similar kind owned or held by you in any manner such that the Personal Property is not readily identifiable, (ii) you have not and will not issue any negotiable or non-negotiable documents or instruments relating to the Personal Property, and (iii) the Personal Property is not and will not be deemed to be fixtures.

Notwithstanding the foregoing, all of your charges of any nature whatsoever shall continue to be charged to and paid by the Company and we shall not be liable for such charges.

You hereby authorize us to file at any time such financing statements naming you as the debtor/bailee, Company as the secured party/bailor, and us as the Company's assignee, indicating as the collateral goods of the Company now or hereafter in your custody, control or possession and proceeds thereof, and including any other information with respect to the Company required under the Uniform Commercial Code for the sufficiency of such financing statement or for it to be accepted by the filing office of any applicable jurisdiction (and any amendments or continuations with respect thereto).

The arrangement as outlined herein is to continue without modification, until we have given you written notice to the contrary.

EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS LETTER.

Any notice(s) required or desired to be given hereunder shall be directed to the party to be notified at the address stated herein.

The terms and conditions contained herein are to be construed and enforced in accordance with the laws of the State of New York.

This terms and conditions contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

The Company has signed below to indicate its consent to, and agreement with, the foregoing arrangements, terms and conditions. By your signature below, you hereby agree to be bound by the terms and conditions of this letter.

Very truly yours,

Hercules Technology Growth Capital, Inc.

By: _____

Name: _____

Title: Duly Authorized Signatory

Legal Department
Attention: Chief Legal Officer and Chad Norman
400 Hamilton Avenue, Suite 310
Palo Alto, CA 94301
Facsimile: 650-473-9194
Telephone: 650-289-3060

Agreed to:

AMEDICA CORPORATION

By: _____

Name: _____

Title: _____

Address: 1885 West 2100 South
Salt Lake City, UT 84119

[NAME OF BAILEE]

By: _____

Name: _____

Title: _____

Address: _____

AUTOMATIC PAYMENT AUTHORIZATION AGREEMENT

Introduction: When you use the automatic payment service, the payment is automatically made by electronic transfer directly from your bank account at the financial institution specified below. An “authorized check signer” must complete, sign and submit one copy of this Authorization Agreement.

Authorization Agreement for Automatic Payment Service (ACH Debits)

1. Amedica Corporation (“Borrower”) hereby authorizes Hercules Technology Growth Capital, Inc. (“Agent”) to initiate debit entries from the account identified below for amounts due under the Loan and Security Agreement, dated as of [**DATE**] (as amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), among Borrower, the guarantors from time to time party thereto, Agent and the lenders from time to time party thereto and the other Loan Documents. Capitalized terms used herein but not defined herein are used herein as defined in the Loan Agreement.
2. Borrower understands that the payment of all Obligations are solely its responsibility. If payment is not satisfied due to account closure, insufficient funds, or cancellation of any required automated payment services, Borrower agrees to remit payment plus any additional amounts due as set forth in the Loan Agreement.
3. It is incumbent upon Borrower to give written notice to Agent of any changes to this Authorization Agreement or the below referenced bank account information 10 days prior to payment date. Borrower may revoke this Authorization Agreement by giving 10 days written notice to Agent unless otherwise stipulated in the Loan Agreement.
4. If the account identified below is a joint account, all of the account holders must sign this Authorization Agreement.

Account:

Provide the following information regarding the account to be debited.

Account type: Checking Savings

Financial Institution: _____

Name of Account: _____

Address of Financial Institution: _____

City/State/Zip: _____

Account #: _____

ABA Routing #: _____

AMEDICA CORPORATION

By: _____

Name:

Title:

[INSERT NAME OF EACH JOINT-ACCOUNT HOLDER, IF ANY]

By: _____
Name:
Title:

FORM OF WARRANT

Loan And Security Agreement - Amedica

BORROWER CONVERSION ELECTION NOTICE

[INSERT DATE]

Hercules Technology Growth Capital, Inc.
400 Hamilton Avenue, Suite 310
Palo Alto, CA 94301

Reference is made to that certain Loan and Security Agreement dated June 30, 2014 and all ancillary documents entered into in connection with such Loan and Security Agreement all as may be amended from time to time, (hereinafter referred to collectively as the "Loan Agreement") between Hercules Technology Growth Capital, Inc., as administrative and collateral agent for Lenders and Amedica, Inc. (the "Company") as Borrower. All capitalized terms not defined herein shall have the same meaning as defined in the Loan Agreement.

Borrower hereby irrevocably elects to make the Principal Installment Payment in the amount of \$ _____ due on [_____] (the "Delivery Date") in shares of Common Stock in accordance with Section 2.4(h)(i) of the Loan Agreement.¹ The number of shares of Common Stock to be delivered to Lender, on or prior to the Delivery Date, is [_____], which amount was determined in accordance with Section 2.4(h) of the Loan Agreement. The stock certificates shall be delivered free and clear of any restrictive legends.

Borrower hereby represents, warrants and certifies to Lender that, as of the date hereof, all of the Conversion Conditions have been satisfied. Borrower acknowledges and agrees that its right to pay the Principal Installment Payment in Common Stock in accordance with this Borrower Conversion Election Notice is subject to the satisfaction of all of the Conversion Conditions on the Delivery Date and, to the extent any of the Conversion Conditions are not satisfied on the Delivery Date, Borrower shall pay the Principal Installment Payment in cash rather than in Common Stock.

Sincerely,

AMEDICA, INC.

By: _____

Name: _____

Its: _____

¹ Note: In accordance with Section 2.4(h) of the Loan Agreement, the Delivery Date must be at least 10 days following the date of delivery of this Borrower Conversion Election Notice.

AGENT CONVERSION ELECTION NOTICE

[INSERT DATE]

Amedica, Inc.
[ADDRESS]

Reference is made to that certain Loan and Security Agreement dated June 30, 2014 and all ancillary documents entered into in connection with such Loan and Security Agreement all as may be amended from time to time, (hereinafter referred to collectively as the "Loan Agreement") between Hercules Technology Growth Capital, Inc., as administrative and collateral agent for Lenders and Amedica, Inc. (the "Company") as Borrower. All capitalized terms not defined herein shall have the same meaning as defined in the Loan Agreement.

On behalf of Lenders, Agent hereby irrevocably elects to receive the Principal Installment Payment in the amount of \$ _____ due on [_____] (the "Delivery Date") in shares of Common Stock in accordance with Section 2.4(h)(iii) of the Loan Agreement.¹ The number of shares of Common Stock to be delivered to Lenders, on or prior to the Delivery Date, is [_____], which amount was determined in accordance with Section 2.4(h) of the Loan Agreement. The stock certificates shall be delivered free and clear of any restrictive legends.

The payment of the Principal Installment Payment in Common Stock in accordance with this Agent Conversion Election Notice is subject to the satisfaction of all of the Conversion Conditions on the Delivery Date and, to the extent any of the Conversion Conditions are not satisfied on the Delivery Date, Borrower shall pay the Principal Installment Payment in cash rather than in Common Stock.

Sincerely,

Hercules Technology Growth Capital, Inc.

By: _____
Name: _____
Its: _____

¹ Note: In accordance with Section 2.4(h) of the Loan Agreement, the Delivery Date must be at least 10 days following the date of delivery of this Agent Conversion Election Notice.

CONVERTIBLE DEBT FINANCING TERMS

Loan And Security Agreement - Amedica



AMEDICA SECURES \$26 MILLION IN FUNDING

\$20 Million Debt Facility with Hercules Technology Growth Capital

\$6 Million Private Placement of Senior Convertible Notes to Magna

Salt Lake City, UT, July 1, 2014 – Amedica Corporation (NASDAQ: AMDA) a biomaterial company focused on using its Silicon Nitride technology platform to develop, manufacture and sell a broad range of medical devices, today announced that it has secured up to \$26.0 million in additional funding consisting of a \$20.0 million debt financing with Hercules Technology Growth Capital, Inc. (NYSE: HTGC), and a private placement to MG Partners II Ltd., an affiliate of Magna (“Magna”), of 6% Senior Convertible Notes in an aggregate principal amount of up to \$6 million.

Approximately \$15.2 million of the proceeds from the financing will be used to retire Amedica’s senior secured credit facility with General Electric Capital Corporation and the balance will be used to further the commercialization and development of Amedica’s Silicon Nitride spinal fusion products and its product candidates for use in total hip and knee joint replacements, and for general corporate purposes.

Jay Moyes, Chief Financial Officer for Amedica indicated that, “the repayment of the GE Credit Facility will eliminate approximately \$3.6 million of remaining scheduled principal payments in 2014, which would have otherwise been due under the GE Credit Facility. This will enable the company to now expend those resources on the commercialization of its products.”

“This is a significant milestone for the company,” stated Eric Olson, President and Chief Executive Officer of Amedica. “Refinancing the GE Credit Facility and securing the additional working capital now puts us in a stronger financial position to further our company objectives. We are pleased to have the support of such reputable financial institutions as Hercules Technology Growth Capital and Magna in maximizing the potential of our silicon nitride biomaterial.”

Hercules Loan Agreement

General terms of the Hercules loan agreement include interest-only payments for 12 months until July 1, 2015, with the possibility of extending the interest-only period to eighteen months. Following the interest-only period, Amedica will repay the loan in equal monthly payments of principal and interest through the scheduled maturity date on January 1, 2018. The loan is secured by a perfected first position lien on all of Amedica’s assets, including intellectual property. In addition, the Company has issued Hercules a warrant to purchase up to 516,129 shares of Common Stock at an exercise price of \$4.65 per share. Further information with respect to the loan arrangement with Hercules, is contained in a Current Report on Form 8-K to be filed on July 1, 2014 by Amedica with the Securities and Exchange Commission.

Magna Convertible Debt Placement

General terms of the convertible debt placement to Magna include the purchase of an initial Note with a principal amount of \$2.9 million, for a purchase price of \$2.5 million. \$400,000 in principal plus interest accrued on the initial Note will be automatically extinguished upon the filing and effectiveness of a resale registration statement within certain specified timelines. Additionally, conditioned upon the effectiveness of the resale registration statement, Magna has agreed to purchase an additional Senior Convertible Note with a principal amount of \$3.5 million. The Notes are convertible into shares of the Company's common stock at any time at an initial conversion price of \$3.75. In addition, the Company has issued Magna a warrant to purchase up to 568,889 shares of Common Stock at an exercise price of \$4.65 per share. Further information with respect to the convertible debt placement to Magna is contained in a Current Report on Form 8-K to be filed on July 1, 2014 by Amedica with the Securities and Exchange Commission.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any jurisdiction where such offer, solicitation or jurisdiction would be unlawful.

About Amedica Corporation

Amedica is a commercial biomaterial company focused on using its Silicon Nitride technology platform to develop, manufacture and sell a broad range of medical devices. Amedica markets spinal fusion products and is developing product candidates for use in total hip and knee joint replacements. Amedica operates an ISO 13485 certified manufacturing facility and its spine products are FDA cleared, CE marked, and currently marketed in the U.S. and select markets in Europe and South America.

About Hercules Technology Growth Capital, Inc.

Hercules Technology Growth Capital, Inc. (NYSE: HTGC) is the leading specialty finance company focused on providing senior secured loans to venture capital-backed companies in technology-related markets, including technology, biotechnology, life science, and energy & renewable technology industries, at all stages of development. Since inception (December 2003), Hercules has committed more than \$4.2 billion to over 270 companies and is the lender of choice for entrepreneurs and venture capital firms seeking growth capital financing.

Hercules' common stock trades on the New York Stock Exchange under the ticker symbol "HTGC."

In addition, Hercules has two outstanding bond issuances of 7.00 percent Senior Notes due 2019—the April 2019 Notes and September 2019 Notes—which trade on the NYSE under the symbols "HTGZ" and "HTGY," respectively.

About Magna

Magna is a New York based investment firm that creates lasting relationships with portfolio companies across a range of sectors—from technology to healthcare to the arts. Magna prioritizes the open mind, converting unexpected opportunity into mutually advantageous investments to build long-term, successful partnerships.

Forward-Looking Statements

This press release contains statements that constitute forward-looking statements within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995. Forward-looking statements contained in this press release include the intent, belief or current expectations of Amedica and members of its management team with respect to Amedica's future business operations, as well as the assumptions upon which such statements are based. Forward-looking statements include specifically, but are not limited to, the timing of the closing of the private placement and the amount of gross proceeds and the use of net proceeds from the financing and such statements are subject to risks and uncertainties such as the timing and success of new product introductions, physician acceptance, endorsement, and use of Amedica's products, regulatory matters, competitor activities, changes in and adoption of reimbursement rates, potential product recalls, and effects of global economic conditions. Additional factors that could cause actual results to differ materially from those contemplated within this press release can also be found in Amedica's Risk Factors disclosure in its Annual Report on Form 10-K, filed with the Securities and Exchange Commission (SEC) on March 31, 2014, and in Amedica's other filings with the SEC. Amedica disclaims any obligation to update any forward-looking statements.

Contact

Amedica Investor Relations:

Gordon Esplin

VP, Finance

(801) 839-3516

gesplin@amedica.com