TAB 23

C/M/S/ Cameron McKenna

CMS Cameron McKenna LLP

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160 Aldersgate Street
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Fax+44(0)20 7367 2000
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Tel +44(0)20 7367 3524
daniel.hennis@cms-cmck.com

Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond Virginia 23219-4047
United States of America

FAO: Stacy M. Colvin

Your Ref: 99999.000310
Our Ref: PRW/DAHE/MIT6.22b/101248.00021

2 April 2009
By email and post

Dear Ms Colvin

Stanford International Bank Limited (in receivership) ("SIB")
Stanford Trust Company Limited (in receivership) ("STC")

Thank you for your letter of 31 March 2009.

I confirm that we act on behalf of the joint receiver-managers of SIB and STC, as appointed by the High Court in Antigua (the "Receivers"). I enclose a copy of the Court Order making that appointment with this letter.

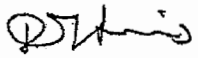
As you set out in your letter of 17 March 2009 to Kevin Sadler at Baker Botts, SIB is a Stanford related entity organised, registered and regulated outside of the United States. As SIB is an Antiguan company and the Receivers have been appointed by the High Court of Antigua, we confirm that the Receivers are the appropriate party to provide you with instructions regarding the property and/or files that you hold for or on behalf of SIB. I therefore request that you provide us with copies of all files, papers, information or any other property that you hold in respect to SIB and STC. The Receivers undertake to pay reasonable copying costs, so long as they are agreed in advance.

At this stage the Receivers do not intend to appear in the courts of the United States, though request that you update us on any developments that occur.

C/M/S/ Cameron McKenna

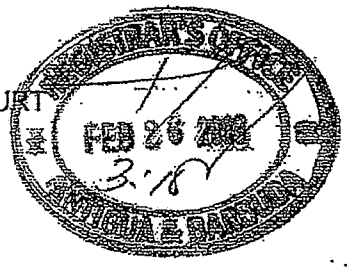
We look forward to hearing from you shortly.

Yours sincerely



Daniel Hennis
CMS Cameron McKenna LLP

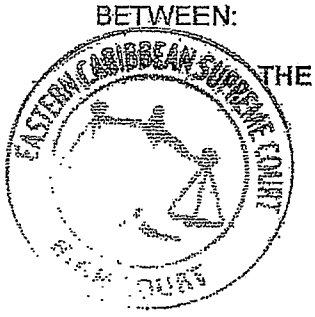
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA



Claim No. ANUHCV2009/0110

In the Matter of Stanford International Bank Limited.
-And-
In the Matter of Stanford Trust Company Limited.
-And-
In the Matter of the International Business Corporations Act, 1982, CAP.222 of the Laws of Antigua and Barbuda
-And-
In the Matter of an Application for the Appointment of a Receiver-Manager of Stanford International Bank Limited and Stanford Trust Company Limited

BETWEEN:



THE FINANCIAL SERVICES REGULATORY COMMISSION
Applicant/Claimant

-And-

STANFORD INTERNATIONAL BANK LIMITED
STANFORD TRUST COMPANY LIMITED
Respondents/Defendants

ORDER

BEFORE The Honourable Justice David Harris, (In Chambers)
DATED the 26th day of February, 2009
ENTERED the 26th day of February, 2009
UPON THE APPLICATION filed herein on the 26th day of February, 2009
AND UPON READING the Affidavits of Peter Nicholas Wastell and Paul A. Ashe filed on the 26th day of February, 2009.
AND UPON HEARING Charlesworth O. D. Brown, Counsel for the Applicant/Claimant, Jasmine Wade appearing with him.

IT IS ORDERED THAT:

1. The Respondents/Defendants be and are hereby restrained by themselves, their agents, servants or otherwise from:-

a. disposing of or otherwise dealing with any of their assets.
b. entering into any agreement or arrangement to sell, transfer or otherwise dispose of any of their assets.
c. carrying on of transacting business of any kind whatsoever under the licence granted by the Applicant/Claimant without the consent, management and supervision of the Applicant/Claimant.

2. The Respondents/Defendants do account for all their assets now or previously in their possession or under the control of any entity on their behalf.

3. The Respondents/Defendants do provide the Applicant/Claimant with:-
   a. a comprehensive list of all transactions, agreements, arrangements and undertakings and copies of documents evidencing the same.
   b. All accounts, documents and information to enable the Applicant/Claimant to trace, if necessary, any or all of the assets of the Respondents/Defendants.
   c. A comprehensive list of all its creditors, customers, employers, employees and other persons or entities to whom they have outstanding obligations and the extent of their obligations in respect of any or all of their assets.

4. Messrs Peter Nicholas Wastell and Nigel Hamilton-Smith be and are hereby appointed Joint Receivers–Managers of the Respondents/Defendants pursuant to Section 220 of the International Business Corporations Act (the Act) with such powers as the Court may determine.

5. The Joint Receivers–Managers do take immediate steps to stabilize the operations of the Respondents/Defendants unless ordered to do otherwise by further order of the Court.

6. The Joint Receivers–Managers do execute their duties in accordance with the Act and otherwise only in accordance with this order and the directions of the Court.

7. The Joint Receivers–Managers do prepare and file in Court a Monthly Interim Report and Financial Statement in respect of the affairs of the Respondents/Defendants within 30 days of the date of this order and thereafter at regular intervals on the fifth day of each ensuing month.

8. The Joint Receivers–Managers upon the completion of their duties do prepare and file Final Accounts including a Financial Statement with recommendations as to the further conduct of the affairs, if any, of the Respondents/Defendants.

9. The Joint Receivers-Managers do take into their custody and control all the property, undertakings and other assets of the Respondents/Defendants pursuant to Section 221 of the Act and comply with all the other parts of the Section.

10. The Joint Receivers-Managers do open and maintain bank accounts within the jurisdiction or in such jurisdictions as they consider appropriate in their names as Joint Receiver-Managers of the Respondents/Defendants for the monies of the corporations coming under their control.

11. Subject to Section 220 of the Act, the Receivers–Managers do exercise, perform and discharge their duties independently or jointly and in so doing they shall be deemed to act as agents for the Respondents/Defendants without personal liability.

12. Without prejudice to the provisions of Section 373 of the Act, the Joint Receiver-Managers be and are hereby authorized to disclose information concerning the management, operations, and financial situation of the Respondents/Defendants as they consider appropriate in the performance of their functions PROVIDED ALWAYS THAT

(1) no disclosure of customer specific information is authorized without further or other order of the Court; and

(2) no disclosure of information is permitted under this Order to any foreign governmental or regulatory body unless such disclosure is subject to mutual disclosure obligations.

For the purposes of this Order, customer specific information means information of sufficient detail to enable a recipient of the information to identify the customer in question, the customer's address or other location, and/or the amount of such customer's credit balances or other investments in the Respondents/Defendants.

13. The remuneration of the Joint Receivers–Managers be fixed on a time- cost basis at the rates agreed between the Applicant/Claimant and the Joint Receivers–Managers.

14. The Joint Receivers–Managers be reimbursed for all reasonable and necessary expenses as may be incurred by them during the course of the receivership from the assets of the Respondents/Defendants.

15. The costs of this Application and all related proceedings be met from the assets of the Respondents/Defendants.

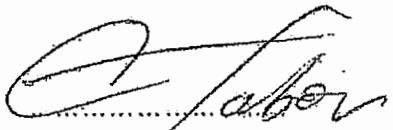
16. The Joint Receivers–Managers be directed from time to time on matters relating to their duties as the Court may determine on the application of the Applicant/Claimant or on the application of the Joint Receivers-Managers or on the application of the Respondents/Defendants.

17. That the Applicant do serve the Defendants/Respondents with the Fixed Date Claim Form, Affidavits thereto, the Notice of Application and this Order.

18. That the return date be fixed for the 9th day of March, 2009.

19. That this Order remains in full force and effect until further order.

BY THE COURT



REGISTRAR

AND TAKE NOTICE that if you the Directors and Officers of the Respondents /Defendants fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.

To: Nigel Hamilton-Smith (E-mail[Nigel.Hamilton-Smith@vantisplc.com]; Geoffrey Rowley (E-mail[Geoffrey.Rowley@vantisplc.com]
Cc: WILTSHIRE, Peter </O=EXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=PRW>; HICKMOTT, Robert </O=EXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RWH>; ALDRED, Duncan </O=EXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=PDA>; O'Connor, William </O=EXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Wioc>; Madsen, Iben </O=EXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Ibma91979525>
From: Hennis, Daniel
Sent: Mon 20/07/2009 3:04:45 PM
Importance: Normal
Subject: FW: Stanford International Bank Limited (in liquidation)
MAIL_RECEIVED: Mon 20/07/2009 3:04:54 PM
Sunflower Bkgrd.jpg
Hennis Letter.pdf

All

Here is the response from Hunton & Williams to our request for access to their files in the UK that relate to work carried out on behalf of SIB. As you will see, they say that there are no files in London and that they carried no work on behalf of SIB in London.

Their response was copied to Baker Botts.

Regards

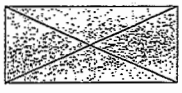
Dan
-----Original Message-----
From: Ellyson, Leslie [mailto:lellyson@hunton.com]
Sent: 20 July 2009 14:37
To: Hennis, Daniel
Cc: kevin.sadler@bakerbotts.com
Subject: Stanford International Bank Limited (in liquidation)

Good morning Mr. Hennis.

On behalf of Bob Rolfe, please see the attached.

Thank you,
Leslie

Leslie Ellyson
Professional Assistant
lellyson@hunton.com



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Before printing, think about the environment

HUNTON& WILLIAMS

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TEL 804 • 788 • 8200
FAX 804 • 788 • 8218

ROBERT M. ROLFE
DIRECT DIAL: 804-788-8466
EMAIL: rrolfe@hunton.com

FILE NO: 99990.000051

July 20, 2009

VIA EMAIL AND
FACSIMILE (+44 (0)20 7367 2000)

Daniel Hennis, Esq.
CMS Cameron McKenna LLP
Mitre House
160 Aldersgate Street
London EC1A 4DD

Re: Stanford International Bank Limited (in liquidation)

Dear Mr. Hennis:

On behalf of Hunton & Williams LLP and its London office ("H&W") I thank you for and respond to your July 10, 2009 letter on behalf of the Antiguan Liquidators of Stanford International Bank ("SIB"). Pursuant to the July 3, 2009 Order of the High Court of England and Wales, you have asked to inspect "the files that cover the work [H&W] carried out on behalf of SIB."

Based on the information available to me, including a review of our Firm's files, it does not appear that the London office of H&W performed any work for SIB. Lawyers in that office did perform a small amount of work regarding a loan by Stanford Financial Group Company, a Florida corporation, in connection with a $40 million loan to the Government of Antigua and Barbuda in 2002, as we described in our letter to the U.S. Receiver, which is a matter of public record and about which we have previously contacted you.

For your information, the work performed by our London office on that matter was quite limited. Our files located in London are small and contain only drafts and execution copies of the final loan documents, as well as some emails that consist primarily of transmittals. In any case, these are not files of work performed for SIB and, therefore, we do not consider them to be within the ambit of your request.

As you are aware from previous communications, the U.S. Receiver has requested all of our files regarding any Stanford-related entity. As permitted by applicable law and rules of professional conduct, we have produced to the U.S. Receiver certain of those files, including

HUNTON& WILLIAMS

files related to Stanford Financial Group Company, related to Stanford entities that were based in the United States.

For the reasons stated in my previous communications with the U.S. Receiver and in response to the U.S. Receiver's Motion to Compel filed in the United States District Court for the Northern District of Texas, we have not produced to the U.S. Receiver, or anyone else, our files regarding our limited representation of SIB or other Stanford entities based outside the United States.. In any case, because all such files are physically located in the United States, we do not believe that they fall within the Order you have sent us.

As you know, we have tried without success to resolve the dispute between the Antiguan Liquidators and the U.S. Receiver regarding which of them, if either, is entitled to our files for SIB and other Stanford entities outside the United States. As you also know, the U.S. Receiver has objected to our producing even a copy of our SIB files to the Antiguan Liquidators and has moved to enjoin our doing so. That motion remains pending in the United States District Court for the Northern District of Texas.

Our Firm wishes to cooperate in every respect legally and ethically permissible with the efforts of all governmental authorities to address the outstanding issues regarding the Stanford-related entities. Nevertheless, you surely understand that we are precluded both legally and ethically from disclosing confidential information to anyone other than our clients, and that in these circumstances the U.S. Receiver and Antiguan Liquidators dispute who has authority to act on behalf of our former clients. This places us in the unfortunate situation of not knowing to whom we owe the duty of confidentiality, and who is entitled to our files.

I will be pleased to discuss this matter with you further.

Very truly yours,

Robert M. Roche

cc: Kevin M. Sadler, Esq.

TAB 24

sent 04/03/09
with attachments

CMS Cameron McKenna LLP

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rachel.rees@cms-cmck.com

JP Morgan Clearing Corp.
570 Washington Blvd, 12th Floor
Jersey City, New Jersey 07310
UNITED STATES OF AMERICA
FAO: Legal Department

Our Ref: PRW/DAHE/RF/MIT6.22b/101248.00021

4 March 2009

Dear Sirs

Stanford International Bank Limited (receiver-managers appointed) ("SIB")
Stanford Trust Company Limited (receiver-managers appointed) ("STC")

We are the law firm instructed by the receiver-managers (the "Receivers") of SIB and STC, appointed in Antigua and Barbuda, where both SIB and STC are registered. We enclose a copy of the document appointing the Receivers dated 19 February 2009, which was executed by the Antiguan Financial Services Regulatory Commission under section 287 of the Antiguan International Business Corporations Act. The appointment of the Receivers was subsequently ratified by the High Court of Justice in Antigua and Barbuda on 26 February 2009. A copy of this court order is also attached.

You may be aware that proceedings have also been initiated in the USA and that the Securities and Exchange Commission has obtained the appointment of a separate receiver (the "US Receiver"). We see from a statement on the status of the receivership published by the US Receiver on 2 March 2009 that you hold assets or accounts in the name, or otherwise for the benefit, of SIB.

The Receivers are in the process of verifying and updating SIB's account information and we should be grateful if you could provide up to date details of all assets or accounts that you hold for SIB and the balances on those accounts. Also, please could you provide us with any information regarding any assets or accounts held in the name, or for the benefit, of STC.

Please note that as the US Receiver has also been appointed, at this juncture we are solely collating up to date information on assets and accounts to ensure that the Receivers can assess SIB's financial position. Needless to say, the Receivers also need this information to ensure that assets are not dissipated or otherwise jeopardised and please confirm that you will not pay out any monies without our consent.

In addition, if you have a claim against either SIB or STC, please provide details.

We expect to correspond with you further in the near future in order to confirm the Receivers' instructions, and in the meantime, we look forward to hearing from you with the information requested above.

We ask you to respond within 10 days of the date of this letter.

Yours faithfully

CMCC

CMS Cameron McKenna LLP

C/M/S/ Cameron McKenna

CMS Cameron McKenna LLP

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Tel +44(0)20 7367 2428
rachel.rees@cms-cmck.com

JP Morgan Clearing Corp.
570 Washington Blvd, 12th Floor,
Jersey City,
New Jersey 07310,
UNITED STATES OF AMERICA

Your Ref:
Our Ref: RF/PRW/DAHE/MIT6.29a/101248/00021

11 March 2009

Dear Sirs

Stanford International Bank Ltd (in receiver-managership) ("SIB")
Stanford Trust Company Ltd (in receiver-managership) ("STC")
(SIB and STC are defined as the "Companies")

We refer to our letter of 4 March 2009.

We have not yet had a reply from you on the questions raised by us in that letter and again kindly request that you provide us with your response in the next 7 days.

As you are aware, the Companies are both registered in Antigua, and regulated by the Financial Services Regulatory Commission in Antigua (the "FSRC"). It was upon the FSRC's application that our clients were appointed, and this appointment was ratified in the Antiguan High Court.

We refer you to paragraph 9 of the Order of the High Court of Justice of Antigua and Barbuda dated 26 February 2009, by which the Antiguan appointed Receivers are required to take into their custody and control "*all the property, undertakings and assets*" of the Companies. This wording naturally includes any accounts, equities, debts or any other assets held by, or in, you, which relate to the Companies.

The Antiguan appointed Receivers are currently in correspondence with the US Receiver over the scope of their respective powers and the extra-territorial effect of the Orders under which they are appointed. These issues remain outstanding.

We understand that the US Receiver has written to a number of financial institutions to request the movement of monies but as you have not been in contact with us we do not know if he has corresponded with you. It is a matter for you and your legal advisers but, in our clients' view, the proper course is for

the accounts, equities, debt or other assets held by or for the Companies to be frozen pending clarification and resolution of this issue. If you fail to take this course, our clients' view would be that they reserve their rights to hold you liable for paying these monies or assets away.

We look forward to hearing from you shortly.

Yours faithfully

CMCK

CMS Cameron McKenna LLP

TAB 25

sent 03/03/09 **749**
with attachment

CMS Cameron McKenna LLP

Mitre House
160 Aldersgate Street
London EC1A 4DD

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KineMed Inc
5980 Horton Street, Suite 400
Emeryville
California 94608
UNITED STATES OF AMERICA
FAO: The Company Secretary

Our Ref: PRW/DAHE/RF/MIT6.22b/101248.00021 3 March 2009

Dear Sirs

Stanford International Bank Limited (receiver-managers appointed) ("SIB")
Stanford Trust Company Limited (receiver-managers appointed) ("STC")

We are the law firm instructed by the Receiver-Managers (the "Receivers") of SIB and STC, appointed in Antigua and Barbuda, where both SIB and STC are registered. We enclose a copy of the document appointing the Receivers dated 19 February 2009, which was executed by the Antiguan Financial Services Regulatory Commission under section 287 of the Antiguan International Business Corporations Act. The appointment of the Receivers was subsequently ratified by the High Court of Justice in Antigua and Barbuda on 26 February 2009. A copy of this court order is also attached.

We see from SIB's and STC's records that SIB and, or, STC may be a creditor of your company, having invested in bonds, notes or other debt instruments issued by you. The Receivers are in the process of verifying and updating SIB's and STC's account information. Please could you provide up to date details of the amount owed by your company (if any).

You may be aware that proceedings have also been initiated in the USA and that the US Securities and Exchange Commission has obtained the appointment of a separate receiver in respect of SIB. Please note that, at this juncture, we are solely collating up to date information to ensure that the Receivers can assess the financial positions of SIB and STC. Needless to say, the Receivers also require this information to ensure that assets are not dissipated or otherwise jeopardised.

We expect to correspond with you further in the near future with regard to the Receivers' further instructions, and in the meantime, we look forward to hearing from you with the information requested above.

(22687732.01)

We ask you to respond within 10 days of the date of this letter.

Yours faithfully

CMCK.

CMS Cameron McKenna LLP

C/M/S/ Cameron McKenna

CMS Cameron McKenna LLP

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London EC1A 4DD

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KineMed Inc
5980 Horton Street, Suite 400,
Emeryville,
California 94608,
UNITED STATES OF AMERICA

Your Ref:
Our Ref: RF/PRW/DAHE/MIT6.29a/101248/00021

11 March 2009

Dear Sirs

Stanford International Bank Ltd (in receiver-managership) ("SIB")
Stanford Trust Company Ltd (in receiver-managership) ("STC")
(SIB and STC are defined as the "Companies")

We refer to our letter of 3 March 2009.

We have not yet had a reply from you on the questions raised by us in that letter and again kindly request that you provide us with your response in the next 7 days.

As you are aware, the Companies are both registered in Antigua, and regulated by the Financial Services Regulatory Commission in Antigua (the "**FSRC**"). It was upon the FSRC's application that our clients were appointed, and this appointment was ratified in the Antiguan High Court.

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C/M/S/ Cameron McKenna

the accounts, equities, debt or other assets held by or for the Companies to be frozen pending clarification and resolution of this issue. If you fail to take this course, our clients' view would be that they reserve their rights to hold you liable for paying these monies or assets away.

We look forward to hearing from you shortly.

Yours faithfully

CMS Cameron McKenna LLP

Madsen, Iben

From:	Rees, Rachel
Sent:	16 March 2009 20:03
To:	O'Connor, William; Madsen, Iben
Subject:	FW: your ref: RF/PRW/DAHE/MIT6.29a/101248/00021
Follow Up Flag:	Follow up
Flag Status:	Completed

Please can one of you dig out the 3 March letter to Kinemed and send, thanks

Rachel Rees
Solicitor
CMS Cameron McKenna LLP
rachel.rees@cms-cmck.com
+44 (0) 207 367 2428

www.law-now.com

-----Original Message-----
From: David Fineman [mailto:DFineman@kinemed.com]
Sent: 16 March 2009 20:01
To: Rees, Rachel
Subject: your ref: RF/PRW/DAHE/MIT6.29a/101248/00021

Dear Ms. Rees:

With reference to the above captioned correspondence received by KineMed from CMS Cameron dated 11 March 2009 regarding Stanford International Bank, Ltd and Stanford Trust: KineMed has not received you letter of 3 March 2009. Please resend the 3 March 2009 letter electronically and we will respond fortwith.

Best regards,

David

David M. Fineman
President & Chairman
KineMed, Inc.
5980 Horton Street, Suite 400
Emeryville, CA 94608
Phone: (510) 655-6525 ext. 102
Fax: (510) 655-6506
Cell: (510) 301-4888
Email: dfineman@kinemed.com

Madsen, Iben

From: Madsen, Iben
Sent: 16 March 2009 20:11
To: 'DFineman@kinemed.com'
Subject: Stanford International Bank Limited (receiver-managers appointed) ("SIB") Stanford Trust Company Limited (receiver-managers appointed) ("STC")

Please see attached letter dated 3 March 2009.

Letter KineMed 03.03.09.PDF

Iben Madsen
Trainee Solicitor
CMS Cameron McKenna LLP
iben.madsen@cms-cmck.com
+44 (0)20 7367 2714

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C/M/S/ Cameron McKenna

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KineMed Inc
5980 Horton Street, Suite 400
Emeryville
California 94608
UNITED STATES OF AMERICA
FAO: The Company Secretary

Our Ref: PRW/DAHE/RF/MIT6.22b/101248.00021

3 March 2009

Dear Sirs

Stanford International Bank Limited (receiver-managers appointed) ("SIB")
Stanford Trust Company Limited (receiver-managers appointed) ("STC")

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(22687732.01)

C/M/S/ Cameron McKenna

We ask you to respond within 10 days of the date of this letter.

Yours faithfully

CMS Cameron McKenna LLP.

CMS Cameron McKenna LLP

To: 'James Burden'[JBurden@kinemed.com]
Cc: 'David Fineman'[DFineman@kinemed.com]; Rees, Rachel[/O=EXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RF]; O'Connor, William[/O=EXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Wioc]; Hennis, Daniel[/O=EXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Dahe84770534]; WILTSHIRE, Peter[/O=EXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=PRW]
From: Madsen, Iben
Sent: Tue 17/03/2009 1:54:58 PM
Importance: Normal
Subject: RE: Stanford International Bank Limited - KineMed, Inc.
MAIL_RECEIVED: Tue 17/03/2009 1:54:58 PM
FSRC DOC.pdf
Antigua Order.pdf

James,

Apologies for the oversight, copies of both orders referred to in our letter of 3 March are now attached.

As you will have noted from our letters, we act for the receivers-managers (the "Receivers") appointed over Stanford International Bank Limited ("SIB") and Stanford Trust Company Limited ("STC") (together, the "Companies") in Antigua by the FSRC, and ratified by the Antiguan court. Both SIB and STC are registered in Antigua.

You will have seen from our letter that the Companies' records show that SIB or STC may be a creditor of KineMed, Inc. Your email states that KineMed, Inc only dealt with a Stanford company based in the United States. Please could you confirm that neither SIB nor STC have any shares, accounts, bonds, notes or other investments in KineMed, Inc and that there are no investments held on SIB or STC's behalf by KineMed, Inc.

The Receivers are currently in discussions with the receiver appointed by the Securities and Exchange Commission in respect of SIB, as to the scope of their respective powers and the extra-territorial effect of the orders under which they were appointed. These issues remain outstanding.

Kind regards,

Iben Madsen
Trainee Solicitor
CMS Cameron McKenna LLP
iben.madsen@cms-cmck.com
+44 (0)20 7367 2714

www.law-now.com

-----Original Message-----
From: James Burden [mailto:JBurden@kinemed.com]
Sent: 16 March 2009 21:22
To: Madsen, Iben
Cc: David Fineman
Subject: Stanford International Bank Limited - KineMed, Inc.

Dear Ms. Madsen,

David Fineman, the Chairman and President of KineMed, Inc., a Delaware corporation, forwarded a copy of your email of March 16th and asked that I deal with the matter referred to in your email. I am a lawyer licensed by the State Bar of California and assist KineMed, Inc. with various matters, including legal matters such as the subject matter.

The letter you forwarded states that a copy of the authority granted to the receiver is attached; however, there was no such attachment in the copy of the letter we received.

Before we can deal with you on the subject matter of your request, I am certain you appreciate that we need to receive evidence of authority. Furthermore, since KineMed, Inc. dealt only with the Stanford company that was based in the United States, please explain how the U.S. proceedings interface with those being carried out by your law firm in England.

We are willing and are happy to cooperate with the efforts to sort out the issues, but as you appreciate, we must be certain we are dealing with the proper people who have the proper authority over the matter.

If you wish to discuss the matter by phone, I can contact you if you provide me appropriate contact information.

Yours truly,

James E. Burden, Esq.

(see address below)

From: Madsen, Iben [mailto:Iben.Madsen@cms-cmck.com]

Sent: Monday, March 16, 2009 1:11 PM

To: David Fineman

Subject: Stanford International Bank Limited (receiver-managers appointed) ("SIB") Stanford Trust Company Limited (receiver-managers appointed) ("STC")

Please see attached letter dated 3 March 2009.

<<Letter KineMed 03.03.09.PDF>>

Iben Madsen

Trainee Solicitor

CMS Cameron McKenna LLP

iben.madsen@cms-cmck.com

+44 (0)20 7367 2714

www.law-now.com

James E. Burden

KineMed, Inc.

5980 Horton Street, Ste 400

Emeryville, CA 94608

Phone 415 421 0404

FINANCIAL SERVICES REGULATORY COMMISSION

International Business Corporations Act, Cap.222
APPOINTMENT OF JOINT RECEIVERS-MANAGERS
Stanford International Bank Ltd (SIBL)
And
Stanford Trust Company Ltd (STCL)

I, **PAUL A. ASHE**, Supervisor of International Banks and Trust Corporations of the **FINANCIAL SERVICES REGULATORY COMMISSION** (the Commission) a statutory body, established under the International Business Corporation Act, Cap 222 of the Laws of Antigua and Barbuda as amended (the Act) of Old Parham Road, St. John's Antigua, being the **APPROPRIATE OFFICIAL** responsible for control and regulation of corporations established under the Act, in pursuance of the power conferred on me under Section 287 of the Act, **DO NOW APPOINT PETER WASTELL and NIGEL HAMILTON-SMITH** both of Vantis Business Recovery Services of Torrington House, 47 Holywell, St. Albans, Hetfordshire, England, to be **JOINT-RECEIVERS-MANAGERS** of all the undertaking, property and assets of the Stanford International Bank Ltd (SIBL) and Stanford Trust Corporation Ltd (STCL) upon the terms and with all the powers, duties and liabilities conferred and imposed by the Act or by any other law **PROVIDED ALWAYS AND WITHOUT PREJUDICE TO THE FOREGOING :**

1. The Receiver-Managers shall be deemed to agents of SIBL and STCL; and SIBL and STCL shall be responsible for the remuneration, acts and defaults.
2. The Receiver-Managers shall have the duties and powers previously vested and discharged by the directors of the SIBL and STCL
3. The Receiver-Managers may exercise, perform and discharge their statutory powers, duties and liabilities independently of the other or jointly according to law.

Dated the 19th day of February, 2009

Signed by **PAUL A. ASHE,**)
Supervisor of International Banks and)
Trusts Corporations, the Appropriate)
Official, Financial Services Regulatory)
Commission before and in the)
presence of:-)
)
)

.....
Trevor Mathurin
Deputy Administrator

.....

SEAL

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

Claim No. ANUHCV2009/0110

In the Matter of Stanford International Bank Limited.
-And-
In the Matter of Stanford Trust Company Limited.
-And-
In the Matter of the International Business Corporations Act, 1982, CAP.222
of the Laws of Antigua and Barbuda
-And-
In the Matter of an Application for the Appointment of a Receiver-Manager of Stanford International Bank Limited and Stanford Trust Company Limited

BETWEEN:

THE FINANCIAL SERVICES REGULATORY COMMISSION
Applicant/Claimant

-And-

STANFORD INTERNATIONAL BANK LIMITED
STANFORD TRUST COMPANY LIMITED
Respondents/Defendants

ORDER

BEFORE The Honourable Justice David Harris, (In Chambers)

DATED the 26th day of February, 2009

ENTERED the 26th day of February, 2009

UPON THE APPLICATION filed herein on the 26th day of February, 2009

AND UPON READING the Affidavits of Peter Nicholas Wastell and Paul A. Ashe filed on the 26th day of February, 2009.

AND UPON HEARING Charlesworth O. D. Brown, Counsel for the Applicant/Claimant, Jasmine Wade appearing with him.

IT IS ORDERED THAT:

1. The Respondents/Defendants be and are hereby restrained by themselves, their agents, servants or otherwise from:-

a. disposing of or otherwise dealing with any of their assets.
b. entering into any agreement or arrangement to sell, transfer or otherwise dispose of any of their assets.
c. carrying on of transacting business of any kind whatsoever under the licence granted by the Applicant/Claimant without the consent, management and supervision of the Applicant/Claimant.

2. The Respondents/Defendants do account for all their assets now or previously in their possession or under the control of any entity on their behalf.

3. The Respondents/Defendants do provide the Applicant/Claimant with:-
   a. a comprehensive list of all transactions, agreements, arrangements and undertakings and copies of documents evidencing the same.
   b. All accounts, documents and information to enable the Applicant/Claimant to trace, if necessary, any or all of the assets of the Respondents/Defendants.
   c. A comprehensive list of all its creditors, customers, employers, employees and other persons or entities to whom they have outstanding obligations and the extent of their obligations in respect of any or all of their assets.

4. Messrs Peter Nicholas Wastell and Nigel Hamilton-Smith be and are hereby appointed Joint Receivers–Managers of the Respondents/Defendants pursuant to Section 220 of the International Business Corporations Act (the Act) with such powers as the Court may determine.

5. The Joint Receivers–Managers do take immediate steps to stabilize the operations of the Respondents/Defendants unless ordered to do otherwise by further order of the Court.

6. The Joint Receivers–Managers do execute their duties in accordance with the Act and otherwise only in accordance with this order and the directions of the Court.

7. The Joint Receivers–Managers do prepare and file in Court a Monthly Interim Report and Financial Statement in respect of the affairs of the Respondents/Defendants within 30 days of the date of this order and thereafter at regular intervals on the fifth day of each ensuing month.

8. The Joint Receivers–Managers upon the completion of their duties do prepare and file Final Accounts including a Financial Statement with recommendations as to the further conduct of the affairs, if any, of the Respondents/Defendants.

9. The Joint Receivers-Managers do take into their custody and control all the property, undertakings and other assets of the Respondents/Defendants pursuant to Section 221 of the Act and comply with all the other parts of the Section.

10. The Joint Receivers-Managers do open and maintain bank accounts within the jurisdiction or in such jurisdictions as they consider appropriate in their names as Joint Receiver-Managers of the Respondents/Defendants for the monies of the corporations coming under their control.

11. Subject to Section 220 of the Act, the Receivers–Managers do exercise, perform and discharge their duties independently or jointly and in so doing they shall be deemed to act as agents for the Respondents/Defendants without personal liability.

12. Without prejudice to the provisions of Section 373 of the Act, the Joint Receiver-Managers be and are hereby authorized to disclose information concerning the management, operations, and financial situation of the Respondents/Defendants as they consider appropriate in the performance of their functions PROVIDED ALWAYS THAT

(1) no disclosure of customer specific information is authorized without further or other order of the Court; and

(2) no disclosure of information is permitted under this Order to any foreign governmental or regulatory body unless such disclosure is subject to mutual disclosure obligations.

For the purposes of this Order, customer specific information means information of sufficient detail to enable a recipient of the information to identify the customer in question, the customer's address or other location, and/or the amount of such customer's credit balances or other investments in the Respondents/Defendants.

13. The remuneration of the Joint Receivers–Managers be fixed on a time- cost basis at the rates agreed between the Applicant/Claimant and the Joint Receivers–Managers.

14. The Joint Receivers–Managers be reimbursed for all reasonable and necessary expenses as may be incurred by them during the course of the receivership from the assets of the Respondents/Defendants.

15. The costs of this Application and all related proceedings be met from the assets of the Respondents/Defendants.

16. The Joint Receivers–Managers be directed from time to time on matters relating to their duties as the Court may determine on the application of the Applicant/Claimant or on the application of the Joint Receivers-Managers or on the application of the Respondents/Defendants.

17. That the Applicant do serve the Defendants/Respondents with the Fixed Date Claim Form, Affidavits thereto, the Notice of Application and this Order.

18. That the return date be fixed for the 9th day of March, 2009.

19. That this Order remains in full force and effect until further order.

BY THE COURT

REGISTRAR

AND TAKE NOTICE that if you the Directors and Officers of the Respondents /Defendants fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

Claim No. ANUHCV2009/

In the Matter of Stanford International Bank Limited.
-And-
In the Matter of Stanford Trust Company Limited.
-And-
In the Matter of the International Business Corporations Act, 1982, CAP.222
of the Laws of Antigua and Barbuda
-And-
In the Matter of an Application for the Appointment of a Receiver-Manager of Stanford International Bank Limited and Stanford Trust Company Limited

BETWEEN:

THE FINANCIAL SERVICES REGULATORY COMMISSION

Applicant/Claimant

-And-

STANFORD INTERNATIONAL BANK LIMITED
STANFORD TRUST COMPANY LIMITED

Respondent/Defendants

++

ORDER

++

CHARLESWORTH O. D. BROWN

Attorney-at-Law

To: OPi@StanfordEagle.com[OPi@StanfordEagle.com]
Cc: David Fineman[DFineman@kinemed.com]; Madsen, Iben[Iben.Madsen@cms-cmck.com]
From: James Burden
Sent: Mon 23/03/2009 11:02:07 PM
Importance: Normal
Subject: KineMed - Stanford Group
MAIL_RECEIVED: Mon 23/03/2009 11:07:05 PM
FSRC DOC.pdf
Antigua Order.pdf

Dear Mr. Pi

David Fineman called me regarding your conversation with him today. As you know, David is traveling and he asked me to contact you and provide you with the information you requested.

We also have been contacted by Iben Madsen who works in a solicitor's office, CMS Cameron McKenna LLP. They claim that they are acting for the receivers-managers (the "Receivers") appointed over Stanford International Bank Limited ("SIB") and Stanford Trust Company Limited ("STC") (together, the "Companies") in Antigua by the FSRC, and ratified by the Antiguan court. They sent us a copy of the orders of the court, which are attached. One order restrains SIB and STC from dealing with the assets.

Of course, KineMed finds itself in the middle of this situation and wants to deal with the proper and correct person. We are in the process of responding to the information requested by Iben Madsen, which includes all of the details of the investment and various assignments of the interests made by Stanford. Contact information is:

Iben Madsen

CMS Cameron McKenna LLP

iben.madsen@cms-cmck.com

+44 (0)20 7367 2714

Might I suggest that you and Iben Madsen determine the correct and authorized party KineMed should be dealing with on the issue of the investment made by Stanford in KineMed, Inc. Let me know the results and to whom our report should be directed.

Thank you, Jim Burden

James E. Burden

KineMed, Inc.

5980 Horton Street, Ste 400

Emeryville, CA 94608

Phone 415 421 0404

To: Rees, Rachel[Rachel.Rees@cms-cmck.com]; WILTSHIRE, Peter[Peter.WILTSHIRE@cms-cmck.com]; HICKMOTT, Robert[Robert.Hickmott@cms-cmck.com]; Hennis, Daniel[Daniel.Hennis@cms-cmck.com]; O'Connor, William[William.OConnor@cms-cmck.com]
From: Madsen, Iben
Sent: Thur 26/03/2009 3:48:12 PM
Importance: Normal
Subject: FW: KineMed - Stanford Group
MAIL_RECEIVED: Thur 26/03/2009 3:48:12 PM

This message has been archived.
FYI - KineMed have confirmed that they will provide the information we have requested.

-----Original Message-----
From: James Burden [mailto:JBurden@kinemed.com]
Sent: 26 March 2009 15:44
To: Madsen, Iben
Subject: RE: KineMed - Stanford Group

Iben, Will do. I have the information and will get it to you shortly. I have been traveling and I am now back in the office.

Best regards, Jim B

James E. Burden

KineMed, Inc.

5980 Horton Street, Ste 400

Emeryville, CA 94608

Phone 415 421 0404

prohibited.

From: Madsen, Iben [mailto:Iben.Madsen@cms-cmck.com]
Sent: Thursday, March 26, 2009 4:10 AM
To: James Burden
Cc: David Fineman; Rees, Rachel; WILTSHIRE, Peter; Hennis, Daniel; O'Connor, William; HICKMOTT, Robert
Subject: RE: KineMed - Stanford Group

Jim

Thank you for your email.

As noted in our earlier correspondence, we act for the receiver-managers of Stanford International Bank Limited ("SIB") and Stanford Trust Company Limited ("STC") (both SIB and STC are Antiguan registered companies), who were appointed in Antigua. Proceedings regarding Stanford entities have also been initiated in the US, and a receiver, Ralph Janvey, has been appointed there. The Antiguan appointed receiver-managers are in communication with the US receiver regarding the scope of their respective powers and the extra-territorial effect of the orders under which they were appointed. A meeting between the two parties has been proposed for early April.

Pending the outcome of those discussions, we would reiterate our request for information regarding investments in KineMed, Inc made by, or on behalf of, SIB or STC. As you will appreciate, the receivers need this information in order to assess the financial situation of the companies. We have noted that in your email dated 16 March 2009 you state that KineMed, Inc only dealt with a Stanford company based in the US. Therefore please confirm that neither SIB or STC have any shares, accounts, bonds, notes or other investments in KineMed, Inc and that there are no investments held on SIB or STC's behalf by KineMed, Inc. Alternatively, please provide the information we have requested as a matter of urgency.

Kind regards,

Iben Madsen
Trainee Solicitor
CMS Cameron McKenna LLP
iben.madsen@cms-cmck.com
+44 (0)20 7367 2714

www.law-now.com

-----Original Message-----
From: James Burden [mailto:JBurden@kinemed.com]
Sent: 23 March 2009 23:02
To: OPi@StanfordEagle.com
Cc: David Fineman; Madsen, Iben
Subject: KineMed - Stanford Group

Dear Mr. Pi

David Fineman called me regarding your conversation with him today. As you know, David is traveling and he asked me to contact you and provide you with the information you requested.

We also have been contacted by Iben Madsen who works in a solicitor's office, CMS Cameron McKenna LLP. They claim that they are acting for the receivers-managers (the "Receivers") appointed over Stanford International Bank Limited ("SIB") and Stanford Trust Company Limited ("STC") (together, the "Companies") in Antigua by the FSRC, and ratified by the Antiguan court. They sent us a copy of the orders of the court, which are attached. One order restrains SIB and STC from dealing with the assets.

Of course, KineMed finds itself in the middle of this situation and wants to deal with the proper and correct person. We are in the process of responding to the information requested by Iben Madsen, which includes all of the details of the investment and various assignments of the interests made by Stanford. Contact information is:

Iben Madsen

CMS Cameron McKenna LLP

iben.madsen@cms-cmck.com

+44 (0)20 7367 2714

Might I suggest that you and Iben Madsen determine the correct and authorized party KineMed should be dealing with on the issue of the investment made by Stanford in KineMed, Inc. Let me know the results and to whom our report should be directed.

Thank you, Jim Burden

James E. Burden

KineMed, Inc.

5980 Horton Street, Ste 400

Emeryville, CA 94608

Phone 415 421 0404

forward this email to optout@cms-cmck.com. Law-Now subscribers: this will not affect your registration for Law-Now, our free email and online information service, unless you indicate otherwise.

****

To: 'JBurden@kinemed.com'[JBurden@kinemed.com]
Cc: 'DFineman@kinemed.com'[DFineman@kinemed.com]; Rees, Rachel[Rachel.Rees@cms-cmck.com]; Hennis, Daniel[Daniel.Hennis@cms-cmck.com]; HICKMOTT, Robert[Robert.Hickmott@cms-cmck.com]; WILTSHIRE, Peter[Peter.WILTSHIRE@cms-cmck.com]; O'Connor, William[William.OConnor@cms-cmck.com]
From: Madsen, Iben
Sent: Thur 26/03/2009 11:30:23 AM
Importance: Normal
Subject: FW: KineMed - Stanford Group
MAIL_RECEIVED: Thur 26/03/2009 11:30:23 AM

Jim, please see David's email below.

Kind regards,

Iben
-----Original Message-----
From: David Fineman [mailto:DFineman@kinemed.com]
Sent: 26 March 2009 11:21
To: Madsen, Iben
Subject: RE: KineMed - Stanford Group

jim
since the ownership was transferred to the Antiguan entity, please send them the information requested
David

David M. Fineman
President & Chairman
KineMed, Inc.
5980 Horton Street, Suite 400
Emeryville, CA 94608
Phone: (510) 655-6525 ext. 102
Fax: (510) 655-6506
Cell: (510) 301-4888
Email: dfineman@kinemed.com

From: Madsen, Iben [mailto:Iben.Madsen@cms-cmck.com]
Sent: Thursday, March 26, 2009 4:10 AM
To: James Burden
Cc: David Fineman; Rees, Rachel; WILTSHIRE, Peter; Hennis, Daniel; O'Connor, William; HICKMOTT, Robert
Subject: RE: KineMed - Stanford Group

Jim

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As noted in our earlier correspondence, we act for the receiver-managers of Stanford International Bank Limited ("SIB") and Stanford Trust Company Limited ("STC") (both SIB and STC are Antiguan registered companies), who were appointed in Antigua. Proceedings regarding Stanford entities have also been initiated in the US, and a receiver, Ralph Janvey, has been appointed there. The Antiguan appointed receiver-managers are in communication with the US receiver regarding the scope of their respective powers and the extra-territorial effect of the orders under which they were appointed. A meeting between the two parties has been proposed for early April.

Pending the outcome of those discussions, we would reiterate our request for information regarding investments in KineMed, Inc made by, or on behalf of, SIB or STC. As you will appreciate, the receivers need this information in order to assess the financial situation of the companies. We have noted that in your email dated 16 March 2009 you state that KineMed, Inc only dealt with a Stanford company based in the US. Therefore please confirm that neither SIB or STC have any shares, accounts, bonds, notes or other investments in KineMed, Inc and that there are no investments held on SIB or STC's behalf by KineMed, Inc. Alternatively, please provide the information we have requested as a matter of urgency.

Kind regards,

Iben Madsen
Trainee Solicitor
CMS Cameron McKenna LLP
iben.madsen@cms-cmck.com
+44 (0)20 7367 2714

www.law-now.com

-----Original Message-----
From: James Burden [mailto:JBurden@kinemed.com]
Sent: 23 March 2009 23:02
To: OPi@StanfordEagle.com
Cc: David Fineman; Madsen, Iben
Subject: KineMed - Stanford Group

Dear Mr. Pi

David Fineman called me regarding your conversation with him today. As you know, David is traveling and he asked me to contact you and provide you with the information you requested.

We also have been contacted by Iben Madsen who works in a solicitor's office, CMS Cameron McKenna LLP. They claim that they are acting for the receivers-managers (the "Receivers") appointed over Stanford International Bank Limited ("SIB") and Stanford Trust Company Limited ("STC") (together, the "Companies") in Antigua by the FSRC, and ratified by the Antiguan court. They sent us a copy of the orders of the court, which are attached. One order restrains SIB and STC from dealing with the assets.

Of course, KineMed finds itself in the middle of this situation and wants to deal with the proper and correct person. We are in the process of responding to the information requested by Iben Madsen, which includes all of the details of the investment and various assignments of the interests made by Stanford. Contact information is:

Iben Madsen

CMS Cameron McKenna LLP

iben.madsen@cms-cmck.com

+44 (0)20 7367 2714

Might I suggest that you and Iben Madsen determine the correct and authorized party KineMed should be dealing with on the issue of the investment made by Stanford in KineMed, Inc. Let me know the results and to whom our report should be directed.

Thank you, Jim Burden

James E. Burden

KineMed, Inc.

5980 Horton Street, Ste 400

Emeryville, CA 94608

Phone 415 421 0404

To: O'Connor, William[William.OConnor@cms-cmck.com]; Rees, Rachel[Rachel.Rees@cms-cmck.com]; Hennis, Daniel[Daniel.Hennis@cms-cmck.com]
Cc: WILTSHIRE, Peter[Peter.WILTSHIRE@cms-cmck.com]; HICKMOTT, Robert[Robert.Hickmott@cms-cmck.com]
From: Madsen, Iben
Sent: Tue 31/03/2009 8:45:38 AM
Importance: Normal
Subject: FW: KineMed, Inc. Transaction with Stanford Group- Email One
MAIL_RECEIVED: Tue 31/03/2009 8:45:39 AM
Response to Receiver.pdf
Ex A Subscription Agreement - Completed.pdf
ExB Senior Convertible Note to Sanford VC Holdings.pdf

FYI the first in a series of emails from KineMed. From a quick glance at the first document attached to this email (which is a memorandum to us) it seems that SIB has a quite large shareholding in KineMed as a result of a recent conversion and recapitalisation of the company, although further action is needed in order to obtain a new share certificate evidencing SIB's holding in KineMed.

-----Original Message-----
From: James Burden [mailto:JBurden@kinemed.com]
Sent: 31 March 2009 01:30
To: Madsen, Iben; OPi@StanfordEagle.com; cweiser@stanfordeagle.com; svidal-pope@stanfordeagle.com
Cc: David Fineman
Subject: KineMed, Inc. Transaction with Stanford Group- Email One

To the addresses:

Please open the attached PDF Files. Because of the size of the attachments, this email will be sent in a series of emails. This is the first of the series.

After you review all of the attachments, if you have any questions, please contact me.

Very truly yours, Jim Burden

James E. Burden

KineMed, Inc.

5980 Horton Street, Ste 400

Emeryville, CA 94608

Phone 415 421 0404

KineMed

MEMORANDUM

To: Iben Madsen - *iben.madsen@cms-cmck.com*
CMS Cameron McKenna LLP

From: James E. Burden on behalf of KineMed, Inc.

Date: March 30, 2009

Subject: Response to questions in March 26, 2009 email from Iben Madsen regarding investment of Stanford Group in KineMed, Inc. and current interest of Stanford International Bank Limited ("SIB") and Stanford Trust Company Limited ("STC") in KineMed, Inc.

Response to Questions

This Memorandum and the files that are incorporated as Exhibits show that as of this date, Stanford International Bank Limited ("SIB") is the beneficial holder of:

- Four Million Five Hundred Thirty-Five Thousand Eight Hundred Ninety (4,535,890) shares of Common Stock of KineMed, Inc., a Delaware corporation. The shares of common stock resulted from the conversion of the 10% Senior Convertible Note referred to below (the "Note"). Although the Note was cancelled as part of the recapitalization plan described below, and is no longer outstanding, a new share certificate evidencing the converted common shares has yet to be issued because the Stanford Group has not responded to KineMed's correspondence and the request to deliver to KineMed the original Note in exchange for the share certificate.
- Warrants to purchase up to Three Hundred Three Thousand Thirty (303,030) shares of common stock of KineMed, Inc., which were issued under the terms of the Note ("Coverage Warrants"). The purchase price of these Coverage Warrants was reset as part of the recapitalization plan to six cents ($0.06) per share.
- Warrants to purchase up to Fifty Thousand (50,000) shares of common stock of KineMed, Inc., which were issued as the non-cash portion of brokerage/finders compensation for the transaction ("Brokerage Warrants"). The purchase price of these Brokerage Warrants was reset as part of the recapitalization plan to forty cents ($0.40) per share.
- Certain individuals connected with the Stanford Group were issued Coverage Warrants and Brokerage Warrants in an equal amount as those set forth above. The particulars are described below.

Background and Details

KineMed, Inc. is a Delaware corporation with a principal place of business at 5980 Horton Street, Suite 400, Emeryville, CA 94608. Information on the company is available at www.kinemed.com.

In 2007, KineMed, Inc. undertook a private placement offering of 10% Senior Convertible Notes. Stanford Financial was introduced to KineMed, Inc. through Francisco D. Salva, Director, Healthcare Investment Banking, Stanford Group Company, 580 California Street, Suite 1335, San Francisco, CA.

Exhibit A is a copy of the Subscription Agreement signed by the parties with the purchaser shown as Stanford Venture Capital Holdings, Inc., based in Houston, Texas. The Purchaser Representative is shown as James M. Davis of Stanford Venture Capital Holdings, Inc., based in Memphis, Tennessee. Under the Subscription Agreement, Stanford Venture Capital Holdings, Inc. acquired $4,000,000 of the 10% Senior Convertible Notes being offered.

Exhibit B is a copy of the 10% Senior Convertible Note in the amount of $4,000,000 issued to Stanford Venture Capital Holdings, Inc.

A total of 606,060 Coverage Warrants were issued under the terms of the Note as follows:

Stock Type	Note #	Warrant #	Cert. Date	Name of Applicant, Custodian, Corporation, Trust or Beneficiary	Coverage Warrants
Note	CPN-000091	WAR-000401	June 30, 2007	Stanford Venture Capital Holdings, Inc.	303,030
Warrants only	none	WAR-000409	June 30, 2007	Bogar, Daniel T.	66,000
Warrants only	none	WAR-000410	June 30, 2007	Fusselmann, William R.	66,000
Warrants only	none	WAR-000411	June 30, 2007	Pi, Osvaldo and Vivian Pi, Trustees, or their successors in trust, under the Osvaldo and Vivian Pi Living Trust, dated February 13, 2007, and any amendments thereto	66,000
Warrants only	none	WAR-000412	June 30, 2007	Stein, Ronald M.	66,000
Warrants only	none	WAR-000413	June 30, 2007	Weiser, Charles M.	11,400
Warrants only	none	WAR-000414	June 30, 2007	Kimmel, Tal	27,630
					606,060

Exhibit C is a copy of the Coverage Warrant issued to Stanford Venture Capital Holdings, Inc. The form is substantially the same for the other Coverage Warrants that were issued, except for the name of the holder, the amount of shares, and the purchase price for shares payable upon exercise of the Warrant.

A total of 100,000 Brokerage Warrants were issued on or about October 31, 2007 as partial consideration for brokerage or finders fees in connection with the transaction. At the instruction of the Stanford Group, these Brokerage Warrants were issued as follows:

Warrants	Warrants to purchase up to
Stanford Venture Capital Holdings, Inc.	50,000 shares
Osvaldo Pi and Vivian Pi	10,890 shares
Daniel T. Bogar	10,890 shares
William R. Fusselmann	10,890 shares
Ronald M. Stein	10,890 shares
Tal Kimmel	4,559 shares
Charles M. Weiser	1,881 shares

Exhibit D is a copy of the Broker Warrant issued to Stanford Venture Capital Holdings, Inc. The form is substantially the same for the other warrants that were issued, except for the name of the holder, the amount of shares, and the purchase price for shares payable upon exercise of the Warrant.

Exhibit E is a letter dated August 4, 2008 received from Carlton Fields, a law firm in Miami, regarding the assignment from Stanford Venture Capital Holdings, Inc. to R. Allan Stanford, an individual, and then a further assignment from R. Allan Stanford to the Stanford International Bank Ltd. Assignment documentation is included.

Exhibit F is a letter that was sent to all KineMed note holders and stockholders in November, 2008 regarding a recapitalization of the KineMed. This letter was sent to the Stanford Group at 201 South Biscayne Boulevard, 27th Floor, Miami, FL 33131 and to Stanford Venture Capital Holdings, Inc., 6075 Poplar Avenue, Memphis, TN 38119, which were the addresses of record for the Stanford Group and the assignee. Following this letter, the required vote of the note holders and the stockholders approved the recapitalization. This converted the outstanding 10% Senior Convertible Notes and each series of Preferred Stock into common stock of KineMed, Inc.

Exhibit G is a copy of the Amended and Restated Certificate of Incorporation of KineMed, Inc., which was filed on January 8, 2009 following approval of the recapitalization.

Exhibit H is a copy of the letter sent out regarding the recapitalization, the conversion of the outstanding notes into common stock of KineMed, Inc. and the cancellation of the outstanding convertible notes.

Conclusion

The senior convertible note held by Stanford International Bank Ltd. pursuant to the series of assignments is no longer in effect. If the bank wishes to obtain evidence of the shares of common stock held as a result of the conversion and recapitalization, the original note should be sent to the company as requested in the letter attached as Exhibit G.

List of Exhibits

A Subscription Agreement for 10% Senior Convertible Note

B Copy of the 10% Senior Convertible Note in the amount of $4,000,000 issued to Stanford Venture Capital Holdings, Inc.

C Copy of Coverage Warrant issued to Stanford Venture Capital Holdings, Inc.

D Copy of Brokerage Warrant issued to Stanford Venture Capital Holdings, Inc.

E Copy of Letter from Carlton Fields law firm regarding the assignment from Stanford Venture Capital Holdings, Inc. to R. Allan Stanford, an individual, and then a further assignment from R. Allan Stanford to the Stanford International Bank Ltd.

F Letter sent to all KineMed note holders and stockholders in November, 2008 regarding the recapitalization plan of the KineMed, Inc.

G Amended and Restated Certificate of Incorporation of KineMed, Inc.

H Letter regarding the recapitalization, the conversion of the outstanding notes into common stock of KineMed, Inc. and the cancellation of the outstanding convertible notes.

CONFIDENTIAL
FOR ACCREDITED INVESTORS ONLY

KineMed, Inc.

a Delaware corporation

10% Senior Convertible Notes

SUBSCRIPTION AGREEMENT AND INVESTOR DATA QUESTIONNAIRE

("Subscription Agreement")

To be Completed by Investors Interested in Subscribing for Note Following Review of Private Placement Memorandum for the Offering

If and when accepted by KineMed, Inc., a Delaware corporation (the "Company"), this Subscription Agreement constitutes a subscription and note purchase agreement for 10% Senior Convertible Notes of the Company. The Company has authorized, or prior to the closing will authorize, up to $5,500,000 of 10% Senior Convertible Notes (the "Notes"), convertible into shares of the Company's common stock (unless otherwise converted upon a Qualified Equity Financing as described in the Private Placement Memorandum for the 10% Senior Convertible Notes (the "Notes PPM"). Subject to the following terms and conditions and those described in the Notes PPM, the Company is offering to Accredited Investors, whose financial condition complies with one or more of the categories set out below, up to $5,500,000 of such Notes. The Company is relying upon the accuracy and completeness of the information and representations below in complying with its obligations under applicable securities laws.

Please read, complete, sign, date, and deliver to the Company a completed Subscription Agreement with two (2) copies of the Counterpart Signature Page. Each subscriber must complete this Subscription Agreement.

1. METHOD OF SUBSCRIPTION.

The undersigned ("Subscriber"), intending to be legally bound, hereby subscribes for and agrees to purchase the amount of 10% Senior Convertible Notes of the Company filled out below (the "Note") and agrees to become a note holder of the Company on the terms and conditions described herein.

Before a subscription for the Note will be accepted, the following must be completed, executed, and returned to the Company:

- This Subscription Agreement with counterpart signature pages executed in duplicate.
- The Investor Data Questionnaire, completely filled out as shown.
- Cash by wire transfer or check made payable to "KineMed, Inc. Note Account."

The undersigned agrees that this subscription can be revoked by the Company as described in the Notes PPM. All obligations under this Subscription Agreement will terminate if this subscription is not accepted by the Company.

2. ACCEPTANCE BY COMPANY. The Company shall have the sole discretion to determine which of the subscriptions received shall be accepted or rejected in whole or in part. The Company will notify Subscriber if the subscription has been rejected, in whole or in part, as promptly as possible. In the event this subscription is rejected, all funds and documents tendered by Subscriber shall be returned.

3. RECEIPT AND REVIEW OF THE NOTES PPM. Subscriber has been furnished, has carefully read and reviewed, and is familiar with the contents of the Notes PPM and the documents referred to therein. Subscriber has been afforded the opportunity to obtain any additional information and to ask questions of and receive answers from persons acting on behalf of the Company concerning matters in the Notes PPM and terms and conditions of the investment. Subscriber is aware that there are substantial risks incident to the ownership of the Note and no federal or state agency has passed upon the Note or made any finding or determination concerning the merits or fairness of this investment.

4. INDEPENDENT LEGAL AND TAX ADVICE. Subscriber acknowledges that he, she, or it has been advised to consult his, her, or its own attorney concerning this investment and to consult independent tax counsel regarding the tax consequences of investing in the Company.

5. LIMITATION ON TRANSFER OF NOTE: Subscriber recognizes and agrees that:

A. Due to the restrictions described in the Notes PPM and below, the lack of any market currently existing or likely to exist for the Note, and possible adverse tax consequences upon sale of the Note, the investment in the Company will be highly illiquid and, most likely, will be required to be held until the maturity date. Upon conversion described in the Notes PPM, the converted securities will be required to be held for a long period of time or perhaps indefinitely.

B. Subscriber must bear the economic risk of investment in the Note until the maturity date, unless upon conversion described in the Notes PPM. Then the subscriber must bear the economic risk of investment in the converted securities for an indefinite period of time, since the converted securities have not been registered under the Securities Act of 1933, as amended (the "Securities Act") or qualified or registered under any state securities laws. Because the Notes will be acquired by investors in a transaction exempt from registration under the Securities Act, the Note may not be offered, sold, pledged, hypothecated, or otherwise transferred in any manner absent either subsequent registration under the Securities Act or an exemption from such registration is available and the favorable opinion of counsel satisfactory to the Company and its counsel to that effect is obtained in advance thereof. Furthermore, Subscriber may not resell, pledge, hypothecate, transfer, assign or make any other disposition of the Note except in a transaction exempt or excluded from the registration requirement of the securities laws of the state in which the Note are offered and sold. The specific approval of such sales and transfers may be required in some states.

6.1 REPRESENTATIONS OF SUBSCRIBER. Subscriber represents and warrants to the Company that:

A. The address set forth at the end of this Agreement is his, her, or its true and correct residence address, and he, she, or it has no present intention of becoming a resident of any other state or jurisdiction.

B. Subscriber is acquiring the Note for his, her, or its own account, as a principal, for investment purposes only and not with a view to, or for, subdivision, resale, distribution, or fractionalization, in whole or in part, or for the account of others, and no other person has or will have a direct or indirect beneficial interest in such Note.

C. Subscriber will hold the Note as an investment and has no present intention, agreement or arrangement to divide his, her, or its participation with others or to resell, assign, transfer or otherwise dispose of all or any part of the Note being subscribed.

D. By reason of Subscriber's knowledge and experience in financial and business matters in general and investments in particular, Subscriber is able to evaluate the merits and risks of an investment in the Note.

E. Subscriber's income and net worth are such that Subscriber is not now, and does not contemplate in the future, being required to dispose of the Note or any portion to satisfy any existing or contemplated obligation.

F. Subscriber understands the risks and other considerations relating to a purchase of the Note and is able to bear the economic risks of such investment, including the risk of losing part or all of the investment and the probable inability to sell or transfer the Note for an indefinite period of time.

G. Subscriber is an "accredited investor" as such term is defined in Regulation D under the Securities Act and other applicable state or federal securities laws and regulations by reason of qualification and compliance at the time of the purchase of the Note with one or more of the following categories that are initialed:

(initial if applicable)

_____ 1. A natural person (not an entity) with an individual net worth or joint net worth with that person's spouse, at the time of the purchase exceeds $1,000,000[1].

2. A natural person (not an entity) who had [mark appropriate blank(s)]:

_____ an individual income in excess of $200,000 in each of the two most recent years, or

_____ joint income with that person's spouse in excess of $300,000 in each of those years, and in either case,

[1] "Net worth" means the excess of total assets over total liabilities. In computing net worth, the undersigned's principal residence must be valued either at: (a) cost, including the cost of improvements, net of the current encumbrances upon the property, or (b) the appraised value of the property as determined upon a written appraisal used by an institutional lender making a loan to the individual secured by the property, including the cost of subsequent improvements, net of current encumbrances.

has a reasonable expectation of reaching the same income level in the current year[2].

_____ 3. A trust with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, and whose purchase is directed by a "sophisticated person" as described in rules and regulations under the Securities Act.

_____ 4. An organization described in section 501(c) (3) of the Internal Revenue Code, such as a corporation, business trust, or partnership, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, and whose purchase is directed by a "sophisticated person" as described in rules and regulations under the Securities Act.

__X__ 5. An entity in which all of the equity owners are "accredited investors" and qualify within one of the categories listed above. If this category applies, list below the names and categories of accreditation of the accredited investors who are the equity owners.

_____ 6. An employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 [mark appropriate blank]: (i) if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is (a) ____ a bank, (b) ____ a savings and loan association, (c) ____ an insurance company, or (d) ____ a registered investment adviser, or (ii) ____ if the employee benefit plan has total assets in excess of $5,000,000, or (iii) ____ if a self-directed plan, with investment decisions made solely by persons who are accredited investors. If category 6(iii) applies, list below the names and categories of accreditation of the accredited investor or investors who are making the investment decisions.

_____ 7. A bank, as defined in Section 3(a)(2) of the Act, or any savings and loan association or other institution, as defined in Section 3(a)(5)(A) of the Act, whether acting in its individual or fiduciary capacity.

_____ 8. A broker or dealer registered pursuant to Section 15 of the Securities Exchanges Act of 1934, as amended.

_____ 9. A director or executive officer of the issuer of the securities being offered or sold.

For category 5 and 6.(iii), please list the names and categories of accreditation for the equity owners or persons making the investment decision:

Equity Owner/Person Making Decision	Accredited Investor Category
R. Allen Stanford	1

6.2 REPRESENTATIONS OF THE COMPANY. The Company's representations and warranties to the Subscribers are set forth on Exhibit A to this Subscription Agreement.

7. PURCHASER REPRESENTATIVE. The following provisions apply if Subscriber used a "Purchaser Representative" (as defined in Rule 501 under the Securities Act) to assist in the evaluation of investment. Subscriber acknowledges, if applicable, that: (i) the person or persons named at the end of this Agreement has or have acted as his, her, or its Purchaser Representative, (ii) in evaluating the investment as contemplated hereby, he, she, or it has been advised by his Purchaser Representative(s) as to the merits and risks of the investment in general and suitability of the investment for the undersigned in particular, and (iii) his, her, or its Purchaser Representative(s), if any, has or have confirmed to the undersigned in writing (a copy of which instrument shall be annexed to this Agreement by the undersigned upon execution) of any past, present or future material relationship, actual or contemplated, between the Purchaser Representative and any entity or affiliate of any entity described herein or in the Notes PPM.

8. INVESTOR DATA QUESTIONNAIRE. Subscriber shall complete the Investor Data Questionnaire that follows. Subscriber represents that all of the following information in the Investor Data Questionnaire will be correct and complete as of

---

[2] In determining income, add to adjusted gross income any amounts attributable to tax exempt income received, losses claimed as a limited partner in any limited partnership, deductions claimed for depletion, contributions to an IRA or Keogh retirement plan, alimony payments, and any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income.

the date submitted. If there should be any material change in such information prior to the acceptance of this subscription by the Company, Subscriber agrees immediately to furnish revised or corrected information to the Company.

9. MISCELLANEOUS.

A. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, including without limitation claims against either party, its affiliates, employees, professionals, officers or directors shall be settled by binding arbitration in San Francisco, California or New York, New York, in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator(s) shall be an active member of the applicable state bar association. In the proceeding, the arbitrators shall apply California substantive law. Pending the hearing, the parties shall be entitled to undertake discovery proceedings, including the taking of depositions, in accordance with California Code of Civil Procedure Section 1283.05, the provisions of which are hereby incorporated herein. The arbitrator's authority in awarding damages shall be interpreted under California law. The undersigned agrees that the arbitrator(s) shall have no authority to award punitive or consequential damages, and the undersigned has been advised to seek counsel concerning the possible waiver by the undersigned of certain rights otherwise available to the undersigned as a consequence of such agreement. The arbitrator(s) shall prepare an award in writing, which shall include factual findings and any legal conclusions on which the decision is based. Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In any such proceeding, the prevailing party shall be entitled, in addition to any other relief awarded or adjudged, such sum as the arbitrator(s) may fix as and for reasonable attorneys' fees and costs, and the same shall be included in the award and any judgment.

B. This subscription is not transferable or assignable by Subscriber.

C. If Subscriber is more than one person, the obligations of Subscriber shall be joint and several and the representations and warranties herein contained shall be deemed to be made by and be binding upon each such person and his heirs, executors, administrators, successors and assigns.

D. The subscription, upon acceptance by the Company, shall be binding upon the heirs, executors, administrators, successors and assigns of Subscriber.

E. This Subscription Agreement and the Notes PPM constitute the entire agreement between the parties respecting the subject matter hereof.

10. ACCEPTANCE AND ADDITIONAL DOCUMENTATION AT CLOSING. Subscriber hereby adopts, accepts and agrees to be bound by all of the terms and conditions of the Offering, as set forth in the Notes PPM, and by all of the terms and conditions of this Subscription Agreement. As a further condition to the closing and acceptance by the Company of this subscription, Subscriber further agrees to execute and deliver to the Company any further documents necessary or desirable to better evidence the transaction contemplated hereunder and under the Notes PPM. The Investment Data Questionnaire and the Counterpart Signature Page are part of this Subscription Agreement and are incorporated herein as if set forth in full.

THIS INVESTMENT INVOLVES A HIGH DEGREE OF RISK (SEE "RISK FACTORS" SECTION IN THE NOTES PPM). IT IS SUITABLE ONLY FOR "ACCREDITED INVESTORS" WHO MEET MINIMUM STANDARDS OF INCOME AND NET WORTH - (SEE "WHO CAN INVEST?" SECTION IN THE NOTES PPM).

KineMed, Inc.
INVESTOR DATA QUESTIONNAIRE - 10% SENIOR CONVERTIBLE NOTES
Required for each subscriber
All information will be treated as confidential.

Name (please print): Stanford Venture Capital Holdings, Inc.

Name of Joint Tenant or Trustee (if applicable): N/A

Account Registration (check one):
( ) Individual Account
( ) Joint Registration
( ) Joint Tenant with Right of Survivorship
( ) Tenants in Common
( ) Tenants by Entirety
( ) Community Property
( ) Pension or Profit Sharing
(X) Corporation, Partnership, Trust, Association or Other Entity (specify below)
Type of Entity: Corporation
Jurisdiction of Formation or Incorporation: Delaware
Formed for the purpose of this investment?
__Yes X No

Name of Registered Owner exactly as it is to appear on the Share Certificate: Stanford Venture Capital Holdings, Inc.

Social Security Number or Taxpayer I.D. #: 76-0619955

Social Security Number or Taxpayer I.D. # of Joint Tenant or Trustee: N/A

If Individual, Marital Status: ( ) Single ( ) Married ( ) Separated ( ) Divorced

Date of Birth: _____

Place of Birth: _____

Residence Address or, for Business Entity, Principal Business Address: 5050 Westheimer
Houston, Texas 77056

County of Residence: _____

Home Phone Number: _____

Business Phone Number: _____

CONFIDENTIAL

Prior Place(s) of Residence if address above has been maintained fewer than three years: _____

_____

Are you registered to vote in, or do you have a driver's license issued by, or do you maintain a residence in any other state or location? ____Yes ____No

If yes to above, in which state(s) or location(s)? _____

College Name/Degree: _____

Graduate School Name/Degree: _____

Please describe in reasonable detail the nature and extent of your business, financial and investment experience which you believe gives you the capacity to evaluate the merits and risks of proposed investment and the capacity to protect your interests. _____

_____

_____

Occupation/Profession: _____

How long with current Employer? _____

Name of Employer _____

Address of Employer: _____

_____

Nature of Employer's Business: _____

If you have any pre-existing personal or business relationship with the Company or any of its officers, directors or controlling persons, please describe the nature and duration of relationship: _____

_____

_____

Are you purchasing the securities offered for your own account and for investment purposes only? _X_ Yes ____No

If no to above, please state for whom you are investing and/or the reason for investing: _____

_____

KineMed, Inc.
10% SENIOR CONVERTIBLE NOTES
SUBSCRIPTION AGREEMENT AND INVESTMENT DATA QUESTIONNAIRE

COUNTERPART SIGNATURE PAGE

This Counterpart Signature Page is part of and is attached to Subscription Agreement and Investment Data Questionnaire completed by the undersigned ("Subscriber"). The information provided by Subscriber is true and correct in all material respects and Subscriber recognizes that the Company and its counsel are relying on the truth and accuracy of such information in reliance on the exemption contained in Subsection 4(2) of the Securities Act of 1933, as amended, and Regulation D thereunder. The undersigned agrees to notify the Company promptly of any changes in the foregoing information which may occur prior to the investment.

IN WITNESS WHEREOF, Subscriber has completed this Subscription Agreement evidencing his or her subscription to purchase the following amount of 10% Senior Convertible Note of the Company and has completed the information required in the Investment Data Questionnaire as of this ___ day of March, 2006/7

AMOUNT OF SUBSCRIPTION: $4,000,000.00

NAME TO APPEAR ON THE CERTIFICATE MUST BE CLEARLY SET FORTH ABOVE.

Please make check payable to: KineMed, Inc. Notes Account
Please send payments to: KineMed, Inc.
Attention: David Fineman, President & CEO
5980 Horton Street, Suite 400
Emeryville, CA 94608

Name and Address of "Purchaser Representative," if any:

James M. Davis
Stanford Venture Capital Holdings, Inc.
6075 Poplar, 3rd Floor
Memphis, TN 98119

Subscriber Name: Stanford Venture Capital Holdings, Inc.

Subscriber Signature: _____
James M. Davis, President

Date: March, 2006/7

Accepted by:
KineMed, Inc.
a Delaware corporation

By: _____
Title: President & CEO
Date: _____

KineMed, Inc.

10% SENIOR CONVERTIBLE NOTES

SUBSCRIPTION AGREEMENT AND INVESTMENT DATA QUESTIONNAIRE

COUNTERPART SIGNATURE PAGE

This Counterpart Signature Page is part of and is attached to Subscription Agreement and Investment Data Questionnaire completed by the undersigned ("Subscriber"). The information provided by Subscriber is true and correct in all material respects and Subscriber recognizes that the Company and its counsel are relying on the truth and accuracy of such information in reliance on the exemption contained in Subsection 4(2) of the Securities Act of 1933, as amended, and Regulation D thereunder. The undersigned agrees to notify the Company promptly of any changes in the foregoing information which may occur prior to the investment.

IN WITNESS WHEREOF, Subscriber has completed this Subscription Agreement evidencing his or her subscription to purchase the following number amount of 10% Senior Convertible Note of the Company and has completed the information required in the Investment Data Questionnaire as of this ___ day of March, 2007

AMOUNT OF SUBSCRIPTION: $ 4,000,000.00

NAME TO APPEAR ON THE CERTIFICATE MUST BE CLEARLY SET FORTH ABOVE.

Please make check payable to: KineMed, Inc. Notes Account
Please send payments to: KineMed, Inc.
Attention: David Fineman, President & CEO
5980 Horton Street, Suite 400
Emeryville, CA 94608

Name and Address of "Purchaser Representative," if any:

James M. Davis

Stanford Venture Capital Holdings, Inc.

6075 Poplar, 3rd Floor

Memphis, TN 98119

Subscriber Name: Stanford Venture Capital Holdings, Inc.

Subscriber Signature: _____
James M. Davis, President

Date: March, 2007

Accepted by:
KineMed, Inc.
a Delaware corporation

By: David M. Fineman
Title: President & CEO
Date: April 24, 2007

CONFIDENTIAL
FOR ACCREDITED INVESTORS ONLY

KineMed, Inc.

a Delaware corporation

10% Senior Convertible Notes
SUBSCRIPTION AGREEMENT AND INVESTOR DATA QUESTIONNAIRE
("Subscription Agreement")

To be Completed by Investors Interested in Subscribing for Note Following Review of Private Placement Memorandum for the Offering

If and when accepted by KineMed, Inc., a Delaware corporation (the "Company"), this Subscription Agreement constitutes a subscription and note purchase agreement for 10% Senior Convertible Notes of the Company. The Company has authorized, or prior to the closing will authorize, up to $5,500,000 of 10% Senior Convertible Notes (the "Notes"), convertible into shares of the Company's common stock (unless otherwise converted upon a Qualified Equity Financing as described in the Private Placement Memorandum for the 10% Senior Convertible Notes (the "Notes PPM"). Subject to the following terms and conditions and those described in the Notes PPM, the Company is offering to Accredited Investors, whose financial condition complies with one or more of the categories set out below, up to $5,500,000 of such Notes. The Company is relying upon the accuracy and completeness of the information and representations below in complying with its obligations under applicable securities laws.

Please read, complete, sign, date, and deliver to the Company a completed Subscription Agreement with two (2) copies of the Counterpart Signature Page. Each subscriber must complete this Subscription Agreement.

1. METHOD OF SUBSCRIPTION.

The undersigned ("Subscriber"), intending to be legally bound, hereby subscribes for and agrees to purchase the amount of 10% Senior Convertible Notes of the Company filled out below (the "Note") and agrees to become a note holder of the Company on the terms and conditions described herein.

Before a subscription for the Note will be accepted, the following must be completed, executed, and returned to the Company:

- ☐ This Subscription Agreement with counterpart signature pages executed in duplicate.
- ☐ The Investor Data Questionnaire, completely filled out as shown.
- ☐ Cash by wire transfer or check made payable to "KineMed, Inc. Note Account."

The undersigned agrees that this subscription can be revoked by the Company as described in the Notes PPM. All obligations under this Subscription Agreement will terminate if this subscription is not accepted by the Company.

2. ACCEPTANCE BY COMPANY. The Company shall have the sole discretion to determine which of the subscriptions received shall be accepted or rejected in whole or in part. The Company will notify Subscriber if the subscription has been rejected, in whole or in part, as promptly as possible. In the event this subscription is rejected, all funds and documents tendered by Subscriber shall be returned.

3. RECEIPT AND REVIEW OF THE NOTES PPM. Subscriber has been furnished, has carefully read and reviewed, and is familiar with the contents of the Notes PPM and the documents referred to therein. Subscriber has been afforded the opportunity to obtain any additional information and to ask questions of and receive answers from persons acting on behalf of the Company concerning matters in the Notes PPM and terms and conditions of the investment. Subscriber is aware that there are substantial risks incident to the ownership of the Note and no federal or state agency has passed upon the Note or made any finding or determination concerning the merits or fairness of this investment.

4. INDEPENDENT LEGAL AND TAX ADVICE. Subscriber acknowledges that he, she, or it has been advised to consult his, her, or its own attorney concerning this investment and to consult independent tax counsel regarding the tax consequences of investing in the Company.

5. LIMITATION ON TRANSFER OF NOTE: Subscriber recognizes and agrees that:

A. Due to the restrictions described in the Notes PPM and below, the lack of any market currently existing or likely to exist for the Note, and possible adverse tax consequences upon sale of the Note, the investment in the Company will be highly illiquid and, most likely, will be required to be held until the maturity date. Upon conversion described in the Notes PPM, the converted securities will be required to be held for a long period of time or perhaps indefinitely.

B. Subscribor must bear the economic risk of investment in the Note until the maturity date, unless upon conversion described in the Notes PPM. Then the subscriber must bear the economic risk of investment in the converted securities for an indefinite period of time, since the converted securities have not been registered under the Securities Act of 1933, as amended (the "Securities Act") or qualified or registered under any state securities laws. Because the Notes will be acquired by investors in a transaction exempt from registration under the Securities Act, the Note may not be offered, sold, pledged, hypothecated, or otherwise transferred in any manner absent either subsequent registration under the Securities Act or an exemption from such registration is available and the favorable opinion of counsel satisfactory to the Company and its counsel to that effect is obtained in advance thereof. Furthermore, Subscriber may not resell, pledge, hypothecate, transfer, assign or make any other disposition of the Note except in a transaction exempt or excluded from the registration requirement of the securities laws of the state in which the Note are offered and sold. The specific approval of such sales and transfers may be required in some states.

6.1 REPRESENTATIONS OF SUBSCRIBER. Subscriber represents and warrants to the Company that:

A. The address set forth at the end of this Agreement is his, her, or its true and correct residence address, and he, she, or it has no present intention of becoming a resident of any other state or jurisdiction.

B. Subscriber is acquiring the Note for his, her, or its own account, as a principal, for investment purposes only and not with a view to, or for, subdivision, resale, distribution, or fractionalization, in whole or in part, or for the account of others, and no other person has or will have a direct or indirect beneficial interest in such Note.

C. Subscriber will hold the Note as an investment and has no present intention, agreement or arrangement to divide his, her, or its participation with others or to resell, assign, transfer or otherwise dispose of all or any part of the Note being subscribed.

D. By reason of Subscriber's knowledge and experience in financial and business matters in general and investments in particular, Subscriber is able to evaluate the merits and risks of an investment in the Note.

E. Subscriber's income and net worth are such that Subscriber is not now, and does not contemplate in the future, being required to dispose of the Note or any portion to satisfy any existing or contemplated obligation.

F. Subscriber understands the risks and other considerations relating to a purchase of the Note and is able to bear the economic risks of such investment, including the risk of losing part or all of the investment and the probable inability to sell or transfer the Note for an indefinite period of time.

G. Subscriber is an "accredited investor" as such term is defined in Regulation D under the Securities Act and other applicable state or federal securities laws and regulations by reason of qualification and compliance at the time of the purchase of the Note with one or more of the following categories that are initialed:

(Initial if applicable)

_____ 1. A natural person (not an entity) with an individual net worth or joint net worth with that person's spouse, at the time of the purchase exceeds $1,000,000[1].

2. A natural person (not an entity) who had [mark appropriate blank(s)]:

_____ an individual income in excess of $200,000 in each of the two most recent years, or

_____ joint income with that person's spouse in excess of $300,000 in each of those years, and in either case,

[1] "Net worth" means the excess of total assets over total liabilities. In computing net worth, the undersigned's principal residence must be valued either at: (a) cost, including the cost of improvements, net of the current encumbrances upon the property, or (b) the appraised value of the property as determined upon a written appraisal used by an institutional lender making a loan to the individual secured by the property, including the cost of subsequent improvements, net of current encumbrances.

has a reasonable expectation of reaching the same income level in the current year[2].

_____ 3. A trust with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, and whose purchase is directed by a "sophisticated person" as described in rules and regulations under the Securities Act.

_____ 4. An organization described in section 501(c) (3) of the Internal Revenue Code, such as a corporation, business trust, or partnership, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, and whose purchase is directed by a "sophisticated person" as described in rules and regulations under the Securities Act.

__X__ 5. An entity in which all of the equity owners are "accredited investors" and qualify within one of the categories listed above. If this category applies, list below the names and categories of accreditation of the accredited investors who are the equity owners.

_____ 6. An employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 [mark appropriate blank]: (i) if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is (a) ____ a bank, (b) ____ a savings and loan association, (c) ____ an insurance company, or (d) ____ a registered investment adviser, or (ii) ____ if the employee benefit plan has total assets in excess of $5,000,000, or (iii) ____ if a self-directed plan, with investment decisions made solely by persons who are accredited investors. If category 6(iii) applies, list below the names and categories of accreditation of the accredited investor or investors who are making the investment decisions.

_____ 7. A bank, as defined in Section 3(a)(2) of the Act, or any savings and loan association or other institution, as defined in Section 3(a)(5)(A) of the Act, whether acting in its individual or fiduciary capacity.

_____ 8. A broker or dealer registered pursuant to Section 15 of the Securities Exchanges Act of 1934, as amended.

_____ 9. A director or executive officer of the issuer of the securities being offered or sold.

For category 5 and 6 (iii), please list the names and categories of accreditation for the equity owners or persons making the investment decision:

Equity Owner/Person Making Decision	Accredited Investor Category
R. Allen Stanford	1

6.2 REPRESENTATIONS OF THE COMPANY. The Company's representations and warranties to the Subscribers are set forth on Exhibit A to this Subscription Agreement.

7. PURCHASER REPRESENTATIVE. The following provisions apply if Subscriber used a "Purchaser Representative" (as defined in Rule 501 under the Securities Act) to assist in the evaluation of investment. Subscriber acknowledges, if applicable, that: (i) the person or persons named at the end of this Agreement has or have acted as his, her, or its Purchaser Representative, (ii) in evaluating the investment as contemplated hereby, he, she, or it has been advised by his Purchaser Representative(s) as to the merits and risks of the investment in general and suitability of the investment for the undersigned in particular, and (iii) his, her, or its Purchaser Representative(s), if any, has or have confirmed to the undersigned in writing (a copy of which instrument shall be annexed to this Agreement by the undersigned upon execution) of any past, present or future material relationship, actual or contemplated, between the Purchaser Representative and any entity or affiliate of any entity described herein or in the Notes PPM.

8. INVESTOR DATA QUESTIONNAIRE. Subscriber shall complete the Investor Data Questionnaire that follows. Subscriber represents that all of the following information in the Investor Data Questionnaire will be correct and complete as of

---

[2] In determining income, add to adjusted gross income any amounts attributable to tax exempt income received, losses claimed as a limited partner in any limited partnership, deductions claimed for depletion, contributions to an IRA or Keogh retirement plan, alimony payments, and any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income.

the date submitted. If there should be any material change in such information prior to the acceptance of this subscription by the Company, Subscriber agrees immediately to furnish revised or corrected information to the Company.

9. MISCELLANEOUS.

A. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, including without limitation claims against either party, its affiliates, employees, professionals, officers or directors shall be settled by binding arbitration in San Francisco, California or New York, New York, in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator(s) shall be an active member of the applicable state bar association. In the proceeding, the arbitrators shall apply California substantive law. Pending the hearing, the parties shall be entitled to undertake discovery proceedings, including the taking of depositions, in accordance with California Code of Civil Procedure Section 1283.05, the provisions of which are hereby incorporated herein. The arbitrator's authority in awarding damages shall be interpreted under California law. The undersigned agrees that the arbitrator(s) shall have no authority to award punitive or consequential damages, and the undersigned has been advised to seek counsel concerning the possible waiver by the undersigned of certain rights otherwise available to the undersigned as a consequence of such agreement. The arbitrator(s) shall prepare an award in writing, which shall include factual findings and any legal conclusions on which the decision is based. Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In any such proceeding, the prevailing party shall be entitled, in addition to any other relief awarded or adjudged, such sum as the arbitrator(s) may fix as and for reasonable attorneys' fees and costs, and the same shall be included in the award and any judgment.

B. This subscription is not transferable or assignable by Subscriber.

C. If Subscriber is more than one person, the obligations of Subscriber shall be joint and several and the representations and warranties herein contained shall be deemed to be made by and be binding upon each such person and his heirs, executors, administrators, successors and assigns.

D. The subscription, upon acceptance by the Company, shall be binding upon the heirs, executors, administrators, successors and assigns of Subscriber.

E. This Subscription Agreement and the Notes PPM constitute the entire agreement between the parties respecting the subject matter hereof.

10. ACCEPTANCE AND ADDITIONAL DOCUMENTATION AT CLOSING. Subscriber hereby adopts, accepts and agrees to be bound by all of the terms and conditions of the Offering, as set forth in the Notes PPM, and by all of the terms and conditions of this Subscription Agreement. As a further condition to the closing and acceptance by the Company of this subscription, Subscriber further agrees to execute and deliver to the Company any further documents necessary or desirable to better evidence the transaction contemplated hereunder and under the Notes PPM. The Investment Data Questionnaire and the Counterpart Signature Page are part of this Subscription Agreement and are incorporated herein as if set forth in full.

THIS INVESTMENT INVOLVES A HIGH DEGREE OF RISK (SEE "RISK FACTORS" SECTION IN THE NOTES PPM). IT IS SUITABLE ONLY FOR "ACCREDITED INVESTORS" WHO MEET MINIMUM STANDARDS OF INCOME AND NET WORTH - (SEE "WHO CAN INVEST?" SECTION IN THE NOTES PPM).

KineMed, Inc.
INVESTOR DATA QUESTIONNAIRE - 10% SENIOR CONVERTIBLE NOTES
Required for each subscriber
All information will be treated as confidential.

Name (please print): Stanford Venture Capital Holdings, Inc.

Name of Joint Tenant or Trustee (if applicable): N/A

Account Registration (check one):

( ) Individual Account
( ) Joint Registration
( ) Joint Tenant with Right of Survivorship
( ) Tenants in Common
( ) Tenants by Entirety
( ) Community Property
( ) Pension or Profit Sharing
(X) Corporation, Partnership, Trust, Association or Other Entity (specify below)
Type of Entity: Corporation
Jurisdiction of Formation or Incorporation: Delaware
Formed for the purpose of this investment?
__Yes X No

Name of Registered Owner exactly as it is to appear on the Share Certificate: Stanford Venture Capital Holdings, Inc.

Social Security Number or Taxpayer I.D. #: 76-0619955

Social Security Number or Taxpayer I.D. # of Joint Tenant or Trustee: N/A

If Individual, Marital Status: ( ) Single ( ) Married ( ) Separated ( ) Divorced

Date of Birth: _____

Place of Birth: _____

Residence Address or, for Business Entity, Principal Business Address: 5050 Westheimer
Houston, Texas 77056

County of Residence: _____

Home Phone Number: _____

Business Phone Number: _____

CONFIDENTIAL

v

Prior Place(s) of Residence if address above has been maintained fewer than three years: _____

_____

Are you registered to vote in, or do you have a driver's license issued by, or do you maintain a residence in any other state or location? ____Yes ____No

If yes to above, in which state(s) or location(s)? _____

College Name/Degree: _____

Graduate School Name/Degree: _____

Please describe in reasonable detail the nature and extent of your business, financial and investment experience which you believe gives you the capacity to evaluate the merits and risks of proposed investment and the capacity to protect your interests. _____

_____

_____

Occupation/Profession: _____

How long with current Employer? _____

Name of Employer _____

Address of Employer: _____

_____

Nature of Employer's Business: _____

If you have any pre-existing personal or business relationship with the Company or any of its officers, directors or controlling persons, please describe the nature and duration of relationship: _____

_____

_____

Are you purchasing the securities offered for your own account and for investment purposes only? _X_ Yes ____No

If no to above, please state for whom you are investing and/or the reason for investing: _____

_____

KineMed, Inc.

10% SENIOR CONVERTIBLE NOTES

SUBSCRIPTION AGREEMENT AND INVESTMENT DATA QUESTIONNAIRE

COUNTERPART SIGNATURE PAGE

This Counterpart Signature Page is part of and is attached to Subscription Agreement and Investment Data Questionnaire completed by the undersigned ("Subscriber"). The information provided by Subscriber is true and correct in all material respects and Subscriber recognizes that the Company and its counsel are relying on the truth and accuracy of such information in reliance on the exemption contained in Subsection 4(2) of the Securities Act of 1933, as amended, and Regulation D thereunder. The undersigned agrees to notify the Company promptly of any changes in the foregoing information which may occur prior to the investment.

IN WITNESS WHEREOF, Subscriber has completed this Subscription Agreement evidencing his or her subscription to purchase the following amount of 10% Senior Convertible Note of the Company and has completed the information required in the Investment Data Questionnaire as of this ____ day of March _____, 2007

AMOUNT OF SUBSCRIPTION: $4,000,000.00

NAME TO APPEAR ON THE CERTIFICATE MUST BE CLEARLY SET FORTH ABOVE.

Please make check payable to: KineMed, Inc. Notes Account
Please send payments to: KineMed, Inc.
Attention: David Fineman, President & CEO
5980 Horton Street, Suite 400
Emeryville, CA 94608

Name and Address of "Purchaser Representative," if any:

James M. Davis

Stanford Venture Capital Holdings, Inc.

6075 Poplar, 3rd Floor

Memphis, TN 98119

Subscriber Name: Stanford Venture Capital Holdings, Inc.

Subscriber Signature: _____
James M. Davis, President

Date: March _____, 2007

Accepted by:
KineMed, Inc.
a Delaware corporation

By: _____
Title: President & CEO
Date: _____

KineMed, Inc.

10% SENIOR CONVERTIBLE NOTES

SUBSCRIPTION AGREEMENT AND INVESTMENT DATA QUESTIONNAIRE

COUNTERPART SIGNATURE PAGE

This Counterpart Signature Page is part of and is attached to Subscription Agreement and Investment Data Questionnaire completed by the undersigned ("Subscriber"). The information provided by Subscriber is true and correct in all material respects and Subscriber recognizes that the Company and its counsel are relying on the truth and accuracy of such information in reliance on the exemption contained in Subsection 4(2) of the Securities Act of 1933, as amended, and Regulation D thereunder. The undersigned agrees to notify the Company promptly of any changes in the foregoing information which may occur prior to the Investment.

IN WITNESS WHEREOF, Subscriber has completed this Subscription Agreement evidencing his or her subscription to purchase the following number amount of 10% Senior Convertible Note of the Company and has completed the information required in the Investment Data Questionnaire as of this ____ day of March _____, 2006?

AMOUNT OF SUBSCRIPTION: $ 4,000,000.00

NAME TO APPEAR ON THE CERTIFICATE MUST BE CLEARLY SET FORTH ABOVE.

Please make check payable to: KineMed, Inc. Notes Account
Please send payments to: KineMed, Inc.
Attention: David Fineman, President & CEO
5980 Horton Street, Suite 400
Emeryville, CA 94608

Name and Address of "Purchaser Representative," if any:

James M. Davis

Stanford Venture Capital Holdings, Inc.

6075 Poplar, 3rd Floor

Memphis, TN 98119

Subscriber Name: Stanford Venture Capital Holdings, Inc.

Subscriber Signature: _____
James M. Davis, President

Date: March _____, 2006?

Accepted by:
KineMed, Inc.
a Delaware corporation

By: David M. Fineman
Title: President & CEO
Date: _____

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION THAT SUCH REGISTRATION IS NOT REQUIRED.

KINEMED, INC.

10% SENIOR CONVERTIBLE NOTE

$4,000,000.00 June 30, 2007

CPN-000091 Emeryville, California

FOR VALUE RECEIVED, KineMed, Inc., a Delaware corporation, (the "**Company**") promises to pay to Stanford Venture Capital Holdings, Inc. ("**Investor**"), or its registered assigns, in lawful money of the United States of America the principal sum of Four Million Dollars ($4,000,000.00), or such lesser amount as shall equal the outstanding principal amount hereof, together with interest from the date of this Note on the unpaid principal balance at a rate equal to 10.00% per annum, computed on the basis of the actual number of days elapsed and a year of 365 days. All unpaid principal, together with any then unpaid and accrued interest and other amounts payable hereunder, shall be due and payable on the earlier of (i) THREE YEARS FROM DATE OF NOTE (the "**Maturity Date**"), or (ii) when, upon or after the occurrence of an Event of Default (as defined below), such amounts are declared due and payable by Investor or made automatically due and payable in accordance with the terms hereof. This Note is one of the "Notes" issued pursuant to the 10% Senior Convertible Notes Subscription Agreement and Investor Data Questionnaires entered into by the Company and the various subscribers dated as of one or more Closings (as amended, modified or supplemented, the "**Subscription Agreement**") between the Company and the Investors (as defined in the Subscription Agreement).

The following is a statement of the rights of Investor and the conditions to which this Note is subject, and to which Investor, by the acceptance of this Note, agrees:

1. ***Definitions.*** As used in this Note, the following capitalized terms have the following meanings:

(a) the "**Company**" includes the corporation initially executing this Note and any Person which shall succeed to or assume the obligations of the Company under this Note.

(b) "**Event of Default**" has the meaning given in Section 4 hereof.

(c) "**Investor**" shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

(d) "**Majority in Interest**" shall mean, more than 50% of the aggregate outstanding principal amount of the Notes issued pursuant to the Subscription Agreements.

(e) "**Subscription Agreement**" has the meaning given in the introductory paragraph hereof.

(f) "**Obligations**" shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Investor of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), now existing or hereafter arising under or pursuant to the terms of this Note and the Subscription Agreement, including, all interest, fees, charges, expenses, attorneys' fees and costs and accountants' fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding. Notwithstanding the foregoing, the term "Obligations" shall not include any obligations of Company under or with respect to the Warrant.

(g) "**Person**" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

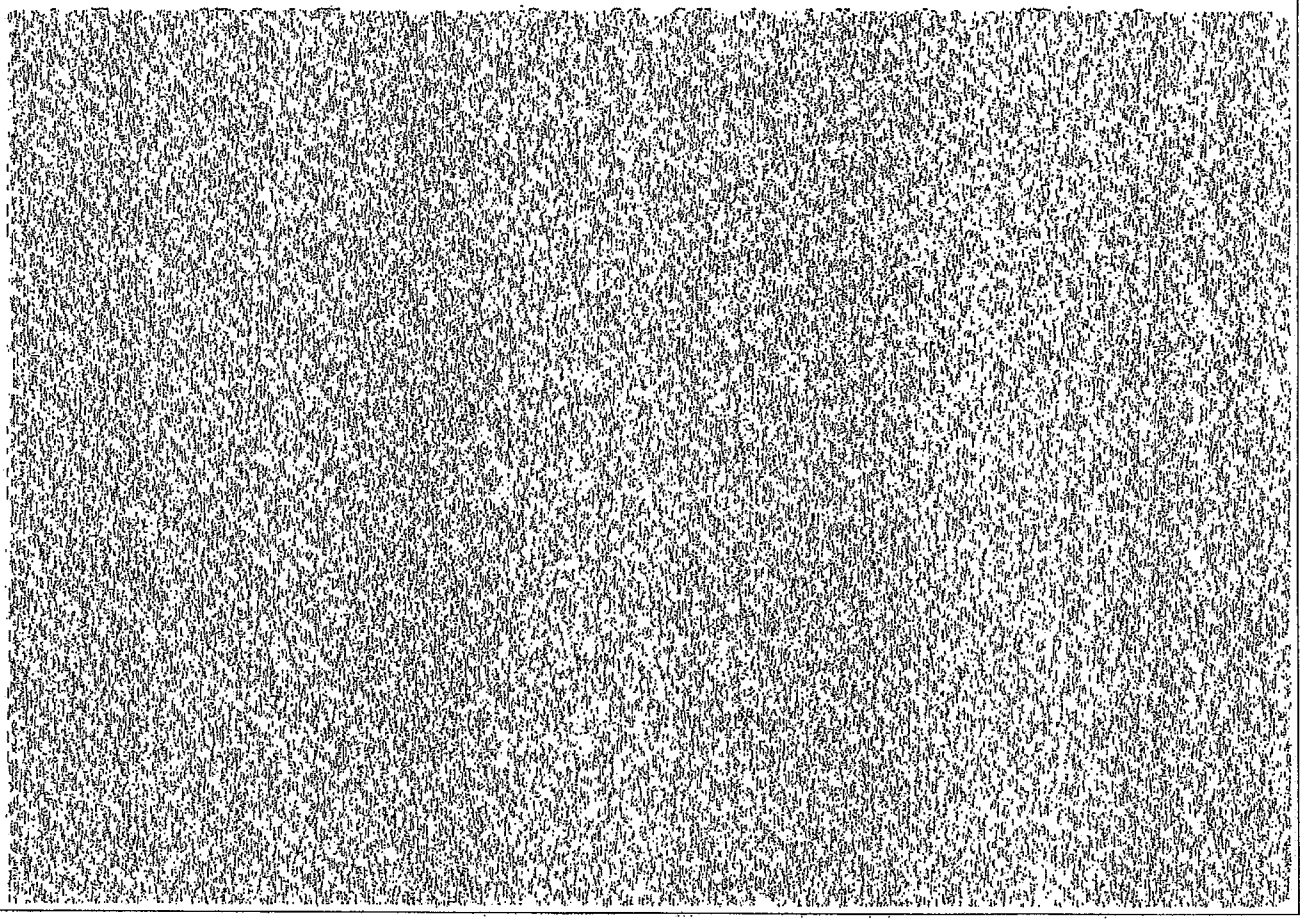
(h) "**Securities Act**" shall mean the Securities Act of 1933, as amended.

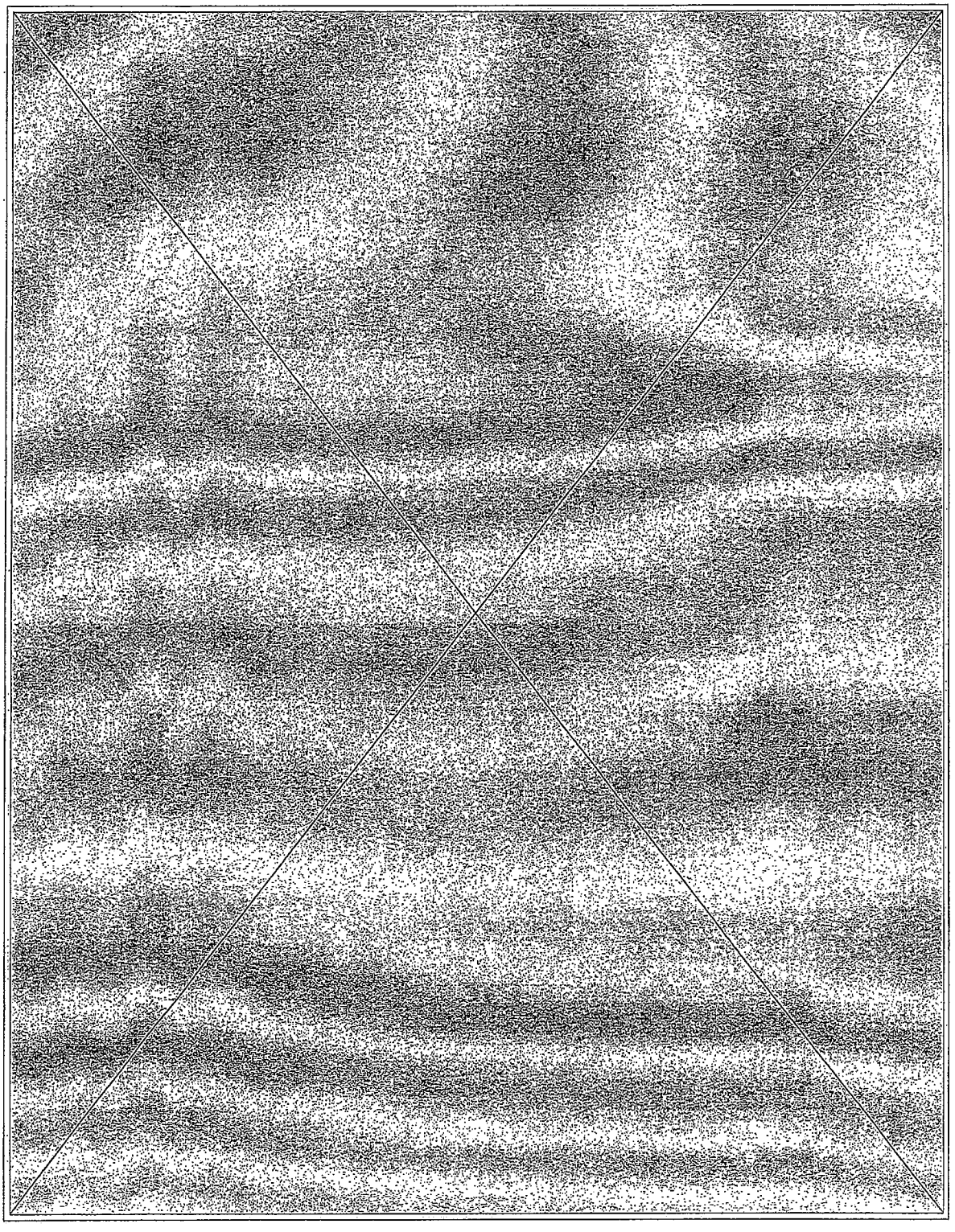
(i) "**Senior Indebtedness**" shall mean, unless expressly subordinated to or made on a parity with the amounts due under this Note, the principal of (and premium, if any), unpaid interest on and amounts reimbursable, fees, expenses, costs of enforcement and other amounts due in connection with, (i) indebtedness of Company, to banks, commercial finance lenders or other lending institutions regularly engaged in the business of lending money (excluding (A) venture capital, investment banking or similar institutions which sometimes engage in lending activities but which are primarily engaged in investments in equity securities and (B) equipment lenders or equipment lessors that advance indebtedness to Company solely to be used for the purchase, finance or acquisition of equipment and where such indebtedness is secured solely by such equipment), which is for money borrowed whether or not secured, and (ii) any such indebtedness or any debentures, notes or other evidence of indebtedness issued in exchange for such Senior Indebtedness, or any indebtedness arising from the satisfaction of such Senior Indebtedness by a guarantor.

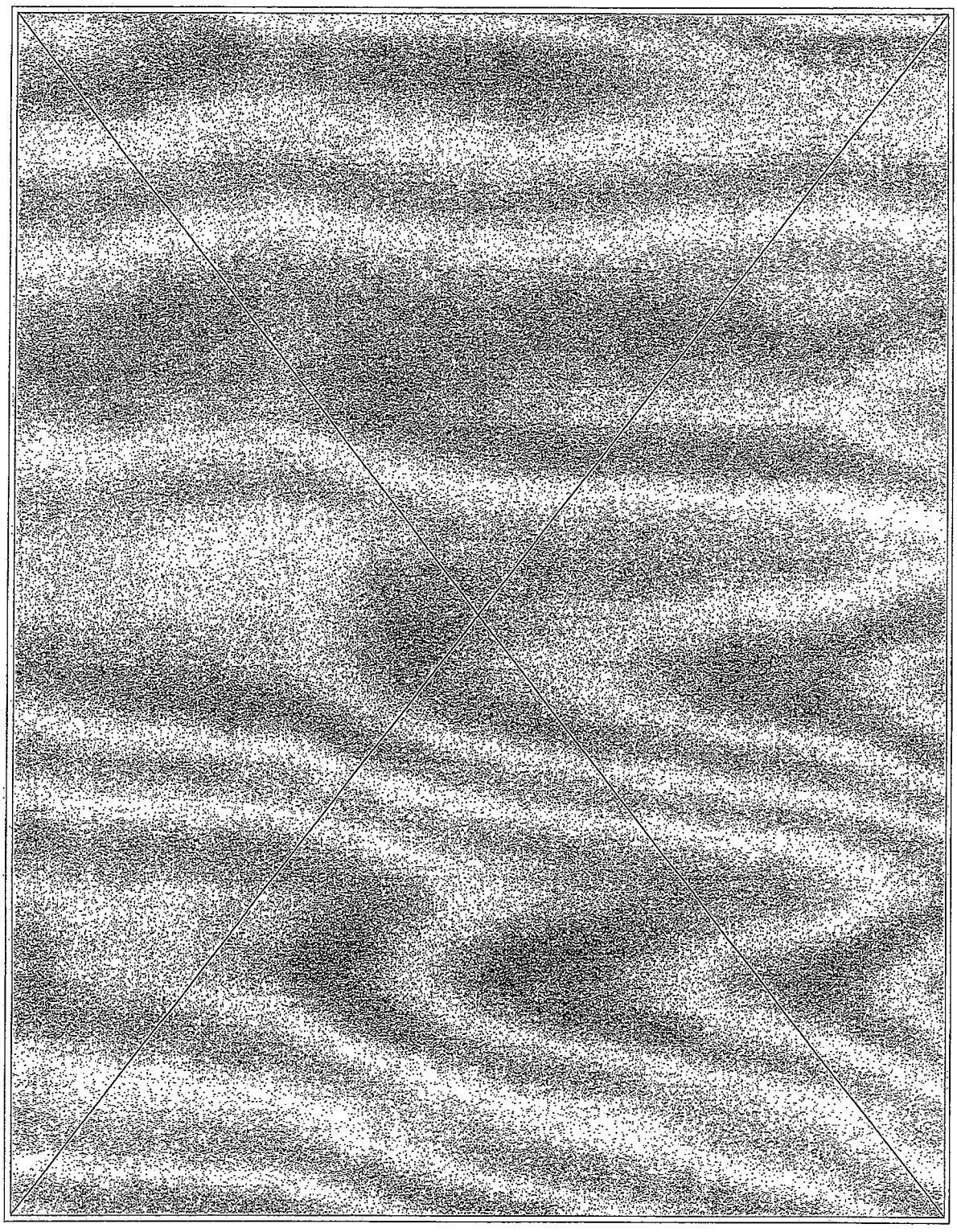
(j) "**Transaction Documents**" shall mean this Note, each of the other Notes issued under the Subscription Agreements and the Warrants issued under the Subscription Agreements.

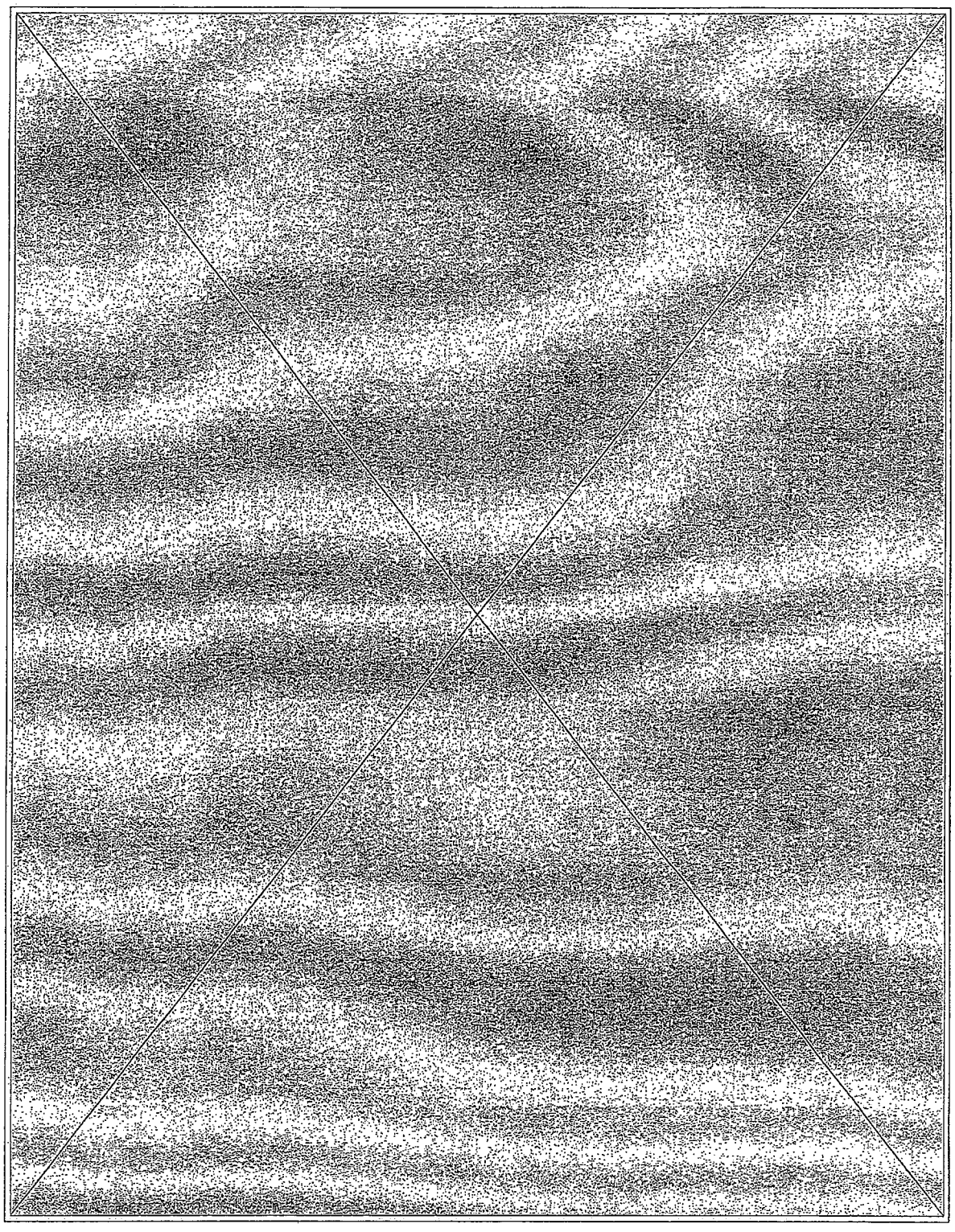
2. *Interest.* Accrued interest on this Note shall be payable at maturity.

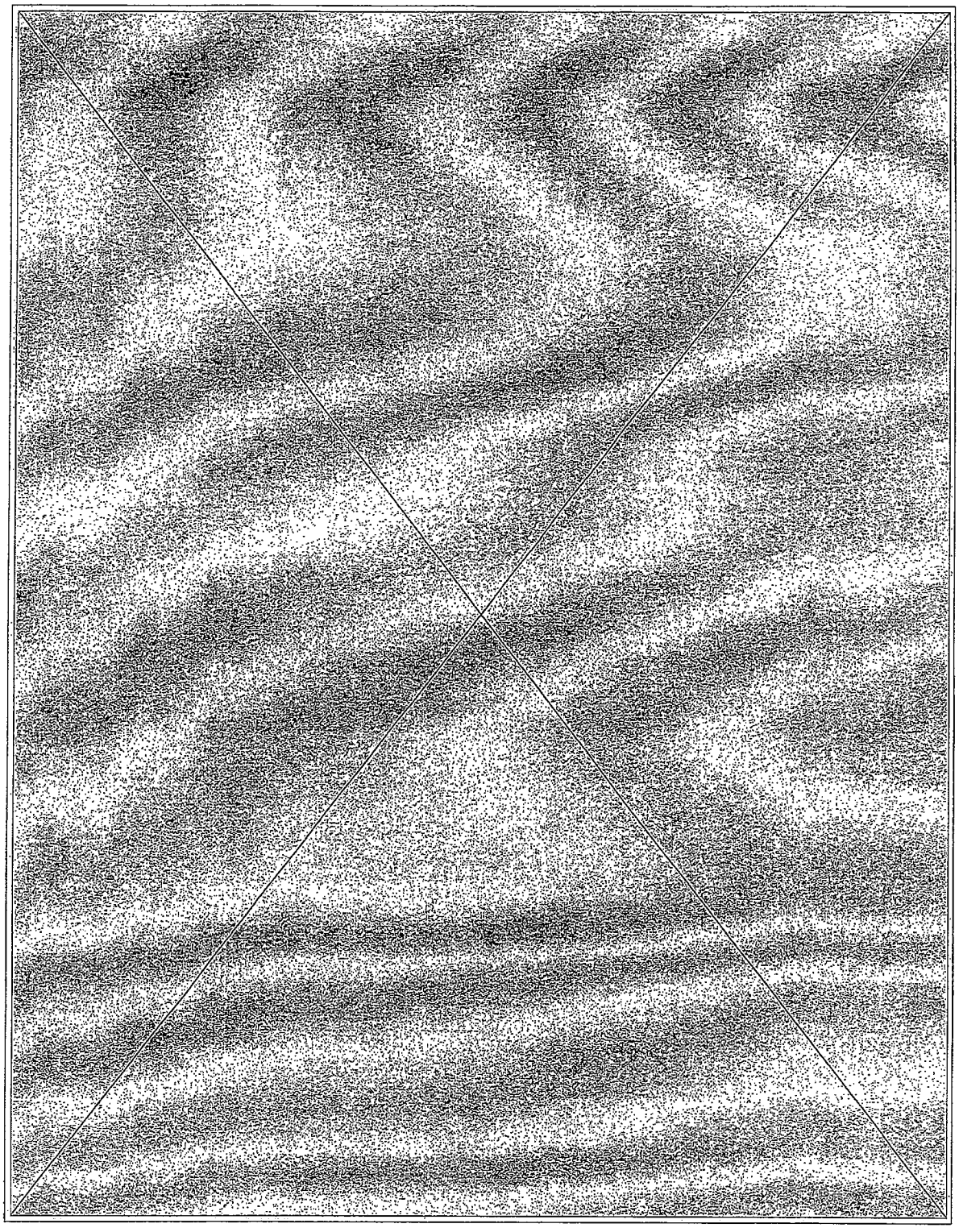
3. ***Prepayment.*** Upon thirty days prior written notice to Investor, the Company may prepay this Note in whole or in part; provided that any such prepayment will be applied first to the payment of expenses due under this Note, second to interest accrued on this Note and third, if the amount of prepayment exceeds the amount of all such expenses and accrued interest, to the payment of principal of this Note.











To: O'Connor, William[William.OConnor@cms-cmck.com]; Hennis, Daniel[Daniel.Hennis@cms-cmck.com]; Rees, Rachel[Rachel.Rees@cms-cmck.com]
Cc: WILTSHIRE, Peter[Peter.WILTSHIRE@cms-cmck.com]; HICKMOTT, Robert[Robert.Hickmott@cms-cmck.com]
From: Madsen, Iben
Sent: Tue 31/03/2009 8:46:53 AM
Importance: Normal
Subject: FW: KineMed, Inc. Stanford Group Transaction - Second Email REVISED
MAIL_RECEIVED: Tue 31/03/2009 8:46:55 AM
Ex C Stanford Coverage Warrant.pdf
Ex D Stanford Brokerage Warrant.pdf
Ex E Carlton Fields re Assignmt of Interests.pdf

-----Original Message-----
From: James Burden [mailto:JBurden@kinemed.com]
Sent: 31 March 2009 01:44
To: Madsen, Iben; OPi@StanfordEagle.com; cweiser@stanfordeagle.com; svidal-pope@stanfordeagle.com
Cc: David Fineman
Subject: KineMed, Inc. Stanford Group Transaction - Second Email REVISED

To the addresses:

PLEASE DELETE THE SECOND EMAIL IN THE SERIES – THE ATTACHMENTS WERE IN THE WRONG SEQUENCE

THIS IS THE SECOND OF THE SERIES

Please open the attached PDF Files. Because of the size of the attachments, this email will be sent in a series of emails. This is the second of the series.

After you review all of the attachments, if you have any questions, please contact me.

Very truly yours, Jim Burden

James E. Burden

KineMed, Inc.

5980 Horton Street, Ste 400

Emeryville, CA 94608

Phone 415 421 0404

THIS WARRANT AND THE SECURITIES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED.

Void after

WAR-000401 June 30, 2014

KINEMED, INC.

WARRANT TO PURCHASE SHARES

This Warrant is issued to Stanford Venture Capital Holdings, Inc. by KineMed, Inc., a Delaware corporation (the "**Company**"), pursuant to the terms of that certain 10% Senior Convertible Notes Subscription Agreement and Investor Data Questionnaire (the "**Subscription Agreement**") of even date herewith, in connection with the Company's issuance to the holder of this Warrant of a convertible promissory note (the "**Note**").

1. Purchase of Shares. Subject to the terms and conditions hereinafter set forth and set forth in the Subscription Agreement, the holder of this Warrant is entitled, upon surrender of this Warrant at the principal office of the Company (or at such other place as the Company shall notify the holder hereof in writing), to purchase from the Company up to 303,030 Shares (as defined below).

2. Definitions.

(a) Exercise Price. The exercise price for the Shares shall be $4.00 per share (such price, as adjusted from time to time, is herein referred to as the "**Exercise Price**").

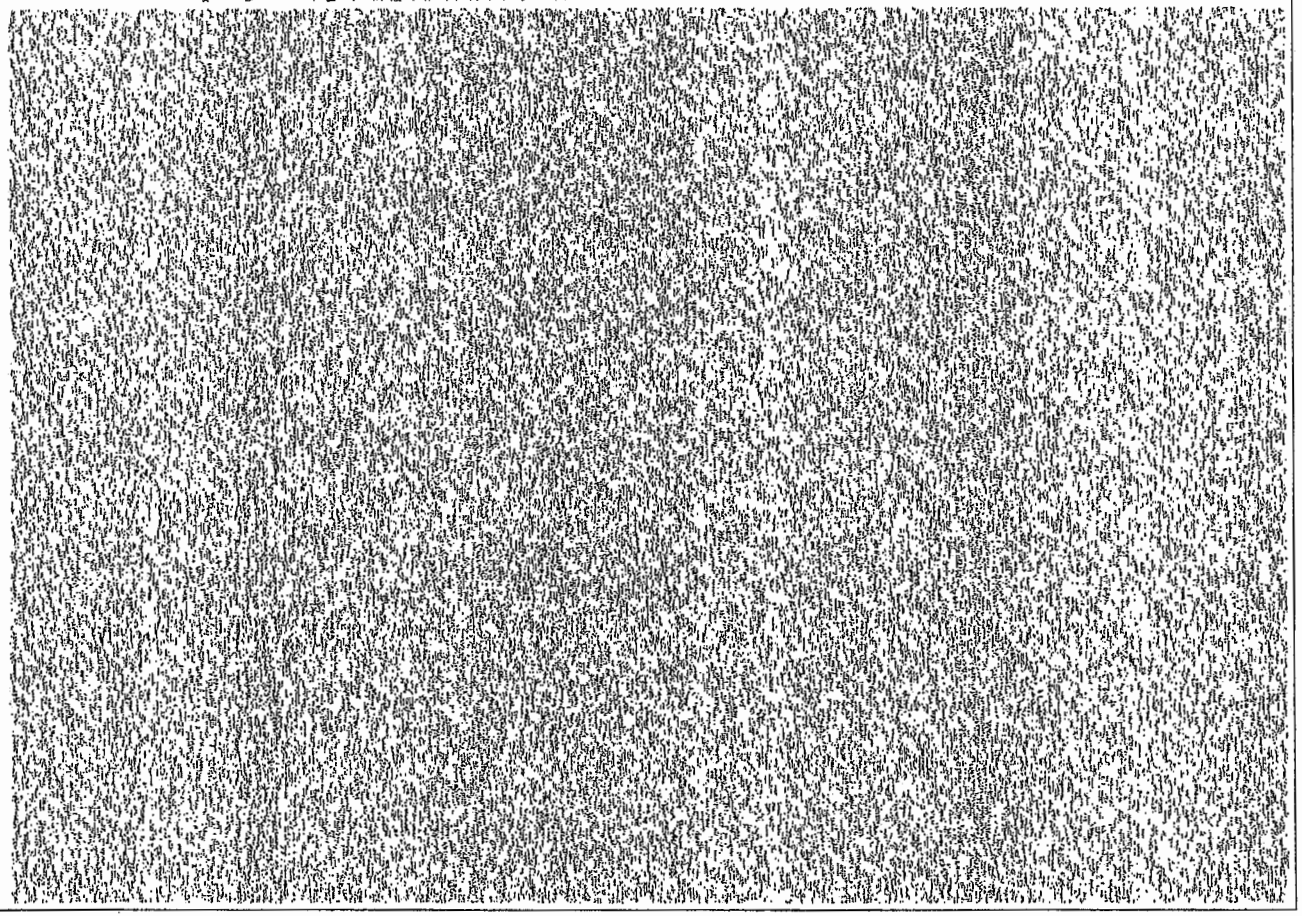
(b) Exercise Period. This Warrant shall be exercisable, in whole or in part, during the term commencing on the date of this Warrant and ending on the expiration of this Warrant pursuant to Section 13 hereof.

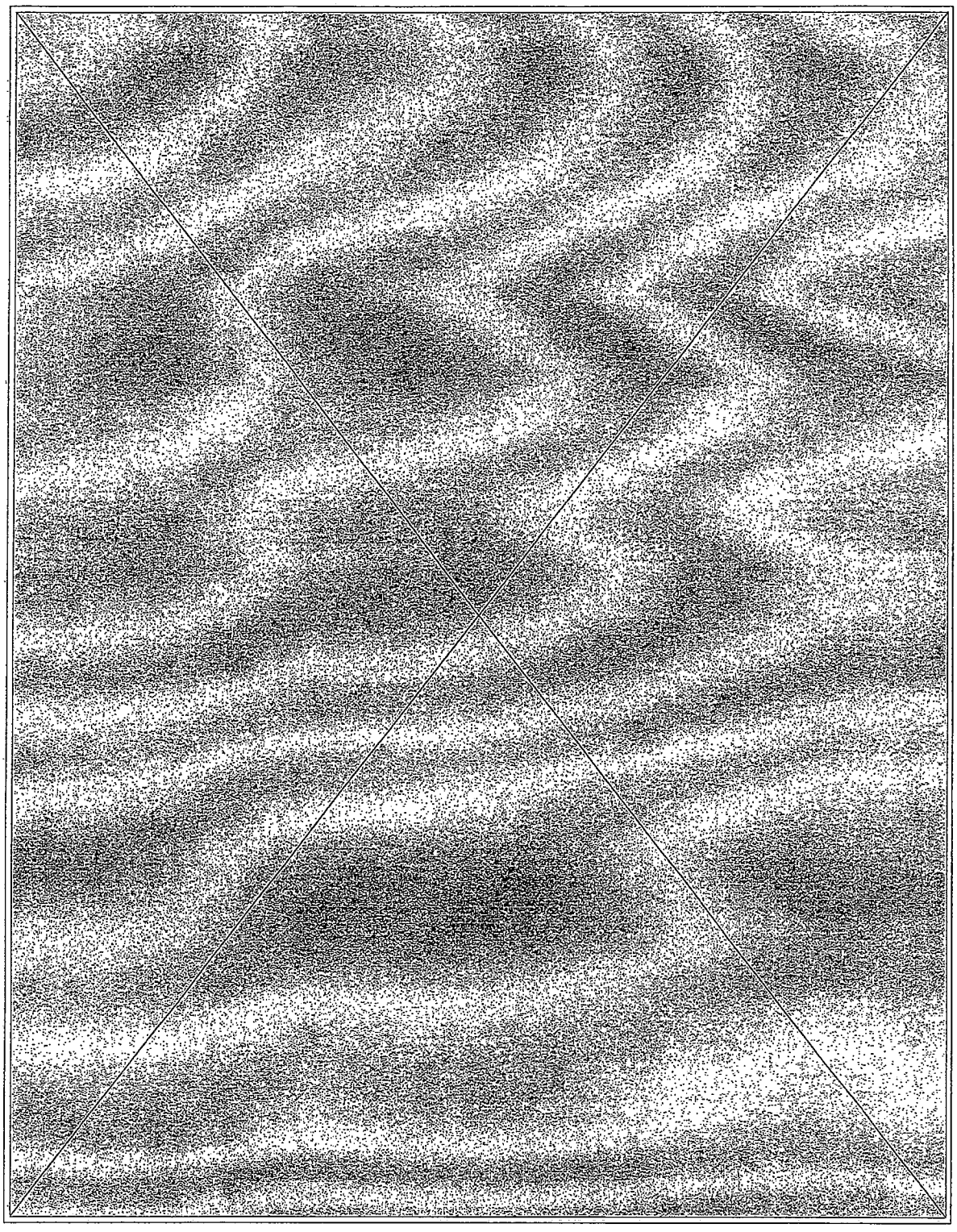
(c) The Shares. The term "**Shares**" shall mean shares of the Company's Common Stock.

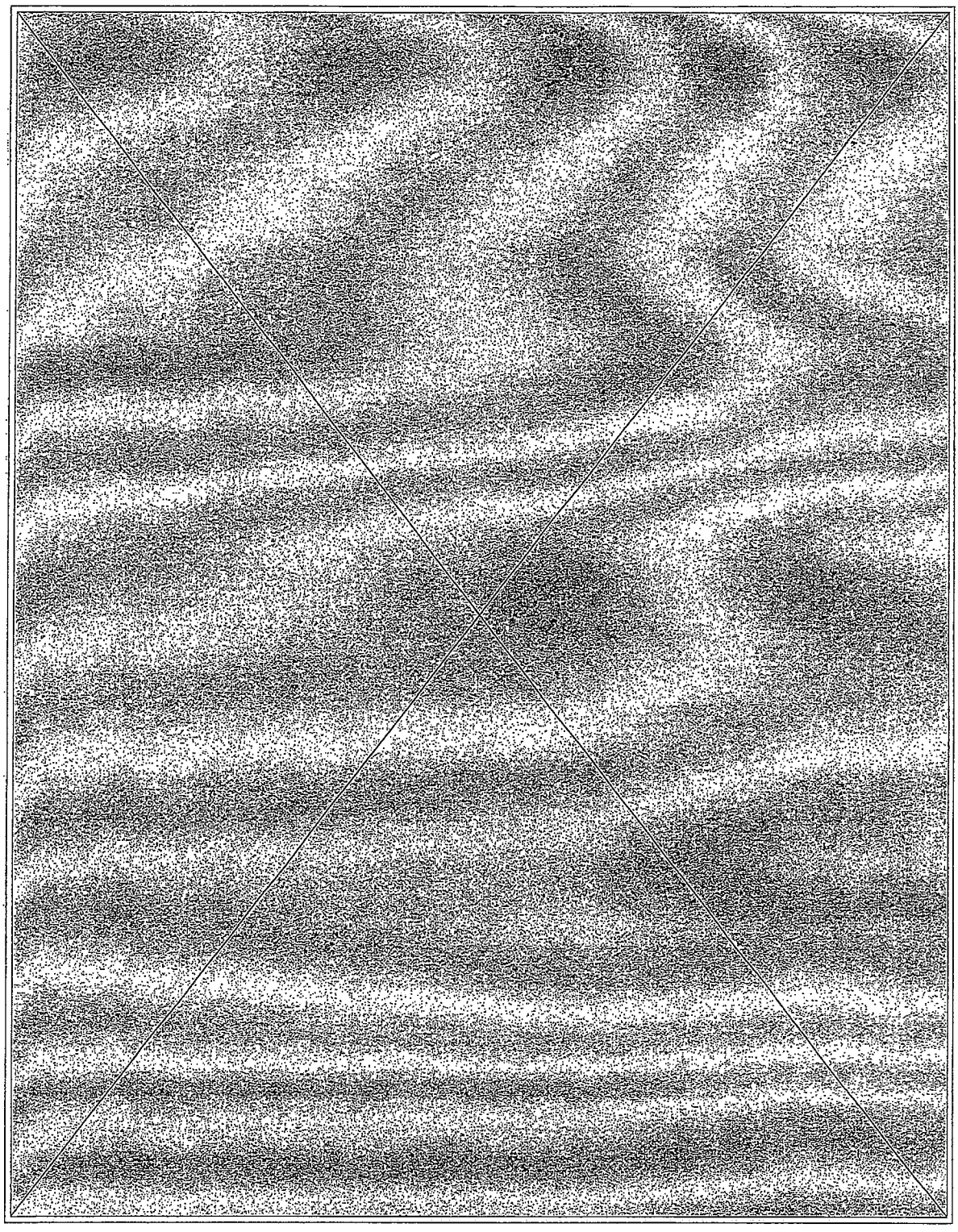
(d) Change of Control. The term "**Change of Control**" shall mean (i) any consolidation or merger involving the Company pursuant to which the Company's stockholders own less than fifty percent (50%) of the voting securities of the surviving entity or (ii) the sale of all or substantially all of the assets of the Company.

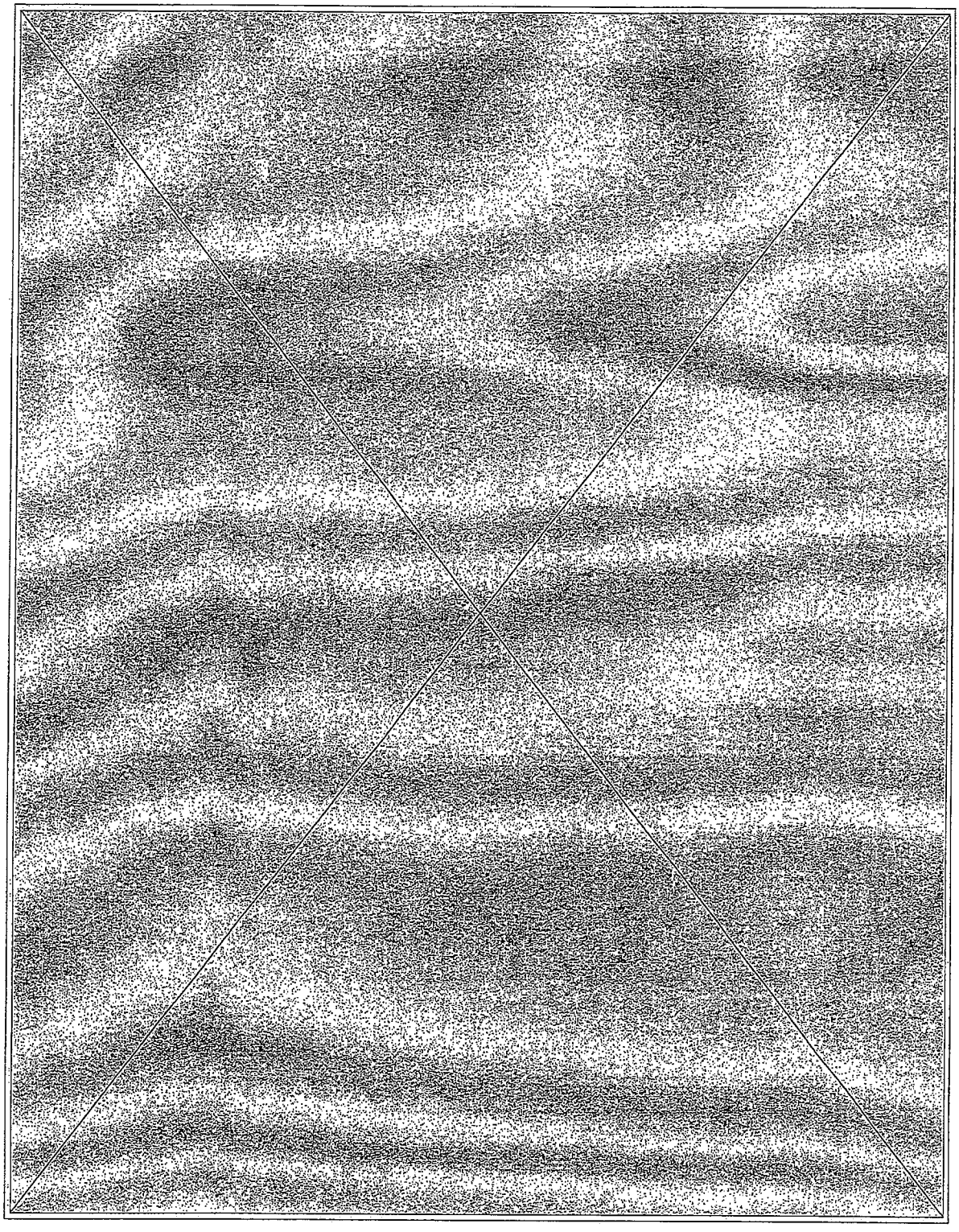
3. Method of Exercise. While this Warrant remains outstanding and exercisable in accordance with Section 2 above, the holder may exercise, in whole or in part, the purchase rights evidenced hereby. Such exercise shall be effected by:

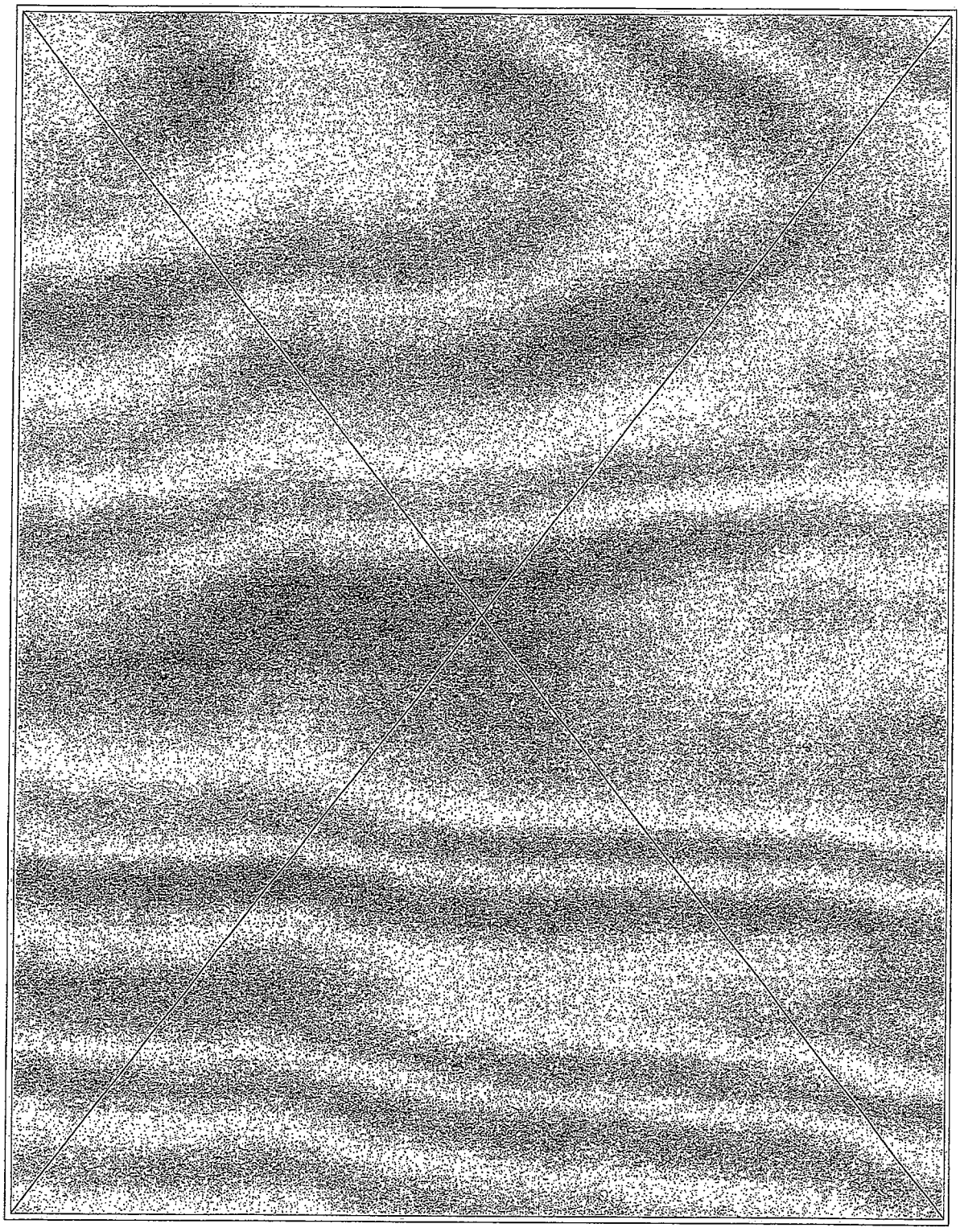
(i) the surrender of the Warrant, together with a notice of exercise to the President of the Company at its principal offices; and

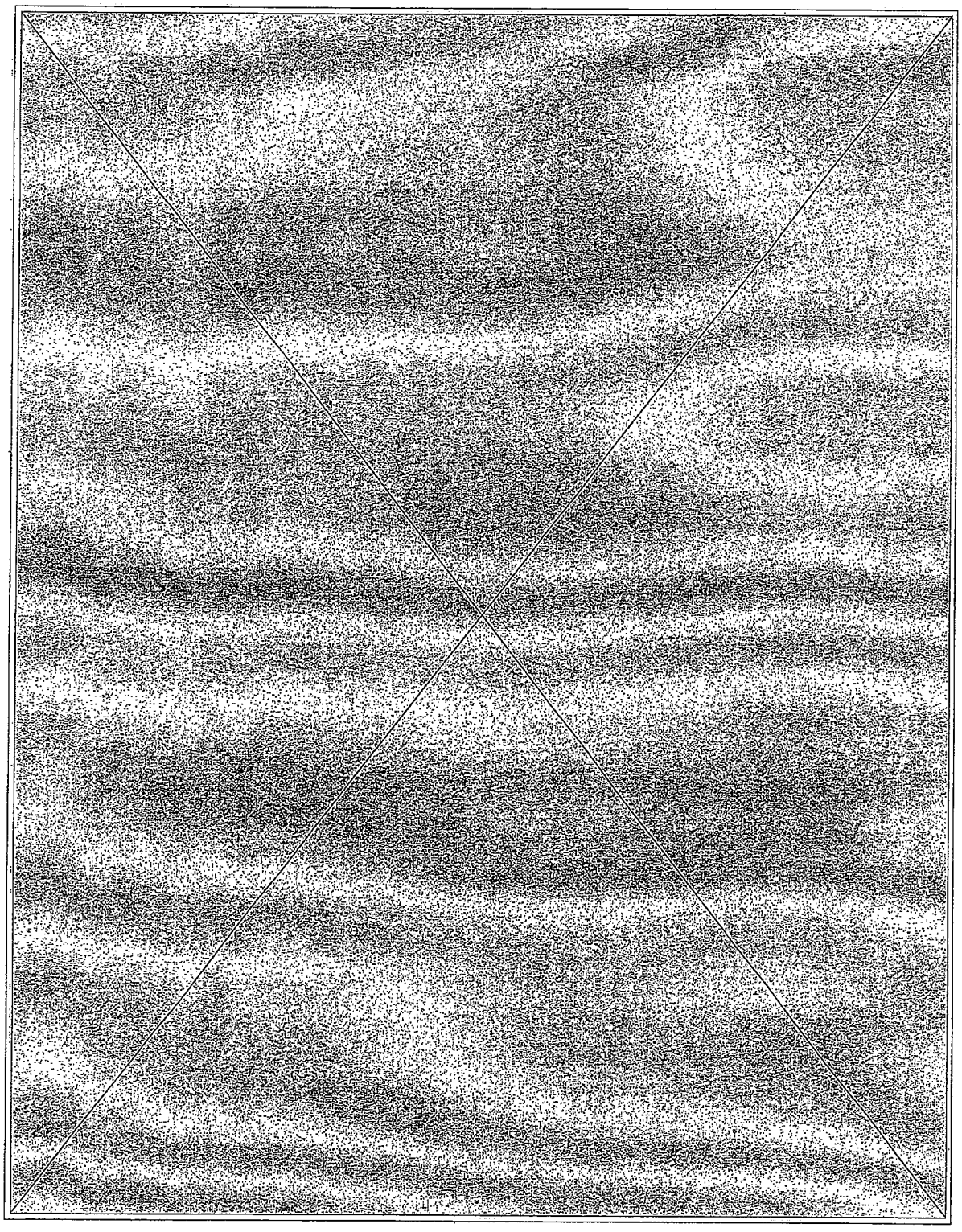


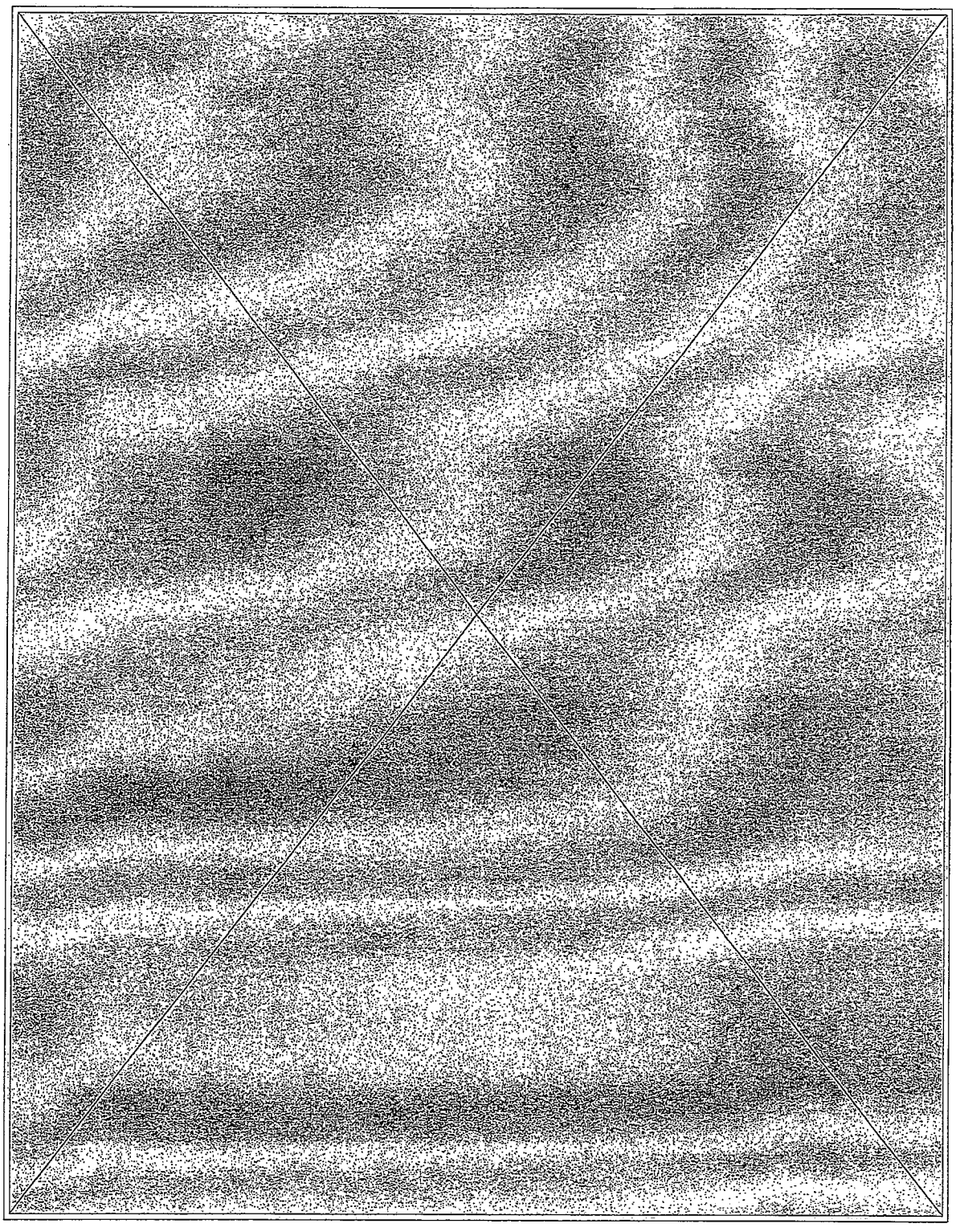


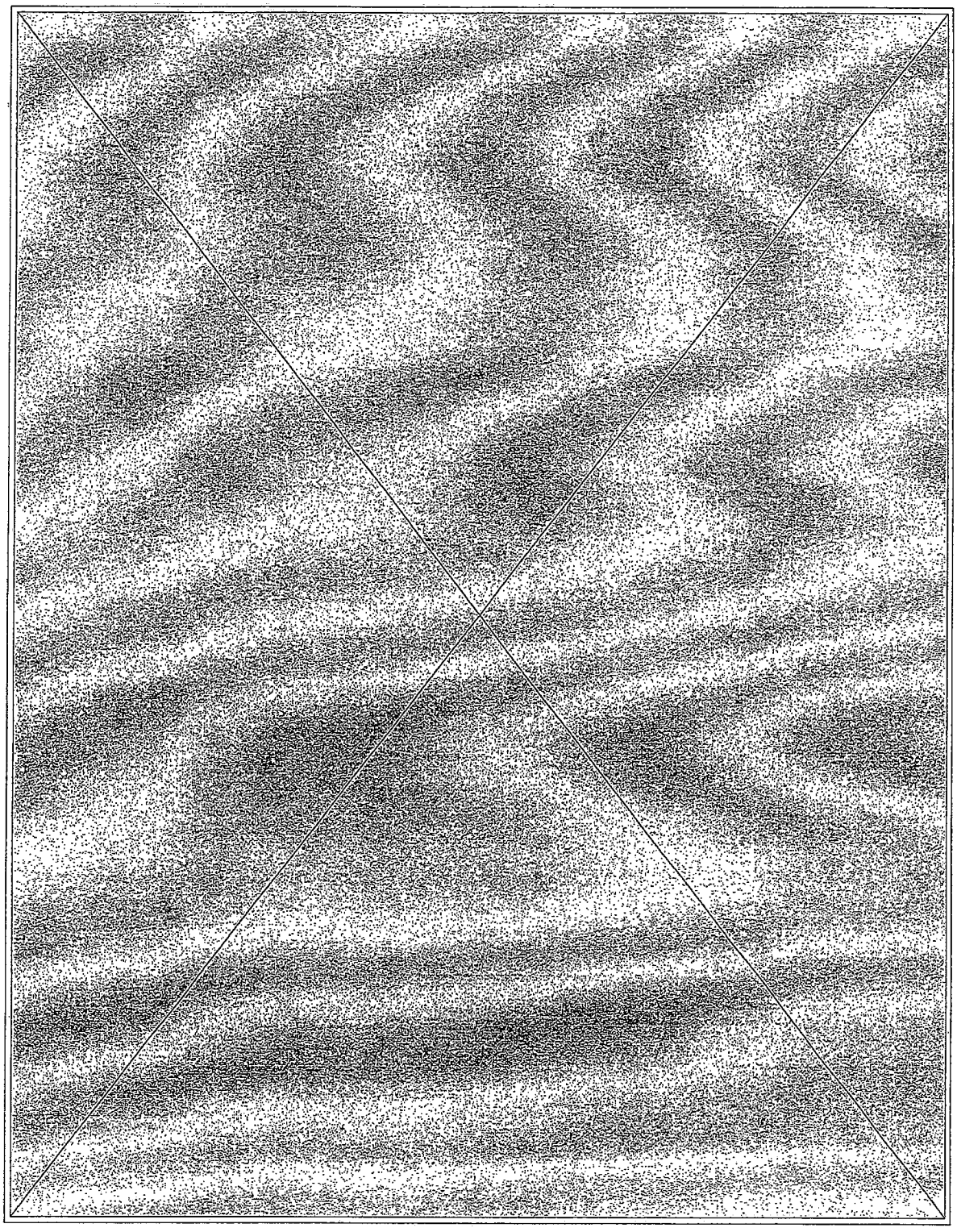


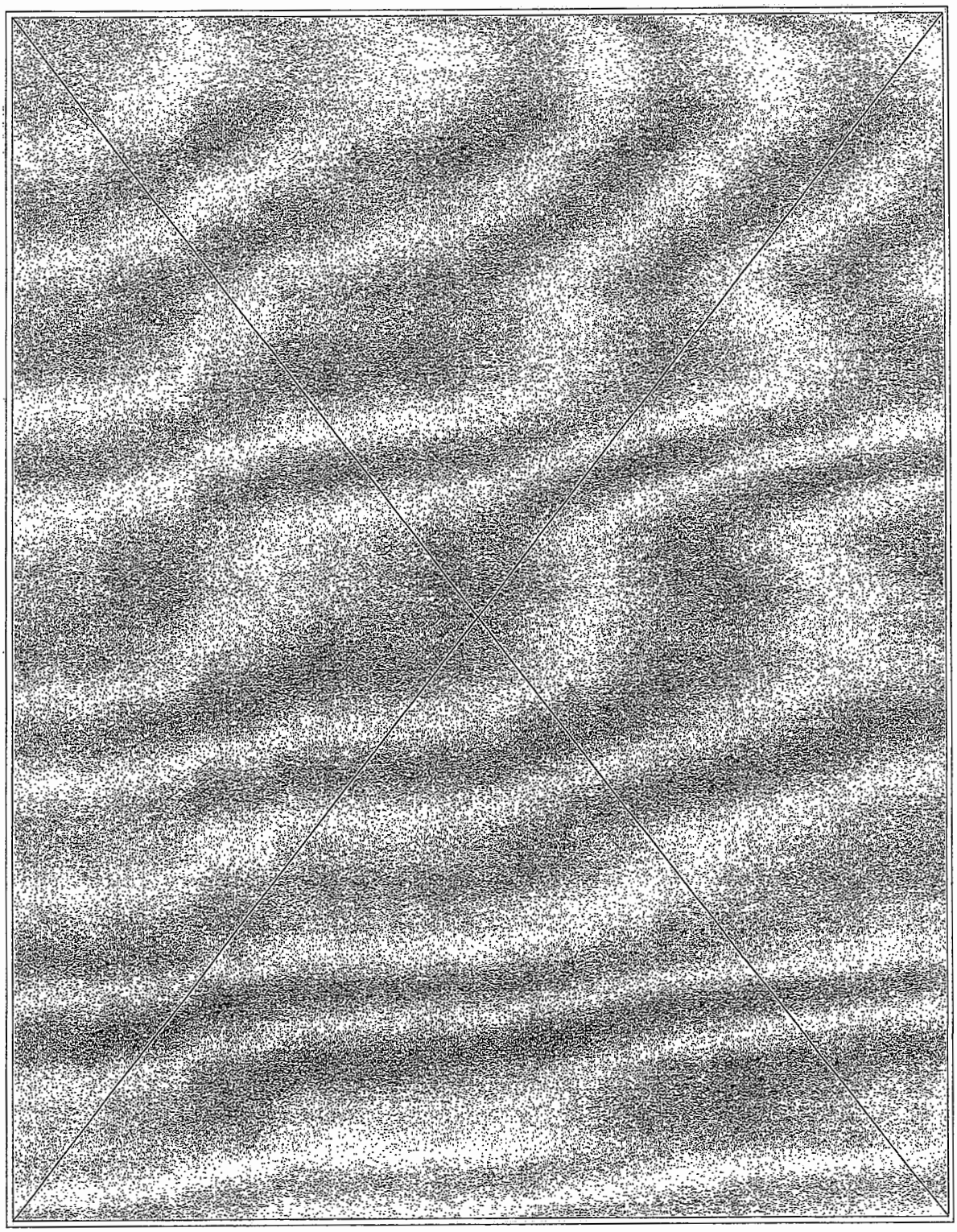


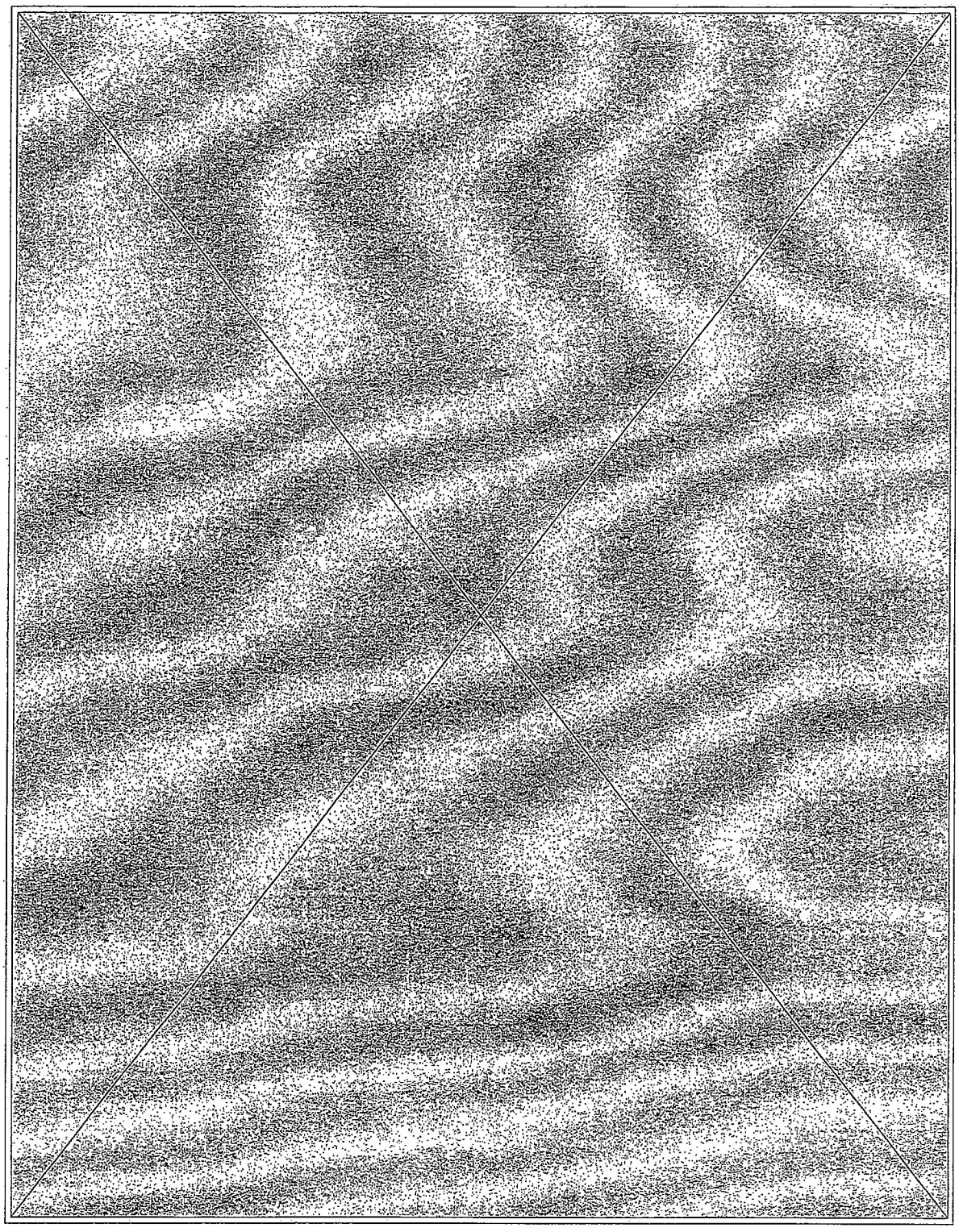












THIS WARRANT AND THE SECURITIES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED.

Void after

WAR-000444

October 31, 2014

KINEMED, INC.

WARRANT TO PURCHASE SHARES

This Warrant is issued to Stanford Venture Capital Holdings, Inc. by KineMed, Inc., a Delaware corporation (the "**Company**"), pursuant to the terms of that certain Private Placement Memorandum (the "**PPM**") dated as of March 1, 2006, in connection with the Company's 10% Senior Convertible Notes Offering.

1. Purchase of Shares. Subject to the terms and conditions hereinafter set forth and set forth in the PPM, the holder of this Warrant is entitled, upon surrender of this Warrant at the principal office of the Company (or at such other place as the Company shall notify the holder hereof in writing), to purchase from the Company up to 50,000 Shares (as defined below).

2. Definitions.

(a) Exercise Price. The exercise price for the Shares shall be $3.30 per share (such price, as adjusted from time to time, is herein referred to as the "**Exercise Price**").

(b) Exercise Period. This Warrant shall be exercisable, in whole or in part, during the term commencing on the date of this Warrant and ending on the expiration of this Warrant pursuant to Section 13 hereof.

(c) The Shares. The term "**Shares**" shall mean shares of the Company's Common Stock.

(d) Change of Control. The term "**Change of Control**" shall mean (i) any consolidation or merger involving the Company pursuant to which the Company's stockholders own less than fifty percent (50%) of the voting securities of the surviving entity or (ii) the sale of all or substantially all of the assets of the Company.

3. Method of Exercise. While this Warrant remains outstanding and exercisable in accordance with Section 2 above, the holder may exercise, in whole or in part, the purchase rights evidenced hereby. Such exercise shall be effected by:

(i) the delivery of a completed and correct investor suitability questionnaire in a form satisfactory to the Company to the President of the Company, representing that the holder is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the "Act") and other state or federal securities laws and regulations by reason of qualification and compliance at the time of exercise;

(ii) the surrender of the Warrant, together with a notice of exercise to the President of the Company at its principal offices; and

(iii) the payment to the Company of an amount equal to the aggregate Exercise Price for the number of Shares being purchased.

4. Certificates for Shares. Upon the exercise of the purchase rights evidenced by this Warrant, one or more certificates for the number of Shares so purchased shall be issued as soon as practicable thereafter, and in any event within thirty (30) days of the delivery of the subscription notice.

5. Issuance of Shares. The Company covenants that the Shares, when issued pursuant to the exercise of this Warrant, will be duly and validly issued, fully paid and nonassessable and free from all taxes, liens, and charges with respect to the issuance thereof.

6. Adjustment of Exercise Price and Number of Shares. The number of and kind of securities purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as follows:

(a) Subdivisions, Combinations and Other Issuances. If the Company shall at any time prior to the expiration of this Warrant subdivide the Shares, by split-up or otherwise, or combine its Shares, or issue additional shares of its Shares as a dividend, the number of Shares issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the purchase price payable per share, but the aggregate purchase price payable for the total number of Shares purchasable under this Warrant (as adjusted) shall remain the same. Any adjustment under this Section 6(a) shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

(b) Reclassification, Reorganization and Consolidation. In case of any reclassification, capital reorganization, or change in the capital stock of the Company (other than as a result of a subdivision, combination, or stock dividend provided for in Section 6(a) above), then the Company shall make appropriate provision so that the holder of this Warrant shall have the right at any time prior to the expiration of this Warrant to purchase, at a total price equal to that payable

upon the exercise of this Warrant, the kind and amount of shares of stock and other securities and property receivable in connection with such reclassification, reorganization, or change by a holder of the same number of Shares as were purchasable by the holder of this Warrant immediately prior to such reclassification, reorganization, or change. In any such case appropriate provisions shall be made with respect to the rights and interest of the holder of this Warrant so that the provisions hereof shall thereafter be applicable with respect to any shares of stock or other securities and property deliverable upon exercise hereof, and appropriate adjustments shall be made to the purchase price per share payable hereunder, provided the aggregate purchase price shall remain the same.

(c) Notice of Adjustment. When any adjustment is required to be made in the number or kind of shares purchasable upon exercise of the Warrant, or in the Exercise Price, the Company shall promptly notify the holder of such event and of the number of Shares or other securities or property thereafter purchasable upon exercise of this Warrant.

7. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant, but in lieu of such fractional shares the Company shall make a cash payment therefor on the basis of the Exercise Price then in effect.

8. Representations of the Company. The Company represents that all corporate actions on the part of the Company, its officers, directors and stockholders necessary for the sale and issuance of this Warrant have been taken.

9. Representations and Warranties by the Holder. The holder represents and warrants to the Company as follows:

(a) This Warrant and the Shares issuable upon exercise thereof are being acquired for its own account, for investment and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Act. Upon exercise of this Warrant, the holder shall, if so requested by the Company, confirm in writing, in a form satisfactory to the Company, that the securities issuable upon exercise of this Warrant are being acquired for investment and not with a view toward distribution or resale.

(b) The holder understands that the Warrant and the Shares have not been registered under the Act by reason of their issuance in a transaction exempt from the registration and prospectus delivery requirements of the Act pursuant to Section 4(2) thereof, and that they must be held by the holder indefinitely, and that the holder must therefore bear the economic risk of such investment indefinitely, unless a subsequent disposition thereof is registered under the Act or is exempted from such registration. The holder further understands that the Warrant Shares have not been qualified under the California Securities Law of 1968 (the "California Law") by reason of their issuance in a transaction exempt from the qualification requirements of the California Law pursuant to Section 25102(f) thereof, which exemption depends upon, among other things, the bona fide nature of the holder's investment intent expressed above.

(c) The holder has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the purchase of this Warrant and the

Shares purchasable pursuant to the terms of this Warrant and of protecting its interests in connection therewith.

(d) The holder is able to bear the economic risk of the purchase of the Shares pursuant to the terms of this Warrant.

(e) The holder is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under the Act.

10. Restrictive Legend.

The Shares (unless registered under the Act) shall be stamped or imprinted with a legend in substantially the following form:

> THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUCH SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY.

11. Warrants Transferable. Subject to compliance with the terms and conditions of this Section 11, this Warrant and all rights hereunder are transferable, in whole, without charge to the holder hereof (except for transfer taxes), upon surrender of this Warrant properly endorsed or accompanied by written instructions of transfer. With respect to any offer, sale or other disposition of this Warrant or any Shares acquired pursuant to the exercise of this Warrant prior to registration of such Warrant or Shares, the holder hereof agrees to give written notice to the Company prior thereto, describing briefly the manner thereof, together with a written opinion of such holder's counsel, or other evidence, if requested by the Company, to the effect that such offer, sale or other disposition may be effected without registration or qualification (under the Act as then in effect or any federal or state securities law then in effect) of this Warrant or the Shares and indicating whether or not under the Act certificates for this Warrant or the Shares to be sold or otherwise disposed of require any restrictive legend as to applicable restrictions on transferability in order to ensure compliance with such law. Upon receiving such written notice and reasonably satisfactory opinion or other evidence, if so requested, the Company, as promptly as practicable, shall notify such holder that such holder may sell or otherwise dispose of this Warrant or such Shares, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this Section 11 that the opinion of counsel for the holder or other evidence is not reasonably satisfactory to the Company, the Company shall so notify the holder promptly with details thereof after such determination has been made. Each certificate representing this Warrant or the Shares transferred in

accordance with this Section 11 shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with such laws, unless in the aforesaid opinion of counsel for the holder, such legend is not required in order to ensure compliance with such laws. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

12. Rights of Stockholders. No holder of this Warrant shall be entitled, as a Warrant holder, to vote or receive dividends or be deemed the holder of the Shares or any other securities of the Company which may at any time be issuable on the exercise hereof for any purpose, nor shall anything contained herein be construed to confer upon the holder of this Warrant, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action (whether upon any recapitalization, issuance of stock, reclassification of stock, change of par value, consolidation, merger, conveyance, or otherwise) or to receive notice of meetings, or to receive dividends or subscription rights or otherwise until the Warrant shall have been exercised and the Shares purchasable upon the exercise hereof shall have become deliverable, as provided herein.

13. Expiration of Warrant; Notice of Certain Events Terminating This Warrant.

(a) This Warrant shall expire and shall no longer be exercisable upon the earlier to occur of:

(i) 5:00 p.m., California local time, on December 12, 2014

(ii) The consummation of any Change of Control; or

(iii) The closing of the initial public offering of the Company's Common Stock.

(b) The Company shall provide at least ten (10) days prior written notice of any event set forth in Section 13(a)(ii) or (iii).

14. Notices. All notices and other communications required or permitted hereunder shall be in writing, shall be effective when given, and shall in any event be deemed to be given upon receipt or, if earlier, (a) five (5) days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by first class mail, postage prepaid, (b) upon delivery, if delivered by hand, (c) one business day after the business day of deposit with Federal Express or similar overnight courier, freight prepaid or (d) one business day after the business day of facsimile transmission, if delivered by facsimile transmission with copy by first class mail, postage prepaid, and shall be addressed (i) if to the holder, at the holder's address and (ii) if to the Company, at the address of its principal corporate offices (attention: President), with a copy to Jon Layman, Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, CA 94304 or at such other address as a party may designate by ten days advance written notice to the other party pursuant to the provisions above.

15. "Market Stand-Off" Agreement. The holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the

final prospectus relating to the Company's initial public offering ("IPO") and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days, or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock of the Company or any securities convertible into or exercisable or exchangeable for Common Stock (whether such shares or any such securities are then owned by the holder or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise. The foregoing provisions of this Section 14 shall apply only to the Company's IPO, shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the holders if all officers and directors enter into similar agreements and the Company uses all reasonable efforts to obtain similar agreements from all other greater than one percent (1%) stockholders. The underwriters in connection with the Company's IPO are intended third-party beneficiaries of this Section 14 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each holder further agrees to execute such agreements as may be reasonably requested by the underwriters in the Company's IPO that are consistent with this Section 14 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters, except in the case of legal separation, divorce or pursuant to the terms of a court order, shall apply to all holders subject to such agreements pro rata based on the number of shares subject to such agreements, provided that, notwithstanding the foregoing, the Company and the underwriters may, in their sole discretion, waive or terminate these restrictions with respect to up to 1% of the Company's outstanding Common Stock.

16. Governing Law. This Warrant and all actions arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California or of any other state.

17. Rights and Obligations Survive Exercise of Warrant. Unless otherwise provided herein, the rights and obligations of the Company, of the holder of this Warrant and of the holder of the Shares issued upon exercise of this Warrant, shall survive the exercise of this Warrant.

Issued this October 31, 2007

KINEMED, INC.

By: _____

Name: David M. Fineman

Title: President and Chief Executive Officer

EXHIBIT A

NOTICE OF EXERCISE

TO: KINEMED, INC.
5980 Horton Street, Suite 400
Emeryville, CA 94608
Attention: President

1. The undersigned hereby elects to purchase _____ Shares of _____ pursuant to the terms of the attached Warrant.

2. Method of Exercise (Please initial the applicable blank):

___ The undersigned elects to exercise the attached Warrant by means of a cash payment, and tenders herewith payment in full for the purchase price of the shares being purchased, together with all applicable transfer taxes, if any.

3. Please issue a certificate or certificates representing said Shares in the name of the undersigned or in such other name as is specified below:

_____
(Name)

_____

_____
(Address)

4. The undersigned hereby represents and warrants that the aforesaid Shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale, in connection with the distribution thereof, and that the undersigned has no present intention of distributing or reselling such shares and all representations and warranties of the undersigned set forth in Section 9 of the attached Warrant (including Section 9 (e) thereof) are true and correct as of the date hereof.

_____
(Signature)

_____
(Name)

_____ _____
(Date) (Title)

EXHIBIT B

FORM OF TRANSFER
(To be signed only upon transfer of Warrant)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the right represented by the attached Warrant to purchase _____ shares of _____ of KINEMED, INC. to which the attached Warrant relates, and appoints _____ Attorney to transfer such right on the books of _____, with full power of substitution in the premises.

Dated: _____

_____
(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

Address: _____
_____
_____

Signed in the presence of:

_____

To: O'Connor, William[William.OConnor@cms-cmck.com]; Hennis, Daniel[Daniel.Hennis@cms-cmck.com]; Rees, Rachel[Rachel.Rees@cms-cmck.com]
Cc: WILTSHIRE, Peter[Peter.WILTSHIRE@cms-cmck.com]; HICKMOTT, Robert[Robert.Hickmott@cms-cmck.com]
From: Madsen, Iben
Sent: Tue 31/03/2009 8:47:16 AM
Importance: Normal
Subject: FW: KineMed, Inc. Stanford Group Transaction - Third and Last of Series of Emails
MAIL_RECEIVED: Tue 31/03/2009 8:47:16 AM
Ex F KineMed Letter to Investors complete 12 Nov 2008.pdf
Ex G Amended Cert Incorp.pdf
Ex H KineMed - Series AA letter to noteholders.pdf

-----Original Message-----
From: James Burden [mailto:JBurden@kinemed.com]
Sent: 31 March 2009 01:48
To: Madsen, Iben; OPi@StanfordEagle.com; cweiser@stanfordeagle.com; svidal-pope@stanfordeagle.com
Cc: David Fineman
Subject: KineMed, Inc. Stanford Group Transaction - Third and Last of Series of Emails

To the addresses:

Please open the attached PDF Files. Because of the size of the attachments, this email will be sent in a series of emails. This is the third and the last of the series.

After you review all of the attachments, if you have any questions, please contact me.

Very truly yours, Jim Burden

James E. Burden

KineMed, Inc.

5980 Horton Street, Ste 400

Emeryville, CA 94608

Phone 415 421 0404

KineMed

CONFIDENTIAL

November 12, 2008

TO INVESTORS OF KINEMED, INC.:

As you may be aware, KineMed, Inc. (the "**Company**") has been actively trying to raise capital for some time. In a letter dated October 17, 2008, the Company provided shareholders a business update and proposed terms for a financing. Unfortunately, the terms of that proposal were not sufficiently attractive to convince shareholders to make additional investments in the Company. The Company now finds itself in urgent need of new capital and, as a result, is proposing a new financing structure that would involve the recapitalization of the outstanding capital stock and debt of the Company and offer terms the Company believes are sufficiently attractive to bring in the necessary funds. The Company also believes the recapitalization will make the Company more attractive to future investors or strategic partners.

The Company has worked aggressively to control expenditures and increase revenues. The Company believes that for a modest additional investment in a small number of select compounds advantaged by its translational medicine capabilities, the Company can increase its value in a cost effective manner, thereby positioning the Company to undertake a strategic or capital raising transaction in the future.

Accordingly, the Company believes the proposed financing and recapitalization will attract the necessary funding while rewarding investors who are steadfast in supporting KineMed through these difficult times. Briefly stated, the Company is asking each of you to approve the financing and recapitalization described in this letter and to invest an incremental amount in a new Series AA Preferred Stock, based on your pro rata ownership of the Company.

The Company is enthusiastic about the progress that KineMed has made with your support in building state-of-the-art capabilities in translational medicine applicable to a broad range of therapy areas. The Company is also enthusiastic about its ability to apply this platform to the creation of a KineMed product pipeline. KineMed is now recognized by large pharmaceutical companies for these capabilities and is regularly engaged to help them create value in their early development pipelines.

This letter provides details on this proposal.

The Company currently proposes to raise up to approximately $7.5 million by issuing up to 125 million shares of Series AA Preferred Stock ("**Series AA Preferred**") at a per share purchase price of $0.06 (the "**Financing**"). In connection with, and prior to the closing of, the Financing, the Company proposes to (i) undertake a recapitalization pursuant to which all of the Company's outstanding Preferred Stock and 10% Senior Convertible Notes would be converted to Common Stock (the "**Recapitalization**"), (ii) amend its Amended and Restated Certificate of Incorporation to create Series AA Preferred and make certain other changes (the "**Certificate Amendment**"), (iii) increase the number of shares available for issuance pursuant to the Company's 2001 Stock Option Plan (the "**Option Plan Increase**") and (iv) amend the Company's outstanding warrants to purchase shares of Common Stock to reduce the exercise prices (the "**Warrant Amendment**"). The terms of the Financing are described

KineMed, Inc. · 5980 Horton Street, Suite 400 · Emeryville, CA 94608 · phone (510) 655-6525 · fax (510) 655-6506

below and on the term sheet attached hereto as Exhibit A (the "**Term Sheet**"). For your reference, a copy of the Company's Private Placement Memorandum will be forwarded to you separately in a few days.

As a stockholder and/or noteholder in the Company (collectively, the "**Investors**"), you are being offered the opportunity to purchase up to your pro rata portion of the Series AA Preferred stock to be offered in the Financing. Your pro rata portion may be calculated by dividing the number of shares of Common Stock that you would own Post-Recapitalization by the Post-Recapitalization number of shares of Common Stock outstanding (34,540,257) and multiplying that number by $7.5 million (the maximum aggregate offering of the Financing). If you so wish, you may elect to participate for a greater amount of the Financing than your pro rata portion and the Company will accept such additional subscriptions in its discretion. Please be advised that federal and state securities laws prevent the Company from accepting a subscription from any Investor unless they are an "accredited investor" as defined under Regulation D of the Securities Act of 1933. The definitions of "accredited investor" are set forth on the Investor Suitability Questionnaire attached hereto as Exhibit D.

The purpose of this letter is to (i) solicit your approval of the Financing, the Recapitalization, the Certificate Amendment, the Option Plan Increase and the Warrant Amendment (collectively, the "Proposals") and (ii) determine your interest in participating in the Financing.

If you wish to participate in the Financing, please review this letter and do the following:

- Review the Action by Written Consent of the Investors attached hereto as Exhibit C;
- Complete the Investor Suitability Questionnaire attached hereto as Exhibit D;
- Review the Series AA Preferred Stock Purchase Agreement and the Investors' Rights Agreement in the forms attached hereto as Exhibit E and Exhibit F, respectively;
- Sign all of the signature pages enclosed in the Signature Page Packet attached hereto as Exhibit G and return your completed questionnaire and all signed signature pages by fax to David Fineman at (510) 655-6506 and by mail to the Company's address at 5980 Horton Street, Suite 400, Emeryville, CA 94608-2012; and
- Please wire your funds by using the Company's wire instructions attached hereto as Exhibit H or send a check payable to KineMed, Inc. in the amount you wish to participate to David Fineman at the Company's address.

If you approve of the Proposals but do not wish to participate in the Financing, please do the following:

- Review and sign the Action by Written Consent of the Investors attached hereto as Exhibit C and return your signed signature page by fax to David Fineman at (510) 655-6506 and by mail to the Company's address at 5980 Horton Street, Suite 400, Emeryville, CA 94608-2012.

Your consideration of these matters is important and you are strongly encouraged to read this letter and all documents enclosed with this letter in their entirety prior to deciding on the above matters.

OVERVIEW OF THE FINANCING

Background to the Financing

Over the past several months, the Company has been actively and aggressively seeking to raise additional capital. The Company has engaged in discussions with numerous current and outside potential investors for the purpose of investigating and evaluating the sources of financing available to the Company necessary for it to continue operations. As you are no doubt aware, the investment climate today is generally not favorable for companies seeking to raise capital. The current market conditions have caused many investors to cut back significantly on their investment activity and to demand that newly invested capital receive significant preferences in the event of a sale or liquidation of these companies in which they invest. Based on our conversations with investors, it has become clear that our existing capital structure is a significant impediment to attracting new money, given that $16.6 million in existing note holder debt and accrued interest comes due in 2009-10. Based on present economic conditions and the state of capital markets, it is uncertain that the Company will be able to meet this obligation.

Based on its current financial situation, management believes that the Company will need to raise at least $3.5 million to fund operations for at least the next 12 months. As of November 1, 2008, the Company had cash in the amount of $111,000, accounts payable of $1,066,000 and accounts receivable of $1,332,000. Based upon existing contracts, ongoing partnering discussions and grants in process, the Company anticipates 2008 revenues of $5 million and 2009 revenues of $6 million. Of this amount, $2,372,000 is under contract from grants or service contracts with pharmaceutical companies. Our monthly cash expenses are approximately $750,000 per month, which is reduced from previous monthly expenditures in excess of $1 million, and we intend to further reduce expenses to $650,000 or less per month by the first quarter of 2009.

Accordingly, the Company has decided to undertake a new round of financing pursuant to which shares of Series AA Preferred Stock are being offered pro rata to accredited investors who are Investors of the Company. In summary, the Company is offering up to $7.5 million of Series AA Preferred Stock which will have a liquidation preference equal to its purchase price and will represent, in aggregate, approximately 78% of the issued and outstanding stock of the Company, on an as-converted basis, Post-Financing. The proposed terms of the Financing are described in more detail on the attached Term Sheet.

Anticipated Initial Closing

The Company anticipates completing the initial closing of the Financing when it receives executed documents from investors for the purchase of $1.0 million of Series AA Preferred Stock (the "**Initial Closing**").

Recapitalization

Conversion of Preferred Stock

As a condition necessary for the completion of the Financing, the Board is seeking approval from the holders of each class of Preferred Stock for a plan of recapitalization in which outstanding shares of the Company's Series A, Series B and Series C Convertible Preferred Stock (collectively, the "**Outstanding Preferred Stock**") are converted into shares of Common Stock at a rate equal to the

conversion rates of each respective series of Preferred Stock (the "**Preferred Stock Conversion**") as set forth in the Company's current Amended and Restated Certificate of Incorporation (the "**Current Certificate**"). Pursuant to the Current Certificate, one (1) share of the Outstanding Preferred Stock will convert into one (1) share of Common Stock. If approved, the Preferred Stock Conversion would take effect immediately prior to the Initial Closing of the Financing with no further action required by the holders of Preferred Stock.

Conversion of 10% Senior Convertible Notes

As a condition necessary for the completion the Financing, the Company is seeking the approval from the holders of the Company's outstanding 10% Senior Convertible Notes (the "**Notes**") to amend the Notes to automatically convert all outstanding principal plus any accrued and unpaid interest under the Notes to shares of the Company's Common Stock at $1.00 per share (the "**Note Conversion**"). If approved, the Note Conversion would take effect immediately prior to the Initial Closing of the Financing with no further action required by the holders of the Notes.

Conversion of Fineman Note

Mr. Fineman, President and Chairman of the Board, will convert a separate Convertible Subordinated Note dated June 30, 2002 together with accrued and unpaid interest at 5%, (the "**Fineman Note**") into Common Stock of the Company in connection with the Recapitalization. The Fineman Note, totaling $456,436 at October 31, 2008, will be converted prior to its original maturity date of June 30, 2009, and will convert at a conversion ratio of $1.00 per share rather than $1.50 per share as set forth in the original note.

Warrants

From time to time, the Company has issued warrants in connection with the issuance of convertible notes and Preferred Stock. In connection with the Financing and the Recapitalization, the Company's outstanding warrants to purchase shares of the Company's Common Stock at exercise prices ranging from $1.50 to $4.00 per share will be amended to reduce the exercise prices to $0.06 per share for warrants to acquire 2,171,863 shares of Common Stock that were issued in connection with the sale and issuance of the Notes and to $0.40 per share for all other warrants to acquire 2,016,310 shares of Common Stock, including the warrants issued to holders of Preferred Stock in connection with the approval of the Notes, warrants issued to holders of Preferred Stock as an additional bonus in connection with the purchase of the Notes, and warrants that had been issued from time to time to placement agents, consultants and landlords.

Capitalization

The table below sets forth the approximate shares and percentage ownership for each of the classes and/or series of capital stock of the Company on a pre-Recapitalization, Post-Recapitalization and Post-Financing basis. The table is based on the Company's outstanding capital stock as of the date of this letter and assumes (i) that the Financing is fully subscribed, including issuance of the Placement Agent warrant, and (ii) that all outstanding 10% Senior Convertible Notes and accrued interest through October 31, 2008, are converted to Common Stock at a conversion price of $3.30 per share Pre-Recapitalization

and $1.00 per share Post-Recapitalization, and (iii) the Fineman Note is converted to Common Stock at a conversion price of $1.50 per share Pre-Recapitalization and $1.00 Post-Recapitalization, and (iv) that all outstanding Preferred Stock will be converted to Common Stock at a ratio of one share of Common Stock per one share of Preferred Stock prior to the Initial Closing of the Financing, and (v) that the shares of Common Stock available for grant under the Company's 2001 Stock Option Plan will be increased from approximately 1.3 million shares to approximately 36.6 million shares.

Pro Forma Capitalization Table

	Pre-Recapitalization Shares	Pre-Recapitalization % Ownership	Post-Recapitalization Shares	Post-Recapitalization % Ownership	Post-Financing Shares	Post-Financing % Ownership	Post-Financing Fully-Diluted % Ownership
Common Stock issued and outstanding	7,894,728	35%	7,894,728	23%	7,894,728	5%	4%
Convertible Notes	5,344,586	23%	17,089,407	49%	17,089,407	11%	8%
Series A Preferred Stock	2,416,171	11%	2,416,171	7%	2,416,171	2%	1%
Series B Preferred Stock	3,889,313	17%	3,889,313	11%	3,889,313	2%	2%
Series C Preferred Stock	3,250,638	14%	3,250,638	9%	3,250,638	2%	2%
Series AA Preferred Stock	–	–	–	–	125,000,000	78%	60%
TOTALS (as-converted to Common Stock):	22,795,436	100%	34,540,257	100%	159,540,257	100%	76%
Warrants	4,188,173		4,188,173		4,188,173		2%
Options Outstanding	5,378,168		5,378,168		5,378,168		3%
New Placement Agent Warrants					4,166,667		2%
Options Available for Issue	1,306,813		1,306,813		36,595,606		17%
TOTALS	33,668,590		45,413,411		209,868,871		100%

Percentage totals may not add due to rounding.

APPROVAL BY THE BOARD OF DIRECTORS

Throughout this process, the members of the Board of Directors (the "**Board**") consulted extensively with the Company's management regarding the Financing. The Board reviewed and discussed the Term Sheet and the financial and other aspects of the proposed Financing and the Recapitalization. After careful consideration, the Board determined that pursuing the Financing and the Recapitalization on the terms set forth in the Term Sheet is in the best interests of the Company and the Investors given the current need for additional operating capital and the current investment climate. Accordingly, the Board approved the Financing and the Recapitalization. The Board also determined that the Certificate Amendment and the Option Plan Increase (as described below) are in the best interests of the Company and the Investors and thus approved both actions as well.

One of our board members, Edward Neugeboren, has an indirect interest in the Financing because he is a Managing Director of Ledgemont Capital Group, LLC ("**Ledgemont**"), which is serving as the Company's financial advisor and Placement Agent. As such, Ledgemont will receive a cash commission from the proceeds of the Financing and a warrant to purchase shares of the Company's Common Stock. Furthermore, Mr. Neugeboren is an investor in the Company and holds 16,666 shares of Series C Preferred Stock, options for 125,000 shares of Common Stock, and warrants for 43,069 shares of Common Stock.

David Fineman, Chairman of the Board and President of the Company, also has a direct interest in the Financing. Mr. Fineman will be participating in the Note Conversion and will also convert a separate Convertible Subordinated Note dated June 30, 2002 together with accrued and unpaid interest at 5%, (the "**Fineman Note**") into Common Stock of the Company in connection with the Recapitalization. The Fineman Note will be converted prior to its original maturity date of June 30, 2009 and will convert at a conversion ratio of $1.00 per share rather than $1.50 per share as set forth in the original note. Furthermore, Mr. Fineman is an investor in the Company and holds 3,225,000 shares of Common Stock, 333,334 shares of Series C Preferred Stock, and warrants to acquire 180,302 shares of Common Stock in addition to Notes which total $923,497 including accrued interest.

In addition, both Mr. Neugeboren and Mr. Fineman intend to participate in the Series AA Preferred to be offered in the Financing. The interests in the Financing of these "interested directors" were fully disclosed to the remaining "disinterested directors" prior to approval of the Financing.

PROPOSALS

Approval of the Financing and the Recapitalization

The Company is seeking approval of the Financing from the Investors on substantially the terms as set forth on the Term Sheet. As discussed above, as a condition to the Financing, all outstanding Preferred Stock and 10% Senior Convertible Notes, including accrued interest through October 31, 2008, will be converted into shares of Common Stock.

The Board recommends that the Investors approve the Financing and the Recapitalization.

Approval of Amendment to the Amended and Restated Certificate of Incorporation

In connection with the Financing and the Recapitalization, the Company is seeking stockholder approval of the adoption of the Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit I (the "**Amended Certificate**"). Adoption of the Amended Certificate would (i) authorize an increase of the number of authorized shares of Common Stock from 65,000,000 shares to 220,000,000 shares, (ii) eliminate the series of stock designated Series A, Series B and Series C Convertible Preferred Stock, (iii) create a new class of Preferred Stock, designated Series AA Preferred Stock, consisting of 125,000,000 shares, (iv) establish the rights, preferences, privileges and restrictions of the Series AA Preferred Stock and (v) make certain other changes, all as set forth in the Amended Certificate.

The Board recommends that the stockholders approve the Amended Certificate.

Approval of Amendment to the 2001 Stock Option Plan

In connection with the Financing and the Recapitalization, the Company is seeking stockholder approval of an amendment to the Company's 2001 Stock Option Plan (the "**Option Plan**") to increase the number of shares of Common Stock available for grant under the Option Plan by approximately 35.3 million shares to a new aggregate total of approximately 36.6 million shares. Grants made from the Plan will be made by the Board and will be at the fair value of the Common Stock on the date of grant as determined by the Compensation Committee and the Board of Directors.

The Board recommends that the stockholders approve the amendment to the Option Plan.

Approval of Amendment to Outstanding Warrants

In connection with the Financing and the Recapitalization, the Company is seeking approval from holders of outstanding warrants to purchase shares of the Company's Common Stock (the "**Warrantholders**") at exercise prices ranging from $1.50 to $4.00 per share (the "**Warrants**") to amend the Warrants to reduce the exercise prices to $0.06 per share for warrants that were issued in connection with the sale and issuance of the Notes and to $0.40 per share for all other warrants, including the warrants issued to holders of Preferred Stock in connection with the approval of the Notes, warrants issued to holders of Preferred Stock as an additional bonus in connection with the purchase of the Notes and warrants from time to time issued to placement agents, consultants and landlords.

The Board recommends that the Warrantholders approve the Warrant Amendment.

REQUESTED ACTION

The Company is requesting that you consider the above Proposals and, if you approve, please sign the attached Action by Written Consent of Investors and return it to the Company as soon as possible. If you wish to participate in the Financing, please review and execute Exhibits C-F as well. For your convenience, all requested signature pages are enclosed in the Signature Page Packet attached as Exhibit G hereto.

Completed questionnaires and signed signature pages should be returned by fax to David Fineman at (510) 655-6506 and by mail to the Company's address at 5980 Horton Street, Suite 400, Emeryville, CA 94608.

Thank you for your prompt attention to this matter. If you should have any questions, please do not hesitate to email David Fineman at dfineman@kinemed.com or call (510) 655-6525 x102. We look forward to hearing from you soon.

Sincerely,

KineMed, Inc.

Robert B. Stein, MD, PhD
Chief Executive Officer

David M. Fineman
President

KineMed, Inc.
5980 Horton Street, Suite 400
Emeryville, CA 94608-2012

EXHIBIT A

TERM SHEET

OFFERING SUMMARY

The following is a brief description of certain terms of the Offering and the Series AA Convertible Preferred Stock. This summary description is not complete and is qualified by the Offering Memorandum the appropriate documents described below.

The Issuer.....	**KineMed, Inc.**, a Delaware corporation (the "Company").
Offering.....	A maximum of 125,000,000 shares of Series AA Convertible Preferred Stock (the "Series AA Preferred"), par value $0.001 per share.
Offering Price.....	$0.06 per share of Series AA Preferred.
Investors.....	This Series AA Preferred is being offered to Accredited Investors who are existing investors in the Company, pro rata with their pro rata ownership in the Company. If any investors do not subscribe for their pro rata interest, other existing investors may purchase more than their proportionate interest. If the full Offering is not subscribed by existing investors, up to 33,000,000 shares may be offered to Accredited Investors who are not currently investors in the Company.
Dividends.....	The holders of the Series AA Preferred shall be entitled to receive non-cumulative dividends, in preference to any dividend on the Common Stock, at the rate of 6% of the Offering Price per annum.
Liquidation Preference.....	$0.06 per share, plus any accrued and unpaid dividends, prior to any payment to the holders of Common Stock.
Optional Conversion.....	Convertible by the holder of Series AA Preferred into Common Stock, par value $0.001 per share, initially on a one-for-one basis, subject to adjustment.
Automatic Conversion	Automatically convertible into Common Stock, at the applicable conversion rate, in the event of either: (i) the closing of an underwritten public offering of shares of the Company's Common Stock resulting in no less than $20,000,000 in net proceeds to the Company at a price at least $0.18 per share; or, (ii) the election of the holders of a majority of the outstanding Series AA Preferred.
Voting Rights.....	One vote per share, representing equal voting rights with the Common Stock (into which the Series AA Preferred is convertible) on all matters submitted to a vote of the holders of Common Stock.

Conversion Adjustment.....	The conversion price of the Series AA Preferred will be subject to proportional adjustment for stock splits, stock dividends, recapitalizations, and the like.
Protective Provisions:	For so long as 20% of the Series AA Preferred sold remains outstanding, consent of the holders of a majority of Series AA Preferred shall be required for any action that (i) adversely alters or changes the rights, preferences or privileges of the Series AA Preferred, (ii) increases or decreases the authorized number of shares of Preferred Stock, (iii) creates (by reclassification or otherwise) any new class or series of shares or securities having rights, preferences or privileges senior to or on a parity with the Series AA Preferred, (iv) results in the redemption of any shares of Common Stock (other than pursuant to the terms of the Company's employee stock option plan), (v) results in any merger, other corporate reorganization, sale of control, or any transaction in which all or substantially all of the assets of the Company are sold, (vi) amends or waives any provision of the Company's Articles of Incorporation in a manner that would be adverse to the Series AA Preferred, or, (vii) results in a filing by the Company for bankruptcy or receivership.
Information Rights.....	Each holder of at least 1.0% of the outstanding Series AA Preferred will be provided annual financial statements within 90 days after the end of each fiscal year and quarterly financial statements within 45 days after the end of each quarter.
Closing Conditions.....	Immediately prior and as a condition to the initial closing, the Company will undertake a restructuring plan, as follows:

- the Company's Series A, B, and C Preferred Stock shall be converted to Common Stock at the conversion rate set forth in the Company's Amended and Restated Certificate of Incorporation, as adjusted for prior dilutive issuances;
- the Company's 10% Senior Convertible Notes and accrued interest shall be converted to Common Stock at a conversion rate equal to $1.00 per share;
- the Subordinated Convertible Note and accrued interest of David Fineman, KineMed co founder and President, in the amount of $456,436, shall be converted to Common Stock at a conversion rate equal to $1.00 per share. This is in addition to the $923,497 of the Company's 10% Senior Convertible Notes, including accrued interest, owned by Fineman;
- the Company shall have received subscriptions for at least $1,000,000.

Capital Stock Outstanding.....	After the Offering, assuming the conversion of all existing shares of preferred stock and notes to Common Stock, and assuming the maximum amount is sold, it is expected the following will be outstanding: • 125,000,000 shares of Series AA Convertible Preferred Stock • 34,540,257 shares of Common Stock • Options outstanding under existing option plans totaling 5,378,168 shares of Common Stock, which generally vest over four years and have exercise prices ranging from $0.15 to $1.06 per share. • Warrants to purchase 4,188,173 shares of Common Stock, with exercise prices ranging from $1.50 to $4.00 per share. In connection with the Offering, the warrant exercise prices will be reduced to $0.06 per share for warrants to acquire 2,171,863 shares of Common Stock that were issued in connection with the sale and issuance of the 10% Senior Convertible Notes and to $0.40 per share for all other warrants to acquire 2,016,310 shares of Common Stock, including the warrants issued to holders of Preferred Stock in connection with the approval of the Notes, warrants issued to holders of Preferred Stock as an additional bonus in connection with the purchase of the Notes and warrants from time to time issued to placement agents, consultants and landlords. • Simultaneously with this Offering, the Company is authorizing a new management stock option pool representing 20% of the fully-diluted Common Stock of the company. As of this date, no shares have been granted under the new stock option pool, which is subject to stockholder approval. Upon approval, grants will be made by the Board of Directors.
Use of Proceeds.....	The proceeds from the Offering, after payment of the expenses of the Offering, will be used for working capital.
Offering Period.....	The Offering period will expire on the earlier to occur of: (i) December 31, 2008, or (ii) the sale of the maximum amount of the shares in the Offering, unless this date is extended, without notice to investors, by the Company, in its sole discretion, for up to an additional 90 days (the "Termination Date").
Plan of Distribution.....	The Company will offer the Series AA Preferred on a "best efforts" basis. The Company will hold a closing promptly after the closing conditions have been met. Ledgemont Securities LLC (the "Placement Agent") will receive a commission of seven and one half percent (7 1/2%) of the proceeds from the sale of the Series

	AA Preferred sold by Ledgemont in this Offering. In addition, the Company will issue a warrant to the Placement Agent granting the right to purchase Common Stock for a period of five years. The warrant will be exercisable for five percent (5%) of the number of shares of the Offering sold by the Placement Agent, and the exercise price will be the price of $0.06 per share paid by investors in the Offering. The Placement Agent and its affiliates may purchase shares of the Series AA Preferred net of commissions.
Restrictions on Transfer.....	None of the shares of Series AA Preferred purchased in the Offering will be registered under the Securities Act of 1933, as amended (the "Securities Act"). The certificates representing the securities will contain a legend restricting the distribution, resale, transfer, pledge, hypothecation, or other disposition of the securities unless and until such securities are registered under the Securities Act or an opinion of counsel reasonably satisfactory to the Company is received stating that registration is not required under the Securities Act and applicable state securities laws.
Registration Rights	Holders of Series AA Preferred will have two demand and unlimited "piggyback" registration rights with respect to certain registrations of their Common Stock effective once the Company's stock is publicly-traded.
Pre-emptive Rights.....	Holders of Series AA Preferred shall have the right of first offer to purchase a pro rata share of any new securities issued by the Company.
Subscription Documents.....	The purchase of the Series AA Preferred shall be made pursuant to a Subscription Agreement. This document contains, among other things, customary representations, warranties, and covenants by the Company and investment representations by the subscribing investor, including representations required by the Securities Act and applicable state "blue sky" laws and appropriate conditions to closing. See "Subscription Procedures."
Offering Expenses.....	All prospective investors are responsible for their own costs, fees, and expenses related to the Offering, including the costs, fees, and expenses of their own legal counsel and other advisors. Placement Agent fees (including the fees and expenses of counsel to the Placement Agent), referral compensation, and other expenses may be paid by the Company from the proceeds of the Offering.

EXHIBIT B

PRIVATE PLACEMENT MEMORANDUM

To Follow

EXHIBIT C

ACTION BY WRITTEN CONSENT OF INVESTORS
OF
KINEMED, INC.
a Delaware Corporation

In accordance with Section 228 of the Delaware General Corporation Law, the bylaws of KineMed, Inc. (the "**Company**") and the provisions of the Company's 10% Senior Convertible Notes and Warrants to Purchase Shares, the undersigned, constituting (i) the holders of the outstanding shares of the Company (the "**Stockholders**"), (ii) the holders of the outstanding 10% Senior Convertible Notes (the "**Noteholders**") and (iii) the holders of the outstanding Warrants to Purchase Shares of the Company (the "**Warrantholders**," together with the Stockholders and the Noteholders, the "**Investors**") having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted or to consent to the following actions, hereby adopt the following resolutions by written consent, effective for all purposes as of November 21, 2008:

Approval of Series AA Preferred Stock Financing

WHEREAS, the Board of Directors of the Company (the "**Board**") has approved of the form of Series AA Preferred Stock Purchase Agreement (the "**Purchase Agreement**") and the form of Investor Rights Agreement (the "**Rights Agreement**") as provided to the Investors (the "**Financing Documents**") for the proposed sale of Series AA Preferred Stock (the "**Financing**") and deemed it advisable, and in the best interests of the Company to seek Investor approval of the Financing.

WHEREAS, the Investors of the Company deem the Financing to be fair and in the best interests of the Company and the Investors.

NOW, THEREFORE, IT IS HEREBY RESOLVED: That the Financing and all of the terms and conditions as described in the Financing Documents are hereby approved, adopted and confirmed by the undersigned Investors.

RESOLVED FURTHER: That the appropriate officers of the Company are authorized and directed to execute and deliver all documents and take whatever actions are deemed necessary or advisable to comply with all applicable state and federal securities laws.

Waiver of Right of First Refusal

WHEREAS, the holders of shares of Preferred Stock of the Company (the "**Preferred Stockholders**"), have a right of first refusal to purchase their pro rata portion of the Financing

pursuant to Section 11(a) of the Company's Amended and Restated Certificate of Incorporation filed with the Delaware Secretary of State on April 6, 2006 (the "**Certificate**").

WHEREAS, pursuant to the terms of the Financing, the Company is offering the Investors the opportunity to participate to their pro rata portion assuming the conversion of all Preferred Stock and all 10% Senior Convertible Notes into shares of Common Stock.

NOW, THEREFORE, IT IS HEREBY RESOLVED: That the undersigned Preferred Stockholders hereby waive their right of first refusal and any requirement of notice pursuant to Section 11(a) of the Certificate with respect to the sale of up to 125 million shares of Series AA Preferred Stock in the Financing.

RESOLVED FURTHER: That this waiver shall be biding on all holders of such right of first refusal.

Conversion of All Outstanding Preferred Stock to Common Stock

WHEREAS, pursuant to Article V Section 5 of the Certificate, each share of Preferred Stock of the Company shall be converted into shares of Common Stock upon the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Preferred Stock, voting together as a class.

NOW, THEREFORE, IT IS HEREBY RESOLVED: That the undersigned Preferred Stockholders hereby consent to the conversion of all of the outstanding shares of Preferred Stock of the Company into shares of the Company's Common Stock (the "**Preferred Stock Conversion**").

RESOLVED FURTHER: That the Preferred Stock Conversion shall take place immediately prior to the Company receiving executed Financing Documents for the initial purchase of $1.0 million of Series AA Preferred Stock (the "**Initial Closing**").

RESOLVED FURTHER: That the Series A Convertible Preferred Stock, Series B Convertible Preferred Stock and Series C Convertible Preferred Stock shall be converted into shares of Common Stock at the applicable conversion rates as set forth in the Certificate.

Conversion of All Outstanding 10% Senior Convertible Notes

WHEREAS, pursuant to Section 9 of the Company's outstanding 10% Senior Convertible Notes (the "**Notes**"), any provision of the Notes may be amended, waived or modified upon written consent of the Company and the holders of more than 50% of the aggregate outstanding principal amount of the Notes issued pursuant to the 10% Senior Convertible Notes Subscription Agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED: That the undersigned Noteholders hereby consent to the conversion of all of the outstanding principal plus any accrued and unpaid interest under the Notes into shares of the Company's Common Stock at the price per share of $1.00 (the "**Note Conversion**").

RESOLVED FURTHER: That the Note Conversion shall take place immediately prior to the Initial Closing.

Amended and Restated Certificate of Incorporation

WHEREAS, the Investors deem it advisable and in the best interests of the Company to adopt and approve of the Amended and Restated Certificate of Incorporation in the form that has been provided to the Investors (the "**Amended Certificate**").

NOW, THEREFORE, IT IS HEREBY RESOLVED: That the Amended Certificate, in substantially the form that has been provided to the Investors, which (i) increases the number of authorized shares of Common Stock of the Corporation from 65,000,000 shares to 220,000,000 shares, (ii) eliminates the series of stock designated Series A, Series B and Series C Preferred Stock, (iii) creates a new series of Preferred Stock, designated Series AA Preferred Stock, consisting of 125,000,000 shares, (iv) establishes the rights, preferences, privileges and restrictions of the Series AA Preferred Stock and (v) makes certain other changes, all as set forth in the Amended Certificate, is hereby approved.

RESOLVED FURTHER: That the appropriate officers of the Company are hereby authorized and directed to execute and file the Amended Certificate with the Delaware Secretary of State and to take any additional action and to execute any other documents they deem necessary or advisable, in consultation with counsel, to carry out the purposes and intent of these resolutions.

Amendment to 2001 Stock Option Plan

WHEREAS, the Investors of the Company deem it advisable and in the best interests of the Company to increase the number of shares of Common Stock reserved for issuance under the Company's 2001 Stock Option Plan (the "**Option Plan**") by 28,000,000 shares for a new total of 35,000,000 shares in order to provide incentives to attract and retain valuable personnel.

NOW, THEREFORE, IT IS HEREBY RESOLVED: That the reservation of an additional 28,000,000 shares of Common Stock for a new total of 35,000,000 shares reserved for issuance under the Option Plan is hereby approved.

RESOLVED FURTHER: That grants made pursuant to the Option Plan will be made by the Compensation Committee of the Board.

Amendment to Warrants to Purchase Shares

WHEREAS, the Company has issued warrants to purchase shares of the Company's Common Stock at exercise prices ranging from $1.50 to $4.00 per share (the "**Warrants**") to the Warrantholders.

NOW, THEREFORE, IT IS HEREBY RESOLVED: That the undersigned Warrantholders hereby consent to the amendment to the Warrants to reduce the exercise price of the Warrants to $0.40 per share of Common Stock (the "**Warrant Amendment**").

RESOLVED FURTHER: That the Warrant Amendment shall take place immediately prior to the Initial Closing.

Omnibus Resolution

RESOLVED: That the appropriate officers of the Company are authorized and empowered to take any and all such further action, to execute and deliver any and all such further agreements, instruments, documents, certificates and communications and to pay such expenses, in the name and on behalf of the Company or such officer, as any such officer may deem necessary or advisable to effectuate the purposes and intent of the resolutions hereby adopted, the taking of such actions, the execution and delivery of such agreements, instruments, documents, certificates or communications and the payment of such expenses by any such officer to be conclusive evidence of his or her authorization hereunder and approval thereof.

RESOLVED FURTHER: That any and all actions taken by the directors and officers of the Company to carry out the purposes and intent of the foregoing resolutions prior to their adoption are approved, ratified and confirmed.

[Signature Pages Follow]

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Investors. By executing this action by written consent, each undersigned Investor is giving written consent with respect to all shares of the Company's capital stock held by such Stockholder or to all votes held by such Noteholder or Warrantholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reliable reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the Company.

_____

Print name of Investor

_____

Signature

_____

Print name of signatory, if signing for an entity

_____

Print title of signatory, if signing for an entity

_____

Date of signature

EXHIBIT D

INVESTOR SUITABILITY QUESTIONNAIRE

KineMed, Inc. (the "**Company**") will use the responses to this questionnaire to establish the availability of exemptions from registration under federal and state securities laws.

Please complete, sign, date and return (facsimile acceptable) this questionnaire to:

David Fineman
KineMed, Inc.
5980 Horton Street, Suite 400
Emeryville, CA 94608-2012
Email: dfineman@kinemed.com
Facsimile: (510) 655-6506

If you have questions, please call David Fineman at (510) 655-6525 ext.102.

PLEASE ANSWER ALL QUESTIONS WITH RESPECT TO THE ACTUAL INDIVIDUAL OR ENTITY WHO WILL MAKE THE CONTEMPLATED INVESTMENT

Name of Investor:_____
(Exact name as it should appear on any stock certificate, note or related legal documents)

Investor Type. **Please indicate the type of the investor contemplating the purchase, and proceed accordingly to the applicable portion of this questionnaire:**

☐ Individual .....**Go to Page 2.**

☐ Corporation, Partnership or LLC.....**Go to Page 4.**

☐ Trust .....**Go to Page 5.**

*****THIS INVESTOR SUITABILITY QUESTIONNAIRE DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY ANY SECURITIES OF KINEMED, INC.*****

INDIVIDUAL INVESTOR INFORMATION

Only an investor who is an INDIVIDUAL should complete this portion of this questionnaire.

(a) Please indicate the state in which you maintain your principal residence and how long you have maintained your principal residence in that state.

State:_____

Duration:_____

(b) Please indicate if you are:

☐ a director or executive officer of the Company.

☐ a person whose individual net worth (or joint net worth with spouse) exceeds $1 million.

☐ a person who had an individual income in excess of $200,000 in each of the two most recent years (or joint income with spouse in excess of $300,000 in each of such years) and has a reasonable expectation of reaching the same income level in the current year.

If you checked any of the items in question (b), go to Page 6 (Contact Information and Signature) of this questionnaire. Otherwise, please complete questions (c)-(g) below.

(c) Business Information.

Occupation:_____

Number of Years:_____

Present Employer:_____

Position/Title:_____

(d) Income and Net Worth.

Please indicate your approximate income for last year and expected income for the current year (you may include your spouse's income).

Last Year: $_____

Expected Current Year: $_____

Please indicate your current net worth (you may include your spouse's net worth).

Net Worth: $_____

(e) Education.

Please describe your educational background and degrees obtained.

_____

_____

_____

(f) Relationship with Company.

Please describe any pre-existing personal or business relationship between you and the Company or any of the Company's officers or directors, including the nature and duration of such relationship.

_____

_____

_____

(g) Business and Investing Experience.

Please describe in reasonable detail the nature and extent of your business, financial and investment experience which you believe gives you the capacity to evaluate the merits and risks of the proposed investment and the capacity to protect your interests.

_____

_____

_____

Go to Page 6 (Contact Information and Signature) of this questionnaire.

CORPORATION, PARTNERSHIP OR LLC INFORMATION

Only a CORPORATION, PARTNERSHIP or LLC should complete this portion of this questionnaire.

(a) Please indicate the state in which the entity maintains its principal offices:_____

(b) Please indicate the state in which the entity is chartered:_____

(c) Is the entity a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 [a U.S. venture capital fund which invests primarily through private placements in non-publicly traded securities and makes available, either directly or through co-investors, to the portfolio companies significant guidance concerning management, operations or business objectives]?

Yes ☐ No ☐

If you answered "Yes" to question (c), go to Page 6 (Contact Information and Signature) of this questionnaire. Otherwise, please continue with question (d) below.

(d) Check **"Yes"** below if each of the following statements is true. Otherwise, check **"No"**.

- The total assets of the corporation, partnership or LLC exceed $5,000,000.

- The corporation, partnership or LLC was not formed for the purpose of investing in the Company.

Yes ☐ No ☐

(e) If you answered **"No"** to **question (d)**, please indicate whether each stockholder, partner or equity owner of the entity an "accredited investor" under the terms of Rule 501(a) of the Securities Act of 1933, as amended?

Yes ☐ No ☐

(f) If you answered "Yes" to **question** (e), each stockholder, partner or other equity owner of the entity **must complete a separate copy** of this questionnaire (please attach to this questionnaire).

Please indicate whether a separate copy of this questionnaire has been attached with respect to **each** stockholder, partner or other equity owner of the entity.

Yes ☐ No ☐

(g) If you otherwise believe that the entity is an "accredited investor" under the terms of Rule 501(a) of the Securities Act of 1933, as amended, please call the attorney at Wilson Sonsini Goodrich & Rosati listed above on Page 1 of this questionnaire.

Go to Page 6 (Contact Information and Signature) of this questionnaire.

TRUST INFORMATION

Only a TRUST should complete this portion of this questionnaire.

(a) Check "Yes" below if each of the following statements is true. Otherwise, check "No".

- The total assets of the trust exceed $5,000,000.
- The investment decisions of the trust are made by a person who is capable of evaluating the merits and risks of the investment in the Company due to such person's knowledge and experience in financial and business matters.
- The trust was not formed for the purpose of investing in the Company.

Yes ☐ No ☐

If you answered "Yes" to question (a), go to Page 6 (Contact Information and Signature) of this questionnaire. Otherwise, please continue with question (b) below.

(b) Is the trust revocable?

Yes ☐ No ☐

(c) If you answered "Yes" to question (b), each grantor of the trust (i.e. the person or persons who established the trust) **must complete a separate copy** of this questionnaire (please attach to this questionnaire).

Please name **each** grantor of the trust:_____.

Please indicate whether a separate copy of this questionnaire has been attached with respect to **each** grantor of the trust.

Yes ☐ No ☐

Go to Page 6 (Contact Information and Signature) of this questionnaire.

CONTACT INFORMATION AND SIGNATURE

Name of Contact Person: _____

E-mail Address: _____

Mailing Address: _____
(Street) (Suite)

_____
(City) (State) (Zip Code)

Telephone: _____ Fax: _____

Investor's Tax I.D. #: _____

You agree that the Company may present this questionnaire to such parties as it deems appropriate to establish the availability of exemptions from registration under federal and state securities laws. You represent that the information furnished in this questionnaire is true and correct and you acknowledge that the Company and its counsel are relying on the truth and accuracy of such information to comply with federal and state securities laws. You agree to notify the Company promptly of any changes in the foregoing information that may occur prior to the investment.

_____
(Signature)

_____
(Entity name, if applicable)

_____
(Title, if signing on behalf of an entity)

Date: _____

EXHIBIT E

SERIES AA PREFERRED STOCK PURCHASE AGREEMENT

KINEMED, INC.

SERIES AA PREFERRED STOCK PURCHASE AGREEMENT

November [___], 2008

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EXHIBITS

A	Schedule of Investors
B	Amended and Restated Certificate of Incorporation
C	Investor Rights Agreement
D	Schedule of Exceptions
E	Compliance Certificate

KINEMED, INC.

SERIES AA PREFERRED STOCK PURCHASE AGREEMENT

This Series AA Preferred Stock Purchase Agreement (this "*Agreement*") is dated as of November [___], 2008, and is between KineMed, Inc., a Delaware corporation (the "*Company*"), and the persons and entities (each, an "*Investor*" and collectively, the "*Investors*") listed on the Schedule of Investors attached as Exhibit A (the "*Schedule of Investors*").

SECTION 1

AUTHORIZATION, SALE AND ISSUANCE

1.1 **Authorization.** The Company will, prior to the Initial Closing (as defined below), authorize (a) the sale and issuance of up to 125,000,000 shares (the "*Shares*") of the Company's Series AA Preferred Stock, par value $0.001 per share (the "*Series AA Preferred*"), having the rights, privileges, preferences and restrictions set forth in the amended and restated certificate of incorporation of the Company, in substantially the form of Exhibit B (the "*Restated Certificate*") and (b) the reservation of shares of Common Stock for issuance upon conversion of the Shares (the "*Conversion Shares*").

1.1 **Sale and Issuance of Shares.** Subject to the terms and conditions of this Agreement, each Investor agrees, severally and not jointly, to purchase, and the Company agrees to sell and issue to each Investor, the number of Shares set forth in the column designated "Number of Series AA Shares" opposite such Investor's name on the Schedule of Investors, at a cash purchase price of $0.06 per share (the "*Purchase Price*"). The Company's agreement with each Investor is a separate agreement, and the sale and issuance of the Shares to each Investor is a separate sale and issuance.

SECTION 2

CLOSING DATES AND DELIVERY

2.1 **Closing.**

(a) The purchase, sale and issuance of the Shares shall take place at one or more closings (each of which is referred to in this Agreement as a "*Closing*"). The initial Closing (the "*Initial Closing*") shall take place at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, CA 94304, at 10:00 a.m. local time on November [___], 2008, or such other date determined by the Company, provided that the Company has satisfied the closing conditions set forth in Section 5.

(b) If less than all of the Shares are sold and issued at the Initial Closing, then, subject to the terms and conditions of this Agreement, the Company may sell and issue at one or more subsequent closings (each, a "*Subsequent Closing*"), on or prior to December 31, 2008 (the "*Subsequent Closing Period*"), up to the balance of the unissued Shares to such persons or entities as may be approved by the Company in its sole discretion. The Company may extend such Subsequent Closing Period in its sole discretion and without notice to the Investors to up to an additional ninety (90) days. Any such sale and issuance in a Subsequent Closing shall be on the same terms and conditions as those contained herein, except that the Company may sell the Shares at a higher Purchase Price to an investor who is not a shareholder or lender to the Company as of the date hereof, and such persons or entities shall, upon execution and delivery of the relevant signature pages, become parties to, and be bound by, this Agreement, the Investors' Rights

Agreement in substantially the form of Exhibit C (the "*Rights Agreement*," and together with this Agreement, the "*Agreements*"), without the need for an amendment to any of the Agreements except to add such person's or entity's name to the appropriate exhibit to such Agreements, and shall have the rights and obligations hereunder and thereunder, in each case as of the date of the applicable Subsequent Closing. Each Subsequent Closing shall take place at such date, time and place as shall be approved by the Company in its sole discretion and the Investors representing a majority of the Shares to be sold in such Subsequent Closing.

(c) Immediately after each Closing, the Schedule of Investors will be amended to list the Investors purchasing Shares hereunder and the number of Shares issued to each Investor hereunder at each such Closing. The Company will furnish to each Investor copies of the amendments to the Schedule of Investors referred to in the preceding sentence.

2.2 Delivery. At each Closing, the Company will deliver to each Investor in such Closing a certificate registered in such Investor's name representing the number of Shares that such Investor is purchasing in such Closing against payment of the purchase price therefor as set forth in the column designated "Purchase Price" opposite such Investor's name on the Schedule of Investors, by (a) check payable to the Company, (b) wire transfer in accordance with the Company's instructions, (c) cancellation of indebtedness or (d) any combination of the foregoing. In the event that payment by an Investor is made, in whole or in part, by cancellation of indebtedness, then such Investor shall surrender to the Company for cancellation at the Closing any evidence of indebtedness or shall execute an instrument of cancellation in form and substance acceptable to the Company.

2.3 Use of Proceeds. Following each Closing, a portion of the proceeds of the sale and issuance of the Shares shall be used to pay Ledgemont Securities LLC ("*Ledgemont*") a cash fee equal to 7 ½% of the aggregate proceeds from the sale of all shares of Series AA Preferred sold to Investors introduced to the Company by Ledgemont. In addition, the Company will issue a warrant to Ledgemont granting Ledgemont the right to purchase Common Stock for a period of five years. The warrant will be exercisable for that number of shares of Common Stock equal to five percent (5%) of the number of shares of Series AA Preferred sold by Ledgemont, and the exercise price per share of Common Stock will be equal to the Purchase Price of $0.06 per share. The Company may enter into additional agreements with other placement and referral agents, whereby the proceeds of the sale and issuance of the Shares may be used to pay such additional fees. Any remaining proceeds of the sale and issuance of the Shares shall be used for working capital.

SECTION 3

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

A Schedule of Exceptions, attached as Exhibit D (each, a "*Schedule of Exceptions*") shall be delivered to the Investors in connection with each Closing. Except as set forth on the Schedule of Exceptions delivered to the Investor at the applicable Closing, the Company hereby represents and warrants to the Investors as follows:

3.1 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has the requisite corporate power and authority to own and operate its properties and assets, to carry on its business as presently conducted, to execute and deliver the Agreements, to issue and sell the Shares and the Conversion Shares and to perform its obligations pursuant to the Agreements and the Restated Certificate. The Company is presently qualified to do business as a foreign corporation in each jurisdiction where the

failure to be so qualified could reasonably be expected to have a material adverse effect on the Company's financial condition or business as now conducted (a "*Material Adverse Effect*").

3.2 Subsidiaries. The Company does not own or control, directly or indirectly, any interest in any corporation, partnership, limited liability company, association or other business entity.

3.3 Capitalization.

(a) Immediately prior to the Initial Closing, the authorized capital stock of the Company will consist of 220,000,000 shares of Common Stock, of which 34,540,257 shares are issued and outstanding and 125,000,000 shares of Preferred Stock, all of which are designated Series AA Preferred and none of which are issued and outstanding. The Common Stock and the Series AA Preferred shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate.

(b) The outstanding shares have been duly authorized and validly issued in compliance with applicable laws, and are fully paid and nonassessable.

(c) The Company has reserved:

(i) the Shares for issuance pursuant to this Agreement;

(ii) shares of Common Stock (as may be adjusted in accordance with the provisions of the Restated Certificate) for issuance upon conversion of the Shares; and

(iii) 4,188,173 shares of Common Stock authorized for issuance upon exercise of outstanding warrants to purchase Common Stock;

(iv) 42,274,166 shares of Common Stock authorized for issuance to employees, consultants and directors pursuant to its 2001 Stock Option Plan, under which options to purchase 5,378,168 shares are issued and outstanding as of the date of this Agreement.

(d) All issued and outstanding shares of the Company's Common Stock (i) have been duly authorized and validly issued and are fully paid and nonassessable, and (ii) were issued in compliance with all applicable state and federal laws concerning the issuance of securities.

(e) The Shares, when issued and delivered and paid for in compliance with the provisions of this Agreement, will be validly issued, fully paid and nonassessable. The Conversion Shares have been duly and validly reserved and, when issued in compliance with the provisions of this Agreement, the Restated Certificate and applicable law, will be validly issued, fully paid and nonassessable. The Shares and the Conversion Shares will be free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Investors; *provided, however*, that the Shares and the Conversion Shares are subject to restrictions on transfer under U.S. state and/or federal securities laws and as set forth herein and in the Rights Agreement. Except as set forth in the Rights Agreement, the Shares and the Conversion Shares are not subject to any preemptive rights or rights of first refusal.

(f) Except for the conversion privileges of the Series AA Preferred and the rights provided pursuant to the Rights Agreement or as otherwise described in this Agreement, there are no options, warrants or other rights to purchase any of the Company's authorized and unissued capital stock.

3.4 Authorization. All corporate action on the part of the Company and its directors, officers and stockholders necessary for the authorization, execution and delivery of the Agreements by the Company, the authorization, sale, issuance and delivery of the Shares and the Conversion Shares, and the performance of all of the Company's obligations under the Agreements has been taken or will be taken prior to the Initial Closing. The Agreements, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except (i) as limited by laws of general application relating to bankruptcy, insolvency and the relief of debtors, (ii) as limited by rules of law governing specific performance, injunctive relief or other equitable remedies and by general principles of equity, and (iii) to the extent the indemnification provisions contained in the Rights Agreement may further be limited by applicable laws and principles of public policy.

3.5 Financial Statements. The Company has delivered to the Investors its audited balance sheet and statement of operations for the period ended December 31, 2006 and 2007 and its unaudited balance sheet and statement of operations of the Company as of and for the period ended September 30, 2008 (the "***Financial Statements***"). The Financial Statements are correct in all material respects and present fairly the financial condition and operating results of the Company as of the date(s) and during the period(s) indicated therein. The audited Financial Statements have been prepared in accordance with generally accepted accounting principles ("***GAAP***") applied on a consistent basis throughout the period indicated, except as disclosed therein.

3.6 Changes. Since September 30, 2008 there has not been:

(a) any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business, that has had a Material Adverse Effect;

(b) any damage, destruction or loss, whether or not covered by insurance, that has had a Material Adverse Effect;

(c) any waiver by the Company of a valuable right or of a material debt owed to it;

(d) any material change or amendment to a material agreement by which the Company or any of its assets or properties is bound or subject that has had a Material Adverse Effect;

(e) any loans made by the Company to its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of its business;

(f) any resignation or termination of any executive officer or key employee of the Company;

(g) any material change in any compensation arrangement or agreement with any employee;

(h) any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets or other intangible assets;

(i) any satisfaction or discharge of any lien, claim, or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the business, properties, prospects or financial condition of the Company;

(j) any declaration, setting aside or payment or other distribution in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any of such stock by the Company;

(k) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;

(l) any receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company; or

(m) any agreement or commitment by the Company to do any of the things described in this Section 3.6.

3.7 Intellectual Property.

(a) ***Ownership.*** To the knowledge of the Company (without having conducted any special investigation or patent search), the Company owns or possesses or can obtain on commercially reasonable terms sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses (software or otherwise), information, processes and similar proprietary rights (*"Intellectual Property"*) necessary to the business of the Company as presently conducted, the lack of which could reasonably be expected to have a Material Adverse Effect, without any conflict with or infringement of the rights of others. Except for agreements with its own employees or consultants, standard end-user license agreements, support/maintenance agreements and agreements entered in the ordinary course of the Company's business, there are no outstanding options, licenses or agreements relating to the Intellectual Property, and the Company is not bound by or a party to any options, licenses or agreements with respect to the Intellectual Property of any other person or entity. The Company has not received any written communication alleging that the Company has violated any of the Intellectual Property of any other person or entity.

(b) ***No Breach by Employees.*** The Company is not aware that any of its employees is obligated under any contract or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would materially interfere with the use of his or her efforts to promote the interests of the Company or that would conflict with the Company's business as presently conducted. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as presently conducted, will, to the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to use any inventions of any of its employees made prior to their employment by the Company.

3.8 Title to Properties and Assets; Liens. The Company has good and marketable title to its properties and assets, and has good title to all its leasehold interests, in each case subject to no material mortgage, pledge, lien, lease, encumbrance or charge, other than (i) liens for current taxes not yet due and payable, (ii) liens imposed by law and incurred in the ordinary course of business for obligations not past due, (iii) liens in respect of pledges or deposits under workers' compensation laws or similar legislation, and (iv) liens, encumbrances and defects in title which do not in any case materially detract from the value of the property subject thereto or have a Material Adverse Effect, and which have not arisen otherwise than in the ordinary course of business. With respect to the property and assets it leases, the Company is in compliance with such leases in all material respects and, to its knowledge, holds a valid leasehold interest free of any liens, claims or encumbrances, subject to clauses (i)-(iv) above.

3.9 Litigation. There are no actions, suits, proceedings or investigations pending against the Company or its properties (nor has the Company received written notice of any threat thereof) before any court or governmental agency that questions the validity of the Agreements or the right of the Company to enter into them, or the right of the Company to perform its obligations contemplated thereby, or that, either individually or in the aggregate, if determined adversely to the Company, would or could reasonably be expected to have a Material Adverse Effect or result in any change in the current equity ownership of the Company. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit or proceeding initiated by the Company currently pending or which the Company currently intends to initiate.

3.10 Governmental Consent. No consent, approval or authorization of or designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, or the offer, sale or issuance of the Shares and the Conversion Shares, or the consummation of any other transaction contemplated by this Agreement, except (i) filing of the Restated Certificate with the office of the Secretary of State of the State of Delaware, (ii) the filing of such notices as may be required under the Securities Act of 1933, as amended (the "*Securities Act*") and (iii) such filings as may be required under applicable state securities laws.

3.11 Offering. Subject to the accuracy of the Investors' representations and warranties in Section 4, the offer, sale and issuance of the Shares to be issued in conformity with the terms of this Agreement and the issuance of the Conversion Shares, constitute transactions exempt from the registration requirements of Section 5 of the Securities Act and from the registration or qualification requirements of applicable state securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

3.12 Brokers or Finders. The Company has not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any of the transactions contemplated hereby.

SECTION 4

REPRESENTATIONS AND WARRANTIES OF THE INVESTORS

Each Investor hereby, severally and not jointly, represents and warrants to the Company as follows:

4.1 No Registration. The Investor understands that the Shares and the Conversion Shares, have not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Investor's representations as expressed herein or otherwise made pursuant hereto.

4.2 Investment Intent. The Investor is acquiring the Shares, and the Conversion Shares, for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof, and that the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. The Investor further represents that it does not have any contract, undertaking, agreement or arrangement with any person or entity to sell, transfer or grant participation to such person or entity or to any third person or entity with respect to any of the Shares or the Conversion Shares.

4.3 **Investment Experience.** The Investor has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company and acknowledges that the Investor, can protect its own interests. The Investor has such knowledge and experience in financial and business matters so that the Investor is capable of evaluating the merits and risks of its investment in the Company.

4.4 **Speculative Nature of Investment.** The Investor understands and acknowledges that the Company has a limited financial and operating history and that an investment in the Company is highly speculative and involves substantial risks. The Investor can bear the economic risk of the Investor's investment and is able, without impairing the Investor's financial condition, to hold the Shares and the Conversion Shares for an indefinite period of time and to suffer a complete loss of the Investor's investment.

4.5 **Access to Data.** The Investor has had an opportunity to ask questions of, and receive answers from, the officers of the Company concerning the Agreements, the exhibits and schedules attached hereto and thereto and the transactions contemplated by the Agreements, as well as the Company's business, management and financial affairs, which questions were answered to its satisfaction. The Investor believes that it has received all the information the Investor considers necessary or appropriate for deciding whether to purchase the Shares and the Conversion Shares. The Investor understands that such discussions, as well as any information issued by the Company, were intended to describe certain aspects of the Company's business and prospects, but were not necessarily a thorough or exhaustive description. The Investor acknowledges that any business plans prepared by the Company have been, and continue to be, subject to change and that any projections included in such business plans or otherwise are necessarily speculative in nature, and it can be expected that some or all of the assumptions underlying the projections will not materialize or will vary significantly from actual results. The Investor also acknowledges that it is relying solely on its own counsel and not on any statements or representations of the Company or its agents for legal advice with respect to this investment or the transactions contemplated by the Agreements.

4.6 **Accredited Investor.** The Investor is an "accredited investor" within the meaning of Regulation D, Rule 501(a), promulgated by the Securities and Exchange Commission under the Securities Act and shall submit to the Company such further assurances of such status as may be reasonably requested by the Company.

4.7 **Residency.** The residency of the Investor (or, in the case of a partnership or corporation, such entity's principal place of business) is correctly set forth on the Schedule of Investors.

4.8 **Rule 144.** The Investor acknowledges that the Shares and the Conversion Shares must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available. The Investor is aware of the provisions of Rule 144 promulgated under the Securities Act which permit resale of shares purchased in a private placement subject to the satisfaction of certain conditions, which may include, among other things, the availability of certain current public information about the Company; the resale occurring not less than a specified period after a party has purchased and paid for the security to be sold; the number of shares being sold during any three-month period not exceeding specified limitations; the sale being effected through a "brokers' transaction," a transaction directly with a "market maker" or a "riskless principal transaction" (as those terms are defined in the Securities Act or the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder); and the filing of a Form 144 notice, if applicable. The Investor understands that the current public information referred to above is not now available and the Company has no present plans to make such information available. The Investor acknowledges and understands that notwithstanding any obligation under the Rights Agreement, the Company may not be satisfying the current public information requirement of Rule 144 at the time the Investor wishes to sell the Shares or the Conversion Shares, and that, in such event, the Investor may

be precluded from selling such securities under Rule 144, even if the other applicable requirements of Rule 144 have been satisfied. The Investor acknowledges that, in the event the applicable requirements of Rule 144 are not met, registration under the Securities Act or an exemption from registration will be required for any disposition of the Shares or the underlying Common Stock. The Investor understands that, although Rule 144 is not exclusive, the Securities and Exchange Commission has expressed its opinion that persons proposing to sell restricted securities received in a private offering other than in a registered offering or pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales and that such persons and the brokers who participate in the transactions do so at their own risk.

4.9 **No Public Market.** The Investor understands and acknowledges that no public market now exists for any of the securities issued by the Company and that the Company has made no assurances that a public market will ever exist for the Company's securities.

4.10 **Authorization.**

(a) The Investor has all requisite power and authority to execute and deliver the Agreements, to purchase the Shares hereunder and to carry out and perform its obligations under the terms of the Agreements. All action on the part of the Investor necessary for the authorization, execution, delivery and performance of the Agreements, and the performance of all of the Investor's obligations under the Agreements, has been taken or will be taken prior to the Closing.

(b) The Agreements, when executed and delivered by the Investor, will constitute valid and legally binding obligations of the Investor, enforceable in accordance with their terms except: (i) to the extent that the indemnification provisions contained in the Rights Agreement may be limited by applicable law and principles of public policy, (ii) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (iii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies or by general principles of equity.

(c) No consent, approval, authorization, order, filing, registration or qualification of or with any court, governmental authority or third person is required to be obtained by the Investor in connection with the execution and delivery of the Agreements by the Investor or the performance of the Investor's obligations hereunder or thereunder.

4.11 **Brokers or Finders.** The Investor has not engaged any brokers, finders or agents, and neither the Company nor any other Investor has, nor will, incur, directly or indirectly, as a result of any action taken by the Investor, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the Agreements.

4.12 **Tax Advisors.** The Investor has reviewed with its own tax advisors the U.S. federal, state, local and foreign tax consequences of this investment and the transactions contemplated by the Agreements. With respect to such matters, the Investor relies solely on such advisors and not on any statements or representations of the Company or any of its agents, written or oral. The Investor understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment or the transactions contemplated by the Agreements.

4.13 **Legends.** The Investor understands and agrees that the certificates evidencing the Shares or the Conversion Shares, or any other securities issued in respect of the Shares or the Conversion Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall bear the

following legend (in addition to any legend required by the Rights Agreement or under applicable state securities laws):

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SUCH ACT AND/OR APPLICABLE STATE SECURITIES LAWS, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE, REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED."

SECTION 5

CONDITIONS TO INVESTORS' OBLIGATIONS TO CLOSE

Each Investor's obligation to purchase the Shares at a Closing is subject to the fulfillment on or before the Closing of each of the following conditions, unless waived by the applicable Investor purchasing the Shares in such Closing:

5.1 Representations and Warranties. Except as set forth in or modified by the Schedule of Exceptions, the representations and warranties made by the Company in Section 3 shall be true and correct in all material respects as of the date of such Closing.

5.2 Covenants. The Company shall have performed or complied with all covenants, agreements and conditions contained in this Agreement to be performed or complied with by the Company on or prior to the Closing in all material respects.

5.3 Blue Sky. The Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and the Conversion Shares.

5.4 Restated Certificate. The Restated Certificate shall have been duly authorized, executed and filed with and accepted by the Secretary of State of the State of Delaware.

5.5 Rights Agreement. The Company and the Investors (each as defined in the Rights Agreement) shall have executed and delivered the Rights Agreement.

5.6 Closing Deliverables. The Company shall have delivered to counsel to the Investors the following:

(a) a certificate executed by the Chief Executive Officer, President or Chief Financial Officer of the Company on behalf of the Company, in substantially the form of Exhibit E, certifying the satisfaction of the conditions to closing listed in Sections 5.1 and 5.2; and

(b) a certificate of the Secretary of State of the State of Delaware, dated as of a date within five days of the date of such Closing, with respect to the good standing of the Company.

5.7 Restructuring Plan. The Company shall have undertaken a restructuring plan as follows:

(a) the shares of the Company's Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall have been converted to Common Stock at a conversion rate of one share of Preferred Stock for one share of Common Stock;

(b) all principal and any accrued but unpaid interest under the Company's 10% Senior Convertible Notes issued pursuant to the 10% Senior Convertible Notes Subscription Agreement shall have been converted to Common Stock at a conversion rate equal to $1.00 per share;

(c) all principal and any accrued but unpaid interest under the Company's Subordinated Convertible Note issued to David Fineman shall have been converted to Common Stock at a conversion rate equal to $1.00 per share; and

(d) the Company shall have received subscriptions for at least $1,000,000 of shares of Series AA Preferred at the Closing.

SECTION 6

CONDITIONS TO COMPANY'S OBLIGATION TO CLOSE

The Company's obligation to sell and issue the Shares at each Closing is subject to the fulfillment on or before such Closing of the following conditions, unless waived by the Company:

6.1 Representations and Warranties. The representations and warranties made by the Investors in such Closing in Section 4 shall be true and correct in all material respects when made and shall be true and correct in all material respects as of the date of such Closing.

6.2 Covenants. The Investors shall have performed or complied with all covenants, agreements and conditions contained in the Agreements to be performed or complied with by the Investors on or prior to the date of such Closing in all material respects.

6.3 Compliance with Securities Laws. The Company shall be satisfied that the offer and sale of the Shares and the Conversion Shares shall be qualified or exempt from registration or qualification under all applicable federal and state securities laws (including receipt by the Company of all necessary blue sky law permits and qualifications required by any state, if any).

6.4 Restated Certificate. The Restated Certificate shall have been duly authorized, executed and filed with and accepted by the Secretary of State of the State of Delaware.

6.5 Rights Agreement. The Company and the Investors (each as defined in the Rights Agreement) shall have executed and delivered the Rights Agreement.

SECTION 7

MISCELLANEOUS

7.1 Amendment. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Investors holding a majority of the Common Stock issued or issuable upon conversion of the Shares issued pursuant to this Agreement (excluding any of such shares that have been sold to the public or pursuant to Rule 144); *provided, however*, that Investors purchasing shares in

a Closing after the Initial Closing may become parties to this Agreement in accordance with Section 2.1 without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Investor. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities have been converted or exchanged or for which such securities have been exercised) and each future holder of all such securities. Each Investor acknowledges that by the operation of this paragraph, the holders of a majority of the Common Stock issued or issuable upon conversion of the Shares issued pursuant to this Agreement (excluding any of such shares that have been sold to the public or pursuant to Rule 144) will have the right and power to diminish or eliminate all rights of such Investor under this Agreement.

7.2 **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand, messenger or courier service addressed:

(a) if to an Investor, to the Investor's address as shown in the Company's records, as may be updated in accordance with the provisions hereof;

(b) if to any other holder of any Shares or Conversion Shares, to such address as shown in the Company's records, or, until any such holder so furnishes an address to the Company, then to the address of the last holder of such Shares or Conversion Shares for which the Company has contact information in its records; or

(c) if to the Company, to the attention of the Chief Executive Officer or Chief Financial Officer of the Company at 5980 Horton Street, Suite 400, Emeryville, CA 94608, or at such other current address as the Company shall have furnished to the Investors, with a copy (which shall not constitute notice) to Jon Layman, Wilson Sonsini Goodrich & Rosati, P.C.,650 Page Mill Road, Palo Alto, CA 94304.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given (i) if delivered by hand, messenger or courier service, when delivered (or if sent via a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier), or (ii) if sent via mail, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid. In the event of any conflict between the Company's books and records and this Agreement or any notice delivered hereunder, the Company's books and records will control absent fraud or error.

Subject to the limitations set forth in Delaware General Corporation Law §232(e), each Investor or other security holder consents to the delivery of any notice to stockholders given by the Company under the Delaware General Corporation Law or the Company's certificate of incorporation or bylaws by (i) facsimile telecommunication to the facsimile number set forth on Exhibit A (or to any other facsimile number for the Investor or other security holder in the Company's records), (ii) electronic mail to the electronic mail address set forth on Exhibit A (or to any other electronic mail address for the Investor or other security holder in the Company's records), (iii) posting on an electronic network together with separate notice to the Investor or other security holder of such specific posting or (iv) any other form of electronic transmission (as defined in the Delaware General Corporation Law) directed to the Investor or other security holder. This consent may be revoked by an Investor or other security holder by written notice to the Company and may be deemed revoked in the circumstances specified in Delaware General Corporation Law §232.

7.3 **Governing Law.** This Agreement shall be governed in all respects by the internal laws of the State of California as applied to agreements entered into among California residents to be performed entirely within California, without regard to principles of conflicts of law.

7.4 **Brokers or Finders.** The Company shall indemnify and hold harmless each Investor from any liability for any commission or compensation in the nature of a brokerage or finder's fee or agent's commission (and the costs and expenses of defending against such liability or asserted liability) for which such Investor or any of its constituent partners, members, officers, directors, employees or representatives is responsible to the extent such liability is attributable to any inaccuracy or breach of the representations and warranties contained in Section 3.17, and each Investor agrees to indemnify and hold harmless the Company and each other Investor from any liability for any commission or compensation in the nature of a brokerage or finder's fee or agent's commission (and the costs and expenses of defending against such liability or asserted liability) for which the Company, any other Investor or any of their constituent partners, members, officers, directors, employees or representatives is responsible to the extent such liability is attributable to any inaccuracy or breach of the representations and warranties contained in Section 4.11.

7.5 **Expenses.** The Company and the Investors shall each pay their own expenses in connection with the transactions contemplated by this Agreement.

7.6 **Survival.** The representations, warranties, covenants and agreements made in this Agreement shall survive any investigation made by any party hereto and the closing of the transactions contemplated hereby for one year from the date of the Initial Closing.

7.7 **Successors and Assigns.** This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any Investor without the prior written consent of the Company. Any attempt by an Investor without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

7.8 **Entire Agreement.** This Agreement, including the exhibits attached hereto, constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof. No party shall be liable or bound to any other party in any manner with regard to the subjects hereof or thereof by any warranties, representations or covenants except as specifically set forth herein or therein.

7.9 **Delays or Omissions.** Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party to this Agreement, shall be cumulative and not alternative.

7.10 **California Corporate Securities Law.** THE SALE OF THE SECURITIES THAT ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER

OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102, OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON THE QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

7.11 **Severability.** If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

7.12 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

7.13 **Telecopy Execution and Delivery.** A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

7.14 **Jurisdiction; Venue.** With respect to any disputes arising out of or related to this Agreement, the parties consent to the exclusive jurisdiction of, and venue in, the state courts in Santa Clara County in the State of California (or in the event of exclusive federal jurisdiction, the courts of the Northern District of California).

7.15 **Further Assurances.** Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement.

7.16 **Attorney's Fees.** In the event that any suit or action is instituted to enforce any provisions in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

7.17 **Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATED TO THIS AGREEMENT.** If the waiver of jury trial set forth in this section is not enforceable, then any claim or cause of action arising out of or relating to this Agreement shall be settled by judicial reference pursuant to California Code of Civil Procedure Section 638 *et seq.* before a referee sitting without a jury, such referee to be mutually acceptable to the parties or, if no agreement is reached, by a referee appointed by the Presiding Judge of the California Superior Court

for Santa Clara County. This paragraph shall not restrict a party from exercising remedies under the Uniform Commercial Code or from exercising pre-judgment remedies under applicable law.

7.18 Waiver of Potential Conflicts of Interest. Each of the Investors and the Company acknowledges that Wilson Sonsini Goodrich & Rosati, Professional Corporation ("*WSGR*") may have represented and may currently represent certain of the Investors. In the course of such representation, WSGR may have come into possession of confidential information relating to such Investors. Each of the Investors and the Company acknowledges that WSGR is representing only the Company in this transaction. Each of the Investors and the Company understands that an affiliate of WSGR may also be an Investor under this Agreement. By executing this Agreement, each of the Investors and the Company hereby waives any actual or potential conflict of interest which may arise as a result of WSGR's representation of such persons and entities, WSGR's possession of such confidential information and the participation by WSGR's affiliate in the financing. Each of the Investors and the Company represents that it has had the opportunity to consult with independent counsel concerning the giving of this waiver.

(signature page follows)

The parties are signing this Series AA Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

KINEMED, INC.,
a Delaware corporation

By: _____
David M. Fineman, President

(Signature page to the Series AA Preferred Stock Purchase Agreement)

The parties are signing this Series AA Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

INVESTOR

_____
(Print investor name)

_____
(Signature)

_____
(Print name of signatory, if signing for an entity)

_____
(Print title of signatory, if signing for an entity)

Exhibit A

SCHEDULE OF INVESTORS

INITIAL CLOSING: NOVEMBER [__], 2008

Investor	Number of Series AA Shares	Purchase Price

Exhibit B

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

Exhibit C

INVESTORS' RIGHTS AGREEMENT

Exhibit D

KINEMED, INC.

SCHEDULE OF EXCEPTIONS

This Schedule of Exceptions is made and given pursuant to Section 3 of the Series AA Preferred Stock Purchase Agreement, dated as of November [___], 2008 (the "*Agreement*"), between KineMed, Inc. (the "*Company*") and the Investors listed on Exhibit A thereto. All capitalized terms used but not defined herein shall have the meanings as defined in the Agreement, unless otherwise provided. The section numbers below correspond to the section numbers of the representations and warranties in the Agreement; *provided, however*, that any information disclosed herein under any section number shall be deemed to be disclosed and incorporated into any other section number under the Agreement where such disclosure would be appropriate.

Nothing in this Schedule of Exceptions is intended to broaden the scope of any representation or warranty contained in the Agreement or to create any covenant. Inclusion of any item in this Schedule of Exceptions (1) does not represent a determination that such item is material or establish a standard of materiality, (2) does not represent a determination that such item did not arise in the ordinary course of business, (3) does not represent a determination that the transactions contemplated by the Agreement require the consent of third parties, and (4) shall not constitute, or be deemed to be, an admission to any third party concerning such item. This Schedule of Exceptions includes brief descriptions or summaries of certain agreements and instruments, copies of which are available upon reasonable request. Such descriptions do not purport to be comprehensive, and are qualified in their entirety by reference to the text of the documents described.

[TO BE PROVIDED]

Exhibit E

KINEMED, INC.

COMPLIANCE CERTIFICATE

November ___, 2008

Pursuant to Section 5.6 of the Series AA Preferred Stock Purchase Agreement, dated as of November ___, 2008, between KineMed, Inc., a Delaware corporation (the "***Company***"), and the Investors listed on Exhibit A thereto (the "***Agreement***"), the undersigned certifies on behalf of the Company as follows:

1. The undersigned is the President of the Company.

2. Except as set forth in or modified by the Schedule of Exceptions, the representations and warranties of the Company in Section 3 of the Agreement are true and correct in all material respects as of the date hereof.

3. The Company has performed or complied with all covenants, agreements and conditions contained in the Agreement to be performed or complied with by the Company on or prior to the Closing in all material respects.

Capitalized terms used but not defined herein have the meanings ascribed to them in the Agreement.

The undersigned signs this certificate as of the date indicated under the title.

KINEMED, INC.,
a Delaware corporation

By: _____
David Fineman, President

EXHIBIT F

INVESTORS RIGHTS AGREEMENT

KINEMED, INC.

INVESTORS' RIGHTS AGREEMENT

November ___, 2008

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KINEMED, INC.
INVESTORS' RIGHTS AGREEMENT

This Investors' Rights Agreement (this "*Agreement*") is dated as of November [__], 2008, and is between KineMed, Inc., a Delaware corporation (the "*Company*"), and the persons and entities listed on Exhibit A (each, an "*Investor*" and collectively, the "*Investors*").

RECITALS

The Investors are parties to the Series AA Preferred Stock Purchase Agreement of even date herewith, among the Company and the Investors listed on the Schedule of Investors thereto (the "*Purchase Agreement*"), and it is a condition to the closing of the sale of the Series AA Preferred Stock to the Investors listed on such Schedule of Investors that the Investors and the Company execute and deliver this Agreement.
The parties therefore agree as follows:

SECTION 1

DEFINITIONS

1.1 **Certain Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "*Commission*" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(b) "*Common Stock*" means the Common Stock of the Company.

(c) "*Conversion Stock*" shall mean shares of Common Stock issued upon conversion of the Series AA Preferred Stock.

(d) "*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(e) "*Holder*" shall mean any Investor who holds Registrable Securities and any holder of Registrable Securities to whom the registration rights conferred by this Agreement have been duly and validly transferred in accordance with Section 2.12 of this Agreement.

(f) "*Indemnified Party*" shall have the meaning set forth in Section 1.1(c).

(g) "*Indemnifying Party*" shall have the meaning set forth in Section 1.1(c).

(h) "*Initial Closing*" shall mean the date of the initial sale of shares of the Company's Series AA Preferred Stock pursuant to the Purchase Agreement.

(i) "*Initial Public Offering*" shall mean the closing of the Company's first firm commitment underwritten public offering of the Company's Common Stock registered under the Securities Act.

(j) *"Initiating Holders"* shall mean any Holder or Holders who in the aggregate hold not less than fifty percent (50%) of the outstanding Registrable Securities.

(k) *"New Securities"* shall have the meaning set forth in Section 1.1(a).

(l) *"Other Selling Stockholders"* shall mean persons other than Holders who, by virtue of agreements with the Company, are entitled to include their Other Shares in certain registrations hereunder.

(m) *"Other Shares"* shall mean shares of Common Stock, other than Registrable Securities (as defined below), with respect to which registration rights have been granted.

(n) *"Purchase Agreement"* shall have the meaning set forth in the Recitals.

(o) *"Registrable Securities"* shall mean (i) shares of Common Stock issued or issuable pursuant to the conversion of the Shares and (ii) any Common Stock issued as a dividend or other distribution with respect to or in exchange for or in replacement of the shares referenced in (i) above; *provided, however*, that Registrable Securities shall not include any shares of Common Stock described in clause (i) or (ii) above which have previously been registered or which have been sold to the public either pursuant to a registration statement or Rule 144, or which have been sold in a private transaction in which the transferor's rights under this Agreement are not validly assigned in accordance with this Agreement.

(p) The terms *"register,"* *"registered"* and *"registration"* shall refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement.

(q) *"Registration Expenses"* shall mean all expenses incurred in effecting any registration pursuant to this Agreement, including, without limitation, all registration, qualification, and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, blue sky fees and expenses, and expenses of any regular or special audits incident to or required by any such registration, but shall not include Selling Expenses, fees and disbursements of counsel for the Holders and the compensation of regular employees of the Company, which shall be paid in any event by the Company.

(r) *"Restricted Securities"* shall mean any Registrable Securities required to bear the first legend set forth in Section 2.8(b).

(s) *"Rule 144"* shall mean Rule 144 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(t) *"Rule 145"* shall mean Rule 145 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission

(u) *"Rule 415"* shall mean Rule 415 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(v) *"Securities Act"* shall mean the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(w) *"Selling Expenses"* shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder.

(x) *"Series AA Preferred Stock"* shall mean the shares of Series AA Preferred Stock.

(y) *"Shares"* shall mean the Company's Series AA Preferred Stock.

(z) *"Withdrawn Registration"* shall mean a forfeited demand registration under Section 2.1 in accordance with the terms and conditions of Section 2.4.

SECTION 2

REGISTRATION RIGHTS

2.1 Requested Registration.

(a) ***Request for Registration.*** Subject to the conditions set forth in this Section 2.1, if the Company shall receive from Initiating Holders a written request signed by such Initiating Holders that the Company effect any registration with respect to all or a part of the Registrable Securities (such request shall state the number of shares of Registrable Securities to be disposed of by such Initiating Holders), the Company will:

(i) promptly give written notice of the proposed registration to all other Holders; and

(ii) as soon as practicable, file and use its commercially reasonable efforts to effect such registration (including, without limitation, filing post-effective amendments, appropriate qualifications under applicable blue sky or other state securities laws, and appropriate compliance with the Securities Act) and to permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within twenty (20) days after such written notice from the Company is mailed or delivered.

(b) ***Limitations on Requested Registration.*** The Company shall not be obligated to effect, or to take any action to effect, any such registration pursuant to this Section 2.1:

(i) Prior to the earlier of (A) the three (3) year anniversary of the date of this Agreement or (B) one hundred and eighty (180) days following the effective date of the first registration statement filed by the Company covering an underwritten offering of any of its securities to the general public (or the subsequent date on which all market stand-off agreements applicable to the offering have terminated);

(ii) If the Initiating Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration statement, propose to sell Registrable Securities and such other securities (if any) at an aggregate offering price, net of underwriters' discounts and expenses, of less than $0.18 per share of Common Stock (as adjusted for any stock dividends, combinations or splits with

respect to such shares) and the aggregate proceeds of which (after deduction for underwriter's discounts and expenses related to the issuance) are less than $20,000,000;

(iii) In any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification, or compliance, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(iv) After the Company has initiated two (2) such registrations pursuant to this Section 2.1;

(v) During the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a Company-initiated registration (or ending on the subsequent date on which all market stand-off agreements applicable to the offering have terminated); *provided* that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective;

(vi) If the Initiating Holders propose to dispose of shares of Registrable Securities that may be registered on Form S-3 pursuant to a request made under Section 2.3;

(vii) If the Initiating Holders do not request that such offering be firmly underwritten by underwriters selected by the Initiating Holders (subject to the consent of the Company); and

(viii) If the Company and the Initiating Holders are unable to obtain the commitment of the underwriter described in clause (b)(vii) above to firmly underwrite the offer.

(c) ***Deferral.*** If (i) in the good faith judgment of the board of directors of the Company, the filing of a registration statement covering the Registrable Securities would be materially detrimental to the Company and the board of directors of the Company concludes, as a result, that it is in the best interests of the Company to defer the filing of such registration statement at such time, and (ii) the Company shall furnish to such Holders a certificate signed by the President of the Company stating that in the good faith judgment of the board of directors of the Company, it would be materially detrimental to the Company for such registration statement to be filed in the near future and that it is, therefore, in the best interests of the Company to defer the filing of such registration statement, then (in addition to the limitations set forth in Section 1.1(b)(v) above) the Company shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request of the Initiating Holders, and, *provided further*, that the Company shall not defer its obligation in this manner more than two (2) times in any twelve-month period.

(d) ***Other Shares.*** The registration statement filed pursuant to the request of the Initiating Holders may, subject to the provisions of Section 1.1(e), include Other Shares, and may include securities of the Company being sold for the account of the Company.

(e) ***Underwriting.*** The right of any Holder to include all or any portion of its Registrable Securities in a registration pursuant to this Section 2.1 shall be conditioned upon such Holder's participation in an underwriting and the inclusion of such Holder's Registrable Securities to the extent provided herein. If the Company shall request inclusion in any registration pursuant to Section 2.1 of securities being sold for its own account, or if other persons shall request inclusion in any registration pursuant to Section 2.1, the Initiating Holders shall, on behalf of all Holders, offer to include such securities in the underwriting and such offer shall be conditioned upon the participation of the Company or such other persons in such underwriting

and the inclusion of the Company's and such person's other securities of the Company and their acceptance of the further applicable provisions of this Section 2 (including Section 2.10). The Company shall (together with all Holders and other persons proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected for such underwriting by the Company, which underwriters are reasonably acceptable to a majority-in-interest of the Initiating Holders.

Notwithstanding any other provision of this Section 2.1, if the underwriters advise the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, the number of Registrable Securities and Other Shares that may be so included shall be allocated as follows: (i) first, among all Holders requesting to include Registrable Securities in such registration statement based on the *pro rata* percentage of Registrable Securities held by such Holders, assuming conversion; (ii) second, to the Other Selling Stockholders; and (iii) third, to the Company, which the Company may allocate, at its discretion, for its own account, or for the account of other holders or employees of the Company.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall be excluded therefrom by written notice from the Company, the underwriter or the Initiating Holders. The securities so excluded shall also be withdrawn from registration. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall also be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares to be included in such registration was previously reduced as a result of marketing factors pursuant to this Section 1.1(e), then the Company shall then offer to all Holders and Other Selling Stockholders who have retained rights to include securities in the registration the right to include additional Registrable Securities or Other Shares in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among such Holders and Other Selling Stockholders requesting additional inclusion, as set forth above.

2.2 Company Registration.

(a) ***Company Registration.*** If the Company shall determine to register any of its securities either for its own account or the account of a security holder or holders, other than a registration pursuant to Section 2.1 or 2.3, a registration relating solely to employee benefit plans, a registration relating to the offer and sale of debt securities, a registration relating to a corporate reorganization or other Rule 145 transaction, or a registration on any registration form that does not permit secondary sales, the Company will:

(i) promptly give written notice of the proposed registration to all Holders; and

(ii) use its commercially reasonable efforts to include in such registration (and any related qualification under blue sky laws or other compliance), except as set forth in Section 1.1(b) below, and in any underwriting involved therein, all of such Registrable Securities as are specified in a written request or requests made by any Holder or Holders received by the Company within ten (10) days after such written notice from the Company is mailed or delivered. Such written request may specify all or a part of a Holder's Registrable Securities.

(b) ***Underwriting.*** If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to Section 1.1(a)(i). In such event, the right of any Holder to registration pursuant to this Section 2.2 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company,

the Other Selling Stockholders and other holders of securities of the Company with registration rights to participate therein distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected by the Company.

Notwithstanding any other provision of this Section 2.2, if the underwriters advise the Company in writing that marketing factors require a limitation on the number of shares to be underwritten, the underwriters may (subject to the limitations set forth below) exclude all Registrable Securities from, or limit the number of Registrable Securities to be included in, the registration and underwriting. The Company shall so advise all holders of securities requesting registration, and the number of shares of securities that are entitled to be included in the registration and underwriting shall be allocated, as follows: (i) first, to the Company for securities being sold for its own account, (ii) second, to the Holders requesting to include Registrable Securities in such registration statement based on the *pro rata* percentage of Registrable Securities held by such Holders, assuming conversion and (iii) third, to the Other Selling Stockholders requesting to include Other Shares in such registration statement based on the *pro rata* percentage of Other Shares held by such Other Selling Stockholders, assuming conversion.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall also be excluded therefrom by written notice from the Company or the underwriter. The Registrable Securities or other securities so excluded shall also be withdrawn from such registration. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

(c) ***Right to Terminate Registration.*** The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.2 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration.

2.3 Registration on Form S-3.

(a) ***Request for Form S-3 Registration.*** After its initial public offering, the Company shall use its commercially reasonable efforts to qualify for registration on Form S-3 or any comparable or successor form or forms. After the Company has qualified for the use of Form S-3, in addition to the rights contained in the foregoing provisions of this Section 2 and subject to the conditions set forth in this Section 2.3, if the Company shall receive from a Holder or Holders of Registrable Securities a written request that the Company effect any registration on Form S-3 or any similar short form registration statement with respect to all or part of the Registrable Securities (such request shall state the number of shares of Registrable Securities to be disposed of and the intended methods of disposition of such shares by such Holder or Holders), the Company will take all such action with respect to such Registrable Securities as required by Section 1.1(a)(i) and (ii).

(b) ***Limitations on Form S-3 Registration.*** The Company shall not be obligated to effect, or take any action to effect, any such registration pursuant to this Section 2.3:

(i) In the circumstances described in either Sections 1.1(b)(i), 1.1(b)(iii) or 1.1(b)(v);

(ii) If the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) on Form S-3 at an aggregate price to the public of less than $1,000,000; or

(iii) If, in a given twelve-month period, the Company has effected one (1) such registration in such period.

(c) *Deferral.* The provisions of Section 1.1(c) shall apply to any registration pursuant to this Section 2.3.

(d) *Underwriting.* If the Holders of Registrable Securities requesting registration under this Section 2.3 intend to distribute the Registrable Securities covered by their request by means of an underwriting, the provisions of Section 1.1(e) shall apply to such registration. Notwithstanding anything contained herein to the contrary, registrations effected pursuant to this Section 2.3 shall not be counted as requests for registration or registrations effected pursuant to Section 2.1.

2.4 **Expenses of Registration.** All Registration Expenses incurred in connection with registrations pursuant to Sections 2.1, 2.2 and 2.3 shall be borne by the Company; *provided, however*, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Sections 2.1 and 2.3 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered or because a sufficient number of Holders shall have withdrawn so that the minimum offering conditions set forth in Sections 2.1 and 2.3 are no longer satisfied (in which case all participating Holders shall bear such expenses *pro rata* among each other based on the number of Registrable Securities requested to be so registered), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to a demand registration pursuant to Section 2.1; *provided, however*, in the event that a withdrawal by the Holders is based upon material adverse information relating to the Company that is different from the information known or available (upon request from the Company or otherwise) to the Holders requesting registration at the time of their request for registration under Section 2.1, such registration shall not be treated as a counted registration for purposes of Section 2.1, even though the Holders do not bear the Registration Expenses for such registration. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the holders of securities included in such registration *pro rata* among each other on the basis of the number of Registrable Securities so registered.

2.5 **Registration Procedures.** In the case of each registration effected by the Company pursuant to Section 2, the Company will keep each Holder advised in writing as to the initiation of each registration and as to the completion thereof. At its expense, the Company will use its commercially reasonable efforts to:

(a) Keep such registration effective for a period of ending on the earlier of the date which is sixty (60) days from the effective date of the registration statement or such time as the Holder or Holders have completed the distribution described in the registration statement relating thereto;

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period set forth in subsection (a) above;

(c) Furnish such number of prospectuses, including any preliminary prospectuses, and other documents incident thereto, including any amendment of or supplement to the prospectus, as a Holder from time to time may reasonably request;

(d) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdiction as shall be reasonably requested by the Holders; *provided*, that the Company shall not be required in connection therewith or as a

condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(e) Notify each seller of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing, and following such notification promptly prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing;

(f) Provide a transfer agent and registrar for all Registrable Securities registered pursuant to such registration statement and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(g) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed; and

(h) In connection with any underwritten offering pursuant to a registration statement filed pursuant to Section 2.1, enter into an underwriting agreement in form reasonably necessary to effect the offer and sale of Common Stock, *provided* such underwriting agreement contains reasonable and customary provisions, and *provided further*, that each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

2.6 Indemnification.

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, each of its officers, directors and partners, legal counsel and accountants and each person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification or compliance has been effected pursuant to this Section 2, and each underwriter, if any, and each person who controls within the meaning of Section 15 of the Securities Act any underwriter, against all expenses, claims, losses, damages and liabilities (or actions, proceedings or settlements in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any prospectus, offering circular or other document (including any related registration statement, notification or the like) incident to any such registration, qualification or compliance, (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation (or alleged violation) by the Company of the Securities Act, any state securities laws or any rule or regulation thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any offering covered by such registration, qualification or compliance, and the Company will reimburse each such Holder, each of its officers, directors, partners, legal counsel and accountants and each person controlling such Holder, each such underwriter and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating and defending or settling any such claim, loss, damage, liability or action; *provided* that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability, or action arises out of or is based on any untrue statement or omission based upon written information furnished to the Company by such Holder, any of such Holder's officers, directors, partners, legal counsel or accountants, any person controlling such Holder, such underwriter or any person

who controls any such underwriter, and stated to be specifically for use therein; and *provided, further* that, the indemnity agreement contained in this Section 1.1(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld).

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification or compliance is being effected, indemnify and hold harmless the Company, each of its directors, officers, partners, legal counsel and accountants and each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, each other such Holder, and each of their officers, directors and partners, and each person controlling each other such Holder, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any prospectus, offering circular or other document (including any related registration statement, notification, or the like) incident to any such registration, qualification or compliance, or (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company and such Holders, directors, officers, partners, legal counsel and accountants, persons, underwriters, or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein; *provided, however*, that the obligations of such Holder hereunder shall not apply to amounts paid in settlement of any such claims, losses, damages or liabilities (or actions in respect thereof) if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld); and *provided* that in no event shall any indemnity under this Section 2.6 exceed the net proceeds from the offering received by such Holder, except in the case of fraud or willful misconduct by such Holder.

(c) Each party entitled to indemnification under this Section 2.6 (the *"Indemnified Party"*) shall give notice to the party required to provide indemnification (the *"Indemnifying Party"*) promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of such claim or any litigation resulting therefrom; *provided* that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party's expense; and *provided further* that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 2.6, to the extent such failure is not prejudicial. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this Section 2.6 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, or expense referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss,

liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission. No person or entity will be required under this Section 1.1(d) to contribute any amount in excess of the net proceeds from the offering received by such person or entity, except in the case of fraud or willful misconduct by such person or entity. No person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person or entity who was not guilty of such fraudulent misrepresentation.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

2.7 Information by Holder. Each Holder of Registrable Securities shall furnish to the Company such information regarding such Holder and the distribution proposed by such Holder as the Company may reasonably request in writing and as shall be reasonably required in connection with any registration, qualification, or compliance referred to in this Section 2.

2.8 Restrictions on Transfer.

(a) The holder of each certificate representing Registrable Securities by acceptance thereof agrees to comply in all respects with the provisions of this Section 2.8. Each Holder agrees not to make any sale, assignment, transfer, pledge or other disposition of all or any portion of the Restricted Securities, or any beneficial interest therein, unless and until the transferee thereof has agreed in writing for the benefit of the Company to take and hold such Restricted Securities subject to, and to be bound by, the terms and conditions set forth in this Agreement, including, without limitation, this Section 2.8 and Section 2.10, and:

(i) There is then in effect a registration statement under the Securities Act covering such proposed disposition and the disposition is made in accordance with the registration statement; or

(ii) The Holder shall have given prior written notice to the Company of the Holder's intention to make such disposition and shall have furnished the Company with a detailed description of the manner and circumstances of the proposed disposition, and the Holder shall have furnished the Company, at the Holder's expense, with (i) an opinion of counsel, reasonably satisfactory to the Company, to the effect that such disposition will not require registration of such Restricted Securities under the Securities Act or (ii) a "no action" letter from the Commission to the effect that the transfer of such securities without registration will not result in a recommendation by the staff of the Commission that action be taken with respect thereto, whereupon the holder of such Restricted Securities shall be entitled to transfer such Restricted Securities in accordance with the terms of the notice delivered by the Holder to the Company.

(b) Each certificate representing Registrable Securities shall (unless otherwise permitted by the provisions of this Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO (1) RESTRICTIONS ON TRANSFERABILITY AND RESALE, INCLUDING A LOCK-UP PERIOD IN THE EVENT OF A PUBLIC OFFERING, AS SET FORTH IN AN INVESTORS' RIGHTS AGREEMENT, AND (2) VOTING RESTRICTIONS AS SET FORTH IN A VOTING AGREEMENT AMONG THE COMPANY AND THE ORIGINAL HOLDERS OF THESE SHARES, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.

The Holders consent to the Company making a notation on its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer established in this Section 2.8.

(c) The first legend referring to federal and state securities laws identified in Section 2.8(b) stamped on a certificate evidencing the Restricted Securities and the stock transfer instructions and record notations with respect to the Restricted Securities shall be removed and the Company shall issue a certificate without such legend to the holder of Restricted Securities if (i) those securities are registered under the Securities Act, or (ii) the holder provides the Company with an opinion of counsel reasonably acceptable to the Company to the effect that a sale or transfer of those securities may be made without registration or qualification.

2.9 **Rule 144 Reporting.** With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Restricted Securities to the public without registration, the Company agrees to use its commercially reasonable efforts to:

(a) Make and keep adequate current public information with respect to the Company available in accordance with Rule 144 under the Securities Act, at all times from and after ninety (90) days following the effective date of the first registration under the Securities Act filed by the Company for an offering of its securities to the general public;

(b) File with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at any time after it has become subject to such reporting requirements; and

(c) So long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (at any time from and after ninety (90) days following the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities

Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as a Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing a Holder to sell any such securities without registration.

2.10 Market Stand-Off Agreement. Each Holder shall not sell or otherwise transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, of any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) during the one hundred and eighty (180) day period following the effective date of the registration statement for the Company's Initial Public Offering filed under the Securities Act (or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto). The obligations described in this Section 2.10 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions and may stamp each such certificate with the second legend set forth in Section 2.8(b) with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of such one hundred and eighty (180) day (or other) period. Each Holder agrees to execute a market standoff agreement with said underwriters in customary form consistent with the provisions of this Section 2.10.

2.11 Delay of Registration. No Holder shall have any right to take any action to restrain, enjoin, or otherwise delay any registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.12 Transfer or Assignment of Registration Rights. The rights to cause the Company to register securities granted to a Holder by the Company under this Section 2 may be transferred or assigned by a Holder only to a transferee or assignee of not less than 1,250,000 shares of Registrable Securities (as presently constituted and subject to subsequent adjustments for stock splits, stock dividends, reverse stock splits, and the like); *provided* that (i) such transfer or assignment of Registrable Securities is effected in accordance with the terms of Section 2.8, the Right of First Refusal and Co-Sale Agreement, and applicable securities laws, (ii) the Company is given written notice prior to said transfer or assignment, stating the name and address of the transferee or assignee and identifying the securities with respect to which such registration rights are intended to be transferred or assigned and (iii) the transferee or assignee of such rights assumes in writing the obligations of such Holder under this Agreement, including without limitation the obligations set forth in Section 2.10.

2.13 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of Holders holding a majority of the Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights the terms of which are senior to the registration rights granted to the Holders hereunder.

2.14 Termination of Registration Rights. The right of any Holder to request registration or inclusion in any registration pursuant to Sections 2.1, 2.2 or 2.3 shall terminate on the earlier of (i) such date, on or after the closing of the Company's first registered public offering of Common Stock, on which all shares of Registrable Securities held or entitled to be held upon conversion by such Holder may immediately

be sold under Rule 144 during any ninety (90) day period and (ii) three (3) years after the closing of the Company's Initial Public Offering.

SECTION 3

INFORMATION COVENANTS OF THE COMPANY

The Company hereby covenants and agrees, as follows:

3.1 Basic Financial Information and Inspection Rights.

(a) ***Basic Financial Information.*** The Company will furnish the following reports to each Holder who owns at least 1,250,000 Shares and/or Conversion Stock (as presently constituted and subject to subsequent adjustments for stock splits, stock dividends, reverse stock splits, and the like):

(i) As soon as practicable after the end of each fiscal year of the Company, and in any event within ninety (90) days after the end of each fiscal year of the Company, a consolidated balance sheet of the Company and its subsidiaries, if any, as at the end of such fiscal year, and consolidated statements of income and cash flows of the Company and its subsidiaries, if any, for such year, prepared in accordance with U.S. generally accepted accounting principles consistently applied, certified by the Chief Financial Officer of the Company; and

(ii) As soon as practicable after the end of the first, second and third quarterly accounting periods in each fiscal year of the Company, and in any event within forty five (45) days after the end of the first, second, and third quarterly accounting periods in each fiscal year of the Company, an unaudited consolidated balance sheet of the Company and its subsidiaries, if any, as of the end of each such quarterly period, and unaudited consolidated statements of income and cash flows of the Company and its subsidiaries, if any, for such period, prepared in accordance with U.S. generally accepted accounting principles consistently applied, subject to changes resulting from normal year-end audit adjustments.

3.2 Confidentiality. Anything in this Agreement to the contrary notwithstanding, no Holder by reason of this Agreement shall have access to any trade secrets or classified information of the Company. The Company shall not be required to comply with any information rights of Section 3 in respect of any Holder whom the Company reasonably determines to be a competitor or an officer, employee, director or holder of more than ten percent (10%) of a competitor. Each Holder acknowledges that the information received by them pursuant to this Agreement may be confidential and for its use only, and it will not use such confidential information in violation of the Exchange Act or reproduce, disclose or disseminate such information to any other person (other than its employees or agents having a need to know the contents of such information, and its attorneys), except in connection with the exercise of rights under this Agreement, unless the Company has made such information available to the public generally.

3.3 Termination of Covenants. The covenants set forth in this Section 3 shall terminate and be of no further force and effect after the closing of the Company's Initial Public Offering.

SECTION 4

RIGHT OF FIRST REFUSAL

4.1 Right of First Refusal. The Company hereby grants to each Holder, the right of first refusal to purchase its *pro rata* share of New Securities (as defined in this Section 1.1(a)) which the Company may,

from time to time, propose to sell and issue after the date of this Agreement. A Holder's *pro rata* share, for purposes of this right of first refusal, is equal to the ratio of (a) the number of shares of Common Stock owned by such Holder immediately prior to the issuance of New Securities (assuming full conversion of the Shares and full conversion or exercise of all outstanding convertible securities, rights, options and warrants held by such Holder) to (b) the total number of shares of Common Stock outstanding immediately prior to the issuance of New Securities (assuming full conversion of the Shares and full conversion or exercise of all outstanding convertible securities, rights, options and warrants). This right of first refusal shall be subject to the following provisions:

(a) ***"New Securities"*** shall mean any capital stock (including Common Stock and/or Preferred Stock) of the Company whether now authorized or not, and rights, convertible securities, options or warrants to purchase such capital stock, and securities of any type whatsoever that are, or may become, exercisable or convertible into capital stock; *provided* that the term ***"New Securities"*** does not include:

(i) the Shares and the Conversion Stock;

(ii) securities issued or issuable to officers, employees, directors, consultants, placement agents, and other service providers of the Company (or any subsidiary) pursuant to stock grants, option plans, purchase plans, agreements or other employee stock incentive programs or arrangements approved by the board of directors of the Company;

(iii) securities issued pursuant to the conversion or exercise of the Common Stock Warrants or any other outstanding convertible or exercisable securities as of this date of this Agreement;

(iv) securities issued or issuable as a dividend or distribution on Preferred Stock of the Company or pursuant to any event for which adjustment is made pursuant to paragraph 4(e), 4(f) or 4(g) of the certificate of incorporation of the Company;

(v) securities offered pursuant to a bona fide, firmly underwritten public offering pursuant to a registration statement filed under the Securities Act pursuant to which all outstanding shares of Preferred Stock are automatically converted into Common Stock pursuant to an Automatic Conversion Event (as defined in the certificate of incorporation of the Company;

(vi) securities issued or issuable pursuant to the acquisition of another corporation by the Company by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, *provided*, that such issuances are approved by the board of directors of the Company;

(vii) securities issued or issuable to banks, equipment lessors or other financial institutions pursuant to a commercial leasing or debt financing transaction approved by the board of directors of the Company;

(viii) securities issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the board of directors of the Company;

(ix) securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the board of directors of the Company;

(x) securities of the Company which are otherwise excluded by the affirmative unanimous vote of the board of directors of the Company; and

(xi) any right, option or warrant to acquire any security convertible into the securities excluded from the definition of New Securities pursuant to subsections (i) through (x) above.

(b) In the event the Company proposes to undertake an issuance of New Securities, it shall give each Holder written notice of its intention, describing the type of New Securities, and their price and the general terms upon which the Company proposes to issue the same. Each Holder shall have ten (10) days after any such notice is mailed or delivered to agree to purchase such Holder's *pro rata* share of such New Securities for the price and upon the terms specified in the notice by giving written notice to the Company, in substantially the form attached as Schedule 1, and stating therein the quantity of New Securities to be purchased.

(c) In the event the Holders fail to exercise fully the right of first refusal within said ten (10) day period (the "***Election Period***"), the Company shall have one hundred eighty (180) days thereafter to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within ninety (90) days from the date of said agreement) to sell that portion of the New Securities with respect to which the Holders' right of first refusal option set forth in this Section 4.1 was not exercised, at a price and upon terms no more favorable to the purchasers thereof than specified in the Company's notice to Holders delivered pursuant to Section 1.1(b). In the event the Company has not sold within such ninety (90) day period following the Election Period, or such ninety (90) day period following the date of said agreement, the Company shall not thereafter issue or sell any New Securities, without first again offering such securities to the Holders in the manner provided in this Section 4.1.

(d) The right of first refusal granted under this Agreement shall expire upon, and shall not be applicable to, the Company's Initial Public Offering.

SECTION 5

MISCELLANEOUS

5.1 Amendment. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Holders holding a majority of the Registrable Securities (excluding any of such shares that have been sold to the public or pursuant to Rule 144); *provided, however,* that Holders purchasing shares of Series AA Preferred Stock in a Closing after the Initial Closing (each as defined in the Purchase Agreement) may become parties to this Agreement, by executing a counterpart of this Agreement without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Holder. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each Holder and each future holder of all such securities of Holder. Each Holder acknowledges that by the operation of this paragraph, the holders of a majority of the Registrable Securities (excluding any of such shares that have been sold to the public or pursuant to Rule 144) will have the right and power to diminish or eliminate all rights of such Holder under this Agreement.

5.2 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand, messenger or courier service addressed:

(a) if to an Investor, to the Investor's address as shown in the Company's records, as may be updated in accordance with the provisions hereof;

(b) if to any Holder, to such address as shown in the Company's records, or, until any such Holder so furnishes an address to the Company, then to the address of the last holder of such shares for which the Company has contact information in its records; or

(c) if to the Company, to the attention of the Chief Executive Officer or Chief Financial Officer of the Company at 5980 Horton Street, Suite 400, Emeryville, CA 94608, or at such other current address as the Company shall have furnished to the Investors or Holders, with a copy (which shall not constitute notice) to Jon Layman, Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, CA 94304.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given (i) if delivered by hand, messenger or courier service, when delivered (or if sent via a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier), or (ii) if sent via mail, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid. In the event of any conflict between the Company's books and records and this Agreement or any notice delivered hereunder, the Company's books and records will control absent fraud or error.

Subject to the limitations set forth in Delaware General Corporation Law §232(e), each Investor and Holder consents to the delivery of any notice to stockholders given by the Company under the Delaware General Corporation Law or the Company's certificate of incorporation or bylaws by (i) facsimile telecommunication to the facsimile number set forth on Exhibit A (or to any other facsimile number for the Investor or Holder in the Company's records), (ii) electronic mail to the electronic mail address set forth on Exhibit A (or to any other electronic mail address for the Investor or Holder in the Company's records), (iii) posting on an electronic network together with separate notice to the Investor or Holder of such specific posting or (iv) any other form of electronic transmission (as defined in the Delaware General Corporation Law) directed to the Investor or Holder. This consent may be revoked by an Investor or Holder by written notice to the Company and may be deemed revoked in the circumstances specified in Delaware General Corporation Law §232.

5.3 **Governing Law.** This Agreement shall be governed in all respects by the internal laws of the State of California as applied to agreements entered into among California residents to be performed entirely within California, without regard to principles of conflicts of law.

5.4 **Successors and Assigns.** This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any Investor without the prior written consent of the Company. Any attempt by an Investor without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

5.5 **Entire Agreement.** This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof. No party hereto shall be liable or bound to any other party in any manner with regard to the subjects hereof or thereof by any warranties, representations or covenants except as specifically set forth herein.

5.6 **Delays or Omissions.** Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party to this Agreement, shall be cumulative and not alternative.

5.7 **Severability.** If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

5.8 **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

5.9 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties that execute such counterparts, and all of which together shall constitute one instrument.

5.10 **Telecopy Execution and Delivery.** A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

5.11 **Jurisdiction; Venue.** With respect to any disputes arising out of or related to this Agreement, the parties consent to the exclusive jurisdiction of, and venue in, the state courts in Santa Clara County in the State of California (or in the event of exclusive federal jurisdiction, the courts of the Northern District of California).

5.12 **Further Assurances.** Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement.

5.13 **Termination Upon Change of Control.** Notwithstanding anything to the contrary herein, this Agreement (excluding any then-existing obligations) shall terminate upon (a) the acquisition of the Company by another entity by means of any transaction or series of related transactions to which the Company is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of

transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity), as a result of shares in the Company held by such holders prior to such transaction, at least fifty percent (50%) of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such transaction or series of transactions; or (b) a sale, lease or other conveyance of all substantially all of the assets of the Company.

5.14 **Conflict.** In the event of any conflict between the terms of this Agreement and the Company's certificate of incorporation or its bylaws, the terms of the Company's certificate of incorporation or its bylaws, as the case may be, will control.

5.15 **Attorneys' Fees.** In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

5.16 **Aggregation of Stock.** All securities held or acquired by affiliated entities (including affiliated venture capital funds) or persons shall be aggregated together for purposes of determining the availability of any rights under this Agreement.

5.17 **Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATED TO THIS AGREEMENT.** If the waiver of jury trial set forth in this section is not enforceable, then any claim or cause of action arising out of or relating to this Agreement shall be settled by judicial reference pursuant to California Code of Civil Procedure Section 638 *et seq.* before a referee sitting without a jury, such referee to be mutually acceptable to the parties or, if no agreement is reached, by a referee appointed by the Presiding Judge of the California Superior Court for Santa Clara County. This paragraph shall not restrict a party from exercising remedies under the Uniform Commercial Code or from exercising pre-judgment remedies under applicable law.

(*signature page follows*)

The parties are signing this Investors' Rights Agreement as of the date stated in the introductory clause.

KINEMED, INC.
a Delaware corporation

By: _____
David M. Fineman, President

(Signature page to the Investors' Rights Agreement)

The parties are signing this Investors' Rights Agreement as of the date stated in the introductory clause.

INVESTOR

_____
(Print investor name)

_____
(Signature)

_____
(Print name of signatory, if signing for an entity)

_____
(Print title of signatory, if signing for an entity)

EXHIBIT A

INVESTORS

SCHEDULE 1

NOTICE AND WAIVER/ELECTION OF
RIGHT OF FIRST REFUSAL

I do hereby waive or exercise, as indicated below, my rights of first refusal under the Investors' Rights Agreement dated as of November [__], 2008 (the "*Agreement*"):

1. Waiver of [___] days' notice period in which to exercise right of first refusal: (**please check only one**)

   ( ) **WAIVE** in full, on behalf of all Holders, the [___]-day notice period provided to exercise my right of first refusal granted under the Agreement.

   ( ) **DO NOT WAIVE** the notice period described above.

2. Issuance and Sale of New Securities: (**please check only one**)

   ( ) **WAIVE** in full the right of first refusal granted under the Agreement with respect to the issuance of the New Securities.

   ( ) **ELECT TO PARTICIPATE** in $_____ (*please provide amount*) in New Securities proposed to be issued by KineMed, Inc., a Delaware corporation, representing LESS than my *pro rata* portion of the aggregate of $[_____] in New Securities being offered in the financing.

   ( ) **ELECT TO PARTICIPATE** in $_____ in New Securities proposed to be issued by KineMed, Inc., a Delaware corporation, representing my FULL *pro rata* portion of the aggregate of $[_____] in New Securities being offered in the financing.

   ( ) **ELECT TO PARTICIPATE** in my full *pro rata* portion of the aggregate of $[_____] in New Securities being made available in the financing AND, to the extent available, the greater of (x) an additional $_____ (*please provide amount*) or (y) my *pro rata* portion of any remaining investment amount available in the event other Holders do not exercise their full rights of first refusal with respect to the $[_____] in New Securities being offered in the financing.

Date: _____

_____
(*Print investor name*)

_____
(*Signature*)

_____
(*Print name of signatory, if signing for an entity*)

_____
(*Print title of signatory, if signing for an entity*)

This is neither a commitment to purchase nor a commitment to issue the New Securities described above. Such issuance can only be made by way of definitive documentation related to such issuance. KineMed, Inc. will supply you with such definitive documentation upon request or if you indicate that you would like to exercise your first-offer rights in whole or in part.

EXHIBIT G

SIGNATURE PAGE PACKET

Signature pages for:

1) Action by Written Consent of Investors

2) Investor Suitability Questionnaire and Contact Information

3) Series AA Preferred Stock Purchase Agreement

4) Investors' Rights Agreements

5) Notice and Waiver/Election of Right of First Refusal

This action by written consent shall be effective as of the date the Company receives the requisite consent of the Investors. By executing this action by written consent, each undersigned Investor is giving written consent with respect to all shares of the Company's capital stock held by such Stockholder or to all votes held by such Noteholder or Warrantholder in favor of the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reliable reproduction is a complete reproduction of the entire original writing. This action by written consent shall be filed with the minutes of the Company.

_____

Print name of Investor

_____

Signature

_____

Print name of signatory, if signing for an entity

_____

Print title of signatory, if signing for an entity

_____

Date of signature

CONTACT INFORMATION AND SIGNATURE

Name of Contact Person: _____

E-mail Address: _____

Mailing Address: _____
(Street) (Suite)

_____
(City) (State) (Zip Code)

Telephone: _____ Fax: _____

Investor's Tax I.D. #: _____

You agree that the Company may present this questionnaire to such parties as it deems appropriate to establish the availability of exemptions from registration under federal and state securities laws. You represent that the information furnished in this questionnaire is true and correct and you acknowledge that the Company and its counsel are relying on the truth and accuracy of such information to comply with federal and state securities laws. You agree to notify the Company promptly of any changes in the foregoing information that may occur prior to the investment.

_____
(Signature)

_____
(Entity name, if applicable)

_____
(Title, if signing on behalf of an entity)

Date: _____

(Signature page to the Investor Suitability Questionnaire)

The parties are signing this Series AA Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

INVESTOR

_____

(Print investor name)

_____

(Signature)

_____

(Print name of signatory, if signing for an entity)

_____

(Print title of signatory, if signing for an entity)

The parties are signing this Investors' Rights Agreement as of the date stated in the introductory clause.

INVESTOR

_____

(Print investor name)

_____

(Signature)

_____

(Print name of signatory, if signing for an entity)

_____

(Print title of signatory, if signing for an entity)

SCHEDULE 1

NOTICE AND WAIVER/ELECTION OF
RIGHT OF FIRST REFUSAL

I do hereby waive or exercise, as indicated below, my rights of first refusal under the Investors' Rights Agreement dated as of November [__], 2008 (the "*Agreement*"):

1. Waiver of [___] days' notice period in which to exercise right of first refusal: **(please check only one)**

( ) **WAIVE** in full, on behalf of all Holders, the [___]-day notice period provided to exercise my right of first refusal granted under the Agreement.

( ) **DO NOT WAIVE** the notice period described above.

2. Issuance and Sale of New Securities: **(please check only one)**

( ) **WAIVE** in full the right of first refusal granted under the Agreement with respect to the issuance of the New Securities.

( ) **ELECT TO PARTICIPATE** in $_____ (*please provide amount*) in New Securities proposed to be issued by KineMed, Inc., a Delaware corporation, representing LESS than my *pro rata* portion of the aggregate of $[_____] in New Securities being offered in the financing.

( ) **ELECT TO PARTICIPATE** in $_____ in New Securities proposed to be issued by KineMed, Inc., a Delaware corporation, representing my FULL *pro rata* portion of the aggregate of $[_____] in New Securities being offered in the financing.

( ) **ELECT TO PARTICIPATE** in my full *pro rata* portion of the aggregate of $[_____] in New Securities being made available in the financing AND, to the extent available, the greater of (x) an additional $_____ (*please provide amount*) or (y) my *pro rata* portion of any remaining investment amount available in the event other Holders do not exercise their full rights of first refusal with respect to the $[_____] in New Securities being offered in the financing.

Date: _____

_____
(*Print investor name*)

_____
(*Signature*)

_____
(*Print name of signatory, if signing for an entity*)

_____
(*Print title of signatory, if signing for an entity*)

This is neither a commitment to purchase nor a commitment to issue the New Securities described above. Such issuance can only be made by way of definitive documentation related to such issuance. KineMed, Inc. will supply you with such definitive documentation upon request or if you indicate that you would like to exercise your first offer rights in whole or in part.

EXHIBIT H

WIRE INSTRUCTIONS

Mellon Bank:
500 Ross Street
Pittsburgh, PA 15262
ABA Routing #0430-0026-1
For Credit to Merrill Lynch Account No. 101-1730
Further Credit to KineMed Inc & ML Acct #20402003

EXHIBIT I

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

KINEMED, INC.

KineMed, Inc., a corporation organized and existing under the laws of the State of Delaware (the "*Corporation*"), certifies that:

1. The name of the Corporation is KineMed, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on February 2, 2001.

2. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

3. The text of the Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, KineMed, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by David Fineman, a duly authorized officer of the Corporation, on November __, 2008.

_____

David Fineman
President

EXHIBIT A

ARTICLE I

The name of the Corporation is KineMed, Inc.

ARTICLE II

The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE III

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of the registered agent at such address is The Corporation Trust Company.

ARTICLE IV

The total number of shares of stock that the corporation shall have authority to issue is three hundred and forty five million (345,000,000), consisting of two hundred and twenty million (220,000,000) shares of Common Stock, $0.001 par value per share, and one hundred and twenty five million (125,000,000) shares of Preferred Stock, $0.001 par value per share. The first Series of Preferred Stock shall be designated "***Series AA Preferred Stock***" and shall consist of one hundred and twenty five million (125,000,000) shares.

ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. **Definitions.** For purposes of this Article V, the following definitions shall apply:

(a) "***Conversion Price***" shall mean $0.06 per share for the Series AA Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein).

(b) "***Convertible Securities***" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(c) "***Corporation***" shall mean KineMed, Inc.

(d) "***Distribution***" shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation by the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchase of capital stock of the Corporation in connection with the settlement of disputes with any stockholder, and (iv) any other repurchase or redemption of capital stock of the Corporation approved by the holders of the Common and Preferred Stock of the Corporation voting as separate classes.

(e) *"Dividend Rate"* shall mean an annual rate of $0.0036 per share for the Series AA Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(f) *"Liquidation Preference"* shall mean $0.06 per share for the Series AA Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(g) *"Options"* shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(h) *"Original Issue Price"* shall mean $0.06 per share for the Series AA Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(i) *"Preferred Stock"* shall mean the Series AA Preferred Stock.

(j) *"Recapitalization"* shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

2. **Dividends.**

(a) *Preferred Stock.* In any calendar year, the holders of outstanding shares of Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Common Stock unless dividends on the Preferred Stock have been declared in accordance with the preferences stated herein and all declared dividends on the Preferred Stock have been paid or set aside for payment to the Preferred Stock holders. The right to receive dividends on shares of Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid. Payment of any dividends to the holders of Preferred Stock shall be on a *pro rata, pari passu* basis in proportion to the Dividend Rates for each series of Preferred Stock.

(b) *Additional Dividends.* Dividends may be paid on the Common Stock when, as and if declared by the Board of Directors, subject to the prior dividend rights of the Preferred Stock and to Section 6.

(c) *Non-Cash Distributions.* Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

(d) *Consent to Certain Distributions.* As authorized by Section 402.5(c) of the California Corporations Code, if Section 502 or Section 503 of the California Corporations Code is applicable to a payment made by the Corporation then such applicable section or sections shall not apply if such payment is a payment made by the Corporation in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchases of Common Stock or Preferred Stock in connection with the settlement of disputes with any stockholder, (iv) any other repurchase or redemption of Common Stock or Preferred Stock approved by the holders of Preferred Stock of the Corporation.

(e) *Waiver of Dividends.* Any dividend preference and any cumulative dividend of any series of Preferred Stock may be waived, in whole or in part, by the consent or vote of the holders of the majority of the outstanding shares of such series.

3. Liquidation Rights.

(a) *Liquidation Preference.* In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Preferred Stock and (ii) all declared or accrued but unpaid dividends (if any) on such share of Preferred Stock, or such lesser amount as may be approved by the holders of the majority of the outstanding shares of Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of the Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) *Remaining Assets.* After the payment or setting aside for payment to the holders of Preferred Stock of the full amounts specified in Section 3(a), the entire remaining assets of the Corporation legally available for distribution shall be distributed *pro rata* to holders of the Common Stock of the Corporation in proportion to the number of shares of Common Stock held by them.

(c) *Shares not Treated as Both Preferred Stock and Common Stock in any Distribution.* Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first foregoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock.

(d) *Reorganization.* For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction retain, immediately after such transaction or series of transactions, as a result of shares in the Corporation held by such holders prior to such transaction, at least a majority of the total voting power represented by the outstanding voting securities of the Corporation or such other surviving or resulting entity (or if the Corporation or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent); (ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole by means of any transaction or series of related transactions, except where such sale, lease or other disposition is to a wholly-owned subsidiary of the Corporation; or (iii) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary. The treatment of any transaction or series of related transactions as a liquidation, dissolution or winding up pursuant to clause (i) or (ii) of the preceding sentence may be waived by the consent or vote of a majority of the outstanding Preferred Stock (voting as a single class and on an as-converted basis).

(e) *Valuation of Non-Cash Consideration.* If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other

than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board of Directors, *except that* any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) If the securities are then traded on a national securities exchange, then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this subsection 3(e), "***trading day***" shall mean any day which the exchange or system on which the securities to be distributed are traded is open and "***closing prices***" or "***closing bid prices***" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or a Nasdaq market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

4. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows:

(a) ***Right to Convert.*** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the "***Conversion Rate***" for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) ***Automatic Conversion.*** Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "***Securities Act***"), covering the offer and sale of the Corporation's Common Stock, *provided* that the offering price per share is not less than $0.18 (as adjusted for Recapitalizations) and the aggregate gross proceeds to the Corporation are not less than $20,000,000, or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of a majority of the Preferred Stock then outstanding (voting as a single class and on an as-converted basis), or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an "***Automatic Conversion Event***").

(c) ***Mechanics of Conversion.*** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be

entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, the holder shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that the holder elects to convert the same; *provided, however,* that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided further,* however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; *provided, however,* that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(d) **Adjustments to Conversion Price for Diluting Issues.**

(i) ***Special Definition.*** For purposes of this paragraph 4(d), "***Additional Shares of Common***" shall mean all shares of Common Stock issued (or, pursuant to paragraph 4(d)(iii), deemed to be issued) by the Corporation after the filing of this Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of:

(1) shares of Common Stock upon the conversion of the Preferred Stock;

(2) shares of Common Stock and options, warrants or other rights to purchase Common Stock issued or issuable to employees, officers or directors of, or consultants or advisors to, placement agents, and other service providers of the Corporation or any subsidiary pursuant to stock grants, restricted stock purchase agreements, option plans, purchase plans, incentive programs or similar arrangements;

(3) shares of Common Stock upon the exercise or conversion of Options or Convertible Securities;

(4) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to paragraph 4(e), 4(f) or 4(g) hereof;

(5) shares of Common Stock issued or issuable in a registered public offering under the Securities Act pursuant to which all outstanding shares of Preferred Stock are automatically converted into Common Stock pursuant to an Automatic Conversion Event;

(6) shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, *provided*, that such issuances are approved by the Board of Directors;

(7) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by the Board of Directors;

(8) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors; and

(9) shares of Common Stock issued or issuable to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors.

(ii) ***No Adjustment of Conversion Price.*** No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to paragraph 4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for such series of Preferred Stock.

(iii) ***Deemed Issue of Additional Shares of Common.*** In the event the Corporation at any time or from time to time after the date of the filing of this Amended and Restated Certificate of Incorporation shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the

time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, *provided* that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 4(d) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Sections 4(e), 4(f) and 4(g) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each Series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this paragraph 4(d)(iii) as of the actual date of their issuance.

(iv) ***Adjustment of Conversion Price Upon Issuance of Additional Shares of Common.*** In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to paragraph 4(d)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than $0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal $0.01 or more in the aggregate. For the purposes of this Subsection 4(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(v) ***Determination of Consideration.*** For purposes of this subsection 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) ***Cash and Property.*** Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board of Directors.

(2) ***Options and Convertible Securities.*** The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to paragraph 4(d)(iii) shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) *Adjustments for Subdivisions or Combinations of Common Stock.* In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) *Adjustments for Subdivisions or Combinations of Preferred Stock.* In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) *Adjustments for Reclassification, Exchange and Substitution.* Subject to Section 3 (*"Liquidation Rights"*), if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(i) *Waiver of Adjustment of Conversion Price.* Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of a majority of the outstanding shares of such series either before or

after the issuance causing the adjustment. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(j) *Notices of Record Date.* In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a liquidation, dissolution or winding up of the corporation pursuant to Section 3(d);

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock at least 10 days' prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the consent or vote of the holders of a majority of the Preferred Stock, voting as a single class and on an as-converted basis.

(k) *Reservation of Stock Issuable Upon Conversion.* The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the 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 the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5. **Voting.**

(a) *Restricted Class Voting.* Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) *No Series Voting.* Other than as provided herein or required by law, there shall be no series voting.

(c) *Preferred Stock.* Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. Fractional votes shall not be permitted and any fractional

voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be disregarded. Except as otherwise expressly provided herein or as required by law, the holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation.

(d) *Election of Directors.* The holders of Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect all members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors.

(e) *Common Stock.* Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

(f) *California Section 2115.* To the extent that Section 2115 of the California General Corporation Law makes Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law applicable to the Corporation, the Corporation's stockholders shall have the right to cumulate their votes in connection with the election of directors as provided by Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law.

6. **Amendments and Changes.** As long as twenty percent (20%) of the shares of the Preferred Stock sold by the Corporation shall be issued and outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than 50% of the outstanding shares of Preferred Stock:

(a) adversely alter or change the rights, preferences, privileges or powers of the Preferred Stock;

(b) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Preferred Stock or any series thereof;

(c) authorize or create (by reclassification or otherwise) any new class or series of equity security having rights, preferences or privileges senior to or on a parity with any series of Preferred Stock;

(d) redeem, retire, purchase or otherwise acquire any share or shares of Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock (i) from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which this Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment;

(e) authorize a merger, acquisition or sale of substantially all of the assets of the Corporation or any of its subsidiaries (other than a merger exclusively to effect a change of domicile of the Corporation);

(f) amend, alter, waive or repeal any provision of the Certificate of Incorporation of the Corporation if such action would adversely alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Preferred Stock or any series thereof; or

(g) take any action that results in a filing by the Corporation for bankruptcy or receivership.

7. **Reissuance of Preferred Stock.** In the event that any shares of Preferred Stock shall be converted pursuant to Section 4 or otherwise repurchased by the Corporation, the shares so converted or repurchased shall be cancelled and shall not be issuable by this Corporation.

8. **Notices.** Any notice required by the provisions of this Article V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Unless otherwise set forth herein, the number of directors that constitute the Board of Directors of the Corporation shall be fixed by, or in the manner provided in, the Bylaws of the Corporation.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

ARTICLE X

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

2. The Corporation shall have the power to indemnify, to the extent permitted by the Delaware General Corporation Law, as it presently exists or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "***Proceeding***") by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

3. Neither any amendment nor repeal of this Article X, nor the adoption of any provision of this Corporation's Certificate of Incorporation inconsistent with this Article X, shall eliminate or reduce the effect of this Article X, in respect of any matter occurring, or any action or proceeding accruing or arising or that,

but for this Article X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "KINEMED, INC.", FILED IN THIS OFFICE ON THE EIGHTH DAY OF JANUARY, A.D. 2009, AT 10:08 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3351201 8100

090018478

AUTHENTICATION: 7071672

DATE: 01-09-09

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:46 PM 01/08/2009
FILED 10:08 PM 01/08/2009
SRV 090018478 - 3351201 FILE

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION OF

KINEMED, INC.

KineMed, Inc., a corporation organized and existing under the laws of the State of Delaware (the "*Corporation*"), certifies that:

1. The name of the Corporation is KineMed, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on February 2, 2001.

2. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

3. The text of the Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, KineMed, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by David Fineman, a duly authorized officer of the Corporation, on January 8, 2009.

/s/ David Fineman
David Fineman,
President

EXHIBIT A

ARTICLE I

The name of the Corporation is KineMed, Inc.

ARTICLE II

The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE III

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of the registered agent at such address is The Corporation Trust Company.

ARTICLE IV

The total number of shares of stock that the corporation shall have authority to issue is three hundred and forty five million (345,000,000), consisting of two hundred and twenty million (220,000,000) shares of Common Stock, $0.001 par value per share, and one hundred and twenty five million (125,000,000) shares of Preferred Stock, $0.001 par value per share. The first Series of Preferred Stock shall be designated "***Series AA Preferred Stock***" and shall consist of one hundred and twenty five million (125,000,000) shares.

ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. **Definitions.** For purposes of this ARTICLE V, the following definitions shall apply:

(a) "***Conversion Price***" shall mean $0.06 per share for the Series AA Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein).

(b) "***Convertible Securities***" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(c) "***Corporation***" shall mean KineMed, Inc.

(d) "***Distribution***" shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation by the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchase of capital stock of the Corporation in connection with the settlement of disputes with any stockholder, and (iv) any other repurchase or redemption of capital stock of the Corporation approved by the holders of the Common and Preferred Stock of the Corporation voting as separate classes.

(e) "*Dividend Rate*" shall mean an annual rate of $0.0036 per share for the Series AA Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(f) "*Liquidation Preference*" shall mean $0.06 per share for the Series AA Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(g) "*Options*" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(h) "*Original Issue Price*" shall mean $0.06 per share for the Series AA Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(i) "*Preferred Stock*" shall mean the Series AA Preferred Stock.

(j) "*Recapitalization*" shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

2. **Dividends.**

(a) *Preferred Stock.* In any calendar year, the holders of outstanding shares of Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Common Stock unless dividends on the Preferred Stock have been declared in accordance with the preferences stated herein and all declared dividends on the Preferred Stock have been paid or set aside for payment to the Preferred Stock holders. The right to receive dividends on shares of Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid. Payment of any dividends to the holders of Preferred Stock shall be on a *pro rata, pari passu* basis in proportion to the Dividend Rates for each series of Preferred Stock.

(b) *Additional Dividends.* Dividends may be paid on the Common Stock when, as and if declared by the Board of Directors, subject to the prior dividend rights of the Preferred Stock and to Section 6.

(c) *Non-Cash Distributions.* Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

(d) *Consent to Certain Distributions.* As authorized by Section 402.5(c) of the California Corporations Code, if Section 502 or Section 503 of the California Corporations Code is applicable to a payment made by the Corporation then such applicable section or sections shall not apply if such payment is a payment made by the Corporation in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchases of Common Stock or Preferred Stock in connection with the settlement of disputes with any stockholder, (iv) any other repurchase or redemption of Common Stock or Preferred Stock approved by the holders of Preferred Stock of the Corporation.

(e) ***Waiver of Dividends.*** Any dividend preference and any cumulative dividend of any series of Preferred Stock may be waived, in whole or in part, by the consent or vote of the holders of the majority of the outstanding shares of such series.

3. **Liquidation Rights.**

(a) ***Liquidation Preference.*** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Preferred Stock and (ii) all declared or accrued but unpaid dividends (if any) on such share of Preferred Stock, or such lesser amount as may be approved by the holders of the majority of the outstanding shares of Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of the Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) ***Remaining Assets.*** After the payment or setting aside for payment to the holders of Preferred Stock of the full amounts specified in Section 3(a), the entire remaining assets of the Corporation legally available for distribution shall be distributed *pro rata* to holders of the Common Stock of the Corporation in proportion to the number of shares of Common Stock held by them.

(c) ***Shares not Treated as Both Preferred Stock and Common Stock in any Distribution.*** Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first foregoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock.

(d) ***Reorganization.*** For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction retain, immediately after such transaction or series of transactions, as a result of shares in the Corporation held by such holders prior to such transaction, at least a majority of the total voting power represented by the outstanding voting securities of the Corporation or such other surviving or resulting entity (or if the Corporation or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent); (ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole by means of any transaction or series of related transactions, except where such sale, lease or other disposition is to a wholly-owned subsidiary of the Corporation; or (iii) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary. The treatment of any transaction or series of related transactions as a liquidation, dissolution or winding up pursuant to clause (i) or (ii) of the preceding sentence may be waived by the consent or vote of a majority of the outstanding Preferred Stock (voting as a single class and on an as-converted basis).

(e) ***Valuation of Non-Cash Consideration.*** If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the

Board of Directors, *except that* any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) If the securities are then traded on a national securities exchange, then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this subsection 3(e), "***trading day***" shall mean any day which the exchange or system on which the securities to be distributed are traded is open and "***closing prices***" or "***closing bid prices***" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or a Nasdaq market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

4. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows:

(a) ***Right to Convert.*** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the "***Conversion Rate***" for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) ***Automatic Conversion.*** Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "***Securities Act***"), covering the offer and sale of the Corporation's Common Stock, *provided* that the offering price per share is not less than $0.18 (as adjusted for Recapitalizations) and the aggregate gross proceeds to the Corporation are not less than $20,000,000, or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of a majority of the Preferred Stock then outstanding (voting as a single class and on an as-converted basis), or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an "***Automatic Conversion Event***").

(c) ***Mechanics of Conversion.*** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Preferred

Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, the holder shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that the holder elects to convert the same; *provided, however*, that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided further*, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; *provided, however*, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(d) ***Adjustments to Conversion Price for Diluting Issues.***

(i) ***Special Definition.*** For purposes of this paragraph 4(d), "***Additional Shares of Common***" shall mean all shares of Common Stock issued (or, pursuant to paragraph 4(d)(iii), deemed to be issued) by the Corporation after the filing of this Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of:

(1) shares of Common Stock upon the conversion of the Preferred Stock;

(2) shares of Common Stock and options, warrants or other rights to purchase Common Stock issued or issuable to employees, officers or directors of, or consultants or advisors to, placement agents, and other service providers of the Corporation or any subsidiary pursuant to stock

grants, restricted stock purchase agreements, option plans, purchase plans, incentive programs or similar arrangements;

(3) shares of Common Stock upon the exercise or conversion of Options or Convertible Securities;

(4) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to paragraph 4(e), 4(f) or 4(g) hereof;

(5) shares of Common Stock issued or issuable in a registered public offering under the Securities Act pursuant to which all outstanding shares of Preferred Stock are automatically converted into Common Stock pursuant to an Automatic Conversion Event;

(6) shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, *provided*, that such issuances are approved by the Board of Directors;

(7) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by the Board of Directors;

(8) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors; and

(9) shares of Common Stock issued or issuable to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors.

(ii) ***No Adjustment of Conversion Price.*** No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to paragraph 4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for such series of Preferred Stock.

(iii) ***Deemed Issue of Additional Shares of Common.*** In the event the Corporation at any time or from time to time after the date of the filing of this Amended and Restated Certificate of Incorporation shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, *provided* that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 4(d) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Sections 4(e), 4(f) and 4(g) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each Series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this paragraph 4(d)(iii) as of the actual date of their issuance.

(iv) ***Adjustment of Conversion Price Upon Issuance of Additional Shares of Common.*** In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to paragraph 4(d)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the affected series of Preferred

Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than $0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal $0.01 or more in the aggregate. For the purposes of this Subsection 4(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(v) ***Determination of Consideration.*** For purposes of this subsection 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) ***Cash and Property.*** Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board of Directors.

(2) ***Options and Convertible Securities.*** The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to paragraph 4(d)(iii) shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) *Adjustments for Subdivisions or Combinations of Common Stock.* In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) *Adjustments for Subdivisions or Combinations of Preferred Stock.* In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) *Adjustments for Reclassification, Exchange and Substitution.* Subject to Section 3 (*"Liquidation Rights"*), if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(i) *Waiver of Adjustment of Conversion Price.* Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of a majority of the outstanding shares of such series either before or after the issuance causing the adjustment. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(j) *Notices of Record Date.* In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a liquidation, dissolution or winding up of the corporation pursuant to Section 3(d);

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock at least 10 days' prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the consent or vote of the holders of a majority of the Preferred Stock, voting as a single class and on an as-converted basis.

(k) ***Reservation of Stock Issuable Upon Conversion.*** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the 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 the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5. **Voting.**

(a) ***Restricted Class Voting.*** Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) ***No Series Voting.*** Other than as provided herein or required by law, there shall be no series voting.

(c) ***Preferred Stock.*** Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. Fractional votes shall not be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be disregarded. Except as otherwise expressly provided herein or as required by law, the holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation.

(d) *Election of Directors.* The holders of Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect all members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors.

(e) *Common Stock.* Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

(f) *California Section 2115.* To the extent that Section 2115 of the California General Corporation Law makes Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law applicable to the Corporation, the Corporation's stockholders shall have the right to cumulate their votes in connection with the election of directors as provided by Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law.

6. **Amendments and Changes.** As long as twenty percent (20%) of the shares of the Preferred Stock sold by the Corporation shall be issued and outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than 50% of the outstanding shares of Preferred Stock:

(a) adversely alter or change the rights, preferences, privileges or powers of the Preferred Stock;

(b) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Preferred Stock or any series thereof;

(c) authorize or create (by reclassification or otherwise) any new class or series of equity security having rights, preferences or privileges senior to or on a parity with any series of Preferred Stock;

(d) redeem, retire, purchase or otherwise acquire any share or shares of Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock (i) from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which this Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment;

(e) authorize a merger, acquisition or sale of substantially all of the assets of the Corporation or any of its subsidiaries (other than a merger exclusively to effect a change of domicile of the Corporation);

(f) amend, alter, waive or repeal any provision of the Certificate of Incorporation of the Corporation if such action would adversely alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Preferred Stock or any series thereof; or

(g) take any action that results in a filing by the Corporation for bankruptcy or receivership.

7. **Reissuance of Preferred Stock.** In the event that any shares of Preferred Stock shall be converted pursuant to Section 4 or otherwise repurchased by the Corporation, the shares so converted or repurchased shall be cancelled and shall not be issuable by this Corporation.

8. **Notices.** Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Unless otherwise set forth herein, the number of directors that constitute the Board of Directors of the Corporation shall be fixed by, or in the manner provided in, the Bylaws of the Corporation.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

ARTICLE X

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

2. The Corporation shall have the power to indemnify, to the extent permitted by the Delaware General Corporation Law, as it presently exists or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "***Proceeding***") by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

3. Neither any amendment nor repeal of this ARTICLE X, nor the adoption of any provision of this Corporation's Certificate of Incorporation inconsistent with this ARTICLE X, shall eliminate or reduce the effect of this ARTICLE X, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

KineMed

January 15, 2009

To: KineMed, Inc. Noteholders

Re: KineMed, Inc. – Converted Senior Convertible Notes

As you may be aware, in connection with the Series AA Preferred Stock financing (the "Financing") of KineMed, Inc. (the "Company"), holders of a majority of the principal amount of 10% Senior Convertible Notes (the "Notes") approved the amendment of the Notes to provide for the conversion of such Notes immediately prior to the initial closing of the Financing (the "First Closing"). The First Closing occurred on January 9, 2009. Accordingly, all of the principal plus accrued and unpaid interest calculated as of January 9, 2009 was automatically converted into shares of Common Stock at $1.00 per share, and the Notes held by you were cancelled pursuant to their terms.

Please return all original Notes to the Company within five (5) days of the date hereof. Once we have received your original Note, a Common Stock certificate, in the name that appears on your Note, will be mailed to you in the appropriate amount. Please be advised that the Company will not issue any Common Stock certificates to you until we have received your original Note(s).

If you have lost your Note, please contact the undersigned for further instructions.

Please send the original Note(s) to me at the address shown below. If you have any questions, please feel free to call me at (510) 655-6525 x102.

Sincerely,

David M. Fineman

David M. Fineman
President

KineMed, Inc.
5980 Horton Street, Suite 400
Emeryville, CA 94608-2012