

**RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT**

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## **RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT**

THIS RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT (this "**Agreement**") is made and entered into as of \_\_\_\_\_, 2018 (the "**Effective Date**") by and among Moda Partners, Inc., a Delaware corporation (the "**Company**"), the holders of the outstanding shares of the outstanding shares of capital stock of the Company listed on Exhibit A (the "**Stockholders**").

### RECITALS

A. The Company and the Stockholders are parties to that certain Class B Common Stock Purchase Agreement (the "**Purchase Agreement**"), pursuant to which the holders of Class B Common Stock agreed to purchase their shares of the Class B Common Stock.

B. The Company and the holders of Class A Common Stock desire to further induce the Stockholders to purchase the Class B Common Stock.

C. The parties hereto desire to enter into this Agreement to set forth their agreements and understandings with respect to the conditions and restrictions governing any potential sale, transfer, assignment or other similar disposition of shares of Common Stock held by them.

NOW, THEREFORE, the parties hereby agree as follows:

### AGREEMENT

1. Definitions. For the purposes of this Agreement, capitalized terms used but not defined elsewhere in this Agreement shall have the meanings set forth below (which shall apply equally to the singular, plural and correlative forms of such terms):

1.1 "**Affiliate**" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including without limitation any general partner, managing member, officer, director or trustee of such Person.

1.2 "**Board of Directors**" means the board of directors of the Company.

1.3 "**Capital Stock**" means (a) shares of Common Stock and Preferred Stock (if issued hereafter), (b) shares of Common Stock issued or issuable upon conversion of Preferred Stock, and (c) shares of Common Stock issued or issuable upon exercise or conversion, as applicable, of stock options, warrants or other convertible securities of the Company, in each case now owned or subsequently acquired by any Stockholder, or their respective successors or permitted transferees or assigns. For purposes of the number of shares of Capital Stock held by a Stockholder (or any other calculation based thereon), all shares of Preferred Stock, if applicable, shall be deemed to have been converted into Common Stock at the then applicable conversion ratio.

1.4 "**Certificate**" means the Certificate of Incorporation of the Company, as amended and/or restated from time to time.

1.5 "**Change of Control**" means (a) a transaction or series of related transactions in which a Person, or a group of related Persons, acquires from Stockholders shares representing more than fifty percent (50%) of the outstanding voting power of the Company or (b) a transaction that qualifies as a Liquidation Event (as defined in the Certificate).

1.6 "**Company Notice**" means written notice from the Company notifying Stockholders that the Company intends to exercise its Secondary Refusal Right as to some or all of the Transfer Stock with respect to any Proposed Stockholder Transfer.

1.7 "**Non-Selling Stockholder**" means a Stockholder who is not a Selling Stockholder with respect to a particular Proposed Stockholder Transfer.

1.8 "**Person**" means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company (whether domestic or foreign), trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or representative capacity.

1.9 "**Proposed Stockholder Transfer**" means any assignment, sale, offer to sell, pledge, mortgage, hypothecation, encumbrance, disposition of or any other like transfer of any Transfer Stock (or any interest therein) proposed by any of the Stockholders.

1.10 "**Proposed Transfer Notice**" means written notice from a Stockholder setting forth the terms and conditions of a Proposed Stockholder Transfer.

1.11 "**Prospective transferee**" means any Person to whom a Stockholder proposes to make a Proposed Stockholder Transfer, as stated in the applicable Proposed Transfer Notice.

1.12 "**Purchaser**" means, collectively, all Exercising Stockholders and, if the Company exercises its Secondary Refusal Right, the Company.

1.13 "**Right of Co-Sale**" means the right, but not the obligation, of a Non-Selling Stockholder to participate in a Proposed Stockholder Transfer on the terms and conditions specified in the Proposed Transfer Notice.

1.14 "**Right of First Refusal**" means the right, but not the obligation, of a Non-Selling Stockholder, or its permitted transferees or assigns, to purchase some or all of the Transfer Stock with respect to a Proposed Stockholder Transfer, on the terms and conditions specified in the Proposed Transfer Notice.

1.15 "**Secondary Refusal Right**" means the right, but not an obligation, of the Company to purchase any Transfer Stock not purchased pursuant to the Right of First Refusal, on the terms and conditions specified in the Proposed Transfer Notice.

1.16 "**Stockholder Agreements**" means, collectively, the Voting Agreement, dated the Effective Date, among the Company and the Stockholders, this Agreement and the Stockholder Rights Agreement.

1.17 "**Stockholder Rights Agreement**" means the Stockholder Rights Agreement, dated the Effective Date, among the Company and the Stockholders.

1.18 "**Selling Stockholder**" means a Stockholder who wishes to complete a Proposed Stockholder Transfer and has submitted a corresponding Proposed Transfer Notice.

1.19 "**Stockholder Exercise Notice**" means written notice from any Stockholder notifying the Company and the Selling Stockholder(s) that such Stockholder intends to exercise its Right of First Refusal as to all or a portion of the Transfer Stock with respect to any Proposed Stockholder Transfer.

1.20 "**Transfer**" means any Proposed Stockholder Transfer or any other sale, assignment, exchange, gift, devise, hypothecation, pledge, encumbrance, attachment, levy, foreclosure, sale by legal process under execution, attachment or receivership, sale or retention of any Capital Stock or interest in Capital Stock by a secured party after a default, change in the beneficial ownership or the trustee of any trust which is a Stockholder, change of ownership ordered by any court, or other change in ownership of Capital Stock, voluntary or involuntary.

1.21 "**Transfer Stock**" means shares of Capital Stock owned by a Stockholder, or issued to a Stockholder after the Effective Date (including without limitation in connection with any stock split, stock dividend, recapitalization, reorganization or the like) that is proposed to be sold in a Proposed Stockholder Transfer.

1.22 "**Undersubscription Notice**" means written notice from an Exercising Stockholder notifying the Company and the Selling Stockholder that such Exercising Stockholder intends to exercise its option to purchase all or any portion of the Transfer Stock not purchased pursuant to the Right of First Refusal.

2. Agreement Among the Company and the Stockholders. No Stockholder will have the right to Transfer any Capital Stock at any time, except that a Stockholder may: (i) sell its Capital Stock pursuant to Section 2.1 or Section 2.2 at any time after the fourth (4th) anniversary of Effective Date; (ii) Transfer its Capital Stock in an Exempt Transfer (as defined in Section 3.1); or (iii) Transfer its Capital Stock to any Person approved in writing by all the Stockholders (which consent may be granted or withheld in each Stockholder's sole discretion).

2.1 Right of First Refusal. After the fourth (4th) anniversary of Effective Date, a Selling Stockholder may propose to sell all, but not less than all, of the Capital Stock it owns pursuant to this Section 2.1.

(a) Grant. Subject to the terms of this Section 2 and Section 3 below, each Stockholder hereby unconditionally and irrevocably grants to the other Stockholders a Right of First Refusal to purchase its pro rata share of the Transfer Stock that a Selling Stockholder may propose to sell in a Proposed Stockholder Transfer, at the same price and on the same terms and conditions as those offered to the Prospective Transferee, subject to

Section 2.1(f). Each Non-Selling Stockholder shall initially be entitled to purchase a number of shares of the Transfer Stock equal to the product obtained by multiplying (i) the aggregate number of shares of Transfer Stock by (ii) a fraction, the numerator of which is the number of shares of Capital Stock owned by such Non-Selling Stockholder immediately before consummation of the Proposed Stockholder Transfer and the denominator of which is the total number of shares of Capital Stock owned, in the aggregate, by all Non-Selling Stockholders immediately prior to the consummation of the Proposed Stockholder Transfer.

(b) Notice. Each Selling Stockholder must deliver a Proposed Transfer Notice to each of the Non-Selling Stockholders and the Company not later than forty-five (45) days prior to the consummation of such Proposed Stockholder Transfer. Such Proposed Transfer Notice shall, at a minimum, (i) contain the material terms and conditions (including price, payment terms and form of consideration) of the Proposed Stockholder Transfer, the identity of the Prospective Transferee, the intended date of the Proposed Stockholder Transfer and (ii) have attached thereto an executed copy of the term sheet, letter of intent or other agreement pursuant to which the Proposed Stockholder Transfer is to be consummated. To exercise its Right of First Refusal, a Non-Selling Stockholder must deliver a Stockholder Exercise Notice to the Selling Stockholder, the other Non-Selling Stockholders and the Company within fifteen (15) days after delivery of the Proposed Transfer Notice (the "**Stockholder Exercise Notice Period**") specifying the number of shares of Transfer Stock to be purchased by such Non-Selling Stockholder. In the event of a conflict between this Agreement and any other agreement that may have been entered into by a Stockholder with the Company or any other Person that contains a preexisting right of first refusal (including without limitation any such rights set forth in the Company's bylaws), the Company and the Stockholders acknowledge and agree that the terms of this Agreement shall control and the preexisting right of first refusal shall be deemed satisfied by compliance with this section.

(c) Undersubscription of Transfer Stock. If the Right of First Refusal has been exercised by the Non-Selling Stockholders pursuant to Section 2.1(b) with respect to some but not all of the Transfer Stock by the end of the Stockholder Exercise Notice Period, then the Company shall, within five (5) days after the expiration of the Stockholder Exercise Notice Period, send written notice (the "**Company Undersubscription Notice**") to those Non-Selling Stockholders who fully exercised their Right of First Refusal within the Stockholder Exercise Notice Period (the "**Exercising Stockholders**"). Each Exercising Stockholder shall, subject to the provisions of this section, have an additional option to purchase all or any part of the balance of any such remaining unsubscribed shares of Transfer Stock on the terms and conditions set forth in the Proposed Transfer Notice. To exercise such option, an Exercising Stockholder must deliver an Undersubscription Notice to the Selling Stockholder and the Company within ten (10) days after the expiration of the Stockholder Exercise Notice Period. In the event there are two (2) or more such Exercising Stockholders that choose to exercise the last-mentioned option for a total number of remaining shares of Transfer Stock in excess of the number available, the remaining shares of Transfer Stock available for purchase under this section shall be allocated to such Exercising Stockholders pro rata based on the number of shares of Transfer Stock such Exercising Stockholders have elected to purchase pursuant to the Right of First Refusal (without giving effect to any shares of Transfer Stock that any such Exercising Stockholder has elected to purchase pursuant to the Company Undersubscription Notice). If the options to purchase the remaining shares of Transfer Stock are exercised in full by the Exercising Stockholders, the

Company shall immediately notify all of the Exercising Stockholders and the Selling Stockholder of that fact.

(d) Grant of Secondary Refusal Right to the Company. Subject to the terms of Section 3, each Stockholder hereby unconditionally and irrevocably grants to the Company a Secondary Refusal Right to purchase all or any portion of the Transfer Stock not purchased by the Non-Selling Stockholders pursuant Sections 2.1(a), 2.1(b) and 2.1(c), as provided in this section. To exercise its Secondary Refusal Right, the Company must deliver a Company Notice to the Selling Stockholder and the Non-Selling Stockholders (the "**Company Exercise Notice**") within ten (10) days after the deadline for delivery of Undersubscription Notices under Section 2.1(c).

(e) Forfeiture of Rights. Notwithstanding the foregoing, if the total number of shares of Transfer Stock that the Non-Selling Stockholders and the Company have agreed to purchase pursuant to this section is less than the total number of shares of Transfer Stock (such difference is the "**Remaining Transfer Stock**"), then the Company and the Non-Selling Stockholders shall be deemed to have forfeited any right to purchase the Remaining Transfer Stock, and the Selling Stockholder shall be free to sell all, but not less than all, of the Remaining Transfer Stock to the Prospective Transferee(s) on terms and conditions substantially similar to (and in no event more favorable to the Prospective Transferee(s) than) the terms and conditions set forth in the applicable Proposed Transfer Notice, it being understood and agreed that: (i) any such sale or transfer to a Prospective Transferees shall be subject to the other terms and restrictions of this Agreement, including without limitation the terms and restrictions set forth in Sections 2.2 and 5.9(b); (ii) any future Proposed Stockholder Transfer shall remain subject to the terms and conditions of this Agreement, including this section and the Right of First Refusal; and (iii) such sale shall be consummated within forty-five (45) days after receipt of the Proposed Transfer Notice by the Company and, if such sale is not consummated within such forty-five (45) day period, such sale shall again become subject to the Right of First Refusal and Secondary Refusal Right on the terms set forth herein.

(f) Consideration; Closing. If the consideration proposed to be paid for the Transfer Stock is in property, services or other non-cash consideration, the fair market value of the consideration shall be as determined in good faith by the Board of Directors, or a third party valuation firm selected by unanimous consent of the Board of Directors. If the Company or any Non-Selling Stockholder cannot for any reason pay for the Transfer Stock in the same form of non-cash consideration, the Company or such Non-Selling Stockholder may pay the cash value equivalent thereof, determined as set forth above. The closing of the purchase of Transfer Stock by the Purchaser(s) shall take place, and all payments from the Purchaser(s) shall have been delivered to the Selling Stockholder, by the later of (i) the date specified in the Proposed Transfer Notice as the intended date of the Proposed Stockholder Transfer; and (ii) forty-five (45) days after delivery of the Proposed Transfer Notice. The Purchaser(s) shall have the right to pay at closing a portion of the purchase price for the Transfer Stock (the "**Purchase Price**") by delivering a senior, secured promissory note having terms that are commercially reasonable to the Selling Stockholder and the Purchaser(s) (a "**Note**"), if:

(A) Delivery of a Note is necessary to obtain regulatory approval for the sale of Transfer Stock to the Purchaser(s). If the Purchaser(s) deliver a Note pursuant to this subsection 2.1(f)(A), then the Note's initial principal balance will be the minimum percentage of the Purchase Price that is necessary to pay by delivering the Note in order to obtain regulatory approval for the transaction; and/or

(B) The Purchaser is the Company, payment of the Purchase Price in all cash at closing would materially impair the continued operation of the Company or its ability to finance the Board Approved Budget. "**Board Approved Budget**" means a budget for the Company approved in advance by the Board of Directors. The Selling Stockholder and the Company shall negotiate in good faith to determine (1) whether payment of the Purchase Price in all cash at closing would materially impair the Company's ability to finance the Board Approved Budget and, if so, (2) what percentage of the Purchase Price would be necessary to pay by delivering a Note in order to not materially impair the Company's ability to finance the Board Approved Budget.

## 2.2 Right of Co-Sale.

(a) Exercise of Right. If any Remaining Transfer Stock is to be sold to a Prospective Transferee, each respective Non-Selling Stockholder may elect to exercise its Right of Co-Sale and participate on a pro rata basis in the Proposed Stockholder Transfer as set forth in Section 2.2(b) below and, subject to Section 2.2(d), otherwise on the same terms and conditions specified in the Proposed Transfer Notice. Each Stockholder who desires to exercise its Right of Co-Sale (each, a "**Participating Stockholder**") must give the Selling Stockholder written notice to that effect within fifteen (15) days after the deadline for delivery of the Stockholder Exercise Notice under Section 2.1(d), and upon giving such notice such Participating Stockholder shall be deemed to have effectively exercised the Right of Co-Sale.

(b) Shares Includable. Each Participating Stockholder may include in the Proposed Stockholder Transfer all or any part of such Participating Stockholder's Capital Stock up to a number of shares equal to the product obtained by multiplying (i) the aggregate number of shares of Remaining Transfer Stock by (ii) a fraction, the numerator of which is the number of shares of Capital Stock owned by such Participating Stockholder immediately before consummation of the Proposed Stockholder Transfer (including any shares that such Participating Stockholder has agreed to purchase pursuant to the Right of First Refusal) and the denominator of which is (A) the total number of shares of Capital Stock owned, in the aggregate, by all Participating Stockholders immediately prior to the consummation of the Proposed Stockholder Transfer (including any shares that all Participating Stockholders have collectively agreed to purchase pursuant to the Right of First Refusal), plus (B) the number of shares of Remaining Transfer Stock held by the Selling Stockholder. To the extent one (1) or more of the Participating Stockholders exercise such Right of Co-Sale in accordance with the terms and conditions set forth herein, the number of shares of Remaining Transfer Stock that the Selling Stockholder may sell in the Proposed Stockholder Transfer shall be correspondingly reduced.

(c) Purchase and Sale Agreement. The Participating Stockholders and the Selling Stockholder agree that the terms and conditions of any Proposed Stockholder Transfer in accordance with this section will be memorialized in, and governed by, a written

purchase and sale agreement with the Prospective Transferee(s) (the "**Purchase and Sale Agreement**") with customary terms and provisions for such a transaction, and the Participating Stockholders and the Selling Stockholder further covenant and agree to enter into such Purchase and Sale Agreement as a condition precedent to any sale or other transfer in accordance with this section. Notwithstanding the foregoing: (i) in no event will any Participating Stockholder be required to contribute to any escrow or holdback of proceeds of any such sale in excess of its pro rata share of the aggregate proceeds paid in connection with the sale (based on each seller's share of the aggregate proceeds paid with respect to its Capital Stock sold in the transaction relative to the aggregate proceeds paid with respect to all Capital Stock sold in the transaction); (ii) no Participating Stockholder will be liable for the inaccuracy of any representation or warranty that relates specifically to another seller (such as indemnification with respect to representations and warranties given regarding a seller's title to and ownership of Capital Stock); (iii) the liability for indemnification, if any, of a Participating Stockholder in the transaction will be several and not joint with any other Person (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants), and will be pro rata in proportion to the amount of consideration paid to such Participating Stockholder in connection with the sale; and (iv) if any seller is given an option as to the form and amount of consideration to be received as a result of the transaction, the Participating Stockholder will be given the same option.

(d) Allocation of Consideration.

(i) Subject to Section 2.2(d)(ii), the aggregate consideration payable to the Participating Stockholders and the Selling Stockholder shall be allocated based on the number of shares of Capital Stock sold to the Prospective Transferee(s) by each Participating Stockholder and the Selling Stockholder as provided in Section 2.2(b).

(ii) In the event that the Proposed Stockholder Transfer constitutes a Change of Control, the terms of the Purchase and Sale Agreement shall provide that the aggregate consideration from such transfer shall be allocated to the Participating Stockholders and the Selling Stockholder in accordance with the Certificate as if (A) such transfer were a Liquidation Event (as defined in the Certificate), and (B) the Capital Stock sold in accordance with the Purchase and Sale Agreement were the only Capital Stock outstanding.

(e) Purchase by Selling Stockholder; Deliveries. Notwithstanding Section 2.2(c), if any Prospective Transferee(s) refuse(s) to purchase securities subject to the Right of Co-Sale from any Participating Stockholder(s) or upon the failure to negotiate a Purchase and Sale Agreement reasonably satisfactory to the Participating Stockholders, no Stockholder may sell any Transfer Stock to such Prospective Transferee(s) unless and until, simultaneously with such sale, such Stockholder purchases all securities subject to the Right of Co-Sale from such Participating Stockholder or Stockholders on the same terms and conditions (including the proposed purchase price) as set forth in the Proposed Transfer Notice and as provided in Section 2.2(d)(i); *provided, however*, if such sale constitutes a Change of Control, the portion of the aggregate consideration paid by the Selling Stockholder to such Participating Stockholder or Stockholders shall be made in accordance with the first sentence of Section 2.2(d)(ii). In connection with such purchase by the Selling Stockholder, such Participating Stockholder(s) shall deliver to the Selling Stockholder any stock certificate or certificates,

properly endorsed for transfer, representing the Capital Stock being purchased by the Selling Stockholder (or request that the Company effect such transfer in the name of the Selling Stockholder). Any such shares transferred to the Selling Stockholder will be transferred to the Prospective Transferee against payment therefor in consummation of the sale of the Transfer Stock pursuant to the terms and conditions specified in the Proposed Transfer Notice, and the Selling Stockholder shall concurrently therewith remit or direct payment to each such Participating Stockholder the portion of the aggregate consideration to which each such Participating Stockholder is entitled by reason of its participation in such sale as provided in this section.

(f) Additional Compliance. If any Proposed Stockholder Transfer is not consummated within forty-five (45) days after receipt of the Proposed Transfer Notice by the Company, the Selling Stockholder(s) proposing the Proposed Stockholder Transfer may not sell any Transfer Stock unless they first comply in full with each provision of this section. The exercise or election not to exercise any right by any Stockholder hereunder shall not adversely affect its Right of Co-Sale with respect to any other sales of Transfer Stock.

### 2.3 Effect of Failure to Comply.

(a) Transfer Void; Equitable Relief. Any Proposed Stockholder Transfer not made in compliance with the requirements of this Agreement shall be null and void *ab initio*, shall not be recorded on the books of the Company or its transfer agent and shall not be recognized by the Company. Each party hereto acknowledges and agrees that any breach of this Agreement would result in substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocably agree that any non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including without limitation seeking specific performance or the rescission of purchases, sales and other transfers of Transfer Stock not made in strict compliance with this Agreement).

(b) Violation of First Refusal Right. If any Selling Stockholder becomes obligated to sell any Transfer Stock to any Stockholder or the Company under this Agreement and fails to deliver such Transfer Stock in accordance with the terms of this Agreement, then such Stockholder and/or the Company, at its option, in addition to all other remedies it may have, send to such Selling Stockholder the purchase price for such Transfer Stock as is herein specified and transfer to the name of such Stockholder and/or the Company (or request that the Company effect such transfer in the name of a Stockholder) on the Company's books any certificates, instruments, or book entry representing the Transfer Stock to be sold.

(c) Violation of Co-Sale Right. If any Selling Stockholder purports to sell any Transfer Stock in contravention of the Right of Co-Sale (a "**Prohibited Transfer**"), each Participating Stockholder who desires to exercise its Right of Co-Sale under Section 2.2 may, in addition to such remedies as may be available by law, in equity or hereunder, require such Selling Stockholder to purchase from such Participating Stockholder the type and number of shares of Capital Stock that such Participating Stockholder would have been entitled to sell to the Prospective Transferee had the Prohibited Transfer been effected in compliance with the terms of Section 2.2. The sale will be made on the same terms, including without limitation as provided

in Section 2.2(d)(i) and the first sentence of Section 2.2(d)(ii), as applicable, and subject to the same conditions as would have applied had the Selling Stockholder not made the Prohibited Transfer, except that the sale (including without limitation the delivery of the purchase price) must be made within ninety (90) days after the Participating Stockholder learns of the Prohibited Transfer, as opposed to the timeframe proscribed in Section 2.2. Such Selling Stockholder shall also reimburse each Participating Stockholder for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Participating Stockholder's rights under Section 2.2.

### 3. Exempt Transfers and Regulatory Approval.

3.1 Exempted Transfers. Notwithstanding the foregoing or anything to the contrary herein, the provisions of Sections 2.1 and 2.2 shall not apply to the following transfers (each an "**Exempt Transfer**"): (a) in the case of a Selling Stockholder that is an entity, upon a transfer by such Selling Stockholder to an Affiliate; and (b) upon a transfer by a Selling Stockholder of shares of Class B Common Stock (i) to the Company pursuant to a valid Redemption Request (as such term is defined in the Stockholder Rights Agreement) or (ii) to any Prospective Transferee(s) (including third parties) following the expiration of the applicable Redemption Deadline (as such term is defined in the Stockholder Rights Agreement) if the Company does not pay the Redemption Price (as such term is defined in the Stockholder Rights Agreement) before such Redemption Deadline; *provided* that such shares of Transfer Stock shall at all times remain subject to the terms and restrictions set forth in the Stockholder Agreements and such transferee shall, as a condition to such issuance, deliver a counterpart signature page to the Stockholder Agreements as confirmation that such transferee shall be bound by all the terms and conditions of the Stockholder Agreements as a Stockholder, including the obligations of a Stockholder with respect to Proposed Stockholder Transfers of such Transfer Stock pursuant to Section 2.

3.2 Prohibited Transferees. Notwithstanding the foregoing or anything to the contrary herein, no Stockholder may transfer any Transfer Stock to (a) any entity which, in the reasonable determination of the Board of Directors, directly or indirectly competes with the Company or (b) any customer, distributor or supplier of the Company, if the Board of Directors should reasonably determine that such transfer would result in such customer, distributor or supplier receiving information that would place the Company at a competitive disadvantage with respect to such customer, distributor or supplier.

3.3 Regulatory Approval. Notwithstanding any other provision of this Agreement, the rights and obligations of the Stockholders and the Company set forth in this Agreement may be subject to regulatory approval, and no party to this Agreement will have any right or obligation under this Agreement if exercising the right or being subject to the obligation would violate any applicable law, including the regulations of the Oregon Department of Consumer and Business Services, Division of Financial Regulation; *provided, however*, that the Selling Stockholder shall thereafter have the right to consummate the Proposed Stockholder Transfer with the Proposed Transferee subject to obtaining the requisite regulatory approvals.

4. Legend. Each certificate, instrument, or book entry representing shares of Transfer Stock held by the Stockholders or issued to any permitted transferee in connection with a transfer permitted by Section 3.1 hereof shall be notated with the following legend:

THE SALE, PLEDGE, HYPOTHECATION, OR TRANSFER OF THE SECURITIES REPRESENTED HEREBY IS SUBJECT TO, AND IN CERTAIN CASES PROHIBITED BY, THE TERMS AND CONDITIONS OF A CERTAIN RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT BY AND AMONG THE STOCKHOLDER, THE CORPORATION AND CERTAIN OTHER HOLDERS OF STOCK OF THE CORPORATION. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE CORPORATION.

Each Stockholder agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares notated with the legend referred to in this section above to enforce the provisions of this Agreement, and the Company agrees to promptly do so. The legend shall be removed upon termination of this Agreement at the request of the holder.

5. Miscellaneous.

5.1 Term. This Agreement shall automatically terminate upon the consummation of a Liquidation Event (as defined in the Certificate).

5.2 Interpretation. All references to numbers of shares in this Agreement shall be appropriately adjusted to reflect any stock dividend, split, combination or other recapitalization affecting the Capital Stock occurring after the Effective Date. Aggregation of Stock. All shares of Capital Stock held or acquired by a Person and its Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Persons and their Affiliates may apportion such rights as among themselves in any manner they deem appropriate. 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.

5.3 Ownership. Each Stockholder represents and warrants that such Stockholder is the sole legal and beneficial owner of the shares of Transfer Stock subject to this Agreement and that no other person or entity has any interest in such shares (other than a community property interest as to which the holder thereof has acknowledged and agreed in writing to the restrictions and obligations hereunder).

5.4 Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Delaware and to the jurisdiction of the United States District Court for the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Delaware or the United States District Court for the District of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that

the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

#### 5.5 Notices.

(a) All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on Schedule A hereto, or to such email address or address as subsequently modified by written notice given in accordance with this section.

(b) Consent to Electronic Notice. Each Stockholder consents to the delivery of any stockholder notice pursuant to the Delaware General Corporation Law (the "DGCL"), as amended or superseded from time to time, by electronic transmission pursuant to Section 232 of the DGCL (or any successor thereto) at the electronic mail address set forth below such Stockholder's name on the Schedules hereto, as updated from time to time by notice to the Company, or as on the books of the Company. To the extent that any notice given by means of electronic transmission is returned or undeliverable for any reason, the foregoing consent shall be deemed to have been revoked until a new or corrected electronic mail address has been provided, and such attempted electronic notice shall be ineffective and deemed to not have been given. Each Stockholder agrees to promptly notify the Company of any change in its electronic mail address, and that failure to do so shall not affect the foregoing.

5.6 Entire Agreement. This Agreement (including, the Exhibits and Schedules hereto) constitutes the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled.

5.7 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under 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-breaching or 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, shall be cumulative and not alternative.

5.8 Amendment; Waiver and Termination. This Agreement may be amended, modified or terminated (other than pursuant to Section 5.1) and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by (a) the Company and (b) the Stockholders holding two-thirds (2/3) of the shares of Transfer Stock then held by all Stockholders. Any amendment, modification, termination or waiver so effected shall be binding upon the Company, the Stockholders and all of their respective successors and permitted assigns whether or not such successor or assignee entered into or approved such amendment, modification, termination or waiver. The Company shall give prompt written notice of any amendment, modification or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, modification, termination or waiver. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

5.9 Assignment of Rights.

(a) The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(b) Any successor or permitted assignee of any Stockholder, including any Prospective Transferee who purchases shares of Transfer Stock in accordance with the terms hereof, shall deliver to the Company and the Stockholders, as a condition to any transfer or assignment, a counterpart signature pages to the Stockholder Agreements pursuant to which such successor or permitted assignee shall confirm their agreement to be subject to and bound by all

of the provisions set forth in the Stockholder Agreements that were applicable to the predecessor or assignor of such successor or permitted assignee.

(c) The rights of the Stockholders hereunder are not assignable without the Company's written consent (which shall not be unreasonably withheld, delayed or conditioned), except by a Stockholder to any Affiliate, it being acknowledged and agreed that any such assignment shall be subject to and conditioned upon any such assignee's delivery to the Company and the other Stockholders of a counterpart signature page hereto pursuant to which such assignee shall confirm their agreement to be subject to and bound by all of the provisions set forth in this Agreement that were applicable to the assignor of such assignee.

(d) Except in connection with an assignment by the Company by operation of law to the acquiror of the Company, the rights and obligations of the Company hereunder may not be assigned under any circumstances.

5.10 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

5.11 Additional Stockholders. Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of Capital Stock after the Effective Date, any purchaser of such shares of Capital Stock may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and thereafter shall be deemed an "Stockholder" for all purposes hereunder.

5.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Right of First Refusal and Co-Sale Agreement as of the Effective Date.

**MODA PARTNERS, INC.**

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Robert Gootee, Chief Executive Officer

**STOCKHOLDERS:**

**DELTA DENTAL OF CALIFORNIA**

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Anthony S. Barth, Chief Executive Officer

**MODA HOLDINGS GROUP, LLC**

By: Oregon Dental Services, its sole member

---

Robert Gootee, Chief Executive Officer

**SCHEDULE A**  
**STOCKHOLDERS**

**Name and Address**

**Number of Shares Held**

**Delta Dental of California**

Attention: Michael G. Hankinson  
Executive Vice President and Chief Legal Officer  
560 Mission Street, Suite 1300  
San Francisco, California 94105  
mhankinson@delta.org

**Moda Holdings Group, LLC**

Attention: Thomas J. Bikales  
601 SW Second Avenue, 24th Floor  
Portland, Oregon 97204-3156  
tom.bikales@modahealth.com