

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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 5, 2023

TELESIS BIO INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-40497
(Commission
File Number)

45-1216839
(I.R.S. Employer
Identification Number)

**10431 Wateridge Circle, Suite 150, San Diego,
CA
92121**

(Address of principal executive offices, including Zip Code)

Registrant's telephone number, including area code: (858) 228-4115

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	TBIO	Nasdaq Global Select Market

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

Emerging growth company

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

Item 3.02 Unregistered Sale of Equity Securities.

As previously disclosed on a Current Report on Form 8-K filed with the Securities and Exchange Commission on May 31, 2023 (the “Prior 8-K”), Telesis Bio Inc. (the “Company”) entered into a redeemable convertible preferred stock and warrant purchase agreement with Novalis LifeSciences Investments II, L.P. and certain other investors, including current investors Northpond Ventures, LP, BroadOak Fund IV LLC and M-185 Corporation, an affiliate of the Company’s Chief Executive Officer, Todd Nelson (collectively, the “Investors”), on May 31, 2023, pursuant to which the Company agreed to issue and sell to the Investors in a private placement (the “Private Placement”) (i) an aggregate of 280,000 shares of its newly designated redeemable convertible preferred stock, par value \$0.0001 per share (the “Redeemable Convertible Preferred”), (ii) warrants with a term of two years (such warrants, the “Short-Term Warrants”) to purchase an aggregate of 5,923,921 shares of the Company’s common stock (the “Common Stock”), and (iii) warrants with a term of seven years (such warrants, the “Long-Term Warrants” and, together with the Short-Term Warrants, the “Warrants”) to purchase an aggregate of 11,847,840 shares of Common Stock. The Redeemable Convertible Preferred were sold in fixed combinations with the Warrants, with each Investor receiving (a) a Short-Term Warrant to purchase one-half of a share of Common Stock per each share of Common Stock initially underlying the Redeemable Convertible Preferred purchased by such Investor and (b) a Long-Term Warrant to purchase one share of Common Stock per each share of Common Stock initially underlying the Redeemable Convertible Preferred purchased by such Investor. The purchase price per share of Redeemable Convertible Preferred and accompanying Short-Term Warrant and Long-Term Warrant was \$100.00. On June 5, 2023, the Private Placement closed, resulting in initial gross proceeds of \$28.0 million to the Company.

The terms and forms of the Redeemable Convertible Preferred and Warrants were filed previously with the SEC in the Prior 8-K and are incorporated herein by reference.

In addition, pursuant to a letter agreement between the Company and H.C. Wainwright & Co., LLC (“HCW”), pursuant to which HCW acted as a financial advisor to the Company, the Company issued warrants for an aggregate of 355,435 shares of common stock to affiliates of HCW. Such warrants shall have a five-year term and an exercise price of \$2.9541. The form of warrant issued to the HCW affiliate is attached hereto as Ex 4.1.

The Company issued the securities in the Private Placement to “accredited investors,” as that term is defined in the Securities Act of 1933, as amended (the “Securities Act”), in reliance on the exemption from registration afforded by Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act and corresponding provisions of state securities or “blue sky” laws.

Item 3.03 Material Modifications of Rights of Security Holders.

In connection with the closing of the Private Placement, the Company filed a Certificate of Designation with the Secretary of State of the State of Delaware that sets forth the rights, privileges and preferences of the Redeemable Convertible Preferred.

A copy of the Certificate of Designation is attached hereto as Exhibit 3.1 and incorporated herein by reference. The foregoing description of the Certificate of Designation is qualified in its entirety by reference to Exhibit 3.1 attached hereto.

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

On June 5, 2023, immediately following the closing of the Private Placement, the Board of Directors of the Company was increased from seven to eight directors and Paul Meister, a partner at Novalis LifeSciences LLC, was appointed as a director of the Company to fill the resulting vacancy.

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

In connection with the closing of the Private Placement, the Company filed with the Secretary of State of the State of Delaware the Certificate of Designation attached hereto as Exhibit 3.1 and incorporated herein by reference. The Certificate of Designation establishes and designates the Redeemable Convertible Preferred and the rights, preferences and privileges thereof.

Item 8.01 Other Events.

On June 5, 2023, the Company issued a press release entitled “Telesis Bio Announces Closing of \$28.0 Million Private Placement of Preferred Stock - And Warrants to Purchase an Additional \$46.2 Million of Common Stock”. A copy of the press release is attached hereto as Exhibit 99.1 and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Description
3.1	Certificate of Designation of Redeemable Convertible Preferred Stock.
4.1	Form of Warrant issued to an affiliate of H.C. Wainwright & Co., LLC.
99.1	Press Release titled “Telesis Bio Announces Closing of \$28.0 Million Private Placement of Preferred Stock - And Warrants to Purchase an Additional \$46.2 Million of Common Stock” issued by Telesis Bio Inc. on June 5, 2023.
104	Cover Page Interactive Data File (formatted as Inline XBRL)

SIGNATURES

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

Date: June 9, 2023

TELESIS BIO INC.

By: /s/Todd R. Nelson
Todd R. Nelson
Chief Executive Officer

CERTIFICATE OF DESIGNATION
OF
REDEEMABLE CONVERTIBLE PREFERRED STOCK
OF
TELESIS BIO INC.
Pursuant to Section 151
of the General Corporation Law of
the State of Delaware

The undersigned, Todd R. Nelson, hereby certifies that:

- I. He is the duly elected and acting Chief Executive Officer of Telesis Bio Inc., a Delaware corporation (the “**Company**”).
- II. The Amended and Restated Certificate of Incorporation of the Company (the “**Certificate of Incorporation**”) authorizes Five Million (5,000,000) shares of preferred stock, par value \$0.0001 per share.
- III. The following is a true and correct copy of the resolutions duly adopted by the Board of Directors of the Company (the “**Board of Directors**”) at a meeting on May 24, 2023, which constituted all requisite actions on the part of the Company with respect to the authorization of the filing of this Certificate of Designation (this “**Certificate of Designation**”).

RESOLUTIONS

WHEREAS, the Board of Directors is authorized to provide for the issuance of the shares of preferred stock in one or more series and, by filing a certificate pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, and to fix the designations, powers, preferences and the relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, of the shares of each such series; and

WHEREAS, the Board of Directors desires, pursuant to its authority as aforesaid, to designate a new series of preferred stock, set the number of shares constituting such series and fix the rights, preferences, privileges and restrictions of such series.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby designates a new series of preferred stock and the number of shares constituting such series and fixes the rights, preferences, powers and restrictions relating to such series as follows:

1. Designation and Number. The shares of such series shall be designated as the Redeemable Convertible Preferred Stock with par value \$0.0001 per share (the “**Convertible Preferred Stock**”). The number of shares initially constituting the Convertible Preferred Stock shall be two hundred and eighty thousand (280,000).

2. Dividends.

(a) From and after the Issue Date, cumulative dividends shall accrue on the Accrued Value of each share of Convertible Preferred Stock at the Annual Rate. Dividends on each share of Convertible Preferred Stock shall be cumulative and shall accrue daily from and after the Issue Date, but shall compound on a quarterly basis on each Quarterly Dividend Date whether or not earned or declared, and whether or not there are earnings or profits, surplus or other funds or assets of the Company legally available for the payment of dividends. All such dividends shall

compound and be added to the Accrued Value on each Quarterly Dividend Date, as provided in the definition of “Accrued Value” in Section 10 hereof. None of such dividends shall be paid in cash unless such dividends are paid pursuant to Section 3 or Section 8, and for the avoidance of doubt, such dividends shall remain accrued when compounded and added to the Accrued Value until paid in cash pursuant to such Sections.

(b) In the event that the Board of Directors shall declare a dividend payable upon the then outstanding shares of Common Stock (other than a stock dividend on the Common Stock payable solely in the form of additional shares of Common Stock), the holders of the Convertible Preferred Stock shall be entitled, in addition to any cumulative dividends to which the Convertible Preferred Stock may be entitled under Section 2(a) above, to receive (concurrent with the payment of the dividend to the holders of Common Stock) the amount of dividends per share of Convertible Preferred Stock that would be payable on the number of whole shares of the Common Stock into which each share of such Convertible Preferred Stock held by each holder could be converted pursuant to the provisions of Section 5 below, such number to be determined as of the record date for the determination of holders of Common Stock entitled to receive such dividend.

(c) The Board of Directors may fix a record date for the determination of holders of shares of Common Stock or the Convertible Preferred Stock entitled to receive payment of a dividend declared thereon, which record date shall be no more than 60 days and no less than 10 days prior to the date fixed for the payment thereof.

3. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) *Payments to Holders of Convertible Preferred Stock.* In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company (each, a “**Liquidation Event**”) or Deemed Liquidation Event, the holders of shares of Convertible Preferred Stock shall be entitled to be paid, with respect to each share of Convertible Preferred Stock then outstanding held by the holder, out of the assets of the Company available for distribution to its stockholders, on a preferred basis prior and in preference to any distribution to the holders of any Common Stock or any other Junior Stock of the Company, an amount in cash per share of Convertible Preferred Stock equal to (i) in the event of a Deemed Liquidation Event occurring prior to the 24-month anniversary of the Issue Date, the greater of (x) 200% multiplied by the sum of the Accrued Value plus an amount equal to all accrued or declared and unpaid dividends on the Convertible Preferred Stock that have not previously been added to the Accrued Value or (y) such amount per share as would have been payable in respect of the shares of Common Stock into which such share of Convertible Preferred Stock is then convertible, assuming all outstanding shares of Convertible Preferred Stock were converted into Common Stock immediately prior to such Deemed Liquidation Event in accordance with Section 5 below (without regard as to whether sufficient shares of Common Stock are available out of the Company’s authorized but unissued stock for the purpose of effecting the conversion of the Convertible Preferred Stock and without regard to any limitation on conversion in accordance with Section 5(j) below) or (ii) in the event of (A) a Liquidation Event that is not a Deemed Liquidation Event or (B) a Deemed Liquidation Event occurring on or after the 24-month anniversary of the Issue Date, the greater of (x) the sum of the Accrued Value plus an amount equal to all accrued or declared and unpaid dividends on the Convertible Preferred Stock that have not previously been added to the Accrued Value or (y) such amount per share as would have been payable in respect of the shares of Common Stock into which such share of Convertible Preferred Stock is then convertible, assuming all outstanding shares of Convertible Preferred Stock were converted into Common Stock immediately prior to such Liquidation Event or Deemed Liquidation Event, as applicable, in accordance with Section 5 below (without regard as to whether sufficient shares of Common Stock are available out of the Company’s authorized but unissued stock for the purpose of effecting the conversion of the Convertible Preferred Stock and without regard to any limitation on conversion in accordance with Section 5(j) below) (the amount payable pursuant to this sentence is hereinafter referred to as the “**Liquidation Amount**”). If upon any such Liquidation Event or Deemed Liquidation Event, the assets of the Company available for distribution to the Company’s stockholders shall be insufficient to pay the holders of shares of the Convertible Preferred Stock the full amount to which they shall be entitled pursuant to the preceding sentence of this Section 3(a), the holders of shares of Convertible Preferred Stock shall share ratably in any distribution of the assets available for distribution and funds of the Company in proportion to the respective amounts which would otherwise be payable in respect of such shares of Convertible Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) *Payments to Holders of Common Stock.* In the event of any Liquidation Event or Deemed Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Convertible Preferred Stock, the remaining assets and funds of the Company available for distribution to its stockholders shall be

distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

(c) *Deemed Liquidation Events.*

(i) *Definition.* Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the Supermajority Required Holders elect otherwise by written notice sent to the Company at least five (5) days prior to the effective date of any such event:

(1) a reorganization, merger or consolidation in which:

- (A) the Company is a constituent party or
- (B) a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such reorganization, merger or consolidation, except any such reorganization, merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such reorganization, merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such reorganization, merger or consolidation, a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly-owned subsidiary of another corporation immediately following such reorganization, merger or consolidation, the parent corporation of such surviving or resulting corporation;

(2) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all of the assets of the Company and its subsidiaries taken as a whole or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly-owned subsidiary of the Company;

(3) issuance or transfer of shares of capital stock of the Company, in a single transaction or series of related transactions, representing at least fifty percent (50%) of the voting power of the voting securities of the Company (but excluding issuances of equity securities (or securities convertible into equity securities) by the Company in a bona fide financing that is primarily for its capital-raising purposes and in which all consideration from such issuances, net of expenses, is received by the Company); or

(4) any tender offer or exchange offer (whether by the Company or another person or entity) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of fifty percent (50%) or more of the outstanding Common Stock.

(ii) *Effecting a Deemed Liquidation Event.*

(1) The Company shall not have the power to effect a Deemed Liquidation Event unless the agreement or plan of merger or consolidation or other agreement for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Company shall be allocated among the holders of capital stock of the Company in accordance with Sections 3(a) and (b), as if the consideration payable to stockholders were all assets of the Company available for distribution to stockholders.

(2) In the event of a Deemed Liquidation Event referred to in Section 3(c)(i)(1)(B), 3(c)(i)(2) or 3(c)(i)(3), if the Company does not effect a dissolution of the Company under the General Corporation Law upon the consummation of such Deemed Liquidation Event, then the Company shall send a written notice to each holder of Convertible Preferred Stock no later than the fifth (5th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of Sections 3(c)(ii)(2), (3), (4) and (5) to require the redemption of such shares of Convertible Preferred Stock, and unless the Supermajority Required Holders agree otherwise in a written instrument delivered to the Company, the Company shall use the consideration received by the Company for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors), together with any other assets of the Company available for distribution to its stockholders (the “**Available Proceeds**”), to the extent legally available therefor, on or prior to the twentieth (20th) day after such Deemed Liquidation Event, to redeem all outstanding shares of Convertible Preferred Stock at a price per share equal to the Liquidation Amount.

Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Convertible Preferred Stock, the Company shall redeem a pro rata portion of each holder's shares of Convertible Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares as soon as practicable after the Company has funds legally available therefor. Prior to the distribution or redemption provided for in this Section 3(c)(ii)(2), the Company shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event. If the Company is required by the provisions of this Section 3(c)(ii)(2) to redeem shares, the redemption shall occur in accordance with the provisions of Sections 3(c)(ii)(2), (3), (4) and (5). The date upon which any such redemption is required to be effected pursuant to this Section 3(c)(ii)(2), shall be the "**Redemption Date**".

(3) The Company shall send written notice of any redemption pursuant to this Section 3(c)(ii) (the "**Redemption Notice**") to each holder of record of Convertible Preferred Stock as required by Section 3(c)(ii)(2). Each Redemption Notice shall state:

- (A) the number of shares held by the holder that the Company shall redeem on the Redemption Date specified in the Redemption Notice (which number shall not be less than the number of shares the Company is then required to redeem);
- (B) the Redemption Date and the redemption price; and
- (C) that the holder is to surrender to the Company, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Convertible Preferred Stock to be redeemed.

(4) On or before the applicable Redemption Date, each holder of shares to be redeemed on such Redemption Date shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Company to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate) to the Company, in the manner and at the place designated in the Redemption Notice, and thereupon the redemption price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares represented by a certificate are redeemed, a new certificate representing the unredeemed shares shall promptly be issued to such holder.

(5) If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the redemption price payable upon redemption of the shares to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares so called for redemption shall not have been surrendered, dividends with respect to such shares shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the redemption price without interest upon surrender of their certificate or certificates therefor. Any shares of Convertible Preferred Stock that are redeemed or otherwise acquired by the Company or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred.

(iii) *Amount Deemed Paid or Distributed.* The consideration paid by the Company upon a Liquidation Event or Deemed Liquidation Event shall be the cash or the value of the property, rights or securities paid or distributed to the holders of the capital stock of the Company by the Company or the acquiring person, firm or other entity, with the value of such property, rights or securities determined in good faith by the Board of Directors.

(iv) *Liquidation Amount Payment Subject to Credit Agreement, Indenture Commitments.* Notwithstanding anything to the contrary contained herein, in the event of a Liquidation Event or a Deemed Liquidation Event, the Company shall pay the Liquidation Amount in cash only after paying in full in cash all obligations of the Company and its subsidiaries under any credit agreement, indenture or similar agreement evidencing indebtedness for borrowed money (including for the termination of all commitments to lend, to the extent required by such credit agreement, indenture or similar agreement) that requires prior payment of the obligations thereunder (and termination of commitments thereunder, if applicable) as a condition to the payment of the Liquidation Amount to the holders of outstanding shares of Convertible Preferred Stock.

4. **Voting.** On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent in lieu of meeting), each holder of Convertible Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Convertible Preferred Stock held by such holder are convertible, in accordance with Section 5 below, on the record date for determining stockholders entitled to vote on such matter (as adjusted from time to time pursuant to Section 5 hereof and subject to the limitations set forth in Section 5(j) below, but without regard as to whether sufficient shares of Common Stock are available out of the Company's authorized but unissued stock, for the purpose of effecting the conversion of the Convertible Preferred Stock). Holders of Convertible Preferred Stock shall be entitled to notice of any meeting of stockholders and, except as otherwise provided herein or otherwise required by law, to vote together with the holders of Common Stock as a single class.

5. **Conversion.** The holders of the Convertible Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**"):

(a) **Right to Convert.** Each share of Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) the sum of the Accrued Value plus an amount equal to all accrued or declared and unpaid dividends on the Convertible Preferred Stock that have not previously been added to the Accrued Value by (ii) the Conversion Price (as defined below) in effect at the time of conversion. The "**Conversion Price**" shall initially be equal to \$2.3633 per share. The rate at which shares of Convertible Preferred Stock may be converted into shares of Common Stock shall be subject to adjustment as provided in Section 5(d), (e), (f) and (g) below.

In the event of a notice of redemption of any shares of Convertible Preferred Stock pursuant to Section 8 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full.

(b) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of the Convertible Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock, which shall be the last reported closing sale price of a share of Common Stock on the Conversion Date if the Common Stock is then listed and trading on a Trading Market or, if the Common Stock is not then so listed and trading, as determined in good faith by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Convertible Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(c) **Mechanics of Conversion.**

(i) Holders of Convertible Preferred Stock shall effect conversions by providing the Company with a written notice of conversion in the form annexed hereto as Exhibit A (a "**Notice of Conversion**") on the Trading Day on which such holder wishes to effect such conversion (the "**Conversion Date**"). Each Notice of Conversion shall specify the number of shares of Convertible Preferred Stock to be converted, the applicable Conversion Price, the number of shares of Common Stock to be issued, and the number of shares of Convertible Preferred Stock owned subsequent to the conversion at issue. The shares of Common Stock shall be deemed to have been issued, and the holder or any other person so designated to be deemed to have become a holder of record of such shares for all purposes, as of the date of delivery to the Company of the Notice of Conversion. To effect conversions of shares of Convertible Preferred Stock, a holder shall not be required to surrender the certificate(s) representing the shares of Convertible Preferred Stock to the Company unless all of the shares of Convertible Preferred Stock represented thereby are so converted, in which case such holder shall deliver the certificate representing such shares of Convertible Preferred Stock promptly following the Conversion Date at issue. Conversions of less than the total amount of shares of Convertible Preferred Stock represented by a certificate held by the holder will have the effect of lowering the outstanding number of Convertible Preferred Stock held by such holder by an amount equal to the number so converted, as if the original stock certificate(s) were cancelled and one or more new stock certificates evidencing the new number of shares of Convertible Preferred Stock were issued; provided, however, that in such cases the holder may request that the Company deliver to the holder a certificate representing such non-converted shares of

Convertible Preferred Stock; provided, further, that the failure of the Company to deliver such new certificate shall not affect the rights of the holder to submit a further Notice of Conversion with respect to such Convertible Preferred Stock and, in any such case, the holder shall be deemed to have submitted the original of such new certificate at the time that it submits such further Notice of Conversion. In the case of a dispute between the Company and a holder as to the calculation of the Conversion Price, the total number of shares of Convertible Preferred Stock outstanding or the number of shares of Common Stock issuable upon a conversion, the Company shall issue to such holder the number of shares of Common Stock that are not disputed within the time periods specified below and shall submit the disputed calculations to a certified public accounting firm of national reputation (other than the Company's regularly retained accountants) within two (2) Trading Days following the Company's receipt of such holder's Notice of Conversion. The Company shall cause such accountant to calculate the Conversion Price, the total number of shares of Convertible Preferred Stock outstanding or the number of shares of Common Stock issuable upon conversion as provided herein and to notify the Company and such holder of the results in writing no later than two (2) Trading Days following the day on which such accountant received the disputed calculations (the "**Dispute Procedure**"). Such accountant's calculation shall be deemed conclusive absent manifest error. The fees of any such accountant shall be borne by the party whose calculations were most at variance with those of such accountant.

(ii) Not later than the number of Trading Days comprising the Settlement Period after each Conversion Date (the "**Share Delivery Date**"), the Company shall deliver, or cause to be delivered, to the converting holder the number of shares of Common Stock being acquired upon the conversion of the Convertible Preferred Stock. If, in the case of any Notice of Conversion, such shares of Common Stock are not delivered to or as directed by the applicable holder by the Share Delivery Date, the holder shall be entitled to elect by written notice to the Company at any time on or before its receipt of such shares of Common Stock, to rescind such conversion, in which event the Company shall promptly return to the holder any original Convertible Preferred Stock certificate delivered to the Company and the holder shall promptly return to the Company the shares of Common Stock issued to such holder pursuant to the rescinded Conversion Notice.

(iii) The Company shall at all times when the Convertible Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Convertible Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Convertible Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Convertible Preferred Stock, the Company shall take such corporate action as may be required to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Convertible Preferred Stock, the Company shall take commercially reasonable efforts to effect any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price, as applicable.

(iv) The Company understands that a delay in the delivery of the shares of Common Stock after the Share Delivery Date could result in economic loss to the holder. As compensation to the holder for such loss, if (i) the Company fails to deliver the number of shares of Common Stock to which the holder is entitled upon the holder's exercise of the Convertible Preferred Stock within the time periods specified above (or, to the extent shares of Common Stock are subject to a Dispute Procedure, within one (1) Business Day of the Company's receipt of the accountant's calculation) and (ii) the holder has not exercised its Buy-In rights as provided below with respect to such shares, the Company agrees to pay (as liquidated damages and not as a penalty) to the holder for late issuance of the shares of Common Stock upon exercise of the Convertible Preferred Stock the proportionate amount of \$10 per Trading Day (increasing to \$20 per Trading Day after the third (3rd) Trading Day) after the Share Delivery Date for each \$1,000 of shares of Common Stock for which the Convertible Preferred Stock is exercised which are not timely delivered. For purposes of clarification, if the Company is obligated to make payments of liquidated damages pursuant to this Section for late issuance of shares of Common Stock, then it shall not also be obligated to make Buy-In payments as described below with respect to those same shares of Common Stock. The Company shall pay any payments incurred under this Section in immediately available funds upon demand.

(v) In addition to any other rights available to the Holder, if the Company fails for any reason to effect delivery of the shares of Common Stock to the holder by the Share Delivery Date (or, to the extent shares of Common Stock are subject to a Dispute Procedure, within one (1) Business Day of the Company's receipt of the accountant's calculation) and if after such date the holder is required by its broker to purchase (in an open market transaction or otherwise) or the holder or its brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the holder of the Common Stock which the holder anticipated receiving upon such exercise (a "**Buy-In**"), then the Company shall (A) pay in cash to the holder the amount, if any, by which (x) the holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased, minus any amounts paid to the holder by the Company as liquidated damages as described in Section 5(b)(iv) above, exceeds (y) the amount obtained by multiplying (1) the number of shares of Common Stock that the Company was required to deliver to the holder in connection with the conversion at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the holder, either reinstate the portion of the Convertible Preferred Stock and equivalent number of shares of Common Stock for which such conversion was not honored (in which case such conversion shall be deemed rescinded) or deliver to the holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the holder \$1,000, assuming no liquidated damages. The holder shall provide the Company written notice indicating the amounts payable to the holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of Convertible Preferred Stock as required pursuant to the terms hereof.

(vi) All shares of Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion and payment of any dividends declared but unpaid on the Convertible Preferred Stock. Any shares of Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Company (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Convertible Preferred Stock accordingly.

(vii) The Company shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Convertible Preferred Stock pursuant to this Section 5. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Convertible Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the Person requesting such issuance has paid to the Company the amount of any such tax or has established, to the satisfaction of the Company, that such tax has been paid.

(d) Adjustment for Stock Splits and Combinations. If the Company shall at any time or from time to time after the Issue Date effect a subdivision of the outstanding shares of Common Stock, the Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common stock issuable on conversion of each share shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Company shall at any time or from time to time after the Issue Date combine the outstanding shares of Common Stock, the Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(e) Adjustment for Certain Dividends and Distributions. In the event the Company at any time or from time to time after the Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each

such event the Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Convertible Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Convertible Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Convertible Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(f) Adjustment for Reclassification, Exchange, or Substitution. If the Common Stock issuable upon the conversion of the Convertible Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of Convertible Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable, upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Convertible Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(g) Adjustment for Merger or Reorganization, etc. If there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Company in which the Common Stock (but not the Convertible Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by paragraphs (d), (e) or (f) of this Section 5), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Convertible Preferred Stock shall be convertible into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Company issuable upon conversion of one share of Convertible Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction (without regard to any limitation in Section 5(j) on the conversion of the Convertible Preferred Stock); and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 5 with respect to the rights and interests thereafter of the holders of the Convertible Preferred Stock to the end that the provisions set forth in this Section 5 (including provisions with respect to changes in and other adjustments of the Conversion Price, as applicable) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Convertible Preferred Stock.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 5, the Company at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Convertible Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Convertible Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, as promptly as reasonably practicable after the written request at any time of any holder of Convertible Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a

certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Convertible Preferred Stock.

(i) Notice of Record Date. In the event:

- (i) that the Company declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Company;
- (ii) that the Company subdivides or combines its outstanding shares of Common Stock;
- (iii) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution on the Common Stock), or of any consolidation or merger of the Company into or with another Person, or a Deemed Liquidation Event; or
- (iv) of a Liquidation Event;

then the Company shall cause to be filed at its principal office or at the office of the transfer agent of the Convertible Preferred Stock, and shall cause to be mailed to the holders of the Convertible Preferred Stock at their last addresses as shown on the records of the Company or such transfer agent, at least ten days prior to the date specified in (A) below or twenty days before the date specified in (B) below, a notice stating:

- (A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or
- (B) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation winding up or Deemed Liquidation Event is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution winding up or Deemed Liquidation Event.

(j) Beneficial Ownership Limitation.

(i) The Company may not issue to a holder, or group of affiliated holders, of shares of Convertible Preferred Stock, upon conversion of such Convertible Preferred Stock, a number of shares of Common Stock that would cause such holder, or group of affiliated holders (collectively, the “**Converting Holder**”), to beneficially own, in the aggregate, a number of shares of the Company’s capital stock that represents in excess of 19.99% of the Company’s voting power, *unless* (x) the Company obtains the approval of its stockholders as required by the applicable rules of the relevant Trading Market for issuances of shares of Common Stock in excess of such amount, (y) the Company is not subject to rules of the relevant Trading Market limiting issuances of shares of Common Stock in excess of such amount or (z) a holder, or group of affiliated holders, of the Company’s capital stock beneficially own, in the aggregate, a number of shares of the Company’s capital stock that represents a percentage of the Company’s voting power in excess of the percentage voting power held by the Converting Holder immediately following such conversion.

(ii) Notwithstanding anything to the contrary herein, upon the written election of a holder of shares of Convertible Preferred Stock, no such holder of Convertible Preferred Stock shall be entitled to effect a conversion of any portion of its shares of Convertible Preferred Stock, to vote in its capacity as a holder of shares of Convertible Preferred Stock with respect to matters submitted to holders of the Common Stock or take delivery of shares of Common Stock upon conversion of such shares of Convertible Preferred Stock, in each case, to the extent that, after giving effect to such conversion, action or delivery, as applicable, such holder, together with all other Attribution Parties (as defined below), collectively would beneficially own in excess of 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion (such percentage, subject to such modifications in accordance with, and subject to the limitations set forth in, this Section 5(j)(ii), the “**Maximum Percentage**”). For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such holder and the other Attribution Parties shall include the number of shares of Common Stock held by the holder and

all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of such shares of Convertible Preferred Stock with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (i) exercise of the remaining, unconverted portion of such shares of Convertible Preferred Stock beneficially owned by such holder or any other Attribution Party and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this [Section 5\(j\)\(ii\)](#). For purposes of determining the number of shares of Common Stock the holder may acquire upon the conversion of shares of its Convertible Preferred Stock without exceeding the Maximum Percentage, such holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the Company or (3) any other written notice by the Company or the transfer agent setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from a holder of Convertible Preferred Stock at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify such holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause such holder's beneficial ownership, as determined pursuant to this [Section 5\(j\)\(ii\)](#), to exceed the Maximum Percentage, such holder must notify the Company of a reduced number of shares of Convertible Preferred Stock to be converted pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of a holder of Convertible Preferred Stock, where such request indicates that it is being made pursuant to this Certificate of Designation, the Company shall within two (2) business days confirm orally and in writing or by electronic mail to such holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company by such holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon the conversion of any of such holder's shares of Convertible Preferred Stock results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock, the number of shares so issued by which such holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled *ab initio*, and such holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void and/or any other shares of Convertible Preferred Stock have been purported to be converted or mandatorily converted in excess of the limitations set forth in this [Section 5\(j\)\(ii\)](#), the Company shall return to the Holder the number of shares of Convertible Preferred Stock corresponding to such excess.

Upon delivery of a written notice to the Company, a holder of Convertible Preferred Stock may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage that is not in excess of 19.99% (except that such increased percentage may exceed 19.99% in the event that (x) the Company obtains the approval of its stockholders as required by the applicable rules of the relevant Trading Market for issuances of shares of Common Stock in excess of such amount or (y) the Company is not subject to rules of the relevant Trading Market limiting issuances of shares of Common Stock in excess of such amount) as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company, and (ii) any such increase or decrease will apply only to such holder of shares of Convertible Preferred Stock and the other Attribution Parties and not to any other holder of Convertible Preferred Stock. For purposes of clarity, the shares of Common Stock underlying such holder's shares of Convertible Preferred Stock in excess of the Maximum Percentage shall not be deemed to be beneficially owned by such holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this [Section 5\(j\)\(ii\)](#) to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this [Section 5\(j\)\(ii\)](#) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation as contained in this paragraph may not be waived and shall apply to a successor holder of the Convertible Preferred Stock.

As used in this Certificate of Designation with respect to any holder of Convertible Preferred Stock, “**Attribution Parties**” means, collectively, the following persons and entities: such holder, any of its Affiliates or principals, any person acting or who could be deemed to be acting as a group together with such holder or any of the foregoing for purposes of Section 13(d) of the Exchange Act, and any other persons whose beneficial ownership of the Common Stock would or could be aggregated with such holder’s and the other Attribution Parties’ for purposes of Section 13(d) of the Exchange Act.

The limitation contained in this Section 5(j)(ii) shall apply to a holder from and after the delivery of such written election to the Company and shall cease to apply thereafter only upon sixty-one (61) days’ written notice from such holder to the Company of an election to increase or decrease or remove such limitation; provided, that such election to be subject to such limitation shall be irrevocable if the holder so electing specifies in writing to the Company that such election is irrevocable. For the avoidance of doubt, the limitation contained in this Section 5(j)(ii) shall not apply to any holder that has not elected in writing to be subject to such limitation.

Notwithstanding anything to the contrary herein, this Section 5(j) and the limitations herein shall not apply to any holder, or group of affiliated holders, that beneficially own, in the aggregate, a number of shares of the Company’s capital stock that represents in excess of 19.99% of the Company’s voting power at the time of issuance of the Convertible Preferred Stock for so long as such holder, or group of affiliated holders, beneficially own, in the aggregate, a number of shares of the Company’s capital stock that represents in excess of 19.99% of the Company’s voting power.

6. Mandatory Conversion.

(a) Trigger Event. If at any time following the third anniversary of the Issue Date, the closing sale price of the Common Stock on the principal Trading Market exceeds two-hundred fifty percent (250%) of the Conversion Price for thirty (30) consecutive Trading Days, then the Company shall have the right to require conversion of the Convertible Preferred Stock, in whole or in part, on a pro rata basis by all holders thereof based on the number of shares of Convertible Preferred Stock then held, at the then effective conversion rate in accordance with Section 5(a)(i), subject to the limitations set forth in this Section 6.

(b) Limitations on Mandatory Conversion.

(i) Certain Equity Conditions. The Company shall be prohibited from exercising its right to require conversion pursuant to Section 6(a), and any such exercise shall be void *ab initio*, at any time at which there exists an Equity Conditions Failure.

(ii) Effect of Blocker Provisions. To the extent any conversion in accordance with this Section 6, would (x) cause a holder to beneficially own a number of shares of Common Stock that exceeds the amount that could be issued to such holder pursuant to Section 5(j) or (y) in the reasonable judgment of the applicable holder, result in a violation by such holder of the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended from time to time (an “**HSR Violation**”), then, at the Mandatory Conversion Time (as defined below) (i) only such portion of such holder’s shares of Convertible Preferred Stock that may be converted without exceeding the limitations in Section 5(j) and without resulting in an HSR Violation shall be converted to Common Stock and (ii) the remaining shares of Convertible Preferred Stock that would otherwise have been converted into Common Stock, from the Mandatory Conversion Time forward, shall, in respect of payment of dividends and distribution of assets of the Company upon a Liquidation Event or Deemed Liquidation Event, have only such rights as are applicable to shares of Common Stock and the provisions of Section 7 (other than Section 7(a)) shall no longer apply; provided, that, for the avoidance of doubt, the other rights applicable to such shares of Convertible Preferred Stock, including the Conversion Rights, shall not be modified.

(c) Procedural Requirements. All holders of record of shares of Convertible Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Convertible Preferred Stock pursuant to this Section 6. Such notice must include a certification that there does not then exist an Equity Conditions Failure. The Company shall send such notice at least thirty (30) days in advance of the occurrence of the conversion requested pursuant to Section 6(a) (the time of such occurrence, the “**Mandatory Conversion Time**”). Prior to the Mandatory Conversion Time specified in the notice, each holder of shares of Convertible Preferred Stock shall surrender his or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit) to the Company at the place

designated in such notice. If so required by the Company, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Company, duly executed by the registered holder or by his or its attorney duly authorized in writing. All rights with respect to the Convertible Preferred Stock converted pursuant to Section 6(a), including the rights to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit) therefor, to receive the items provided for in the next sentence of this Section 6(c). As soon as practicable after the Mandatory Conversion Time (but in any event within three Trading Days), the Company shall issue and deliver to such holder, or to his, her or its nominee, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Convertible Preferred Stock converted. Such converted Convertible Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Company may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Convertible Preferred Stock accordingly.

7. Protective Covenants. At any time when shares of Convertible Preferred Stock are outstanding, the Company shall not, either directly or indirectly (including through any subsidiary of the Company) by amendment, merger, consolidation, reclassification, reorganization or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the Required Holders (or, solely with respect to Section 7(a), the Supermajority Required Holders), given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act taken or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(a) amend, modify or fail to give effect to the rights of the holders of Convertible Preferred Stock;

(b) increase or decrease the number of authorized shares of Convertible Preferred Stock (except as permitted under Section 8(i) hereunder);

(c) create or issue any equity securities or securities convertible into equity securities with equal or superior rights, preferences or privileges to those of the Convertible Preferred Stock in respect of (i) payment of dividends, or (ii) distribution of assets of the Company upon a Liquidation Event or Deemed Liquidation Event;

(d) other than the issuance of shares of Common Stock on exercise or conversion of securities outstanding on the Issue Date, issue any shares of Common Stock or securities convertible into or exercisable (directly or indirectly) for Common Stock if at such time (or after giving effect to such issuance) the Company does not have sufficient shares of Common Stock available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Convertible Preferred Stock into Common Stock (assuming that accrued and unpaid dividends at such time include all dividends that would have accrued on the Convertible Preferred Stock for a period of five years from the date thereof) and the exercise and conversion of all other securities convertible or exercisable (directly or indirectly) for Common Stock;

(e) declare or pay any dividends or distributions on or make redemptions or repurchases of equity securities, except for repurchases from employees, directors, advisors or consultants upon termination pursuant to contractual call rights; or

(f) create any subsidiary that is not majority-owned, either directly or indirectly, by the Company; provided, however, that this restriction shall not apply, in the case of (i) any subsidiary created outside of the United States, solely to the extent that, due to local law or regulatory requirements, the Company is not permitted to legally own such subsidiary or (ii) the creation of any joint venture created in the ordinary course of business for a bona fide business purpose.

8. Redemptions.

(a) Seven-Year Redemption. On or at any time after the seventh anniversary of the Issue Date,

(i) each holder of Convertible Preferred Stock shall have the right to require the Company to redeem all of such holder's Convertible Preferred Stock, for cash, at a redemption price per share of Convertible Preferred Stock equal

to the sum of the Accrued Value plus an amount equal to all accrued or declared and unpaid dividends on the Convertible Preferred Stock that have not previously been added to the Accrued Value.

(ii) the Company shall have the right to redeem, in whole or in part, on a pro rata basis from all holders thereof based on the number of shares of Convertible Preferred Stock then held, the outstanding Convertible Preferred Stock, for cash, at a redemption price per share of the sum of the Accrued Value plus an amount equal to all accrued or declared and unpaid dividends on the Convertible Preferred Stock that have not previously been added to the Accrued Value.

(b) Limitations on Redemption Right. The Company shall be prohibited from exercising its right to redeem Convertible Preferred Stock pursuant to Section 8(a)(ii), and any such exercise shall be void *ab initio*, at any time at which there exists an Equity Conditions Failure.

(c) Exercise of Redemption Right.

(i) Any holder of Convertible Preferred Stock may exercise the holder's redemption right under Section 8(a)(i) by delivering to the Company at its principal office a written notice stating the holder's intention to exercise the holder's redemption right and the number of the holder's shares of Convertible Preferred Stock to be redeemed. The Company shall be obligated to redeem the total number of shares of Convertible Preferred Stock specified in the holder's redemption notice on or before the earlier of the sixtieth (60th) business day following its receipt of the initial redemption request triggering the notice described in Section 8(d) below pursuant to Section 8(a).

(ii) The Company may exercise its redemption right under Section 8(a)(ii) by delivering to each holder at the address for such holder last shown on the records of the transfer agent therefor (or the records of the Company, if it serves as its own transfer agent) a written notice stating the Company's intention to exercise its redemption right, the number of the holder's shares of Convertible Preferred Stock to be redeemed and the time of such redemption, which shall not be sooner than thirty (30) days after the delivery of such notice.

(d) Notice of Redemption. The Company shall provide notice of any redemption requested by the Company under Section 8(a)(ii), specifying the time and place of redemption and the redemption price, by first class or registered mail, postage prepaid, return receipt requested, to each holder of record of Convertible Preferred Stock at the address for such holder last shown on the records of the transfer agent therefor (or the records of the Company, if it serves as its own transfer agent), not less than fifteen (15) days prior to each redemption date. In the case of redemptions requested by the Company pursuant to Section 8(a)(ii), such notice must include a certification that there does not then exist an Equity Conditions Failure. In the case of redemptions requested by a holder under Section 8(a)(i), the Company shall use its commercially reasonable efforts, and shall take all reasonable action necessary, to pay the redemption price as provided in this Section 8.

(e) Insufficient Funds. If the funds of the Company legally available for redemption by a holder pursuant to Section 8(a)(i) of the Convertible Preferred Stock on any redemption date are insufficient to redeem all shares of the Convertible Preferred Stock being redeemed by the Company on such date, those funds which are legally available will be used first to redeem, on a pro rata basis based on the number of shares of Convertible Preferred Stock then held by each holder being redeemed on such date, the maximum possible number of shares of the Convertible Preferred Stock being redeemed in accordance with the aggregate redemption proceeds payable with respect to the shares of Convertible Preferred Stock to be redeemed on such date. At any time thereafter when additional funds of the Company become legally available for the redemption of the Convertible Preferred Stock, such funds will be used to redeem the balance of the shares of Convertible Preferred Stock which the Company was theretofore obligated to redeem as provided in the immediately preceding sentence. Any shares of Convertible Preferred Stock which are not redeemed as a result of the circumstances described in this Section 8(e) shall remain outstanding until such shares shall have been redeemed and the redemption price therefor, as applicable, shall have been paid or set aside for payment in full.

(f) Rights Terminated. Upon (i) presentation and surrender of the certificate or certificates representing the shares of Convertible Preferred Stock being redeemed pursuant to this Section 8 and receipt of the redemption price therefor or (ii) irrevocable deposit in trust by the Company for holders of the Convertible Preferred Stock being redeemed pursuant to this Section 8 of an amount in cash equal to the redemption price for the shares of Convertible Preferred Stock being redeemed on any redemption date, each holder of Convertible Preferred Stock will cease to have any rights as a stockholder of the Company by reason of the ownership of such redeemed shares of Convertible Preferred Stock (except for the right to receive the redemption price therefor upon the surrender of the certificate or

certificates representing the redeemed shares if such certificate or certificates have not been surrendered), and such redeemed shares of Convertible Preferred Stock will not from and after the date of payment in full of the redemption price therefor be deemed to be outstanding.

(g) Restrictions on Other Payments. After the receipt by the Company of a redemption request pursuant to Section 8(a)(i), unless and until the full redemption price for the shares of Convertible Preferred Stock to be redeemed on any redemption date has been paid to the holders requesting such redemption, (i) no dividends shall be paid or declared or set aside for payment or other distribution upon any capital stock of the Company and (ii) no shares of capital stock of the Company shall be redeemed, retired, purchased or otherwise acquired for any consideration (or any payment made to or available for a sinking fund for the redemption of any such shares) by the Company or any subsidiary (except by conversion into or exchange for shares of Common Stock for which adjustment may be made pursuant to Section 5 above).

(h) Conversion Prior to Redemption. At any time after delivering a request for redemption pursuant to Section 8(a)(i) or the receipt by a holder of a notice of redemption from the Company pursuant to Section 8(a)(ii) and prior to receipt of the full redemption price therefor (or, if later, the time of redemption specified in the notice delivered pursuant to Section 8(d)), such holder shall be permitted to convert any or all of its Convertible Preferred Stock, including any shares subject to a redemption notice, in the manner contemplated by Section 5.

(i) Reacquired Shares. Any shares of Convertible Preferred Stock converted, redeemed, purchased, or otherwise acquired by the Company in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof, and shall not be reissued and the Company from time to time shall take such action as may be necessary to reduce the authorized Convertible Preferred Stock accordingly.

9. Definitions. The following terms shall have the following respective meanings:

“**Accrued Value**” means, with respect to each share of Convertible Preferred Stock, the sum, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Convertible Preferred Stock, of (i) the Original Purchase Price plus (ii) on each Quarterly Dividend Date, an additional amount equal to the dollar value of any dividends on a share of Convertible Preferred Stock which have accrued on any dividend payment date and have not been previously added to such Accrued Value.

“**affiliate**” means, with respect to any Person (as defined herein), any (x) spouse, parent, sibling or descendant of such Person (or a spouse, parent, sibling or descendant of a director, officer, or partner of such Person) and (y) other Persons that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person. The term “**control**” includes, without limitation, the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Annual Rate**” means 8.0% per annum.

“**beneficial ownership**” shall be calculated in accordance with Section 13(d) of the Exchange Act.

“**Common Stock**” means the common stock, par value \$0.0001 per share, of the Company.

“**Equity Conditions**” means: (i) the Company shall not be in breach of any of its obligations in any material respect under this Certificate of Designation, the Redeemable Convertible Preferred Stock Purchase Agreement dated as of May 31, 2023 (the “**Purchase Agreement**”) or the Registration Rights Agreement dated as of June 2, 2023; and (ii) all shares of Common Stock into which the Convertible Preferred Stock is convertible shall, upon issuance, be freely tradable by the holder under an effective registration statement filed by the Company pursuant to the Securities Act of 1933, amended, or Rule 144 promulgated thereunder without any volume or manner of sale limitations applicable to “affiliates,” as defined therein. For purposes of part (i) of this definition, the Company shall be deemed to be in breach of its obligations if the Common Stock issuable on conversion of the Convertible Preferred Stock is not then listed for trading on a Trading Market or if the Company has received a final notice of de-listing from a Trading Market.

“Equity Conditions Failure” means that on any applicable date of determination, any of the Equity Conditions have not been satisfied or any of the Equity Conditions would not reasonably be expected to be satisfied in the foreseeable future.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

“Issue Date” means, with respect to each share of the Convertible Preferred Stock, the date on which such share of Convertible Preferred Stock was issued.

“Junior Stock” means each class or series of capital stock of the Company created after the Issue Date that does not expressly rank *pari passu* with or senior to the shares of Convertible Preferred Stock as to payment of dividends and to distribution of assets of the Company upon a Liquidation Event or Deemed Liquidation Event.

“Original Purchase Price” means \$100.00 per share of Convertible Preferred Stock.

“Person” means, without limitation, an individual, a partnership, a corporation, an association, a joint stock corporation, a limited liability company, a trust, a joint venture, an unincorporated organization and a governmental authority.

“Quarterly Dividend Date” shall mean March 31, June 30, September 30 and December 31 of each year.

“Required Holders” means holders of a majority of the then outstanding shares of Convertible Preferred Stock.

“Settlement Period” means the standard settlement period, expressed in a number of Trading Days, for the Company’s primary trading market or quotation system with respect to the Common Stock that is in effect on the date of delivery of an applicable Notice of Conversion, which as of the Issue Date was “T+2”.

“Supermajority Required Holders” means holders of seventy-five percent (75%) of the then outstanding shares of Convertible Preferred Stock.

“Trading Day” means (a) any day on which the Common Stock is listed or quoted and traded on its primary Trading Market or (b) if the Common Stock is not then listed or quoted and traded on any Trading Market, then a day on which trading occurs on the Nasdaq Global Market (or any successor thereto).

“Trading Market” means the following market(s) or exchange(s) on which the Common Stock is listed or quoted for trading on the date in question (as applicable): the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange or the NYSE MKT or any successor markets thereto.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Certificate of Designation has been signed on behalf of the Company by its Chief Executive Officer as of June 1, 2023.

TELESIS BIO INC.

By: /s/ Todd R. Nelson

Name: Todd R. Nelson

Title: Chief Executive Officer

EXHIBIT A
NOTICE OF CONVERSION

TO: **TELESIS BIO INC.**

(1) The undersigned hereby elects to convert _____ shares of Convertible Preferred Stock into _____ shares of Common Stock pursuant to the terms of the Certificate of Designation.

(2) Please issue said shares of Common Stock in the name of the undersigned or in such other name as is specified below:

The shares of Common Stock shall be delivered to the following DWAC Account Number:

[SIGNATURE OF HOLDER]

Name of Investing Entity:

Signature of Authorized Signatory of Investing Entity:

Name of Authorized Signatory:

Title of Authorized Signatory:

Date:

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

COMMON STOCK PURCHASE WARRANT

TELESIS BIO INC.

Warrant Shares: [_____]

Issue Date: June 5, 2023

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, [_____], or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the Issue Date and on or prior to 5:00 p.m. (New York City time) on June 5, 2028 (the "Termination Date") but not thereafter, to subscribe for and purchase from Telesis Bio Inc., a Delaware corporation (the "Company"), up to [_____] shares (as subject to adjustment hereunder, the "Warrant Shares") of common stock, par value \$0.0001 per share, of the Company (the "Common Stock"). The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Redeemable Convertible Preferred Stock and Warrant Purchase Agreement (the "Purchase Agreement"), dated May 31, 2023, among the Company and the purchasers signatory thereto, as such Purchase Agreement is in effect as of May 31, 2023.

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Issue Date and on or before the Termination Date by delivery to the Company of a duly executed PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto as Exhibit A (the "Notice of Exercise"). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the

PAGE

applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation as soon as reasonably practicable following the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be \$2.9541, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If at the time this Warrant is exercised, in whole or in part, after the six-month anniversary of the Issue Date, there is no effective registration statement registering, or the prospectus contained therein is not available for the resale of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing $[(A-B)*(X)]$ by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. ("Bloomberg") as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the

applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of “regular trading hours” on such Trading Day;

- (B) = the Exercise Price of this Warrant, as adjusted hereunder; and
- (X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTCQB Venture Market (“OTCQB”) or the OTCQX Best Market (“OTCQX”) is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (“Pink Market”) operated by the OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the holding period of the Warrant Shares being issued may be tacked on to the holding period of this Warrant. The Company agrees not to take any position contrary to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, 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 of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by the Warrant Share Delivery Date. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the third (3rd) Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or the Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an

amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto as Exhibit B duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder, together with its Attribution Parties (as defined below), beneficially owns or would beneficially own as determined in accordance with Section 13(d) of the Exchange Act, in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder, together with its Attribution Parties, shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder, together with its Attribution Parties, and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company beneficially owned by the Holder, together with its Attribution Parties (including, without limitation, any other Common Stock Equivalents), that are subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is

exercisable (in relation to other securities beneficially owned by the Holder, together with its Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities beneficially owned by the Holder, together with its Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one (1) Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the issued and outstanding shares of Common Stock. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 19.99% (except that such increased percentage may exceed 19.99% in the event that (x) the Company obtains the approval of its stockholders as required by the applicable rules of the relevant Trading Market for issuances of shares of Common Stock in excess of such amount, (y) a holder, or group of affiliated holders, of the Company's capital stock beneficially own, in the aggregate, a number of shares of the Company's capital stock that would represent a percentage of the Company's voting power in excess of the percentage voting power held by the Holder and its Attribution Parties immediately following conversion or exercise, or (z) the Company is not subject to rules of the relevant Trading Market limiting issuances of shares of Common Stock in excess of such amount) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant. As used herein, "Attribution Parties" means, collectively, (i) any direct or indirect Affiliates of the Holder, (ii) any person acting or who could be deemed to be acting as a Group together with the Holder or

any of the foregoing and (iii) any other persons whose beneficial ownership of the Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) or Section 16 of the Exchange Act (for clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Beneficial Ownership Limitation).

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend on its Common Stock or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents 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 Beneficial Ownership Limitation) 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, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder, together with its Attribution Parties, exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) 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, together with its Attribution Parties, exceeding the Beneficial Ownership Limitation).

c) Pro Rata Distributions. During such time as this Warrant is outstanding, 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) (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 Beneficial Ownership Limitation) immediately before the date of 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, that to the extent that the Holder’s right to participate in any such Distribution would result in the Holder, together with its Attribution Parties, exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (and shall not be entitled to beneficial ownership of any shares of Common Stock as a result of such Distribution (and beneficial ownership) to such extent) and the portion of such Distribution 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, together with its Attribution Parties, exceeding the Beneficial Ownership Limitation).

d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, in which the Company is not the surviving entity and in which the stockholders of the Company immediately prior to such merger or consolidation do not own, directly or indirectly, at least 50% of the voting power of the surviving entity immediately after such merger or consolidation, (ii) the Company (or any Subsidiary), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets, other than to a wholly owned Subsidiary, in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock or 50% or more of the voting power of the common equity of the Company, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group

of Persons whereby such other Person or group acquires 50% or more of the outstanding shares of Common Stock or 50% or more of the voting power of the common equity of the Company (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant without regard to any limitations on exercise contained herein (the "Alternate Consideration"). The Company shall not effect any Fundamental Transaction in which the Company is not the surviving entity or the Alternate Consideration includes securities of another Person unless (i) the Alternate Consideration is solely cash and the Company provides for the simultaneous "cashless exercise" of this Warrant pursuant to Section 2 above or (ii) prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or other person (including any purchaser of assets of the Company) shall assume the obligation to deliver to the Holder such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to receive, and the other obligations under this Warrant. The provisions of this paragraph (d) shall similarly apply to subsequent transactions analogous of a Fundamental Transaction type.

e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

f) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company (or any of its Subsidiaries) is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall

authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, or a Fundamental Transaction, then, in each case, the Company shall cause to be delivered by email to the Holder at its last email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange, or a Fundamental Transaction is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, or a Fundamental Transaction; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable United States federal and state securities laws and the conditions set forth in Section 4(d) hereof, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. This Warrant, if properly assigned in accordance herewith, may be

exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Issue Date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, provide to the Company an opinion of counsel selected by the Holder 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 Warrant under the Securities Act of 1933, as amended. Upon such surrender and, if required, such payment, the Company shall execute and deliver or cause to be executed and delivered a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued. The Company shall register or cause to be registered this Warrant, upon records to be maintained by the Company or Warrant Agent for that purpose, in the name of the record Holder hereof from time to time. The Company or Warrant Agent may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

e) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with

a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a “cashless exercise” pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then, such action may be taken or such right may be exercised on the next succeeding Trading Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, 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, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Governing Law and Jurisdiction. This Warrant shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of law principles. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Warrant shall be brought in any federal or state court located in the State of New York, and each of the parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 5(h) shall be deemed effective service of process on such party.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies, notwithstanding the fact that the right to exercise this Warrant terminates on the Termination Date. Without limiting

any other provision of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any out-of-pocket costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing. Any notices, requests, demands and other communications required or permitted under this Warrant shall be effective if in writing and (i) delivered personally, (ii) sent by facsimile or e-mail or (iii) delivered by overnight courier, in each case, addressed as follows:

If to the Company to:

Telesis Bio Inc.
10431 Wateridge Circle, Suite 150
San Diego, CA 92121
Attention: Chief Legal Officer
E-mail: rob.cutler@telesisbio.com

and

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

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, CA 94304
Attention: Philip Oettinger
E-mail: poettinger@wsgr.com

If to any Holder:

To the address or other contact information delivered by the Holder to the Company or as is on the books and records of the Company.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company, on the one hand, and the Holder of this Warrant, on the other hand.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

TELESIS BIO INC.

By: _____
Name: Todd R. Nelson
Title: President and Chief Executive Officer

NOTICE OF EXERCISE

TO: **TELESIS BIO INC.**

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full.

(2) Payment shall take the form of (check applicable box):

in lawful money of the United States; or

if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in Subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in Subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

The Warrant Shares shall be delivered to the following DWAC Account Number:

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to exercise the Warrant to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____, _____, _____

Holder's Signature: _____

Holder's Address: _____

Number of Warrant Shares underlying assigned
portion of Warrant (for partial Warrant transfers,
if applicable): _____

**Telesis Bio Announces Closing of \$28.0 Million Private Placement of Preferred Stock
And Warrants to Purchase an Additional \$46.2 Million of Common Stock**

SAN DIEGO, June 5, 2023 (GLOBE NEWSWIRE) — Telesis Bio Inc. (NASDAQ: TBIO), a leader in molecular biology automation solutions for multi-omic and synthetic biology applications, today announced the closing of its private placement of redeemable convertible preferred stock and warrants resulting in initial gross proceeds of \$28.0 million to Telesis Bio. The warrants issued in the private placement will provide Telesis Bio with approximately \$46.2 million in additional gross proceeds if they are cash exercised.

The financing was led by Novalis LifeSciences LLC with participation from Northpond Ventures, BroadOak Capital Partners and M-185 Corporation, an affiliate of the Company's Chief Executive Officer and Founder, Todd R. Nelson, PhD.

The Company also announced the appointment of Paul Meister, a partner at Novalis LifeSciences LLC, to the Company's board of directors immediately following the closing.

Please refer to the Company's Form 8-K to be filed with the Securities and Exchange Commission for the complete terms of the financing.

The Company intends to use the proceeds from the financing for general corporate purposes.

THIS PRESS RELEASE DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY ANY SECURITY. THE SECURITIES OFFERED HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE OFFERED OR SOLD IN THE UNITED STATES OR ANY STATE THEREOF ABSENT REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR AN APPLICABLE EXEMPTION FROM REGISTRATION REQUIREMENTS.

H.C. Wainwright & Co. acted as a financial advisor for the private placement.

About Telesis Bio

Telesis Bio is empowering scientists with the ability to create novel, synthetic biology-enabled solutions for many of humanity's greatest challenges. As inventors of the industry-standard Gibson Assembly® method and the first commercial automated benchtop DNA and mRNA synthesis system, Telesis Bio is enabling rapid, accurate and reproducible writing of DNA and mRNA for numerous downstream markets. The award-winning BioXp® system consolidates, automates, and optimizes the entire synthesis, cloning and amplification workflow. As a result, it delivers virtually error-free synthesis of DNA and RNA at scale within days and hours instead of weeks or months. Scientists around the world are using the technology in their own laboratories to accelerate the design-build-test paradigm for novel, high-value products for precision medicine, biologics drug discovery, vaccine and therapeutic development, genome editing, and cell and gene therapy. Telesis Bio is a public company based in San Diego. For more information, visit www.telesisbio.com.

Telesis Bio, the Telesis Bio logo, Gibson Assembly, and BioXp are trademarks of Telesis Bio Inc.

About Novalis LifeSciences

Novalis LifeSciences is a boutique investment and advisory firm for the Life Science industry. With a team of experienced operating executives from the industry, Novalis funds and advises visionary Life Science entrepreneurs. For more information visit www.novalislifesciences.com.

Forward-Looking Statements

This press release contains forward-looking statements. All statements other than statements of historical facts contained herein are forward-looking statements reflecting the current beliefs and expectations of management made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These statements include statements and guidance regarding the anticipated use of proceeds from the financing, as well as statements regarding the future release and success of new and existing products and services. Such statements are based on current assumptions that involve risks and uncertainties that could cause actual outcomes and results to differ materially. These risks and uncertainties, many of which are beyond our control, include risks described in the section entitled Risk Factors and elsewhere in our Annual Report on Form 10-K, which was filed with the Securities and Exchange Commission (SEC) on March 22, 2023, as amended on May 17, 2023 and in our Quarterly Report on Form 10-Q, which was filed with the SEC on May 12, 2023. These forward-looking statements speak only as of the date hereof and should not be unduly relied upon. Telesis Bio disclaims any obligation to update these forward-looking statements.

Contact:

Jen Carroll
Vice President of Investor Relations
jen.carroll@telesisbio.com