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

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**FORM 8-K**

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**CURRENT REPORT**  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934

**Date of Report (Date of earliest event reported): December 20, 2023**

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**Luna Innovations Incorporated**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**000-52008**  
(Commission  
File Number)

**54-1560050**  
(IRS Employer  
Identification No.)

**301 1st Street SW, Suite 200**  
**Roanoke, VA**

**24011**

(Address of principal executive offices)

(Zip Code)

**Registrant's telephone number, including area code: 540-769-8400**

**N/A**

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

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	LUNA	Nasdaq Stock Market, LLC

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

Emerging growth company

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

**1.01. Entry into a Definitive Material Agreement.**

*Share Purchase Agreement*

On December 21, 2023, Luna Innovations Incorporated (the “Company”) entered into an agreement (the “Majority Share Purchase Agreement”) for the sale and purchase of a majority portion of the entire issued share capital of Silixa Ltd a private limited company incorporated in England (“Silixa”) from certain shareholders of Silixa named therein (the “Majority Sellers”).

On the same day, the Company entered into an agreement for the Sale and Purchase of a minority portion of the entire issued share capital of Silixa by and among the minority shareholders of Silixa named therein and the Company (the “Minority Share Purchase Agreement,” and, collectively, the Majority Share Purchase Agreement and Minority Share Purchase Agreement, the “Share Purchase Agreements”).

Pursuant to the Share Purchase Agreements, the Company acquired all of the issued share capital of Silixa for an aggregate consideration of £17,770,209 of cash consideration paid at completion, plus £13,000,000 in contingent cash consideration upon achievement of target performance milestones and up to a further £6,500,000 in the event Silixa exceeds such performance milestones.

The Share Purchase Agreements, which are governed by English law, contain customary warranties subject to certain limitations and insurance caps set forth in the Share Purchase Agreements. In addition, at closing of the transaction, the Company obtained a warranty and indemnity insurance policy from Liberty Market International Insurance Company Limited in connection with the Share Purchase Agreements.

In addition, for a period of 18 months after closing, certain Majority Sellers have agreed not to, directly or indirectly, alone or jointly with any other person, compete or engage in any competing business with the Company in certain countries in which Silixa operates and not to solicit customers, employees or suppliers of the Company, subject to specified exceptions.

Pursuant to the Share Purchase Agreements, the Company also agreed to assume, subject to the filing of a Registration Statement on Form S-8, each restricted stock unit of Silixa outstanding immediately prior to the effective time of the Transaction, whether or not vested, which awards will be substituted for restricted stock units of the Company under the Company’s 2023 Equity Incentive Plan, adjusted in accordance with the exchange formula provided in the Share Purchase Agreements.

The foregoing description of the Share Purchase Agreements and the Transaction does not purport to be complete and is subject to, and qualified in its entirety by reference to, the Share Purchase Agreements, copies of which are filed as Exhibits 2.1 and 2.2 to this Current Report on Form 8-K and incorporated herein by reference. The warranties and covenants contained in the Share Purchase Agreements were made only for the purposes of the Share Purchase Agreements, were made as of specific dates, and were made solely for the benefit of the parties to the Share Purchase Agreements and may not have been intended to be statements of fact but, rather, as a method of allocating risk and governing the contractual rights and relationships among the parties to Share Purchase Agreements. The assertions embodied in those warranties may be subject to important qualifications and limitations agreed to by the parties in connection with negotiating their respective terms. Moreover, the warranties may be subject to a contractual standard of materiality that may be different from what may be viewed as material to shareholders of the Company. For the foregoing reasons, none of the Company’s shareholders or any other person should rely on such warranties, or any characterizations thereof, as statements of factual information at the time they were made or otherwise.

*Private Placement of Series B Convertible Preferred Stock*

On December 21, 2023 (the “Subscription Date”), the Company entered into a Subscription Agreement (the “Subscription Agreement”) with certain affiliates and related funds of White Hat Capital Partners LP (collectively the “Purchasers”), relating to the issuance and sale of up to 65,000 shares of a new series of the Company’s Series B Convertible Preferred Stock, par value \$0.001 per share (the “Series B Convertible Preferred Stock”), for an aggregate purchase price of up to \$62.5 million. On December 21, 2023 (the “Initial Closing Date”), pursuant to the terms of the Subscription Agreement, the Purchasers purchased an aggregate of 52,500 shares of Series B Convertible Preferred Stock (the “Initial Issuance”) for an aggregate purchase price of \$50.0 million. In addition, at any time on or prior to December 21, 2026, each Purchaser has the right in one or more additional closings to purchase their pro rata portion of an aggregate of 12,500 additional shares of Series B Convertible Preferred Stock at \$1,000 per share, for an aggregate purchase price of up to \$12.5 million (each, a “Subsequent Issuance,” and together with the Initial Issuance, the “Issuance”).

The proceeds from the Initial Issuance are being used to (i) fund the Transaction, (ii) to repay in full the Company’s outstanding term debt under the Company’s credit facility with PNC Bank, National Association and (iii) for general corporate purposes.

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The Subscription Agreement contains customary representations, warranties and covenants by the Company, conditions to closing, indemnification obligations of the Company and termination provisions. Any such representations, warranties and covenants were made solely for the benefit of the parties to the Subscription Agreement. Such representations, warranties and covenants (i) are intended as a way of allocating risk between the parties to the Subscription Agreement and not as statements of fact, and (ii) may apply standards of materiality in a way that is different from what may be viewed as material by stockholders of, or other investors in, the Company. Investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its affiliates.

#### *Designation of Series B Convertible Preferred Stock*

The Series B Convertible Preferred Stock ranks senior to the shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), with respect to the payment of dividends and the distribution of assets upon a liquidation, dissolution or winding up of the Company. The Series B Convertible Preferred Stock initially has a liquidation preference of \$1,000 per share. Holders of the Series B Convertible Preferred Stock are entitled to a cumulative dividend (the "Dividend") at the rate of 8.5% per annum, compounding quarterly, if paid in cash, or 10.0% per annum, compounding quarterly, if paid-in-kind, at the Company's election, for the first three years. For any quarter in which the Company elects not to pay the Dividend in cash with respect to a share of Series B Convertible Preferred Stock, such Dividend will become part of the liquidation preference of such share, as set forth in the Certificate of Designations designating the Series B Convertible Preferred Stock, which was filed by the Company with the Secretary of State of the State of Delaware on December 20, 2023 (the "Certificate of Designations"). After three years from the Initial Issuance, all Dividends must be paid in cash. In addition, no dividend or other distribution on the Common Stock may be declared or paid on the Common Stock unless, at the time of such declaration and payment, an equivalent dividend or distribution is declared and paid on the Series B Convertible Preferred Stock.

#### *Conversion Rights and Mandatory Conversion*

The Series B Convertible Preferred Stock will be convertible into shares of Common Stock at the option of the holders thereof at or following the earlier to occur of (a) the first anniversary of the date of the Initial Issuance and (b) immediately prior to (and conditioned upon) the consummation of a Change of Control (as defined in the Certificate of Designations). The initial conversion price (the "Conversion Price") for the shares issued in the Initial Issuance and any Subsequent Issuance is \$6.70, representing a 10% premium to the 30-day volume-weighted average price of the Company's Common Stock as of the date of the Initial Closing. The Conversion Price is subject to certain adjustments set forth in the Certificate of Designations, including by virtue of a weighted-average antidilution adjustment in the event that the Company issues equity at a discount to the Conversion Price, subject to customary exceptions. At any time after the first anniversary of the date of the Initial Issuance, in the event that the closing price of the Common Stock exceeds 200% of the Conversion Price for 30 consecutive trading days, the Company will have the right to mandatorily convert up to an aggregate of 15% of the Convertible Preferred Stock to Common Stock. Unless approved by the stockholders of the Company, the maximum aggregate number of shares of Common Stock issuable upon conversion of Series B Preferred Stock shall be limited to 6,935,934 (the "Exchange Cap"), which is 19.99% of the shares of Common Stock that were issued and outstanding on the Subscription Date.

In addition, each Purchaser's ability to convert the Series B Convertible Preferred Stock shall be subject to a blocker provision, initially 9.99% ("Beneficial Ownership Blocker") that will prohibit the Purchaser and any Attribution Parties (as defined in the Certificate of Designations) from beneficially owning more than 9.99% of the outstanding Common Stock at any time, determined in accordance with rules promulgated under the Securities Exchange Act. The Beneficial Ownership Blocker applicable to each Purchaser may from time to time be decreased or, upon 61 day notice, increased to a percentage not in excess of 9.99% by such Purchaser.

Following the date of a Mandatory Conversion or conversion in connection with a Change of Control, any shares of Series B Convertible Preferred Stock that are not converted as a result of the Exchange Cap or a Conversion Blocker shall be settled in cash based on the then trading price of the Common Stock.

#### *Voting and Consent Rights*

Holders of the Series B Convertible Preferred Stock are entitled to vote with the holders of the Common Stock on an as-converted basis subject to a restriction that the aggregate votes of the Series B Convertible Preferred Stock not exceed 19.99% of the voting power of the Common Stock outstanding on the Initial Issuance unless stockholder approval for the additional voting power is obtained. Holders of the Series B Convertible Preferred Stock are entitled to a separate class vote with respect to, among other things, related party transactions, the payment of dividends, repurchases or redemptions of securities of the Company in excess of \$100,000 per fiscal year, dispositions of businesses or assets in any transaction or series of transactions having a fair value of consideration in excess of \$30.0 million, the incurrence of indebtedness and certain amendments or extensions of the Company's existing credit facility, amendments to the Company's organizational documents that have an

adverse effect on the Series B Convertible Preferred Stock and authorizations or issuances of securities of the Company, in each case, subject to the specified exceptions and qualifications set forth in the Certificate of Designations.

#### *Redemption*

Each Purchaser will have the right to require the Company to repurchase such Purchaser's Series B Convertible Preferred Stock in cash in the aggregate amount of the then liquidation preference on the shares of Series B Convertible Preferred Stock (including any paid in kind dividends) being redeemed, plus accrued and unpaid dividends, upon (a) a date on or after December 21, 2027 (the "Optional Redemption Date"), (b) a Change of Control (as defined in the Certificate of Designations), or (c) the occurrence of certain triggering events, including the Company's material breach of terms of the Series B Convertible Preferred Stock, delisting of the Common Stock, material defaults that accelerate outstanding indebtedness and bankruptcy, liquidation or winding up of the Company.

The Company will have the right to repurchase the Series B Convertible Preferred Stock in connection with a Change of Control in an amount equal to 150% of the liquidation preference of such shares of Series B Convertible Preferred Stock (including any paid in kind dividends) being redeemed, plus accrued and unpaid dividends, subject to the Purchasers' rights to convert such shares of Series B Convertible Preferred Stock to Common Stock in accordance with their terms.

#### *Right to Designate a Director*

For so long as the Purchasers (or their permitted transferees) own beneficially and of record at least 50% of the shares of Series B Convertible Preferred Stock purchased pursuant to the Subscription Agreement (including any shares of Series B Convertible Preferred Stock previously held that were subsequently converted into shares of Common Stock for so long as the Purchasers (or their permitted transferees) continue to own beneficially and of record such shares of Common Stock), the Purchasers representing at least a majority of the outstanding shares of Series B Convertible Preferred Stock then outstanding will have the right to elect one person (the "Series B Director") to serve on the Board of Directors of the Company (the "Board"), with the initial director designee being David Chanley, as described below.

#### *Standstill*

Until the later of (i) six month anniversary of the date that the holders of Series B Convertible Preferred Stock no longer have a right to designate a director and (ii) December 21, 2026, subject to the qualifications set forth in the Subscription Agreement, the Purchasers will be subject to certain standstill restrictions pursuant to which the Purchasers will be restricted, among other things and subject to certain customary exceptions, from (i) acquiring shares of the Company's equity securities or securities exchangeable for or convertible into equity securities, (ii) making or in any way encouraging or participating in any "solicitation" of "proxies" or consents to vote, or knowingly seek to advise, encourage or influence any person with respect to voting of, any voting securities of the Company or any securities convertible or exchangeable into or exercisable for any such voting securities, (3) requesting, calling or seeking to call a meeting of the Company's stockholders or action by written consent, other than of or by the holders of the Series B Preferred Stock voting as a separate class for the purpose of voting or consenting to the matters on which the holders of Series B Preferred Stock have the right to vote or consent, (4) initiating or being the proponent of any stockholder proposal for action by the Company's stockholders, (5) seeking, alone or in concert with others, representation on the Company's Board of Directors or the removal of any director from the Board of Directors or (6) becoming a "participant" in any contested solicitation for the election of directors with respect to the Company; or (vii) taking any action that would require the Company to make a public announcement regarding any of the foregoing.

#### *Transfer Restrictions*

The Purchasers will be restricted from transferring the Series B Convertible Preferred Stock, subject to certain specified exceptions. Subject to certain specified exceptions, the Purchasers will generally be restricted from transferring the Common Stock issuable upon conversion of the Series B Convertible Preferred Stock until the one year anniversary of the Initial Closing.

#### *Registration Rights Agreement*

Also on December 21, 2023, the Company entered into a registration rights agreement (the "Registration Rights Agreement") with the Purchasers, pursuant to which the Company agreed to register for resale the shares of Common Stock issuable upon conversion of the Series B Preferred Stock (the "Conversion Shares"). Under the Registration Rights Agreement, the Company has agreed to file a registration statement (the "Shelf Registration Statement") covering the resale by the Purchasers of their Conversion Shares (the "Registrable Securities"). The Company has agreed to use reasonable best efforts to cause such registration statement to be declared effective as soon as practicable after the filing thereof, but in any event within twelve (12)

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months of the Initial Issuance and to keep such registration statement effective until the date the Conversion Shares covered by such registration statement have been sold or cease to be Registrable Securities. The Company has agreed to be responsible for all fees and expenses incurred in connection with the registration of the Registrable Securities. The Purchasers also have customary “demand” and “piggyback” registration rights as described in the Registration Rights Agreement.

The Company also granted Purchasers a right to demand an underwritten offering to sell Registrable Securities as long as the anticipated gross proceeds of such underwritten offering is not less than \$15.0 million (unless the Purchasers are proposing to sell all of their remaining Registrable Securities), subject to the limits and conditions contained in the Registration Rights Agreement. The Company also agreed, to facilitate underwritten block trades on behalf of the Purchasers, subject to certain limits and customary conditions contained in the Registration Rights Agreement.

The Registration Rights Agreement includes customary indemnification provisions, whereby the Company and the Purchasers have agreed to indemnify one another against certain liabilities in connection with registered offerings of securities.

The Certificate of Designations, Subscription Agreement and Registration Rights Agreement have been filed as Exhibits 3.1, 10.1 and 10.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference. The foregoing descriptions of the Certificate of Designations, Subscription Agreement and Registration Rights Agreement are not complete and are qualified in their entirety by reference to such exhibits.

This Current Report on Form 8-K does not constitute an offer to sell, or a solicitation of an offer to buy, any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale would be unlawful.

**2.01. Completion of Acquisition or Disposition of Assets.**

The information included in Item 1.01 is incorporated herein by reference.

**3.02. Unregistered Sales of Equity Securities.**

The information set forth under Item 1.01 above is hereby incorporated by reference into Item 3.02.

**3.03. Material Modification to Rights of Security Holders.**

The information provided in Items 1.01 is hereby incorporated by reference to this Item 3.03.

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

In accordance with the Subscription Agreement, the Board authorized an increase in the size of the Board from seven directors to eight directors and appointed David Chanley to the Board as the Series B Director, effective immediately upon the Initial Issuance on December 21, 2023. Mr. Chanley’s service as the Series B Director will continue until the rights of the holders of Series B Preferred Stock to elect a Series B Director expire and until his successor is duly elected and qualified, or his earlier death, resignation, or removal.

**David Chanley**, age 49, is the Co-Founder and has served as the Managing Partner of White Hat Capital Partners LP since 2016. Prior to co-founding White Hat Capital Partners LP, Mr. Chanley was Managing Director and Co-Head of Stifel’s Global Technology Investment Banking Group from 2010 until 2016. Mr. Chanley joined Stifel in connection with its merger with Thomas Weisel Partners in 2010. He joined Thomas Weisel Partners just after its founding in 1999 and became a Partner in 2007. Mr. Chanley received his A.B. in Business Economics and Organizational Behavior & Management from Brown University.

Mr. Chanley will not receive any compensation for his service as a director. Mr. Chanley has also entered into the Company’s standard form of indemnification agreement.

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Mr. Chanley was selected as a director of the Company pursuant to the Subscription Agreement between the Company and the Purchasers, the material terms of which are outlined in Item 1.01 of this Current Report on Form 8-K and are incorporated into this Item 5.02 by reference. There are no family relationships between Mr. Chanley and any director or executive officer of the Company and Mr. Chanley does not have any direct or indirect material interest in any related-person transaction or proposed related-person transaction required to be disclosed by Item 404(a) of Regulation S-K under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

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

The information provided in Items 1.01 is hereby incorporated by reference to this Item 5.03.

**7.01. Regulation FD Disclosure.**

On December 21, 2023, the Company issued press releases announcing the Initial Issuance and the Transaction. On December 21, 2023, the Company hosted a conference call to discuss the Transaction and the White Hat financing. The Company used a slide presentation in connection with the conference call. Copies of these press releases and presentation are furnished herewith as Exhibits 99.1, 99.2 and 99.3 to this Current Report on Form 8-K.

The information in this Item 7.01 and Exhibits 99.1 and 99.2 hereto shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act, or the Exchange Act, regardless of any general incorporation language in such filing.

**9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit</b>	<b>Description</b>
2.1	<a href="#">Agreement for the Sale and Purchase of a Proportion of the Entire Issued Share Capital of Silixa Ltd, dated as of December 21, 2023.</a>
2.2	<a href="#">Agreement for the Sale and Purchase of Shares of Silixa Ltd, dated as of December 21, 2023.</a>
3.1	<a href="#">Certificate of Designations.</a>
10.1	<a href="#">Subscription Agreement, by and between the Company and the Investors (as defined therein), dated as of December 21, 2023</a>
10.2	<a href="#">Registration Rights Agreement, by and between the Company and the Investors (as defined therein), dated as of December 21, 2023</a>
99.1	<a href="#">Press Release, dated December 21, 2023.</a>
99.3	<a href="#">Press Release, dated December 21, 2023</a>
99.3	<a href="#">Presentation.</a>

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**SIGNATURES**

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

**Luna Innovations Incorporated**

By: /s/ Scott A. Graeff  
Scott A. Graeff  
President and Chief Executive Officer

Date: December 27, 2023



EXECUTION VERSION

DATED ..... 2023

- (1) THE MINORITY SELLERS
- (2) LUNA INNOVATIONS INC.

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**AGREEMENT FOR THE SALE AND PURCHASE OF**

**SHARES IN THE CAPITAL OF**

**SILIXA LTD**

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THIS AGREEMENT is made on ..... 2023.

**AMONG:**

- (1) **THE SEVERAL PERSONS** whose names and addresses are set out in Schedule 1 (together the "**Minority Sellers**" and each a "**Minority Seller**");  
  
and
- (2) **LUNA INNOVATIONS INC.**, a public company incorporated in Delaware having its principal office at 301 1st St SW #200, Roanoke, VA 24011, United States (the "**Purchaser**"),  
  
(each a "**Party**" and together the "**Parties**").

**BACKGROUND:**

- (A) The Target is a private limited company incorporated in England.
- (B) The Minority Sellers wish to sell, and the Purchaser wishes to acquire, the Minority Shares on the terms of this Agreement.
- (C) The Parties acknowledge that the Majority Sellers have agreed to sell and the Purchaser has agreed to purchase the Target Shares on and subject to the terms of the Majority SPA.
- (D) The Minority Shares and the Target Shares constitute the entire issued share capital of the Target.

**IT IS AGREED** as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, the following words and expressions shall have the following meanings:

"**2023 R&D Claim**" means the R&D Claim in respect of the accounting period of the Target ended 30 December 2023;

"**A Ordinary Shares**" means the A ordinary shares of £0.01 each in the capital of the Target having such rights as set out in the Articles;

"**Adjusted Waterfall Distribution**" means the distribution as set out in articles 5 and 6 of the Articles, taking into account the prior payment of the Completion Payment in this Agreement and the Completion Payment under the Majority SPA (as defined therein) and as adjusted to enable Lime Rock Partners V, L.P. to first receive three million pounds sterling (£3,000,000) of any Earn Out Consideration that becomes payable;

"**Agreement**" means this agreement;

"**Articles**" means the articles of association of the Target immediately prior to Completion;

**"B Ordinary Shares"** means the B ordinary shares of £0.01 each in the capital of the Target having such rights as set out in the Articles;

**"Business Day"** means a day that is not a Saturday or Sunday or a public holiday in London, United Kingdom and Roanoke, Virginia, United States;

**"C Ordinary Shares"** means the C ordinary shares of £0.01 each in the capital of the Target having such rights as set out in the Articles;

**"Claim"** means a claim for a breach of this Agreement;

**"Companies Act"** means the Companies Act 2006;

**"Completion"** means completion of the sale and purchase of the Minority Shares in accordance with this Agreement;

**"Completion Date"** means the date of this Agreement;

**"Completion Payment"** means the sum of £279,788 (being the aggregate sum payable to the Minority Sellers pursuant to this Agreement);

**"Deed Poll"** means the deed poll executed by the Target immediately prior to the date of this Agreement granting Target RSUs to the RSU Recipients;

**"Earn Out Consideration"** has the meaning given to it in Schedule 4;

**"Encumbrance"** means a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, retention of title arrangement or other third party right, interest or claim of any kind or any agreement or commitment to create or give any of the foregoing;

**"Majority Sellers"** means the persons whose names and addresses are set out in Schedule 2;

**"Majority SPA"** means the share purchase agreement, in the Agreed Form, for the sale and purchase of the Target Shares to be entered into between or on behalf of the Majority Sellers and the Purchaser;

**"Minority R&D Tax Credit Deferred Consideration"** has the meaning given to it in Clause 3.5(a);

**"Minority Shares"** means the number and class of shares, in the capital of the Target, set out in column 2 of Schedule 1;

**"Ordinary Shares"** means the ordinary shares of £0.01 each in the capital of the Target having such rights as set out in the Articles;

**"Paying Agent"** means Shieldpay Limited;

**"Payroll Tax"** means employer's and employee's social security and pension contributions and income tax accountable via PAYE or payroll (including National Insurance contributions,

apprenticeship levy, tax in respect of PAYE income, as defined in and pursuant to the Income Tax (Earnings and Pensions) Act 2003 and regulations made thereunder), and any similar tax, contributions, levies withholdings and deductions in any jurisdiction, together with all penalties, fines, charges, surcharges and interest relating to any of the foregoing, or resulting from a failure to comply with the provisions of any enactment relating to any Payroll Tax within this definition, including in connection with the failure to make any return, the making of any incomplete or incorrect return, or the failure to maintain records;

**"Preference Shares"** means the preference shares of \$4.00 each in the capital of the Target, having such rights as set out in the Articles;

**"Preference Shares B"** means the preference shares B of \$4.00 each in the capital of the Target, having such rights as set out in the Articles;

**"Preference Shares C"** means the preference shares C of \$4.00 each in the capital of the Target, having such rights as set out in the Articles;

**"Preference Shares D"** means the preference shares D of \$4.00 each in the capital of the Target, having such rights as set out in the Articles;

**"Preference Shares E"** means the preference shares E of \$4.00 each in the capital of the Target, having such rights as set out in the Articles;

**"Press Release"** means the press release to be issued by the Purchaser's Group and the Target in the agreed form;

**"Purchase Price"** has the meaning given in Clause 3.1;

**"Purchaser's Group"** means the Purchaser and its group undertakings as at the Completion Date;

**"R&D Claim"** means any claim for relief for expenditure incurred on research and development including under any of the provisions of Part 13 of the Corporation Tax Act 2009 or an R&D expenditure credit (as defined for the purposes of section of the Corporation Tax Act 2009) under any of the provisions of Chapter 6A of Part 3 of the Corporation Tax Act 2009;

**"R&D Tax Credit Payments"** means any payment actually received by the Target from HMRC after Completion which relates to the 2023 R&D Claim (and, to the extent that any such payment would have been received but for it having been applied in discharging any liability of the Target to make an actual payment of tax, the amount of the payment so applied shall be deemed to have been actually received, save to the extent that such application has had the effect of reducing or eliminating any liability of the Founder Sellers under the Tax Covenant (with the terms "Founder Sellers" and "Tax Covenant" having the meaning given in the Majority SPA);

**"RSU Recipients"** means the individuals named in Schedule 1 to the Deed Poll;

**"Sellers' Representative"** means the representative and agent of the Minority Sellers appointed in accordance with Clause 8.1 and who, as at Completion, is Rasheed Abayomi Amunikoro;

**"Shares"** means all of the Target Shares and the Minority Shares together comprising the entire issued share capital of the Target;

**"Target"** means Silixa Ltd a private limited company incorporated in England (company number 06207412) having its registered office address at Silixa House, 230 Centennial Park, Elstree, Hertfordshire, WD6 3SN, United Kingdom;

**"Target RSU"** has the meaning given to it in Clause 4.4;

**"Target Shares"** means all of the Ordinary Shares, A Ordinary Shares, B Ordinary Shares, Preference Shares, Preference Shares B, Preference Shares C, Preference Shares D and Preference Shares E held by the Majority Sellers as set out against each Majority Seller's name in column 2 of Schedule 2;

**"Transaction Documents"** means this Agreement and any document referred to in this Agreement;

**"Transactions"** means the transactions contemplated by this Agreement;

**"Warranties"** means the warranties given pursuant to Clause 5.1 and set out in Schedule 3 and **"Warranty"** shall mean any of them; and

**"Waterfall Distribution"** means the distribution as set out in articles 5 and 6 of the Articles.

1.2 In this Agreement, unless the context requires otherwise, or otherwise stated:

- (a) use of the singular includes the plural and vice versa, and use of any gender includes the other genders;
- (b) **"they"** and **"their"** are used as gender-neutral singular pronouns when used with an antecedent defined term that is singular;
- (c) a reference to any specific legislation includes a reference to that legislation as re-enacted, consolidated, replaced or amended; any previous legislation of which it is a re-enactment, consolidation, replacement or amendment; and any subordinate legislation made under any of the same (and **"legislation"** in this Clause 1.2(c) includes any statute, statutory provision, regulation, rule or subordinate legislation);
- (d) any reference to a Clause or Schedule is to the relevant clause or schedule of or to this Agreement;
- (e) any reference in a Schedule to a part or a paragraph is to a part or a paragraph of that Schedule or, where relevant, to a paragraph of that part of that Schedule;

- (f) any reference to a **"person"** includes an individual, firm, partnership, body corporate, corporation, association, organisation, government, state, foundation and trust, in each case whether or not having separate legal personality;
- (g) references to **"£"** or **"GBP"** are references to the lawful currency of the United Kingdom from time to time;
- (h) any reference to an English legal or tax term or concept, or any court, official, governmental or administrative authority or agency in England, includes in respect of any jurisdiction other than England a reference to whatever most closely approximates to it in that jurisdiction;
- (i) the Clause, Schedule and paragraph headings are included for convenience only and shall not affect the interpretation of this Agreement;
- (j) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules;
- (k) any reference in this Agreement to a document being **"in the Agreed Form"** means a document in a form agreed by the parties before the signing of this Agreement and either entered into on the date of this Agreement by the relevant parties or initialled by the parties (or on their behalf) and where that document is not entered into on the date of this Agreement, with such amendments as the parties may subsequently agree; and
- (l) the words **"other"**, **"including"**, **"includes"**, **"include"**, **"in particular"** and any similar words shall not limit the general effect of words that precede or follow them and the *ejusdem generis* rule shall not apply.

## 2. **SALE AND PURCHASE OF THE MINORITY SHARES**

- 2.1 Each of the Minority Sellers severally agrees to sell, and the Purchaser agrees to purchase, the Minority Shares set out against each of his, her or their respective names in column 2 of Schedule 1, with full title guarantee free from all Encumbrances and with all rights attaching to them at Completion, including the right to receive all dividends and other distributions declared, made or paid after Completion.
- 2.2 The Purchaser shall not be obliged to complete the purchase of any of the Minority Shares unless the purchase of all the Minority Shares and the purchase of all the Target Shares under the Majority SPA is completed simultaneously.
- 2.3 Each Minority Seller unconditionally and irrevocably waives any rights of pre-emption conferred on it by the Articles or otherwise existing in respect of any of the Minority Shares held by such Minority Seller.

### 3. PURCHASE PRICE AND SATISFACTION OF CONSIDERATION

- 3.1 The consideration for the sale of the Minority Shares in accordance with Clause 2 shall be an amount equal to the aggregate of:
- (a) the Completion Payment which shall be apportioned between the Minority Sellers and the Minority Shares in the amounts set out in column 3 of Schedule 1;
  - (b) *plus* the portion of the Earn Out Consideration (if any) attributable to the Minority Sellers which shall be apportioned between each Minority Seller by applying the Adjusted Waterfall Distribution;
  - (c) *plus* the portion of the Minority R&D Tax Credit Deferred Consideration attributable to the Minority Sellers which shall be (i) apportioned between each Minority Seller by applying the Waterfall Distribution and (ii) payable in accordance with Clause 3.5,
- (the "**Purchase Price**").
- 3.2 The Purchaser and the Minority Sellers shall comply with their respective obligations in Schedule 4 in relation to the Earn Out Consideration. The Minority Sellers agree that the Earn Out Consideration (if any) shall be determined in accordance with the Majority SPA.
- 3.3 Any amount paid by or on behalf of the Minority Sellers to the Purchaser in respect of any Claim or pursuant to any indemnity or undertaking to pay any amount under this Agreement (as the case may be) shall, to the extent permitted by law, be deemed to reduce the Purchase Price payable to the relevant Minority Sellers by, and, where appropriate, be a repayment of, that amount.
- 3.4 Notwithstanding any other provision of this Agreement, the Purchaser shall have the right (but not the obligation), in its sole and absolute discretion, to make, or cause any of its members of the Purchaser's Group (including the Target after Completion) to make, an election under Section 338(g) of the US Internal Revenue Code of 1986 (as amended) and any corresponding or similar election as may be available under any applicable state, local, or non-U.S. Law with respect to the Transactions, including with respect to the Target and any of its subsidiaries (the "**Section 338(g) Election**"). If the Purchaser elects to make the Section 338(g) Election, the Minority Sellers shall cooperate fully, as and to the extent reasonably requested by the Purchaser, in connection with the making of the Section 338(g) Election, including completing and timely executing any and all applicable forms (including IRS Forms 8023, 8883, and SS-4).
- 3.5 **Minority R&D Tax Credit Deferred Consideration**
- (a) The Purchaser shall pay to the Minority Sellers, by way of deferred consideration for the sale of the Minority Shares (the "**Minority R&D Tax Credit Deferred Consideration**") an amount equal to the proportion which is attributable to the Minority Sellers of the aggregate amount of all R&D Tax Credit Payments received by the Target after the Completion Date, provided such amount is not reflected or



otherwise taken into account in the Locked Box Accounts (as defined in the Majority SPA).

- (b) The Minority R&D Tax Credit Deferred Consideration payable under Clause 3.5(a) shall be payable as follows:
  - (i) if there is a single R&D Tax Credit Payment, by a payment on the date which is ten Business Days following the date when the Target receives the R&D Tax Credit Payment (the "**Receipt Date**"); or
  - (ii) if there are multiple R&D Tax Credit Payments, by a payment on the date which is ten Business Days following the final Receipt Date.

#### 4. **COMPLETION**

4.1 Completion shall take place remotely on the Completion Date.

4.2 At Completion:

- (a) each Minority Seller shall deliver to the Purchaser:
  - (i) stock transfer form(s) in favour of the Purchaser, or any nominee specified by the Purchaser for this purpose in respect of their respective Minority Shares, duly executed by the Minority Seller (or his, her or their attorney); and
  - (ii) the share certificate(s) representing the relevant Minority Shares (if available);
- (b) subject to each of the Minority Sellers complying with their respective obligations in Clause 4.2(a), the Purchaser shall pay (or procure the payment of) the Completion Payment to the Sellers Account in accordance with Clause 7.

4.3 In respect of each Minority Seller who has not delivered an original share certificate (being a "**Relevant Seller**") for some or all of their Minority Shares (each such share certificate being a "**Certificate**") pursuant to clause 4.2(a)(ii), such Relevant Seller hereby:

- (a) confirms that each such Certificate has been lost, destroyed or not received;
- (b) confirms that neither the Minority Shares set out opposite their name in column 2 of Schedule 1, nor each Certificate, has been transferred, charged, lent, deposited, pledged, encumbered or dealt with in any manner that may affect title to such Minority Shares and such Relevant Seller is the person named in each relevant Certificate and is entitled to be on the register of members of the Target in respect of such Minority Shares;
- (c) subject to the Purchaser complying with its obligations under Clause 4.2, authorises the Target to register the transfer of such Minority Shares in accordance with the accompanying stock transfer form(s) without the production of each Relevant Certificate for such Minority Shares, and to enter the name of the Purchaser (or any

nominee specified by the Purchaser) in the Target's register of members as the legal owner of such Minority Shares;

- (d) subject to the Purchaser complying with its obligations under Clause 4.2, agrees to indemnify and keep indemnified the Target and the directors of the Target from the date of this Agreement from and against all claims, actions, proceedings and demands which may be brought against the Target following the date of this Agreement and all reasonable and proper losses, liabilities, charges, costs, damages and expenses which the Target and/or the directors of the Target may incur, in each case, as a direct result of allowing the registration of the transfer of all or any part of such Minority Shares without the production of each relevant Certificate; and
- (e) subject to the Purchaser complying with its obligations under Clause 4.2, agrees to return each such Certificates to the Target for cancellation if found.

4.4 As soon as practicable following the Completion Date, each restricted stock unit denominated in Ordinary Shares (each, a "**Target RSU**") subject to time-based, performance, or other vesting restrictions that is outstanding under the RSU Sub Plan to the Silixa Ltd 2020 Enterprise Management Incentive Plan immediately before Completion, whether vested or unvested, shall automatically be substituted by the Purchaser and converted into a restricted stock unit denominated in shares of common stock ("**Purchaser Shares**") of the Purchaser (each, a "**Converted RSU**") to be issued under the Luna Innovations Incorporated 2023 Equity Incentive Plan or any successor plan; provided, that, prior to such substitution, the Purchaser shall have filed with the U.S. Securities and Exchange Commission a registration statement on Form S-8 covering the number of Purchaser Shares subject to such Converted RSUs. No action on the part of any holder or beneficiary of a Target RSU shall be required in respect of such automatic substitution, save that, following the Completion Date, each holder or beneficiary of a Converted RSU shall be required to execute a written award agreement evidencing such Converted RSU (a "**Converted RSU Agreement**") between such holder or beneficiary and the Purchaser relating to such Converted RSU, which Converted RSU Agreement shall be in a form provided by the Purchaser. Each Converted RSU shall continue to have and be subject to substantially the same terms and conditions as were applicable to such Target RSU immediately before the Completion Date (including vesting conditions), except that each Converted RSU shall cover that number of Purchaser Shares equal to the quotient (rounded down to the nearest whole number) obtained by dividing (A) the amount in GBP that corresponds to each holder of a Target RSU as set forth in Column B of Schedule 1 to the Deed Poll by (B) an amount equal to the average of the closing sale prices in USD of a Purchaser Share on the Nasdaq Stock Market (as reported by The Wall Street Journal) for each of the thirty (30) consecutive trading days ending with the complete trading day immediately before (and excluding) the Completion Date after applying the spot GBP/USD exchange rate as published by the Bank of England at close of business on the preceding Business Day.

4.5 Prior to the Completion Date, the Target shall take all appropriate actions to: (a) effectuate the provisions of Clause 4.4 and (b) ensure that after the Completion Date, no holder of Converted RSUs, any beneficiary thereof, nor any other participant in the RSU Sub Plan to the Silixa Ltd 2020 Enterprise Management Incentive Plan shall have any right to acquire any

securities of the Target or to receive any payment or benefit with respect to any award previously granted thereunder, except as provided in Clause 4.4.

5. **WARRANTIES**

- 5.1 Each Minority Seller severally warrants to the Purchaser that each of the Warranties is true and accurate as at the Completion Date (solely in respect of such Minority Seller and those Minority Shares set out against such Minority Seller's name in column 2 of Schedule 1).
- 5.2 Each of the Warranties is separate and is to be construed independently of the other Warranties and any other provisions of this Agreement.
- 5.3 Clause 6 shall apply to limit or exclude, in accordance with their respective terms, any liability which the Minority Sellers might otherwise have in respect of any Claim.

6. **LIMITATIONS ON LIABILITY**

- 6.1 This Clause 6 limits the liability of the Minority Sellers in relation to any Claim.
- 6.2 The maximum aggregate liability of the Minority Sellers in respect of all Claims and in respect of any indemnity or other undertaking to pay any amount under this Agreement (as the case may be) will not exceed an amount equal to the aggregate Purchase Price actually received by the Minority Sellers and the maximum aggregate liability of each Minority Seller in respect of such Claims and in respect of any indemnity or other undertaking to pay any amount under this Agreement (as the case may be) will not exceed such Minority Seller's proportion of the Purchase Price actually received by that Minority Seller.
- 6.3 The Minority Sellers shall not be liable for a Claim unless notice in writing (specifying in reasonable detail the basis of the Claim (in so far as is known to the Purchaser) and, so far as is practicable, the amount claimed in respect of it) has been given by or on behalf of the Purchaser to the Sellers' Representative within the period of seven (7) years commencing on the Completion Date.
- 6.4 Any Claim (to the extent not previously remedied, satisfied, settled or withdrawn) be deemed to have been withdrawn unless proceedings in respect of such Claim have been commenced by the Purchaser being both issued and validly served within nine (9) months after notice has first been given in accordance with Clause 6.3 and are being pursued with reasonable diligence.
- 6.5 Nothing in this Clause 6 applies to exclude or limit the liability of a Minority Seller to the extent that a Claim arises or is delayed as a result of fraud or wilful concealment by that Minority Seller.
- 6.6 If a Claim is based upon a liability that is contingent only or is not capable of being quantified, the Minority Sellers will have no liability in respect of that Claim unless and until such liability ceases to be contingent or unquantifiable and becomes an actual liability or capable of being quantified, provided that this clause will not operate to prevent the Purchaser making a Claim in respect of a contingent or unquantifiable liability if written notice of such claim is received by the Sellers' Representative within the time limits in clause 6.3 in circumstances where the

liability does not become an actual liability or capable of being quantified until after the expiry of the relevant time limit.

- 6.7 Nothing in this Agreement shall restrict or limit the general obligation at law of the Purchaser to mitigate any losses which it may suffer pursuant to any Claim.
- 6.8 The Purchaser shall not be entitled to recover damages or obtain payment, reimbursement or restitution more than once in respect of any one liability or loss which give rise to more than one Claim.

7. **PAYMENTS AND INTEREST**

- 7.1 Payments to be made to the Minority Sellers under this Agreement shall be made in GBP by electronic transfer of immediately available funds from the Purchaser to the account of the Paying Agent, or with respect to the Minority R&D Tax Credit Deferred Consideration only, such account as nominated by the Sellers' Representative, in each case the details of which shall be notified by the Sellers' Representative to the Purchaser at least one (1) Business Day before the relevant payment date ("**Sellers Account**").
- 7.2 The Paying Agent is irrevocably authorised by each Minority Seller to receive any amount payable to the Minority Sellers under this Agreement and the receipt of any amount so paid in the Sellers Account will be a valid discharge for the Purchaser for the relevant amount. The Purchaser shall have no obligation relating to the distribution of any payment made under Clause 7.1 between any of the Minority Sellers.
- 7.3 Payment of any sum in accordance with Clause 7.1 will discharge the obligations of the Purchaser to pay the sum in question and the Purchaser shall not be concerned to see the application of the monies so paid.
- 7.4 If any sums required to be paid by a Party under this Agreement are not paid by the relevant due date, then such sums shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of four per cent per annum over the base rate from time to time of Barclays Bank Plc up to and including the day of actual payment of such sums, such interest to be payable on demand and compounded on a quarterly basis.
- 7.5 Each Minority Seller unconditionally and irrevocably agrees to indemnify the Purchaser, the Target and each other member of the Purchaser's Group in respect of all Payroll Tax, to the extent permitted by law which arises as a consequence of or in connection with the disposal of the Target Shares by that Minority Seller, including, without limitation, in respect of any liability arising under or in connection with Part 7 or Part 7A of the Income Tax (Earnings and Pensions) Act 2003, together, in each case, with related interest and penalties. Without prejudice to the foregoing, each Minority Seller agrees that the Purchaser may recover from such Minority Seller any amount for which they are liable under this Clause 7.5 via deductions from any salary or other remuneration, or from any other payments by any member of the Purchaser's Group.
- 7.6 For the avoidance of doubt, If the Purchaser, the Target or any of the Target's subsidiaries, or any agent of, or any person connected with any of them, has from time to time any obligation imposed by law to account for any Tax in relation to any payment to be made to any Minority

Seller pursuant to this Agreement, or in relation to any other matter pursuant to this Agreement involving such Minority Seller, the Purchaser, the Target, the relevant subsidiary of the Target and any such other person shall be entitled to deduct or withhold an amount equal to such Tax from any payment to such Minority Seller whether such payment arises under this Agreement or otherwise, provided that any such amount so deducted or withheld shall be treated as being received by the relevant Minority Seller and accounted to a Tax Authority.

**8. SELLERS' REPRESENTATIVE**

8.1 Each Minority Seller hereby appoints the Sellers' Representative as their representative and agent upon the terms and conditions set out in this Clause 8 and in accordance with any other applicable provisions in this Agreement, and the Sellers' Representative hereby accepts such appointment.

8.2 The Sellers' Representative shall have power and authority on each Minority Seller's behalf to take any action required, permitted or, in the absolute discretion of the Sellers' Representative (acting reasonably), desirable or expedient pursuant to or in connection with this Agreement, including power to:

- (a) give any consent, direction or notice to be given by the Minority Sellers (or any of them), and/or to make any decision or take any action on behalf of the Minority Sellers (or any of them) including, but not limited to, making any waiver or request for the Minority Sellers (or any of them), under or in connection with the Transaction Documents;
- (b) to negotiate and/or agree and/or settle any Claim against the Minority Sellers;
- (c) to review and determine (where applicable) the Earn Out Consideration in accordance with Schedule 4;
- (d) receive and distribute all demands, notices or other communications directed to the Minority Sellers (or any of them) under or in connection with the Transaction Documents; and
- (e) agree any amounts due to or from the Minority Sellers (or any of them) under the Transaction Documents,

provided that the Sellers' Representative shall not have the power to do any such thing on behalf of a Minority Seller where that thing relates to such Minority Seller only, rather than to the Minority Seller together with one or more other Minority Sellers.

8.3 After Completion, each Minority Seller shall not otherwise attempt to exercise any right, power or authority in relation to this Agreement in lieu of the Sellers' Representative, even if such Minority Seller shall be prejudiced thereby, other than any right, power or authority is to be exercised by the Minority Seller acting by and for itself only and not in conjunction with the exercise of such right, power or authority by any other Minority Seller.

8.4 Minority Sellers representing at least seventy-five per cent (75%) of the Minority Shares may from time to time (subject to receipt of prior agreement from such person in writing agreeing to

accept their appointment) appoint any Minority Seller by notice executed by the appointed Sellers' Representative and delivered to the Purchaser (with a copy of the notice provided to each Minority Seller), to be a Sellers' Representative in place of any person who was a Sellers' Representative immediately before the delivery of that notice. The Purchaser shall be entitled to assume that any Sellers' Representative notified to the Purchaser in accordance with this Clause 8.4 has been properly appointed under this Clause 8.4 and has the rights, powers and authority set out in this Clause 8.

- 8.5 Without prejudice to Clause 8.1, the Sellers' Representative may resign and be discharged from their duties and obligations under this Agreement by giving notice to the Minority Sellers and the Purchaser and specifying a date (which date shall be the later of the date specified in the notice and two (2) Business Days after deemed receipt) on which their resignation shall take effect.
- 8.6 The Minority Sellers hereby waive any rights they have or may have to make or bring a claim against the Sellers' Representative in relation to the exercise in good faith of any power for and on behalf of any of the Minority Sellers and, provided it acts in good faith, the Sellers' Representative shall have and accepts no liability to any of the Minority Sellers in connection with or as a result of anything which the Sellers' Representative does, refrains from doing or neglects or omits to do in his capacity as Sellers' Representative in connection with any matter relating to the Agreement.
- 8.7 Delivery of any document required to be made to the Minority Sellers or any of them by the Purchaser may be made to the Sellers' Representative whose receipt for such delivery shall be an absolute discharge of the person making the same who shall not be concerned as to its application.
- 8.8 Each of the Minority Sellers and the Sellers' Representative agree as follows:
- (a) no provisions of this Agreement shall require the Sellers' Representative to expend or risk its own funds or incur any liability;
  - (b) the Sellers' Representative shall not be required to take any action unless it has been provided with funds, security or indemnities which it has determined are sufficient to protect it against the costs, expenses and liabilities which it may incur in performing such actions;
  - (c) the Sellers' Representative shall not be liable for any action it takes or omits to take in good faith that it believes to be authorised or within the rights or powers conferred upon it by this Agreement and the Transaction Documents;
  - (d) the Minority Sellers shall reimburse the Sellers' Representative (in proportion to their allocation of the Purchase Price) promptly on request for all reasonable and proper disbursements, advances and expenses incurred or made by it in acting as Sellers' Representative, subject to the Sellers' Representative providing the Minority Sellers with reasonable details of the disbursements, advances and expenses incurred; and
  - (e) the Minority Sellers shall indemnify the Sellers' Representative against any and all losses, liabilities or reasonable and proper expenses incurred by it arising out of or in

connection with the proper discharge of its duties as Sellers' Representative under this Agreement and the other Transaction Documents.

9. **POWER OF AGENCY**

9.1 Each Minority Seller (as "**Appointor**") severally, irrevocably, and to secure the proprietary interest of the Purchaser of the Minority Shares, appoints the Purchaser to be his, her, their or its agent for the following purposes:

- (a) to receive, complete, authenticate, send, supply, execute and deliver in the name and on behalf of the Appointor all such proxy appointments, consents (including consents to short notice), appointments, authorisations, waivers, directions, resolutions, requests, share transfers and other documents and deeds and (without limitation) to signify agreement on behalf of the Appointor to any written resolution to be passed under Part 13 Companies Act);
- (b) to receive notice of, attend and vote at any meeting of the shareholders (or class of shareholders) of the Target and at any adjournment of any such meeting; and
- (c) otherwise (and without limitation) to do all such acts and things and exercise all such rights and powers,

in each case as the Appointor may be entitled to receive or do by reason of being or having been the registered holder of their relevant Minority Shares, in such manner and on such terms as the Purchaser in its absolute discretion thinks fit and to the exclusion of the Appointor or any other person.

9.2 The Purchaser may delegate in writing underhand to one or more persons all or any of the powers granted to the Purchaser under the power of agency in this Clause 9 (the "**Power of Agency**") on such terms as the Purchaser thinks fit and may revoke such delegation at any time.

9.3 The Purchaser may appoint one or more persons to act as a substitute or substitutes in its place to exercise all or any of the powers granted to the Purchaser under this Power of Agency as the Purchaser thinks fit other than the power to appoint a substitute and may revoke any such appointment at any time.

9.4 This Power of Agency shall, in respect of the relevant Appointor only, continue until the later of the time at which:

- (a) the Purchaser or its nominee becomes the registered holder of that Appointor's Minority Shares; and
- (b) all rights which the Appointor has or had by reason of being a registered member are exercised or lapse,

and is given on the basis that the Purchaser should use its reasonable endeavours to effect such registration or exercise such rights as soon as possible.

- 9.5 During the term of the appointment, the Appointor shall:
- (a) hold their relevant Minority Shares and all distributions, property and rights deriving from them on trust for the Purchaser as beneficial owner;
  - (b) not do or cause or authorise any other person to do any of the acts which the Purchaser is authorised to do under this Power of Agency;
  - (c) promptly (and in any case, within ten (10) Business Days) account to the Purchaser for all dividends, interest, bonuses, distributions or other sums of any kind whatsoever relating to their relevant Minority Shares, and promptly (and in any case, within ten (10) Business Days) deliver to the Purchaser any notices, letters and other documents or communications of any kind whatsoever relating to their relevant Minority Shares, in each case received by or on behalf of the Appointor after the Completion Date;
  - (d) promptly (and in any case, within ten (10) Business Days) exercise any rights held by the Appointor by reason of being or having been a registered member and deal with the Minority Shares and all distributions, property and rights deriving from them, in each case only as the Purchaser may from time to time direct; and
  - (e) on request ratify everything which the Purchaser may do or purport to do in the proper exercise of the Purchaser's powers and/or authorities under this Power of Agency.
- 9.6 The Purchaser undertakes to the Minority Sellers (i) on behalf of itself that it shall and (ii) to procure that any other party exercising the rights and powers granted by each Minority Seller pursuant to this Power of Agency shall, exercise all rights and powers granted pursuant to this Power of Agency in accordance with all applicable laws. The Purchaser indemnifies each Minority Seller for any and all losses that the relevant Minority Seller suffers arising from this Power of Agency.
10. **FURTHER ASSURANCE**
- Each Party will, from time to time on being required to do so by any other Party and so far as it is reasonably able to do so, promptly and at its own expense do or procure the doing of all such acts and execute or procure the execution of all such documents as are necessary for giving full effect to this Agreement.
11. **ASSIGNMENT**
- 11.1 This Agreement shall be binding on and enure for the benefit of the successors and permitted assignees of the Parties.
- 11.2 Except as provided in Clause 11.3, no Party may assign or otherwise dispose of any rights under this Agreement, at law or in equity, including by way of declaration of trust without the consent of the other Parties.
- 11.3 The Purchaser may assign all or any of its rights under this Agreement to its bankers by way of security and to any member of the Purchaser's Group, provided that any such member of the Purchaser's Group shall cease to be entitled to exercise those rights, and shall reassign



those rights to the Purchaser, on ceasing to be a member of the Purchaser's Group, and provided also that the liability of each of the Minority Sellers to any such assignee shall not be greater than its liability to the Purchaser if that assignment had not occurred. If there is any such assignment, references to the rights of the Purchaser (other than in this Clause) shall be construed as references to the holder, at any relevant time, of the Purchaser's rights under this Agreement.

**12. ANNOUNCEMENTS AND CONFIDENTIALITY**

12.1 Subject to Clause 12.2, no Party may make or permit any other person to make any press release or other public announcement about this Agreement or the Transactions.

12.2 Clause 12.1 shall not apply to:

- (a) the Press Release; or
- (b) any other public announcement of the acquisition of the Shares made by the Purchaser, including any announcement to the customers or suppliers of (a) the Target or (b) any other member of the Purchaser's Group, which contains no material information relating to this Agreement and the Transactions that is not in Press Release.

12.3 Subject to Clauses 12.4 and 12.6, each Party shall treat the following information as confidential and shall not disclose or use it:

- (a) details of the provisions of this Agreement and any agreement, document or arrangement entered into in connection with this Agreement;
- (b) information relating to the negotiations leading to the execution of this Agreement and any other agreement, document or arrangement entered into in connection with this Agreement; and
- (c) to the extent obtained as a result of or in connection with entering into, or fulfilling obligations under, this Agreement, information relating to any other Party.

12.4 Each Party may disclose or use information otherwise required by Clause 12.3 to be treated as confidential:

- (a) if and to the extent included in the Press Release;
- (b) if disclosed to or used by that Party's insurers, professional advisers, auditors or bankers (at any relevant time) on a strictly confidential basis;
- (c) in the case of the Purchaser, to its shareholders, investors and their respective affiliates;
- (d) if and to the extent required for the purpose of any legal (including arbitration and regulatory) proceedings arising out of this Agreement or any other agreement, document or arrangement entered into in connection with this Agreement;

- (e) if and to the extent the information is or comes into the public domain through no fault of that Party;
  - (f) if such disclosure is to a tax authority in connection with the tax affairs or reporting obligations of the disclosing party; or
  - (g) if such disclosure is to another Party (to the extent reasonably required).
- 12.5 Each Party shall ensure that any person to whom confidential information is disclosed pursuant to Clause 12.4(b) or 12.4(f) is made aware of the obligations of confidentiality contained in this Clause and complies with Clause 12.3 as if binding on it directly.
- 12.6 Each Party may disclose or use information otherwise required by Clause 12.3 to be treated as confidential, or may make, or permit any person to make, any press release or other public announcement:
- (a) if and to the extent required by applicable law or regulation in any relevant jurisdiction; or
  - (b) if and to the extent required or requested by any court, competent regulatory or governmental body, or securities exchange in any relevant competent jurisdiction, whether or not the requirement or request has the force of law,

and, provided that the Party using such information or making or permitting such disclosure, press release or announcement shall take all such steps as are reasonably practicable in the circumstances and permitted by law and subject to legal professional privilege (including litigation privilege and/or legal advice privilege), to notify and consult with the other Party or Parties before the relevant disclosure, release or announcement is made, and shall take into account each such Party's reasonable comments.

13. **COSTS**

Save as provided in this Agreement, each Party shall bear its own costs, expenses and taxes in connection with the preparation, negotiation, execution and performance of this Agreement and the documents referred to in it.

14. **NOTICES**

- 14.1 Any notice, consent or other communication ("**Notice**") given under this Agreement shall be in writing and in English and signed by or on behalf of the Party giving it, and shall be delivered by hand or internationally recognised courier service or sent by prepaid recorded or next working day delivery post (or prepaid international recorded airmail if sent internationally) in accordance with the details set out below:

**by hand or by post to the Purchaser:**

For the attention of: Scott Graeff at 301 1st St SW #200, Roanoke, VA 24011, United States;

with a copy by email (which shall not constitute notice) to Aaron Binstock

(abinstock@cooley.com) and Russell Anderson (randerson@cooley.com); and

**by hand or by post to the Sellers' Representative:**

Rasheed Abayomi Amunikoro of 26 Chalklands, Howe Green, Chelmsford, CM2 7TH

with a copy by email (which shall not constitute notice) to David Ponsford (d.ponsford@teacherstern.com).

- 14.2 The Parties may from time to time notify each other of any other person or address for the receipt of Notices or copy Notices. Any such change shall take effect five (5) Business Days after notice of the change is received or (if later) on the date (if any) specified in the notice as the date on which the change is to take place.
- 14.3 Any Notice given in accordance with Clause 14.1 will be effective on receipt and, in the absence of evidence of earlier receipt, will be deemed to have been received:
- (a) at the time of delivery if delivered by hand or courier service; or
  - (b) if sent by pre-paid first class post or another next working day delivery service providing proof of postage or delivery to an address in the UK, at 9.00 am (at the place of receipt of the Notice) on the second Business Day after posting or at the time recorded by the delivery service;
  - (c) if sent by pre-paid international recorded airmail providing proof of postage or delivery to an address outside the UK, at 9:00am (at the place of receipt of the Notice) on the fifth Business Day after posting or at the time recorded by the delivery service,

save that if this means that any Notice would otherwise be deemed to be received outside normal business hours (normal business hours for this purpose being between 9.00am and 5.30 pm on a Business Day at the place of receipt of the Notice), such Notice will be deemed to be received at the start of normal business hours on the next Business Day.

- 14.4 The provisions of this Clause 14 shall not apply in relation to the service of process in any legal proceedings arising out of or in connection with this Agreement.

15. **THIRD PARTY RIGHTS**

Except as otherwise stated in this Agreement, a person who is not party to this Agreement shall have no right pursuant to the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement. This Clause shall not affect any right or remedy of a third party which exists or is available apart from that Act.

16. **WAIVER**

No delay, failure or omission (in whole or part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under this Agreement or by law shall be deemed to be, or be construed as, a waiver of that or any other right, power, privilege, claim or remedy, or operate so as to bar the enforcement, exercise or pursuance of that or any other right, power, privilege, claim or remedy, in any other instance at any other time.

17. **SEVERANCE**

If any provision or part provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

18. **CUMULATIVE RIGHTS**

The rights and remedies provided by this Agreement are cumulative and (except as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.

19. **PROVISIONS SURVIVING COMPLETION**

The provisions of this Agreement shall remain in full force and effect notwithstanding Completion.

20. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until each of the Parties has executed at least one counterpart.

21. **ENTIRE AGREEMENT**

21.1 This Agreement and the Transaction Documents together constitute the entire agreement and understanding of the Parties relating to the Transactions and those documents, and supersede any previous agreement between any of the Parties relating to the subject matter of this Agreement and those documents, which shall cease to have any further effect.

21.2 Nothing in this Agreement shall limit or exclude the liability of any Party for the fraud of that Party.

22. **APPLICABLE LAW AND JURISDICTION**

22.1 The validity, construction and performance of this Agreement and any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with this Agreement or its enforceability shall be governed by and construed in accordance with the law of England.

22.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

**THIS AGREEMENT** is entered into by each of the Parties on the date at the top of page 1.

SCHEDULE 1

THE MINORITY SELLERS

\*\*\*

[\*\*]

SCHEDULE 2

THE MAJORITY SELLERS

[\*\*\*]

\*\*\*



**SCHEDULE 3****WARRANTIES****1. TITLE**

- 1.1 The Minority Seller is the legal and beneficial owner of the Minority Shares set out alongside its name in Schedule 1, and such Minority Shares are free from Encumbrances and the Minority Seller is entitled to enjoy and exercise all of the rights attaching to such Minority Shares.
- 1.2 The Minority Seller is not party to any transaction (other than the Transactions) pursuant to, or as a result of, which any of its Minority Shares are, or may become, liable to be transferred or re-transferred to another person.

**2. CAPACITY**

- 2.1 The Minority Seller has all necessary power and authority to enter into, and the capacity to act and perform its obligations under, this Agreement and all agreements and documents to be executed or signed by it or on its behalf pursuant to this Agreement.
- 2.2 This Agreement, and all agreements and documents to be executed or signed by or on behalf of the Minority Seller pursuant to this Agreement, constitute, or will when executed or signed constitute, binding and enforceable obligations on the Minority Seller in accordance with their respective terms.
- 2.3 The execution and delivery by the Minority Seller of this Agreement and each of the other documents to be executed or signed by or on behalf of the Minority Seller pursuant to this Agreement, and compliance with their respective terms shall not breach or constitute a default:
- (a) under any agreement or instrument to which the Minority Seller is a party or by which the Minority Seller is bound;
  - (b) of any order, judgment, decree or other restriction applicable to the Minority Seller; or
  - (c) under applicable Law; and
  - (d) will not require the consent of any third party or the providing of notice to, or the filing or registration with, any governmental authority.
- 2.4 The Minority Seller has not:
- (a) had a bankruptcy petition presented against it or been declared bankrupt, and no decision has been taken to appoint a trustee or receiver for the Minority Seller;
  - (b) been served with a statutory demand, or is unable to pay its debts within the meaning of the Insolvency Act 1986;

- (c) entered into, or has proposed to enter into, any composition or arrangement with, or for, its creditors (including an individual voluntary arrangement); or
- (d) been subject of any other event analogous to the foregoing in any jurisdiction outside of England and Wales.

**SCHEDULE 4**

**EARN OUT**

**Part A – Definitions**

In this Schedule, the following words and expressions shall have the following meanings unless expressly provided otherwise:

**"2024 Gross Profit"** has the meaning given in paragraph 3.6 of Part B of this Schedule;

**"2024 Revenue"** has the meaning given in paragraph 3.1 of Part B of this Schedule;

**"Base Level Gross Profit Consideration"** means [\*\*\*];

**"Base Level Revenue Consideration"** means [\*\*\*];

**"Company Accounts"** means the audited accounts of the Target Companies for Financial Year 2024 and shall be drawn in accordance with the following accounting policies that shall be applied in the following order of priority:

- (a) adopting the same format applied to the Locked Box Accounts;
- (b) adopting the accounting bases, principles, policies, treatments and categorisations in respect of Gross Profit and Revenue as applied for the purposes of the Accounts, the Management Accounts and the Locked Box Accounts (each as defined in the Majority SPA);
- (c) adopting the accounting bases, principles, policies, treatments, and categorisations applied for the purposes of the Accounts, the Management Accounts and the Locked Box Accounts;
- (d) in accordance with UK GAAP,

for the avoidance of doubt, in the preparation of the Company Accounts, the terms of paragraph (a) shall take precedence over the terms of paragraph (b), the terms of paragraph (b) shall take precedence over the terms of paragraph (c) and the terms of paragraph (c) shall take precedence over the terms of paragraph (d);

**"Earn Out Consideration"** has the meaning given to in in paragraph 4 of Part B of this Schedule;

**"Earn Out Payment Date"** means five (5) Business Days following agreement or determination of the Earn Out Consideration (if due);

**"Financial Year 2024"** means the period from 1 January 2024 and ending on 31 December 2024.

**"Gross Profit"** means Revenue as defined and calculated in line with historic management accounts less;  
(i) materials;

- (ii) direct labour;
- (iii) shipping;
- (iv) subcontractor costs;
- (v) direct travel and subsistence;
- (vi) any research and development not capitalised.

For the avoidance of doubt, Gross Profit should be calculated in line with the same practices and methodologies as the historic management accounts;

**"Gross Profit Forecast"** means the Gross Profit forecast for Financial Year 2024 totalling [\*\*\*];

**"Independent Accountant"** means any independent chartered accountant appointed pursuant to the Majority SPA;

**"Majority SPA Sellers' Representative"** means the sellers' representative appointed by the Majority Sellers under the Majority SPA;

**"Minimum Threshold"** means achievement by the Target of the Minimum Gross Profit Threshold and the Minimum Revenue Threshold;

**"Minimum Gross Profit Threshold"** means achievement by the Target of [\*\*\*] of the Gross Profit Forecast;

**"Minimum Revenue Threshold"** means achievement by the Target of [\*\*\*] of the Revenue Forecast;

**"Revenue"** means global sales income generated resulting from;

- (i) sale of products;
- (ii) rental/lease of equipment;
- (iii) consultancy;
- (iv) data services;
- (v) engineering services;
- (vi) freight;
- (vi) any other services provided by the company

For the avoidance of doubt Revenue should be calculated in line with the same practices and methodologies as the historic management accounts;

**"Revenue Forecast"** means the Revenue forecast for Financial Year 2024 totaling [\*\*\*];

**"Target Companies"** means the Target and each of the Subsidiaries, and a reference to a **"Target Company"** is a reference to any one of them; and

**"UK GAAP"** means generally accepted accounting principles in the United Kingdom.

**Part B – Earn Out Consideration**

1. There shall be no Earn Out Consideration payable by the Purchaser unless the Minimum Threshold is achieved.
2. In determining whether the Minimum Threshold has been met or surpassed, the Purchaser shall apply [\*\*\*] to the measurement of the Gross Profit Forecast and the Revenue Forecast such that the Target will need to achieve the requisite percentage in both Gross Profit and Revenue in order for the Minimum Threshold to be satisfied.
3. In the event that 2024 Revenue and 2024 Gross Profit (the “**2024 Financials**”) meet or exceed the Minimum Threshold then the following payments shall be made:

*Gross Revenue Payment*

- 3.1. in the event that Revenue for 2024 (“**2024 Revenue**”) is equal to the Minimum Revenue Threshold then the Purchaser shall pay to the Majority Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; or
- 3.2. in the event that 2024 Revenue exceeds the Minimum Revenue Threshold and is less than one hundred percent (100%) of the Revenue Forecast, then the Purchaser shall pay to the Majority Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; and
- 3.3. in the event that 2024 Revenue is equal to one hundred percent (100%) of the Revenue Forecast, then the Purchaser shall pay to the Majority Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to the Base Level Revenue Consideration (i.e. £6,500,000); or
- 3.4. in the event the 2024 Revenue is equal to or exceeds [\*\*\*] of the Revenue Forecast, then the Purchaser shall pay to the Majority Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; or
- 3.5. in the event the 2024 Revenue exceeds one hundred per cent (100%) of the Revenue Forecast but is less than [\*\*\*] of the Revenue Forecast then the Purchaser shall pay to the Majority Sellers and the Minority Sellers (in aggregate) to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to the Relevant Percentage of the Base Level Revenue Consideration where “**Relevant Percentage**” is the percentage achieved of the Revenue Forecast [\*\*\*].

*Gross Profit Payment*

- 3.6. in the event that Gross Profit for 2024 ("**2024 Gross Profit**") is equal to the Minimum Gross Profit Threshold then the Purchaser shall pay to the Majority Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; or
  - 3.7. in the event that 2024 Gross Profit exceeds the Minimum Gross Profit Threshold and is less than one hundred percent (100%) of the Gross Profit Forecast, then the Purchaser shall pay to the Majority Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; and
  - 3.8. in the event that 2024 Gross Profit is equal to one hundred percent (100%) of the Gross Profit Forecast, then the Purchaser shall pay to the Majority Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to the Base Level Gross Profit Consideration (i.e. £6,500,000);
  - 3.9. in the event the 2024 Gross Profit is equal to or exceeds [\*\*\*] of the Gross Profit Forecast, then the Purchaser shall pay to the Majority Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; or
  - 3.10. in the event the 2024 Gross Profit exceeds one hundred per cent (100%) of the Gross Profit Forecast but is less than [\*\*\*] of the Gross Profit Forecast then the Purchaser shall pay to the Majority Sellers and the Minority Sellers (in aggregate) to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to the Relevant Percentage of the Base Level Gross Profit Consideration where "**Relevant Percentage**" is the percentage achieved of the Gross Profit Forecast [\*\*\*].
  4. The payment due to the Majority Sellers and the Minority Sellers (in aggregate) (if any) following determination or agreement of the 2024 Financials in accordance with this Part B shall be the "**Earn Out Consideration**".
  5. The total aggregate Earn Out Consideration shall not be greater than £19,500,000.
-

**Part C – Earn Out Protections**

1. **Sellers' Undertakings**
  - 1.1 Each Minority Seller severally agrees and undertakes to the Purchaser that during the period starting on (and including) the Completion Date and ending on (and including) 31 December 2024 he, she or they shall:
    - (a) not take any action, or allow anything to be done which he is reasonably able to prevent, which in either case is effected with the deliberate intention of inflating artificially the Revenue, Gross Profit and/ or Earn Out Consideration; and
    - (b) to the extent and for so long as that Minority Seller is an employee or officer of or a consultant to any of the Target Companies or any other member of the Purchaser's Group, not at any time in the performance of his, her or their duties and in the management of the business and operations of any of the Target Companies act in any way other than to promote the success of the Target Companies for the benefit of its members as a whole provided this shall not prejudice or limit each Minority Seller's right to procure that the Target meets the conditions for the earn out.
  - 1.2 Without limiting the previous paragraphs, each of the Minority Sellers, to the extent and for so long as that Minority Seller is an employee or officer of or a consultant to any of the Target Companies or any other member of the Purchaser's Group, agrees and undertakes to ensure that during the period starting on (and including) the Completion Date and ending on (and including) the Earn Out Payment Date, no Target Company shall make any changes to the accounting policies used by the Target to prepare its accounts, management accounts and any other financial statements, without the prior written consent of the Purchaser (acting reasonably and without delay (a decision in writing to be provided by the Purchaser no later than 10 Business Days following written request).
2. **Purchaser's Undertakings**
  - 2.1 Subject to paragraphs 2.3 and 2.4 below, the Purchaser agrees and undertakes on behalf of itself and each member of the Purchaser's Group (but excluding the Target Companies) (such companies being the "**Relevant Purchaser Group**") to the Minority Sellers that during the

period starting on (and including) the Completion Date and ending on (and including) 31 December 2024 (the "**Earn Out Period**"), it shall not (and it shall procure that no other member of the Purchaser's Group shall), whether directly or indirectly, take any action or omit to take any action (or cause or permit any action to be taken or omitted) or take any action or omit to take any action (or cause or permit anything to be done) in bad faith that (i) diverts, redirects or defers from the Target Companies any trading, business opportunities, revenue or earnings which would in the usual and ordinary course of business have been attributable to the Target Companies, or; (ii) allow anything to be done which the Purchaser and/or any other member of the Relevant Purchaser Group is reasonably able to prevent which, with the intention of reducing the Earn Out Consideration diverts or defers from the Target Companies any trading, business opportunities, revenue or earnings which would in the usual and ordinary course of business have been attributable to the Target Companies; or (iii) distorts the financial performance of the Target Companies.

- 2.2 Without limiting paragraph 2.1 but subject to paragraphs 2.3, 2.4 and 2.6 the Purchaser agrees and undertakes to exercise its rights as a shareholder of the Target to vote in general meetings and, to the extent it has appointed representatives to the board of the Target, its right to vote at board meetings of the Target to ensure that during the Earn Out Period:
- (a) the Target shall not enter into any agreement or incur any commitment which is not on arms' length terms and in the ordinary course of its business and on reasonable commercial terms;
  - (b) the Target shall not cease to carry on all or a material part of its business;
  - (c) the Target shall not sell or otherwise dispose of all or substantially all of its business, assets or undertaking or a material part of its business, or enters into any agreement to do so;
  - (d) the Target shall not make, commence, or settle any claims (including insurance claims) or any legal (including arbitration or regulatory) proceedings for a sum in excess of £50,000 or, in the case of any settlement, where the amount to be recovered by the Target is more than £50,000 below the amount claimed by the Target;



- (e) the Target shall not make any changes to the accounting policies used by the Target to prepare its accounts, management accounts and any other financial statements;
  - (f) it shall not sell, transfer or otherwise dispose of, or grant any Encumbrance over, any of the shares in the capital of the Target (or enter into any agreement to do so);
  - (g) it shall not cause or permit any of the following:
    - (i) a change to the accounting reference date of any of the Target Companies;
    - (ii) a material change to the scope or nature of the business of the any of the Target Companies;
    - (iii) the proposal or passing of a resolution to wind up any of the Target Companies; and
  - (j) it shall procure that each Target Company has sufficient working capital to continue to carry on its business.
- 2.3 Nothing in paragraphs 2.1, or 2.2 shall require the Purchaser or any member of the Purchaser's Group to take any action, or refrain from taking any action, where to do so would result, or be likely to result, in any director of any member of the Purchaser's Group (including the Target Companies) being in breach of any statutory or fiduciary duty or being in breach of any applicable law or regulation in any relevant jurisdiction.
- 2.4 The Purchaser shall be permitted to take any action or cause or allow any action to be taken by the Target (the "**Proposed Activity**") which would otherwise contravene paragraphs 2.1, or 2.2 provided that before such Proposed Activity is undertaken or permitted, either:
- (a) the prior written consent of the Majority SPA Sellers' Representative and the Founder Sellers is obtained; or
  - (b) an adjustment to the calculation of the Gross Profit and/or the Revenue to ensure that the effect of the Proposed Activity on those calculations is neutral (the "**Adjustment**") is either:
    - (i) agreed in writing between the Majority SPA Sellers' Representative, the Founder Sellers and the Purchaser on or before the date falling 15 Business Days after the date on which the Purchaser notifies the Majority SPA Sellers'

Representative in writing of the Proposed Activity and its proposed Adjustment in relation to it; or

- (ii) in the event the Purchaser, the Founder Sellers and the Majority SPA Sellers' Representative are not able to agree the Adjustment within the period referred to in paragraph 2.4(b)(i), determined by an Independent Accountant who shall be appointed to deliver such a determination by the Purchaser and the Majority Sellers in accordance with the Majority SPA,

and any Adjustment agreed or determined in accordance with this paragraph 2.4 shall be final and binding on the parties for all purposes. The Purchaser and the Sellers' Representative shall promptly provide to each other, each other's accountants and professional advisers, and any Independent Accountant appointed pursuant to paragraph 2.4(b)(ii), access to and copies of all such documents and information as are in their possession or under their control (other than the working papers of any of their professional advisers) and access upon reasonable notice and during normal working hours to all relevant personnel as may in any case be reasonably requested for the purpose of agreeing or determining any Adjustment. Nothing shall require any party to disclose or provide access to any documents or information which are legally privileged or which that party is required by law or other legally binding obligation to keep confidential.

2.5 The Purchaser shall procure that the Purchaser and the Target Companies shall keep proper records and books of account containing all information and data necessary for the determination of Earn Out Consideration.

2.6 Nothing in this Schedule shall prevent the Purchaser from:

- (a) placing any operations or human resources personnel into the Target Companies either at its own cost or, with the consent of the Seller's Representative, the cost of a Target Company; or
- (b) engaging on behalf of a Target Company, accountants as is chosen by the Purchaser to conduct financial audits of the Target Companies (or any of them) at the cost of the Target.

Signed by  
**Rasheed Abayomi Amunikoro**

)

*/s/ Rasheed Abayomi Amunikoro*  
.....

Signed by **MJLS Limited**  
acting by its attorney Murray  
Longton

)

*/s/ Murray Longton*  
.....  
attorney

)

Signed by  
**Garth Naldrett**

)

*/s/ Garth Naldrett*  
.....

Signed by  
**Fauzia Farooq**

)

*/s/ Fauzia Farooq*  
.....

Signed as by  
**Michail Mondanos**

)

*/s/ Michail Mondanos*  
.....

Signed by  
**Craig Milne**

)

*/s/ Craig Milne*  
.....

Signed by  
**Peter Richter**

)

*/s/ Peter Richter*  
.....

Signed by  
**Andrew Peter Clarke**

)

*/s/ Andrew Peter Clarke*  
.....

EXECUTION VERSION

Signed by  
**Arran Gillies** )  
/s/ Arran Gillies  
.....

Signed by  
**Barry Shaw** )  
/s/ Barry Shaw  
.....

Signed by  
**Jackson Teck Leong Yeo** )  
/s/ Jackson Teck Leong Yeo  
.....

Signed by  
**Janita Gohil** )  
/s/ Janita Gohil  
.....

Signed by  
**Jason Clark** )  
/s/ Jason Clark  
.....

Signed by  
**Veronique Mahue** )  
/s/ Veronique Mahue  
.....

Signed by  
**Keith O'Connor** )  
/s/ Keith O'Connor  
.....

Signed by  
**Murray Longton** )  
/s/ Murray Longton  
.....

Signed by  
**Valentina Shatalina** )  
/s/ Valentina Shatalina  
.....

Signed by  
**Daniel Finfer**

)  
/s/ Daniel Finfer  
.....

Signed by )  
LUNA INNOVATIONS INC acting by )  
)

Scott A. Graeff  
\_\_\_\_\_  
Print Full Name

/s/ Scott A. Graeff  
.....  
Authorised signatory



EXECUTION VERSION

DATED ..... 2023

- (1) THE FOUNDER SELLERS
- (2) THE INVESTOR SELLERS
- (3) ALISON GOLIGHER
- (3) LUNA INNOVATIONS INC.

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AGREEMENT FOR THE SALE AND PURCHASE OF  
A PROPORTION OF THE ENTIRE ISSUED SHARE CAPITAL OF  
SILIXA LTD

---

**Cooley**

COOLEY (UK) LLP, 22 BISHOPSGATE, LONDON EC2N 4BQ, UK  
T: +44 (0) 20 7583 4055 F: +44 (0) 20 7785 9355 WWW.COOLEY.COM

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THIS AGREEMENT is made on ..... 2023.

AMONG:

- (1) THE SEVERAL PERSONS whose names and addresses are set out in Part A of Schedule 1 (together the "Founder Sellers" and each a "Founder Seller");
- (2) THE SEVERAL PERSONS whose names and addresses are set out in Part B of Schedule 1 (together the "Investor Sellers" and each a "Investor Seller");
- (3) ALISON GOLIGHER, residing at Doonbarra, Kilkenny Road, Glenties, Co Donegal, Ireland ("AG");  
  
(the Founder Sellers, the Investor Sellers and AG together the "Sellers" and each a "Seller");  
and
- (4) LUNA INNOVATIONS INC., a public company incorporated in Delaware having its principal office at 301 1st St SW #200, Roanoke, VA 24011, United States (the "Purchaser"),  
  
(each a "Party" and together the "Parties").

BACKGROUND:

- (A) The Target is a private limited company incorporated in England, further details of which are set out in Schedule 2.
- (B) The Sellers wish to sell, and the Purchaser wishes to purchase and pay for, the Target Shares on the terms of this Agreement.
- (C) The Parties acknowledge that the Minority Sellers have agreed to sell and the Purchaser has agreed to purchase the Minority Shares on and subject to the terms set out in the Minority SPA.
- (D) The Target Shares and the Minority Shares constitute the entire issued share capital of the Target.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words and expressions shall have the following meanings:

"2023 R&D Claim" means the R&D Claim in respect of the accounting period of the Target ended 30 December 2023;

"A Ordinary Shares" means the A ordinary shares of £0.01 each in the capital of the Target having such rights as set out in the Articles;

"Accounts" means the audited consolidated financial statements of the Target Companies for the financial year ended on the Accounts Date (including the auditors' and directors' reports, the consolidated statement of financial position as at the Accounts Date, the statements of

profit or loss and other comprehensive income, statements of cash flows and statements of changes in equity for the financial year ended on the Accounts Date, and the notes to them), copies of which are in the Data Room;

"Accounts Date" means 31 December 2022;

"Adjusted Waterfall Distribution" means the distribution as set out in articles 5 and 6 of the Articles, taking into account the prior payment of the Completion Payment and as adjusted to enable Lime Rock Partners V, L.P. to first receive three million pounds sterling (£3,000,000) of any Earn Out Consideration that becomes payable;

"Agreement" means this agreement;

"Anti-Money Laundering Laws" means all applicable laws relating to anti-money laundering and dealings in proceeds of crime, including such laws in (i) the country of the Sellers' or Purchaser's, as the case may be, place of incorporation; (ii) for each of the parties, the countries of each such Party's, and/or each such Party's ultimate parent company's place of incorporation; and (iii) all other countries in which such laws may apply by virtue of financial transactions being carried out in or connected to such countries;

"Articles" means the articles of association of the Target immediately prior to Completion;

"B Ordinary Shares" means the B ordinary shares of £0.01 each in the capital of the Target having such rights as set out in the Articles;

"**Business**" means the business consisting of the provision of distributed fibre optic sensing products and services to customers in the energy, infrastructure, defence and mining domains as carried on, or proposed to be carried on, by the Target Companies at Completion;

"Business Day" means a day that is not a Saturday or Sunday or a public holiday in London, United Kingdom and Roanoke, Virginia, United States;

"C Ordinary Shares" means the C ordinary shares of £0.01 each in the capital of the Target having such rights as set out in the Articles;

"Claim" means a claim for a breach of the relevant General Warranty or General Warranties;

"Code" means the US Internal Revenue Code of 1986, as amended;

"Companies Act" means the Companies Act 2006;

"Competing Business" has the meaning given in Clause 11.1(a);

"Completion" means completion of the sale and purchase of the Target Shares in accordance with this Agreement;

"Completion Date" means the date of this Agreement;

"Completion Payment" means the sum of £17,490,421 which shall be apportioned between the Sellers in the amounts set out in column 3 of each of Part A, Part B, and Part C of Schedule 1;

"Consultancy Agreement" means the consultancy agreement between the Target and AG;

"Customer" means any person who was at any time during the period of twelve (12) months ending on the Completion Date a customer or client of the Target Companies;

"Data Room" means, as of 19 December 2023 at 6pm (UK time), the "Project Stirling" virtual data room hosted by Donnelley Financial Solutions Venue;

"Deed Poll" means the deed poll executed by the Target immediately prior to the date of this Agreement granting Target RSUs to the RSU Recipients;

"Disclosed" has the meaning given in Clause 7.6;

"Disclosure Documents" means the documents contained in the Data Room and listed in the index of documents attached to the Disclosure Letter;

"Disclosure Letter" means the disclosure letter in the Agreed Form from the Founder Sellers to the Purchaser dated on the date of this Agreement;

"Earn Out Consideration" has the meaning given to it in Schedule 7;

"Earn Out Consideration Balance" means, at the relevant time, the balance of the Earn Out Consideration allocated to the Founder Sellers in accordance with their Relevant Earn Out Consideration Allocation following any deductions made in accordance with Clause 10;

"EMI Options" means options over Ordinary Shares granted under the Option Plans that are intended to qualify as enterprise management incentive options under Schedule 5 to ITEPA;

"Encumbrance" means a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, retention of title arrangement or other third party right, interest or claim of any kind or any agreement or commitment to create or give any of the foregoing;

"Exchange Rate" means with respect to the conversion of a particular currency into another currency on a particular date, the closing mid-point rate for conversion of the first currency into that other currency on that date or, if that date is not a Business Day, on the first Business Day after that date, in both cases as set out in the London edition of the Financial Times containing exchange rates applicable to the relevant Business Day;

"Excluded Liability Claim" means a claim for a breach of the relevant Excluded Liability Warranty or Excluded Liability Warranties;

"Excluded Liability Warranties" means those Warranties given pursuant to Clause 7.3 and set out in Part C of Schedule 4;

"Excluded Liability Tax Claim" means an Excluded Liability Tax Warranty Claim or an Excluded Liability Tax Covenant Claim;

"Excluded Liability Tax Covenant" means those tax covenants given in favour of the Purchaser set out in Part E of Schedule 5;

"Excluded Liability Tax Covenant Claim" means a claim under the Excluded Liability Tax Covenant;

"Excluded Liability Tax Warranties" means those warranties given pursuant to Clause 7.3 and set out in Part D of Schedule 5;

"Excluded Liability Tax Warranty Claim" means a claim for a breach of the relevant Excluded Liability Tax Warranty or Excluded Liability Tax Warranties;

"Finally Determined" has the meaning given in Clause 10.6(c);

"FIRPTA Certificate" has the meaning given in paragraph 8 of Part C of Schedule 5;

"Founder Sellers Counsel" means Teacher Stern LLP, 37-41 Bedford Row, London, WC1R 4JH;

"Fundamental Warranties" means the Warranties given pursuant to Clauses 7.2, 7.4 and 7.5 and set out in Part A of Schedule 4;

"Fundamental Warranty Claim" means a claim for a breach of the relevant Fundamental Warranty or Fundamental Warranties;

"General Warranties" means the Warranties given pursuant to Clause 7.1 and set out in Part B and Part C of Schedule 4;

"Insured Claim" means any Claim or Tax Claim that is not an Excluded Liability Claim and/or an Excluded Liability Tax Claim;

"Investment Agreement" means the investment agreement relating to the Target dated 18 March 2010 between the Target and certain of the Sellers as amended and restated from time to time;

"Investment Agreement Deed of Termination" means the deed of termination in the Agreed Form relating to the Investment Agreement;

"Investor Sellers Counsel" means Addleshaw Goddard LLP of 1st Floor North Kingshill View, Prime Four Business Park, Aberdeen, AB15 8PU, United Kingdom who are representing Equinor Ventures AS and Lime Rock Partners V L.P. only;

"IRS" means the US Internal Revenue Service;

"ITEPA" has the meaning given in Part A of Schedule 5;

"Key Individual" means each Founder Seller, Rasheed Abayomi Amunikoro, Peter Richter, Amer Khayyat, Thomas Coleman Glynn Williams, Garth Naldrett, Michail Mondanos and Zara Anderson;

"Laws" means (with respect to any person, property, transaction, event or other matter) any binding law, rule, statute, regulation, instrument, order, judgment, decree, treaty or other requirement having the force of law or enactment in any relevant jurisdiction, including, where

appropriate, any interpretation of the law (or any part thereof) by any person having jurisdiction over it, or charged with its administration or interpretation;

"Leakage" has the meaning given in Clause 5.1;

"Leasehold Properties" means the leasehold properties demised by the Leases;

"Leases" means the leases listed in Schedule 6;

"Locked Box Accounts" means the unaudited management accounts of each of the Target Companies comprising a balance sheet as at the Locked Box Accounts Date and a profit and loss account for the period which began on the Accounts Date and ended on the Locked Box Accounts Date, copies of which are appended to this Agreement at Schedule 9;

"Locked Box Accounts Date" means 31 August 2023;

"Management Accounts" means the unaudited management accounts of each of the Target Companies comprising a balance sheet as at the Management Accounts Date and a profit and loss account for the period which began on the Accounts Date and ended on the Management Accounts Date, copies of which are in the Data Room in Disclosure Document 13.7.2.62;

"Management Accounts Date" means 31 October 2023;

"Minority Sellers" means the persons whose names and addresses are set out in Part D of Schedule 1;

"Minority Shares" means the number and class of shares set opposite each Minority Seller's name in column 2 of Part D of Schedule 1;

"Minority SPA" means the agreement, in the Agreed Form, for the sale and purchase of the Minority Shares to be entered into between the Minority Sellers and the Purchaser;

"Non-Service Providers" Valentina Shatalina, Murray Longton, Keith O'Connor and Daniel Finfer;

"Option Plans" means the Silixa Ltd 2010 Enterprise Management Incentive Plan and the Silixa Ltd 2020 Enterprise Management Incentive Plan, in each case, as amended from time to time;

"Options" means EMI Options and Unapproved Options, or each of them as the case may be;

"Ordinary Shares" means the ordinary shares of £0.01 each in the capital of the Target having such rights as set out in the Articles;

"Party's Group" means, in the case of a Party, it and its group undertakings at any relevant time;

"PAYE" has the meaning given in Part A of Schedule 5;

"Paying Agent" means Shieldpay Limited;

"Payment Date" has the meaning given in Clause 10.2;

"Payroll Tax" has the meaning given in Part A of Schedule 5;

"Permitted Leakage" means the following payments, costs, accruals, expenses or liabilities of a Target Company, to the extent made in the period from (and excluding) the Locked Box Accounts Date up to (and including) the date of Completion:

- (a) any payment by any Target Company of salaries, benefits, bonus, incentive payments and all other emoluments and properly and reasonably incurred expenses, made to or for the benefit of a Seller as an employee or director of any Target Company to the extent such payments are made (i) in the ordinary course of business; (ii) in accordance with past practice; and/or (iii) in accordance with the terms of that Seller's employment, together with any associated employer Payroll Tax (up to an aggregate maximum amount of £225,552 per calendar month);
- (b) any payment specifically provided for in the Locked Box Accounts or the Purchase Price Schedule;
- (c) any payment made or agreed to be paid or payable or action taken, in each case in direct satisfaction of an obligation of a Seller under this Agreement or any of the documents referred to in this Agreement as being in the Agreed Form (other than any payment of or in respect of Tax (or any action giving rise to Tax) or in connection with any matter undertaken at the written request of the Purchaser;
- (d) any amounts waived by the Target, owed to the Target by any Seller, in respect of loans made by the Target to such Sellers in relation to the exercise of share options, to a maximum aggregate sum of £17,000;
- (e) rent in the amount of £1,650 per month and other charges paid or payable by the Target to the spouse of Mahmoud Farhadiroushan in respect of the lease over 26 Douglas Close, London; and
- (f) payment by a Target Company of any professional or legal costs or expenses relating to the sale of the Target Shares being (i) legal fees in the amount of £38,519.40 (inclusive of any VAT) paid on 17 October 2023; (ii) advisory fees in the amount of £704,963.80 payable to Price Waterhouse Coopers (inclusive of any VAT) and (ii) Data Room and accountancy support fees in the amount of £50,400 (inclusive of any VAT).

"Preference Shares" means the preference shares of \$4.00 each in the capital of the Target, having such rights as set out in the Articles;

"Preference Shares B" means the preference shares B of \$4.00 each in the capital of the Target, having such rights as set out in the Articles;

"Preference Shares C" means the preference shares C of \$4.00 each in the capital of the Target, having such rights as set out in the Articles;

"Preference Shares D" means the preference shares D of \$4.00 each in the capital of the Target, having such rights as set out in the Articles;

"Preference Shares E" means the preference shares E of \$4.00 each in the capital of the Target, having such rights as set out in the Articles;

"Press Release" means the press release to be issued by the Purchaser's Group and the Target in the Agreed Form;

"Proceedings" means any litigation, arbitration, mediation, conciliation, expert determination, adjudication or other dispute resolution process or criminal, regulatory or administrative proceedings in any jurisdiction;

"Properties" means the properties owned, occupied or used by the Target Companies in the United Kingdom, details of which are set out in Schedule 6;

"Purchase Price" has the meaning given in Clause 3.1;

"Purchase Price Schedule" means the schedule in the Agreed Form setting out the items that the parties have deducted from the headline valuation in order to arrive at the Purchase Price;

"**Purchaser's Group**" means the Purchaser and its group undertakings as at the Completion Date;

"Purchaser's Relief" has the meaning given in Part A of Schedule 5;

"R&D Claim" has the meaning given in Part A of Schedule 5;

"R&D Tax Credit Deferred Consideration" has the meaning given to it in Clause 3.5(a);

"R&D Tax Credit Payments" means any payment actually received by the Target from HMRC after Completion which relates to the 2023 R&D Claim (and, to the extent that any such payment would have been received but for its having been applied in discharging any liability of the Target to make an actual payment of Tax, the amount of the payment so applied shall be deemed to have been actually received, save to the extent that such application has had the effect of reducing or eliminating any liability of the Founder Sellers under the Tax Covenant);

"Relevant Earn Out Consideration Allocation" means the amount of the Earn Out Consideration apportioned and allocated to each Seller by applying the Adjusted Waterfall Distribution;

"Relevant Excluded Liability Claim Percentage" means in respect of each Founder Seller, such Founder Seller's liability percentage with respect to an Excluded Liability Claim and an Excluded Liability Tax Claim as set out in column 4 of Part A of Schedule 1;

"Relief" has the meaning given in Part A of Schedule 5;

"RSU Recipients" means the individuals named in Schedule 1 to the Deed Poll;



"Sellers Account" has the meaning given in Clause 12.1;

"**Sellers' Representative**" means the representative and agent of the Sellers appointed in accordance with Clause 13.1 and who, as at Completion is Lime Rock Partners V, L.P.;

"Service Agreements" means the service agreements to be entered into between the Target and Glynn Williams and Amer Khyatt in a form approved by each individual and the Purchaser;

"Settlement Agreements" means the settlement agreements between the Target and each of AG and Glynn Williams in a form approved by each individual and the Purchaser;

"Subsidiaries" means the subsidiary undertakings of the Target at the date of this Agreement (details of the subsidiary undertakings of the Target are set out in Part B of Schedule 2) and a reference to a "Subsidiary" is a reference to any one of them;

"Target" means Silixa Ltd a private limited company incorporated in England (company number 06207412) having its registered office address at Silixa House, 230 Centennial Park, Elstree, Hertfordshire, WD6 3SN, United Kingdom;

"Target Companies" means the Target and each of the Subsidiaries, and a reference to a "Target Company" is a reference to any one of them;

"Target Products" has the meaning given in paragraph 2.10 of Part B of Schedule 4;

"Target Shares" means the Ordinary Shares, A Ordinary Shares, B Ordinary Shares, C Ordinary Shares, Preference Shares, Preference Shares B, Preference Shares C, Preference Shares D and Preference Shares E held by the Sellers as set out against each Seller's name in column 2 of Part A, Part B and Part C of Schedule 1;

"Tax" or "Taxation" has the meaning given in Part A of Schedule 5;

"Tax Authority" has the meaning given in Part A of Schedule 5;

"Tax Claim" has the meaning given in Part A of Schedule 5;

"Tax Covenant" means the tax covenants given in favour of the Purchaser set out in paragraph 1 of Part C and Part E of Schedule 5;

"Tax Warranties" means the warranties given pursuant to Clause 7.1 and set out in Part B and Part D of Schedule 5;

"Tax Warranty Claim" means a claim for a breach of the relevant Tax Warranty or Tax Warranties;

"Transaction Documents" means this Agreement and any document referred to in this Agreement;

"Transactions" means the transactions contemplated by this Agreement;

"UK GAAP" means Financial Reporting Standards 102 applicable in the United Kingdom and the Republic of Ireland and the accounting requirements under the Companies Act;

"Unapproved Options" means non-tax advantaged options over Ordinary Shares granted under the Option Plans or EMI Options to the extent that they fail to satisfy the requirements of Schedule 5 to ITEPA in whole or in part;

"United Kingdom" or "UK" means the United Kingdom of Great Britain and Northern Ireland;

"US" means the United States of America;

"VAT" has the meaning given in Part A of Schedule 5;

"W&I Insurance Policy" means the warranty and indemnity insurance policy issued to the Purchaser by the W&I Insurer on or before the date of this Agreement in the form provided to the Sellers at Completion;

"W&I Insurer" means Markel International Insurance Company Limited;

"Warranties" means the Fundamental Warranties, the General Warranties and the Tax Warranties and "Warranty" means any of them; and

"Waterfall Distribution" means the distribution as set out in articles 5 and 6 of the Articles.

1.2 In this Agreement, unless the context requires otherwise, or otherwise stated:

- (a) use of the singular includes the plural and vice versa, and use of any gender includes the other genders;
- (b) "they" and "their" are used as gender-neutral singular pronouns when used with an antecedent defined term that is singular;
- (c) a reference to any specific legislation includes a reference to that legislation as re-enacted, consolidated, replaced or amended; any previous legislation of which it is a re-enactment, consolidation, replacement or amendment; and any subordinate legislation made under any of the same (and "legislation" in this Clause 1.2(c) includes any statute, statutory provision, regulation, rule or subordinate legislation);
- (d) "undertaking" shall have the meaning given in section 1161 of the Companies Act, save that for the purposes of this Agreement, an undertaking shall include a limited liability partnership;
- (e) any reference to a Clause or Schedule is to the relevant clause or schedule of or to this Agreement;
- (f) any reference in a Schedule to a part or a paragraph is to a part or a paragraph of that Schedule or, where relevant, to a paragraph of that part of that Schedule;

- (g) any reference to a "person" includes an individual, firm, partnership, body corporate, corporation, association, organisation, government, state, foundation and trust, in each case whether or not having separate legal personality;
- (h) references to "£" or "GBP" are references to the lawful currency of the United Kingdom from time to time and "\$" or "Dollar" are references to the lawful currency of the United States of America;
- (i) "group undertaking" and "subsidiary undertaking" shall have the respective meanings given in section 1161(5) and section 1162 of the Companies Act, save that for the purposes of this Agreement, an undertaking shall be treated as a member of another undertaking if any of the shares in that other undertaking are registered in the name of another person (or its nominee) as security (or in connection with the taking of security) from the first undertaking or any of that first undertaking's subsidiary undertakings;
- (j) "to the extent that" means "if and to the extent that";
- (k) any reference to an English legal or Tax term or concept, or any court, official, governmental or administrative authority or agency in England, includes in respect of any jurisdiction other than England a reference to whatever most closely approximates to it in that jurisdiction;
- (l) the Clause, Schedule and paragraph headings are included for convenience only and shall not affect the interpretation of this Agreement;
- (m) the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules;
- (n) any reference in this Agreement to a document being "in the Agreed Form" means a document in a form agreed by the parties before the signing of this Agreement and either entered into on the date of this Agreement by the relevant parties or initialled or approved via email by the parties (or on their behalf) and where that document is not entered into on the date of this Agreement, with such amendments as the parties may subsequently agree;
- (o) the words "other", "including", "includes", "include", "in particular" and any similar words shall not limit the general effect of words that precede or follow them and the ejusdem generis rule shall not apply; and
- (p) any Warranty that refers to the awareness, knowledge or belief of the Founder Sellers, or analogous expression, shall be deemed to include an additional statement that it has been made after due and careful enquiry of each other Founder Seller and each of AG, Rasheed Abayomi Amunikoro (in respect of accounts, financials, employment, property, tax and insurance only), Fauzia Farooq (in respect of intellectual property, contracts, litigation, anti-corruption and sanctions only), Thomas Coleman (in respect of projects/customers within his business unit and defence projects), Zara Anderson (in respect of projects and customers within her business

unit only), Pete Richter (in respect of projects and customers within his business unit only), Jackson Yeo (in respect of optoelectronics products and certifications only), Amer Khayyat (in respect of projects and customers within his business unit only), Michail Mondanos (in respect of projects and customers within his business unit only), Glynn Williams, Garth Naldrett (projects and customers within his business unit, software/edge products and applications only), Roxanne Trainor (in respect of employment only) and Vicky McLucas (in respect of employment only).

2. SALE AND PURCHASE OF THE TARGET SHARES
  - 2.1 Each of the Sellers agrees to sell, and the Purchaser agrees to purchase, the Target Shares set out against each of his, her or their respective names in Schedule 1, with full title guarantee free from all Encumbrances and with all rights attaching to them at Completion, including the right to receive all dividends and other distributions declared, made or paid after Completion.
  - 2.2 The Purchaser shall not be obliged to complete the purchase of any of the Target Shares unless the purchase of all the Target Shares and the purchase of all of the Minority Shares under the Minority SPA is completed simultaneously.
  - 2.3 Each Seller unconditionally and irrevocably waives any rights of pre-emption conferred on it by the Articles or otherwise existing in respect of any of the Target Shares.
3. PURCHASE PRICE AND SATISFACTION OF CONSIDERATION
  - 3.1 The consideration for the sale of the Target Shares in accordance with Clause 2 shall be an amount equal to the aggregate of:
    - (a) the Completion Payment which shall be apportioned between the Sellers and the Target Shares in the amounts set out in column 3 of Part A, Part B and Part C of Schedule 1;
    - (b) plus the portion of the Earn Out Consideration attributable to the Sellers which shall be apportioned between each Seller by applying the Adjusted Waterfall Distribution;
    - (c) plus the portion of the R&D Tax Credit Deferred Consideration attributable to the Sellers which shall be (i) apportioned between each Seller by applying the Waterfall Distribution and (ii) payable in accordance with Clause 3.5,(the "Purchase Price").
  - 3.2 Subject to Clause 10 the Purchaser and the Sellers shall comply with their respective obligations in Schedule 7 in relation to the Earn Out Consideration.
  - 3.3 Any amount paid by or on behalf of the Sellers to the Purchaser in respect of any claim for any breach of this Agreement or pursuant to any indemnity or undertaking to pay any amount under this Agreement (including, for the avoidance of doubt, any liability to pay which is satisfied by recourse against the Earn Out Consideration and any retention of any amount of the Earn Out Consideration by the Purchaser pursuant to Clause 10) shall, to the extent

permitted by law, be deemed to reduce the Purchase Price payable to the relevant Sellers by, and, where appropriate, be a repayment of, that amount.

3.4 Notwithstanding any other provision of this Agreement, the Purchaser shall have the right (but not the obligation), in its sole and absolute discretion, to make, or cause any members of the Purchaser's Group (including the Target after Completion) to make, an election under Section 338(g) of the Code and any corresponding or similar election as may be available under any applicable state, local, or non-U.S. Law with respect to the Transactions, including with respect to the Target and any of its Subsidiaries (the "Section 338(g) Election"). If the Purchaser elects to make the Section 338(g) Election, the Sellers shall cooperate fully, as and to the extent reasonably requested by the Purchaser, in connection with the making of the Section 338(g) Election, including completing and timely executing any and all applicable forms (including IRS Forms 8023, 8883, and SS-4).

3.5 R&D Tax Credit Deferred Consideration

(a) The Purchaser shall pay to the Sellers, by way of deferred consideration for the sale of the Target Shares (the "R&D Tax Credit Deferred Consideration") an amount equal to the proportion which is attributable to the Sellers of the aggregate amount of all R&D Tax Credit Payments received by the Target after the Completion Date, provided such amount is not reflected or otherwise taken into account in the Locked Box Accounts.

(b) The R&D Tax Credit Deferred Consideration payable under Clause 3.5(a) shall be payable as follows:

(i) if there is a single R&D Tax Credit Payment, by a payment on the date which is ten Business Days following the date when the Target receives the R&D Tax Credit Payment (the "Receipt Date"); or

(ii) if there are multiple R&D Tax Credit Payments, by a payment on the date which is ten Business Days following the final Receipt Date.

4. COMPLETION

4.1 Completion shall take place remotely immediately upon execution of this Agreement.

4.2 At Completion the Purchaser shall pay (or shall procure the payment of) the Completion Payment to the Sellers Account in accordance with Clause 12.

4.3 At Completion, the Sellers and the Purchaser shall simultaneously comply with their respective obligations set out in Schedule 3.

4.4 In respect of each Seller who has not delivered an original share certificate (the "Relevant Sellers") for some or all of their Target Shares (each such share certificate being a "**Certificate**"), such Relevant Seller hereby:

(a) confirms that such Certificate has been lost, destroyed or not received;

- (b) confirms that neither the Target Shares set out opposite their name in column 2 of Schedule 1 nor the Certificate has been transferred, charged, lent, deposited, pledged, encumbered or dealt with in any manner that may affect title to such Target Shares and such Relevant Seller is the person named in each relevant Certificate and is entitled to be on the register of members of the Target in respect of such Target Shares;
- (c) subject to the Purchaser complying with its obligations under Clause 4.2, authorises the Target to register the transfer of such Target Shares in accordance with the accompanying stock transfer form without the production of each relevant Certificate for such Target Shares, and to enter the name of the Purchaser (or any nominee specified by the Purchaser) in the Target's register of members as the legal owner of such Target Shares;
- (d) subject to the Purchaser complying with its obligations under Clause 4.2, agrees to indemnify and keep indemnified the Target and the directors of the Target from the date of this Agreement from and against all claims, actions, proceedings and demands which may be brought against the Target following the date of this Agreement and all losses, liabilities, charges, costs, damages and expenses which the Target and/or the directors of the Target may incur, in each case, as a direct result of allowing the registration of the transfer of all or any part of such Target Shares without the production of each relevant Certificate; and
- (e) subject to the Purchaser complying with its obligations under Clause 4.2, agrees to return each such Certificates to the Target for cancellation if found.

5. LOCKED BOX

5.1 Each Seller undertakes to the Purchaser that in the period between the Locked Box Accounts Date and up to and including the Completion Date, and save for Permitted Leakage:

- (a) no management charge, service charge, royalty or other similar fee has been paid, and no other payment has been made (directly or indirectly) by any Target Company to any Seller (or to any Seller's affiliated entities or undertakings) or to any Minority Seller;
- (b) no bonuses or other incentive payments have been paid or agreed to be paid by any Target Company;
- (c) no dividend or distribution of profits or assets has been, or has been deemed to have been, declared, paid or made by any Target Company (in cash or in kind) other than in favour of another Target Company;
- (d) no share in the capital of any Target Company other than a share held by another Target Company has been issued, redeemed or repurchased, and no Target Company has reduced its share capital on terms providing for the payment of any sum to (or at the direction of) any Seller (or to any Seller's affiliated entities or undertakings) or to (or at the direction of) any Minority Seller;

- (e) no asset (and no interest in any asset) has been transferred or surrendered by any Target Company to any Seller (or to any Seller's affiliated entities or undertakings) or to any Minority Seller or to any Target Company by any Seller (or by any Seller's affiliated entities or undertakings) or by any Minority Seller;
- (f) no Target Company has assumed any obligations, actual or contingent, including by the giving of an indemnity or guarantee, and no Target Company has incurred any liability, in either case for the benefit of any Seller (or any Seller's affiliated entities or undertakings) or any Minority Seller;
- (g) no Target Company has waived any liability or obligation owed to that Target Company by any Seller (or any Seller's affiliated entities or undertakings) or by any Minority Seller;
- (h) no Target Company has paid any advisory, consultancy, professional, investment banking or other costs or expenses relating to the sale of the Target Shares or relating to any of the other transactions contemplated by any of the documents referred to in this Agreement as being in the Agreed Form;
- (i) no Target Company has paid any transaction or sale bonus or will make any other payment as a result of the completion of the sale of the Target Shares or any of the other transactions contemplated by any of the documents referred to in this Agreement as being in the Agreed Form;
- (j) no Target Company has entered into any transaction or arrangement (or any variation to any arrangement or agreement) with a Seller (or any Seller's affiliated entities or undertakings) or with a Minority Seller other than in the ordinary course of conduct of the Target Companies' business and on arm's length commercial terms;
- (k) no Target Company has made or entered into any agreement or arrangement to do any of the matters referred to in this Clause 5.1; and
- (l) no Target Company has paid or incurred, nor will incur, any Tax (or would have done so, or would be so required, but for the use of any Purchaser's Relief) in connection with any of the matters referred to in paragraphs (a) to (k) above, and such Tax shall, for the purpose of this Clause 5 (and particularly in respect of a Leakage Claim), be deemed to have been received by and benefitted the person receiving (or deemed to receive) the benefit of the matter in question,

(5.1(a) to 5.1(l) inclusive, being "Leakage").

- 5.2 Subject to Clause 5.5, each of the Sellers undertakes to pay to the Purchaser in cash promptly following written demand by the Purchaser his or her Relevant Proportion of the amount of any Leakage that occurs or has occurred in breach of the undertakings in Clause 5.1 (and any amount claimed under this Clause 5.2 by the Purchaser shall hereinafter be referred to as a "Leakage Claim"). For the purposes of this Clause 5.2, "Relevant Proportion" means, in relation to each Seller, a percentage calculated by reference to the proportion of that Seller's allocation of the Purchase Price but as adjusted proportionately to account for the exclusion of the Minority Sellers.

- 5.3 All payments pursuant to Clause 5.2 shall be made in accordance with Clause 12.4. The Purchaser's sole remedy for a Leakage Claim is reimbursement under Clause 5.2 (except to the extent that any amount of Tax comprised in a Leakage Claim may also give rise to a Tax Claim).
- 5.4 If a Seller becomes aware that any Leakage has occurred, that Seller shall promptly notify the Purchaser in writing of that fact including reasonable details (in so far as they are known to the Seller) of the Leakage concerned and as far as is reasonably practicable, an estimate of the quantum of the Leakage in question.
- 5.5 The general obligation at law of the Purchaser or any member of the Purchaser's Group to mitigate the loss or damage which it may suffer or incur in relation to any matter giving rise to a claim under clause 5 shall not apply.
- 5.6 The Sellers shall not be liable for any Leakage Claim unless written notice of a Leakage Claim in respect of that breach is given to the Sellers' Representative on or before the date falling twelve (12) months after the Completion Date.
6. DEBT AND RSUs
- 6.1 The Sellers shall ensure that at Completion any amounts owing by the Target Companies to any Sellers (or to such Seller's affiliated entities or undertakings), other than amounts in respect of ordinary course trading or ordinary course salary payable in accordance with the relevant employment agreement, in each case consistent with past practice, are repaid in full and each Seller hereby waives any and all claims in respect of amounts owed to it by the Target Companies before Completion.
- 6.2 As soon as practicable following the Completion Date, each restricted stock unit denominated in Ordinary Shares (each, a "Target RSU") subject to time-based, performance, or other vesting restrictions that is outstanding under the RSU Sub Plan to the Silixa Ltd 2020 Enterprise Management Incentive Plan immediately before Completion, whether vested or unvested, shall automatically be substituted by the Purchaser and converted into a restricted stock unit denominated in shares of common stock ("Purchaser Shares") of the Purchaser (each, a "Converted RSU") to be issued under the Luna Innovations Incorporated 2023 Equity Incentive Plan or any successor plan; provided, that, prior to such substitution, the Purchaser shall have filed with the U.S. Securities and Exchange Commission a registration statement on Form S-8 covering the number of Purchaser Shares subject to such Converted RSUs. No action on the part of any holder or beneficiary of a Target RSU shall be required in respect of such automatic substitution, save that, following the Completion Date, each holder or beneficiary of a Converted RSU shall be required to execute a written award agreement evidencing such Converted RSU (a "Converted RSU Agreement") between such holder or beneficiary and the Purchaser relating to such Converted RSU, which Converted RSU Agreement shall be in a form provided by the Purchaser. Each Converted RSU shall continue to have and be subject to substantially the same terms and conditions as were applicable to such Target RSU immediately before the Completion Date (including vesting conditions), except that each Converted RSU shall cover that number of Purchaser Shares equal to the quotient (rounded down to the nearest whole number) obtained by dividing (A) the amount in GBP that corresponds to each holder of a Target RSU as set forth in Column B of Schedule 1 to the Deed Poll by (B) an amount equal to the average of the closing sale prices in USD of a



Purchaser Share on the Nasdaq Stock Market (as reported by The Wall Street Journal) for each of the thirty (30) consecutive trading days ending with the complete trading day immediately before (and excluding) the Completion Date after applying the spot GBP/ USD exchange rate as published by the Bank of England at close of business on the preceding Business Day.

- 6.3 Prior to the Completion Date, Target shall take all appropriate actions to: (a) effectuate the provisions of Clause 6.2 and (b) ensure that after the Completion Date, no holder of Converted RSUs, any beneficiary thereof, nor any other participant in the RSU Sub Plan to the Silixa Ltd 2020 Enterprise Management Incentive Plan shall have any right to acquire any securities of the Target or to receive any payment or benefit with respect to any award previously granted thereunder, except as provided in Clause 6.2.

7. WARRANTIES

- 7.1 Each Founder Seller severally warrants to the Purchaser that, save as Disclosed, each of the Warranties (other than the Fundamental Warranties, Excluded Liability Warranties and Excluded Liability Tax Warranties) is true and accurate as at the Completion Date.
- 7.2 Each Founder Seller severally warrants to the Purchaser that each of the Fundamental Warranties is true and accurate as at the Completion Date (solely in respect of such Founder Seller and those Target Shares set out against such Founder Seller's name in Schedule 1).
- 7.3 Each Founder Seller severally warrants to the Purchaser that each of Excluded Liability Warranties and Excluded Liability Tax Warranties is true and accurate as at the Completion Date.
- 7.4 Each Investor Seller severally warrants to the Purchaser that each of the Fundamental Warranties is true and accurate as at the Completion Date (solely in respect of such Investor Seller and those Target Shares set out against such Investor Seller's name in Schedule 1).
- 7.5 AG severally warrants to the Purchaser that each of the Fundamental Warranties is true and accurate as at the Completion Date.
- 7.6 A matter shall be regarded as "Disclosed" for the purposes of this Agreement only to the extent that information about that matter is contained in the Disclosure Letter or the Disclosure Documents in sufficient detail to enable a purchaser to identify the nature and scope of that matter. The provisions of this Clause 7 shall prevail over any provision to the contrary in the Disclosure Letter.
- 7.7 Each of the Warranties is separate and is to be construed independently of the other Warranties and any other provisions of this Agreement.
- 7.8 Schedule 5 (in the case of a Tax Claim) and Clause 9 (in the case of a Claim or, where specifically provided, a Tax Claim) shall apply to limit or exclude, in accordance with their respective terms, any liability which the Sellers might otherwise have in respect of any Claim or any Tax Claim.
- 7.9 The Purchaser warrants to the Sellers that each of the warranties set out in Part D of Schedule 4 is true and accurate as at the Completion Date.

- 7.10 The Purchaser acknowledges and agrees that any costs relating to the W&I Insurance Policy shall be for the sole account of the Purchaser.
- 7.11 The Purchaser undertakes to the Sellers:
- (a) to procure that at all times the W&I Insurance Policy contains a waiver by the W&I Insurer of all rights of subrogation or contribution or to exercise any rights assigned to it against the Sellers save in respect of any claim attributable to fraud or wilful concealment on the part of the Sellers; and
  - (b) not to agree any amendments, waivers or variations (or do anything with similar effect) to the subrogation and contribution provisions of the W&I Insurance Policy.
- 7.12 The Purchaser hereby warrants to the Investor Sellers that the consideration proceeds paid or payable to the Investor Sellers pursuant to this Agreement are not the proceeds of crime as such terms may be defined in any Anti-Money Laundering Laws or regulations.

## 8. TAXATION

- 8.1 The provisions of Schedule 5 shall apply with effect from Completion.
- 8.2 The Disclosure Letter shall not qualify the Tax Covenant or otherwise limit the liability of the Founder Sellers in respect of any claim brought by the Purchaser under the Tax Covenant.

## 9. LIMITATIONS ON LIABILITY

- 9.1 Save as provided in Clause 9.8, this Clause 9 limits the liability of the Sellers in relation to any Claim, any claim under this Agreement (other than any Fundamental Warranty Claim or Tax Claim) and (only where and to the extent specifically provided) any Fundamental Warranty Claim or Tax Claim.

### Financial Limitations

- 9.2 Subject to Clause 9.3, the maximum aggregate liability of the Sellers in respect of all claims under this Agreement will not exceed an amount equal to the aggregate Purchase Price actually received by the Sellers and the maximum aggregate liability of each Seller in respect of such claims will not exceed such Seller's proportion of the Purchase Price actually received by that Seller. Subject to the foregoing sentence, each such Founder Seller's aggregate liability in respect of any individual Excluded Liability Claim and any individual Excluded Liability Tax Claim shall equal their Relevant Excluded Liability Claim Percentage of such liability.
- 9.3 The Purchaser's sole recourse in respect of any Insured Claim against the Founder Sellers shall be under the W&I Insurance Policy. The maximum aggregate liability of the Founder Sellers in respect of any Insured Claim will not exceed the sum of one pound sterling (£1).
- 9.4 The Founder Sellers shall not be liable for a Claim unless:
- (a) the Founder Sellers' liability in respect of such Claim (together with any connected Claims) exceeds seventeen thousand pounds sterling (£17,000); and

- (b) the amount of the Founder Sellers' liability in respect of such Claim, either individually or when aggregated with their liability for all other claims (other than those excluded under Clause 9.4(a) and all Tax Claims), exceeds one hundred and seventy thousand pounds sterling (£170,000), in which case the Founder Sellers shall be liable for the whole amount of the Claim and not just the amount above the threshold specified in this Clause 9.4(b).

For the purposes of this Clause 9.4, a Claim is connected with another Claim if the Claims arise from the same facts, events or circumstances.

Notice Requirements

- 9.5 The Founder Sellers shall not be liable for a Claim, a Fundamental Warranty Claim or a Tax Claim and the Investor Sellers and AG shall not be liable for a Fundamental Warranty Claim unless notice in writing (specifying in reasonable detail the basis of the Claim, the Fundamental Warranty Claim or the Tax Claim (in so far as it is known to the Purchaser) and, so far as is practicable, the amount claimed in respect of it) has been given by or on behalf of the Purchaser to the Sellers' Representative:
    - (a) in the case of a Claim, within the period of twenty four (24) months commencing on the Completion Date; or
    - (b) in the case of a Tax Claim or a Fundamental Warranty Claim, within the period of seven (7) years commencing on the Completion Date.
  - 9.6 Any Claim, or Fundamental Warranty Claim (to the extent not previously remedied, satisfied, settled or withdrawn) will be deemed to have been withdrawn unless proceedings in respect of such Claim or Fundamental Warranty Claim have been commenced by the Purchaser being both issued and served within nine (9) months after notice has first been given in accordance with Clause 9.5 and are being pursued with reasonable diligence.
  - 9.7 The Sellers shall not be liable for a Claim (or, where and to the extent specifically provided, for a Tax Warranty Claim but excluding for the avoidance of doubt an Excluded Liability Claim or Excluded Liability Tax Claim) to the extent that:
    - (a) the Claim (or the Tax Warranty Claim) arises from facts, events or circumstances that have been Disclosed; or
    - (b) the Claim relates to a matter specifically provided for in the Accounts.
  - 9.8 Nothing in this Clause 9 or Schedule 5 applies to exclude or limit the liability of a Seller to the extent that a claim under this Agreement, Claim, Fundamental Warranty Claim or Tax Claim arises or is delayed as a result of fraud or wilful concealment by that Seller.
  - 9.9 The Sellers shall not be liable in respect of any Claim to the extent that the matter giving rise to it results from the enactment, amendment, or change in the generally accepted interpretation or application, of any law, rule or regulation, or any change in the practice of any governmental, regulatory or other body after Completion.
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- 9.10 If a Claim or Fundamental Warranty Claim is based upon a liability that is contingent only or is not capable of being quantified, the Sellers will have no liability in respect of that claim unless and until such liability ceases to be contingent or unquantifiable and becomes an actual liability or capable of being quantified, provided that this clause will not operate to prevent the Purchaser making a Claim or Fundamental Warranty Claim in respect of a contingent or unquantifiable liability if written notice of such claim is received by the Sellers' Representative within the time limits in clause 9.5 in circumstances where the liability does not become an actual liability or capable of being quantified until after the expiry of the relevant time limit.

Third Party Claims

- 9.11 If the Purchaser becomes aware of any claim by a third party which might reasonably be expected to result in an Excluded Liability Claim being made (a "Third Party Claim") the Purchaser shall:
- (a) as soon as reasonably practicable after becoming aware of the Third Party Claim and in any event, prior to taking any material step to defend the Third Party Claim or to compromise, settle or waive any right in relation to the Third Party Claim, give written notice of such Third Party Claim to the Sellers' Representative containing such reasonable details of the Third Party Claim as the Purchaser has available to it;
  - (b) provide the Sellers' Representative with such information as the Founder Sellers may reasonably require relating to the Third Party Claim and shall keep the Sellers' Representative reasonably informed of any material development in the conduct of the Third Party Claim;
  - (c) consult with the Sellers' Representative on a reasonably frequent basis with respect to the Third Party Claim and permit the Sellers' Representative to propose reasonable suggestions in connection with the defence or settlement of such Third Party Claim; and
  - (d) not make (and procure that the Target Companies shall not make) any admission of liability, agreement or compromise to or with any person, body or authority in relation to that Third Party Claim without the prior written consent of the Sellers' Representative, such consent not to be unreasonably withheld or delayed unless such admission, agreement or compromise does not give rise to a financial liability for any Founder Seller.

Mitigation

- 9.12 Nothing in this Agreement shall restrict or limit the general obligation at law of the Purchaser to mitigate any losses which it may suffer pursuant to any Claim, Fundamental Warranty Claim, Excluded Liability Claim or Tax Warranty Claim.

No Double Recovery

- 9.13 The Purchaser shall not be entitled to recover damages or obtain payment, reimbursement or restitution more than once in respect of any one liability or loss which give rise to more than one Claim, Fundamental Warranty Claim, Tax Claim, Excluded Liability Claim, Excluded Liability Tax Claim or Leakage Claim under Clause 5.

Acts or Omissions of the Purchaser

9.14 No Seller shall be liable for a Claim to the extent that it would not have arisen but for, or that the liability to which it relates has been increased by and then only to the extent of such increase), any voluntary act, omission or transaction carried out:

- (a) on or after Completion by the Purchaser, any member of the Purchaser's Group or any Target Company; or
- (b) before Completion by any Seller or any Target Company at the written direction or request of the Purchaser or any member of the Purchaser's Group,

and which, in any case, the Purchaser or the relevant member of the Purchaser's Group was actually aware or ought to reasonably have been aware would give rise to, or increase the liability of, the relevant Claim.

Insurance

9.15 If the Purchaser, the Purchaser's Group or any of the Target Companies' are entitled make a claim under a policy of insurance in force at the date of this Agreement in respect of any matter or circumstance giving rise to an Excluded Liability Claim or an Excluded Liability Tax Claim, the Purchaser shall procure that the relevant Target Company uses its reasonable endeavours to make a claim against its insurers pursuant to the relevant policy. To the extent that the amount of such Excluded Liability Claim or Excluded Liability Tax Claim (as appropriate) is recovered (without any right of set off, relief, subrogation or deduction of excess against any member of the Target Companies) under any policy of insurance in force at the date of this Agreement, the Founder Sellers' liability in respect of any such Excluded Liability Claim or Excluded Liability Tax Claim (as appropriate) shall be reduced by the amount recovered (less any out-of-pocket costs incurred by the Purchaser and/or the Purchaser's Group in pursuing the recovery, including any Tax suffered, or which would have been suffered but for the availability of any Relief, by the Target Companies, the Purchaser and/or the Purchaser's Group on the amount recovered) provided that nothing in this Clause 9.15 shall require the Purchaser or the relevant Target Company to take any action which in the reasonable opinion of the Purchaser is or is reasonably likely to be of material detriment to the commercial interests of the business of the Target Companies, the Purchaser or the Purchaser's Group.

Third Party Amounts

9.16 If after any Founder Seller has made a payment in respect of an Excluded Liability Claim, the Purchaser or any Target Company recovers from a third party a sum which is directly referable to that payment, which would not have arisen but for the matter giving rise to the Excluded Liability Claim in question (the "**Recovery Amount**"), then the Purchaser shall repay (or procure the repayment to) the relevant Founder Seller(s) to be apportioned in accordance with the Founder Sellers' Relevant Excluded Liability Claim Percentage, so much of the Recovery Amount (less all out-of-pocket costs, charges and expenses incurred in making such recovery, and any Tax suffered, or which would have been suffered but for the availability of any Relief, by the Target Companies, Purchaser and/or the Purchaser's Group on the amount recovered) as does not exceed the sum paid by the relevant Founder Seller(s)

provided that nothing in this Clause 9.16 shall require the Purchaser to take any action which in the reasonable opinion of the Purchaser is or is reasonably likely to be of material detriment to the commercial interests of the business of the Purchaser's Group.

General

- 9.17 All claims under or in connection with this Agreement shall be settled by the relevant Party or Parties in GBP at the Exchange Rate applicable on the first Business Day prior to the date on which any amount in respect of such claim is paid.
- 9.18 For the avoidance of doubt each Investor Seller and AG shall have no liability in respect of any Claims, Excluded Liability Claims, Tax Claims or Excluded Liability Tax Claims.
10. SETTLEMENT OF CLAIMS USING THE EARN OUT CONSIDERATION BALANCE
- 10.1 The Purchaser shall be entitled to the extent set out in this Clause 10 to have recourse to the amount of the Earn Out Consideration Balance allocated to the Founder Sellers to obtain payment of any amounts due to it under any Relevant Claims that have been Finally Determined.
- 10.2 On the date (the "Payment Date") where the amount of the Earn Out Consideration Balance allocated to the Founder Sellers would fall due for payment to the Founder Sellers in accordance with the terms of Schedule 7 (the "Due Earn Out Consideration"):
- (a) if there is no Relevant Claim outstanding, the Due Earn Out Consideration shall be released to the Founder Sellers by way of payment to the bank account(s) specified by the Sellers' Representative; or
  - (b) if any Relevant Claim remains outstanding, subject to Clause 10.3 below there shall be retained by the Purchaser the alleged amount of such Relevant Claim against the Founder Sellers, or if such alleged amount exceeds the amount of Earn Out Consideration allocated to the Founder Sellers, the total amount allocated to the Founder Sellers (the "Deduction") and an amount equal to the Due Earn Out Consideration minus the Deduction shall be paid by the Purchaser to the Founder Sellers to the bank account(s) specified by the Sellers' Representative.
- 10.3 An amount in respect of an outstanding Relevant Claim may only be retained by the Purchaser after the Payment Date in accordance with Clause 10.2(b) if the Purchaser has provided to the Sellers' Representative a written opinion of counsel of not less than ten (10) years call with experience in relation to disputes of a similar nature to the Relevant Claim advising that the Relevant Claim has a reasonable prospect of success and to the extent of such counsel's written estimate of the total liability, subject always to the Relevant Claim being Finally Determined, in which case the remaining provisions of this Clause 10 shall apply.
- 10.4 If it is Finally Determined, whether before, on or after the Payment Date, that all or some of the Founder Sellers are liable in whole or in part in respect of a Relevant Claim, the Purchaser shall be permitted to permanently retain from the Due Earn Out Consideration an amount equal to the amount due to the Purchaser under the Relevant Claim (to the extent

sufficient or in the event the amount due under the Relevant Claim exceeds the Due Earn Out Consideration, the entire Due Earn Out Consideration shall be retained).

10.5 If at any time after the Payment Date it shall be Finally Determined that the relevant Founder Sellers are not liable in whole or in part in respect of a Relevant Claim or if a Relevant Claim shall have been Withdrawn, then to the extent that the relevant Founder Sellers are not so liable or that the claim has been Withdrawn, there shall be no deduction from the Due Earn Out Consideration by the Purchaser in respect of such Relevant Claim and the relevant Deduction shall be promptly paid by the Purchaser to the Founder Sellers by way of payment to the bank account(s) specified by the Sellers' Representative.

10.6 For the purposes of this Agreement:

(a) "Relevant Claim" shall mean any Excluded Liability Claim and any Excluded Liability Tax Claim against any Founder Seller by the Purchaser under this Agreement which has been notified in writing by the Purchaser to the Sellers' Representative, together with details of the amount alleged to be due in respect of it, before the Payment Date and which has not previously been Withdrawn or paid or satisfied by or on behalf of the relevant Founder Seller(s);

(b) a Relevant Claim shall be deemed to have been "Withdrawn" if legal proceedings in respect of it shall not have been commenced by being both issued and served on the relevant Founder Seller(s) on or before the expiry of nine (9) months from the date on which the claim is notified to the Sellers' Representative or, if later (in the case of a Relevant Claim which is an Excluded Liability Tax Claim), the expiry of twelve (12) months from the date on which the subject matter of the Relevant Claim has been Finally Determined by the relevant Tax Authority; and

(c) a Relevant Claim shall be deemed to be "Finally Determined" if either:

(i) so determined by a court of competent jurisdiction from which there is no appeal or from whose judgment the relevant Founder Seller(s) or the Purchaser (as the case may be) do not appeal within any applicable time limits; or

(ii) the Sellers' Representative and the Purchaser shall so agree in writing; or

(iii) it is an amount which is due and payable to the Purchaser under the Tax Covenant.

10.7 The provisions of this Clause 10 shall be without prejudice to any other rights the Purchaser may have in respect of the claim(s) concerned.

## 11. PROTECTIVE COVENANTS

11.1 The Sellers (other than the Investor Sellers) acknowledge that the Purchaser is purchasing the Target Shares in accordance with the terms of this Agreement and that the Purchaser is therefore entitled to protect the goodwill of the Target Companies. Accordingly, each Seller (other than the Investor Sellers) severally agrees with the Purchaser that it shall not (without the Purchaser's prior written consent), directly or indirectly, alone or jointly with any other

person, and whether as a shareholder, partner, director, principal, consultant or agent or in any other capacity:

- (a) for a period of eighteen (18) months, starting on the Completion Date (the "Relevant Period"), carry on or be engaged, interested or concerned in, or be associated with, assist or lend money to any business within the United Kingdom, Canada and the US that competes with the Business (a "Competing Business");
  - (b) for the Relevant Period, to the detriment of the Business, solicit business from any Customer in relation to a Competing Business;
  - (c) for the Relevant Period, to the detriment of the Business, employ or engage the services of any Key Individual; or
  - (d) for the Relevant Period, to the detriment of the Business, induce, or endeavour to induce, any Key Individual to leave their position, whether or not that person would commit a breach of his or her contract by so leaving.
- 11.2 The Investor Sellers also acknowledge that the Purchaser is purchasing the Target Shares in accordance with the terms of this Agreement and that the Purchaser is therefore entitled to protect the goodwill of the Target Companies. Accordingly, each Investor Seller severally agrees with the Purchaser that it shall not (without the Purchaser's prior written consent), directly for the Relevant Period to the detriment of the Business, employ or engage the services of any Key Individual.
- 11.3 Nothing in Clause 11.1 shall prohibit any Seller from holding any interest in any securities listed or dealt in on any securities exchange which amount to less than 5% of the issued securities of that class and which in all circumstances carry less than 5% of the voting rights (if any) attaching to the issued securities of that class.
- 11.4 The Sellers shall not, at any time after Completion, disclose or use any confidential information relating to the Target Companies or its Customers or suppliers, provided that this Clause shall not prohibit the use or disclosure of any such confidential information to the extent permitted by Clause 17.3.
- 11.5 No Seller shall at any time after the Completion Date falsely present themselves or permit themselves to be presented as in any way connected with the Target Companies or interested in any of the Target Shares, other than in relation to references to being a former shareholder of the Target or to their position as an employee or consultant to the Target Companies, the Purchaser or other member of the Purchaser's Group (as applicable).
- 11.6 Since the Sellers have confidential information relating to the Target Companies and a detailed awareness of the Customers, and since the Purchase Price has been calculated on the basis that the Sellers would assume (as applicable) the obligations set out in the applicable provisions of this Clause 11, the Parties acknowledge that each of those obligations is reasonable as to subject matter, area and duration and is necessary to protect the Purchaser's legitimate interest in the goodwill of the Target Companies.
- 11.7 The Sellers and the Purchaser each acknowledge that it has entered into this Agreement on an arm's length basis.



- 11.8 Notwithstanding the previous provisions of this Clause 11, the Purchaser agrees that any activities carried out by a Seller in accordance with the terms of their employment with, or consultancy services to, any of the Target Companies shall not be an actionable breach of Clause 11.
12. PAYMENTS AND INTEREST
- 12.1 Payments to be made to the Sellers under this Agreement shall be made in GBP by electronic transfer of immediately available funds from the Purchaser to the account of the Paying Agent, or in respect of the R&D Tax Credit Deferred Consideration, an account nominated by the Sellers' Representative, the details of which shall be notified by the Sellers' Representative to the Purchaser at least one (1) Business Day before the relevant payment date ("Sellers Account").
- 12.2 The Paying Agent and, in respect of the R&D Tax Credit Deferred Consideration, the Sellers' Representative, is irrevocably authorised by each Seller to receive any amount payable to the Sellers under this Agreement and the receipt of any amount so paid in the Sellers Account will be a valid discharge for the Purchaser for the relevant amount. The Purchaser shall have no obligation relating to the distribution of any payment made under Clause 12.1 between any of the Sellers.
- 12.3 Payment of any sum in accordance with Clause 12.1 will discharge the obligations of the Purchaser to pay the sum in question and the Purchaser shall not be concerned to see the application of the monies so paid.
- 12.4 Payments to be made to the Purchaser under this Agreement shall be made in GBP by electronic transfer of immediately available funds to the account of the Purchaser, the details of which shall be notified to by the Purchaser to the Sellers' Representative at least three (3) Business Day before the relevant payment date ("Purchaser's Account"):
- 12.5 Any amount expressed in a currency other than GBP shall, to the extent that it requires in whole or in part to be expressed in GBP in order to give due effect to this Agreement, be deemed for that purpose to have been converted at the Exchange Rate into GBP on the relevant date.
- 12.6 For the avoidance of doubt, If the Purchaser, any Target Company or any agent of, or any person connected with any of them has from time to time any obligation imposed by law to account for any Tax in relation to any payment to be made to any Seller pursuant to this Agreement, or in relation to any other matter pursuant to this Agreement involving such Seller, the Purchaser, the Target Company and any such other person shall be entitled to deduct or withhold an amount equal to such Tax from any payment to such Seller whether such payment arises under this Agreement or otherwise, provided that any such amount so deducted or withheld shall be treated as being received by the relevant Seller and accounted to a Tax Authority.
- 12.7 If:
- (a) any deduction or withholding is required by law to be made from any sum payable (or treated as being payable) by any Seller under this Agreement, such Seller shall be

obliged to pay such increased sum as will, after the deduction or withholding has been made, leave the Purchaser with the same amount as it would have been entitled to receive in the absence of such requirement to make a deduction or withholding; and

- (b) any sum paid or payable (or treated as being paid or payable) under this Agreement ("original sum") by any Seller is or will be chargeable to Tax in the hands of the Purchaser, the relevant Seller shall be obliged to pay such additional sum to the Purchaser as will ensure that, after payment of the Tax, the Purchaser is left with an amount equal to the original sum, and for these purposes a sum shall be regarded as chargeable to Tax in circumstances where it would have been chargeable to Tax but for some Relief available to the Purchaser.
- 12.8 Each Seller unconditionally and irrevocably agrees to indemnify the Purchaser, the Target Companies and each other member of the Purchaser's Group in respect of all Payroll Tax, to the extent permitted by law which arises as a consequence of or in connection with the disposal of the Target Shares by that Seller, including, without limitation, in respect of any liability arising under or in connection with Part 7 or Part 7A ITEPA, together, in each case, with related interest and penalties. Without prejudice to the foregoing, each Seller agrees that the Purchaser may recover from such Seller any amount for which they are liable under this Clause 12.8 via deductions from any salary or other remuneration, or from any other payments by any member of the Purchaser's Group.
- 12.9 If any sums required to be paid by a Party under this Agreement are not paid by the relevant due date, then such sums shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of four per cent per annum over the base rate from time to time of Barclays Bank Plc up to and including the day of actual payment of such sums, such interest to be payable on demand and compounded on a quarterly basis.

**13. SELLERS' REPRESENTATIVE**

- 13.1 Each Seller hereby appoints the Sellers' Representative as their representative and agent upon the terms and conditions set out in this Clause 13 and in accordance with any other applicable provisions in this Agreement, and the Sellers' Representative hereby accepts such appointment.
- 13.2 The Sellers' Representative shall have power and authority on each Seller's behalf to take any action required, permitted or, in the absolute discretion of the Sellers' Representative, desirable or expedient pursuant to or in connection with this Agreement, including power to:
- (a) give any consent, direction or notice to be given by the Sellers (or any of them), and/or to make any decision or take any action on behalf of the Sellers (or any of them) including, but not limited to, making any waiver or request for the Sellers (or any of them), under or in connection with the Transaction Documents;
  - (b) to negotiate and/or agree and/or settle any Claim or Tax Claim against the Founder Sellers;
  - (c) to review and determine the Earn Out Consideration in accordance with Schedule 7;

- (d) receive and distribute all demands, notices or other communications directed to the Sellers (or any of them) under or in connection with the Transaction Documents; and
- (e) agree any amounts due to or from the Sellers (or any of them) under the Transaction Documents,

provided that the Sellers' Representative shall not have the power to do any such thing on behalf of a Seller where that thing relates to such Seller only, rather than to the Seller together with one or more other Sellers.

- 13.3 After Completion, each Seller shall not otherwise attempt to exercise any right, power or authority in relation to this Agreement in lieu of the Sellers' Representative, even if such Seller shall be prejudiced thereby, other than any right, power or authority is to be exercised by the Seller acting by and for itself only and not in conjunction with the exercise of such right, power or authority by any other Seller.
- 13.4 Sellers representing at least seventy-five per cent (75%) of the Target Shares may from time to time (subject to receipt of prior agreement from such person in writing agreeing to accept their appointment) appoint any Seller or other person by notice executed by the appointed Sellers' Representative and delivered to the Purchaser (with a copy of the notice provided to each Seller), to be a Sellers' Representative in place of any person who was a Sellers' Representative immediately before the delivery of that notice. The Purchaser shall be entitled to assume that any Sellers' Representative notified to the Purchaser in accordance with this Clause 13.4 has been properly appointed under this Clause 13.4 and has the rights, powers and authority set out in this Clause 13.
- 13.5 Without prejudice to Clause 13.1, the Sellers' Representative may resign and be discharged from their duties and obligations under this Agreement by giving notice to the Sellers and the Purchaser and specifying a date (which date shall be the later of the date specified in the notice and two (2) Business Days after deemed receipt) on which their resignation shall take effect.
- 13.6 The Sellers hereby waive any rights they have or may have to make or bring a claim against the Sellers' Representative in relation to the exercise in good faith of any power for and on behalf of any of the Sellers and, provided it acts in good faith, the Sellers' Representative shall have and accepts no liability to any of the Sellers in connection with or as a result of anything which the Sellers' Representative does, refrains from doing or neglects or omits to do in his capacity as Sellers' Representative in connection with any matter relating to the Agreement.
- 13.7 Delivery of any document required to be made to the Sellers or any of them by the Purchaser may be made to the Sellers' Representative whose receipt for such delivery shall be an absolute discharge of the person making the same who shall not be concerned as to its application.
- 13.8 Each of the Sellers and the Sellers' Representative agree as follows:
  - (a) no provisions of this Agreement shall require the Sellers' Representative to expend or risk its own funds or incur any liability;

- (b) the Sellers' Representative shall not be required to take any action unless it has been provided with funds, security or indemnities which it has determined are sufficient to protect it against the costs, expenses and liabilities which it may incur in performing such actions;
- (c) the Sellers' Representative shall not be liable for any action it takes or omits to take in good faith that it believes to be authorised or within the rights or powers conferred upon it by this Agreement and the Transaction Documents;
- (d) the Sellers shall reimburse the Sellers' Representative (in proportion to their allocation of the Purchase Price) promptly on request for all reasonable and proper disbursements, advances and expenses incurred or made by it in acting as Sellers' Representative, subject to the Sellers' Representative providing the Sellers with reasonable details of the disbursements, advances and expenses incurred; and
- (e) the Sellers shall indemnify the Sellers' Representative against any and all losses, liabilities or reasonable and proper expenses incurred by it arising out of or in connection with the proper discharge of its duties as Sellers' Representative under this Agreement and the other Transaction Documents.

14. POWER OF AGENCY

14.1 Each Seller (as "Appointor") severally, irrevocably, and to secure the proprietary interest of the Purchaser of the Target Shares, appoints the Purchaser to be his, her, their or its agent for the following purposes:

- (a) to receive, complete, authenticate, send, supply, execute and deliver in the name and on behalf of the Appointor all such proxy appointments, consents (including consents to short notice), appointments, authorisations, waivers, directions, resolutions, requests, share transfers and other documents and deeds and (without limitation) to signify agreement on behalf of the Appointor to any written resolution to be passed under Part 13 Companies Act);
- (b) to receive notice of, attend and vote at any meeting of the shareholders (or class of shareholders) of the Target and at any adjournment of any such meeting; and
- (c) otherwise (and without limitation) to do all such acts and things and exercise all such rights and powers,

in each case as the Appointor may be entitled to receive or do by reason of being or having been the registered holder of their relevant Target Shares, in such manner and on such terms as the Purchaser in its absolute discretion thinks fit and to the exclusion of the Appointor or any other person.

14.2 The Purchaser may delegate in writing underhand to one or more persons all or any of the powers granted to the Purchaser under the power of agency in this Clause 14 (the "Power of Agency") on such terms as the Purchaser thinks fit and may revoke such delegation at any time.

- 14.3 The Purchaser may appoint one or more persons to act as a substitute or substitutes in its place to exercise all or any of the powers granted to the Purchaser under this Power of Agency as the Purchaser thinks fit other than the power to appoint a substitute and may revoke any such appointment at any time.
- 14.4 This Power of Agency shall, in respect of the relevant Appointor only, continue until the later of the time at which:
- (a) the Purchaser or its nominee becomes the registered holder of that Appointor's Target Shares; and
  - (b) all rights which the Appointor has or had by reason of being a registered member are exercised or lapse,
- and is given on the basis that the Purchaser should use its reasonable endeavours to effect such registration or exercise such rights as soon as possible save that the appointment shall terminate in any event on the date falling six months after the date of this Agreement.
- 14.5 During the term of the appointment, the Appointor shall:
- (a) hold their relevant Target Shares and all distributions, property and rights deriving from them on trust for the Purchaser as beneficial owner;
  - (b) not do or cause or authorise any other person to do any of the acts which the Purchaser is authorised to do under this Power of Agency;
  - (c) promptly (and in any case, within ten (10) Business Days) account to the Purchaser for all dividends, interest, bonuses, distributions or other sums of any kind whatsoever relating to their relevant Target Shares, and promptly (and in any case, within ten (10) Business Days) deliver to the Purchaser any notices, letters and other documents or communications of any kind whatsoever relating to their relevant Target Shares, in each case received by or on behalf of the Appointor after the Completion Date;
  - (d) promptly (and in any case, within ten (10) Business Days) exercise any rights held by the Appointor by reason of being or having been a registered member and deal with the Target Shares and all distributions, property and rights deriving from them, in each case only as the Purchaser may from time to time direct; and
  - (e) on request ratify everything which the Purchaser may do or purport to do in the proper exercise of the Purchaser's powers and/or authorities under this Power of Agency.
- 14.6 The Purchaser undertakes to the Sellers (i) on behalf of itself that it shall and (ii) to procure that any other party exercising the rights and powers granted by each Seller pursuant to this Power of Agency shall, exercise all rights and powers granted pursuant to this Power of Agency in accordance with all applicable Laws. The Purchaser indemnifies each Seller for any and all losses that the relevant Seller and their respective affiliates (including their respective directors, officers and employees) suffer arising from this Power of Agency.

## 15. FURTHER ASSURANCE

Each Party will, from time to time on being required to do so by any other Party and so far as it is reasonably able to do so, promptly and at its own expense do or procure the doing of all such acts and execute or procure the execution of all such documents as are necessary for giving full effect to this Agreement.

## 16. ASSIGNMENT

16.1 This Agreement shall be binding on and enure for the benefit of the successors and permitted assignees of the Parties.

16.2 Except as provided in Clause 16.3, no Party may assign or otherwise dispose of any rights under this Agreement, at law or in equity, including by way of declaration of trust without the consent of the other Parties. For the avoidance of doubt, any purported assignment by the Purchaser to any party who subsequently becomes a member of the Purchaser's Group after the Completion Date shall require the consent of the Investor Sellers. Any purported assignment in breach of this Clause shall be void and confer no rights on the purported assignee.

16.3 The Purchaser may assign all or any of its rights under this Agreement to its bankers by way of security and, subject to Clause 16.4, to any member of the Purchaser's Group, in which case such assignment shall require consent of the Investor Sellers), provided that any such member of the Purchaser's Group shall cease to be entitled to exercise those rights, and shall reassign those rights to the Purchaser, on ceasing to be a member of the Purchaser's Group, and provided also that the liability of the Sellers to any such assignee shall not be greater than its liability to the Purchaser if that assignment had not occurred. If there is any such assignment, references to the Purchaser (other than in this Clause) shall be construed as references to the holder, at any relevant time, of the Purchaser's rights under this Agreement.

16.4 The assignment to a member of the Purchaser's Group shall be subject to the consent of each of the Investor Sellers, which consent shall be denied only if an Investor Seller reasonably believes that such assignment may expose that Investor Seller to adverse consequences under Anti-Bribery Laws, Anti Money Laundering Laws or Sanctions.

## 17. ANNOUNCEMENTS AND CONFIDENTIALITY

17.1 Subject to Clause 17.2, no Party may make or permit any other person to make any press release or other public announcement about this Agreement or the Transactions.

17.2 Clause 17.1 shall not apply to:

- (a) the Press Release; or
- (b) any other public announcement of the acquisition of the Target Shares made by the Purchaser, including any announcement to the customers or suppliers of (a) the Target or (b) any other member of the Purchaser's Group, which contains no material information relating to this Agreement and the Transactions that is not in Press Release.

- 17.3 Subject to Clauses 17.4 and 17.6, each Party shall treat the following information as confidential and shall not disclose or use it:
- (a) details of the provisions of this Agreement and any agreement, document or arrangement entered into in connection with this Agreement;
  - (b) information relating to the negotiations leading to the execution of this Agreement and any agreement, document or arrangement entered into in connection with this Agreement; and
  - (c) to the extent obtained as a result of or in connection with entering into, or fulfilling obligations under, this Agreement, information relating to any other Party or any member of any other Party's Group.
- 17.4 Each Party may disclose or use information otherwise required by Clause 11.4 or Clause 17.3 to be treated as confidential:
- (a) if and to the extent included in the Press Release;
  - (b) if disclosed to or used by that Party's insurers, professional advisers, auditors or bankers (at any relevant time) on a strictly confidential basis;
  - (c) in the case of the Purchaser, to its shareholders, investors and their respective affiliates;
  - (d) in the case of an Investor Seller, to its shareholders, investors and their respective affiliates;
  - (e) if and to the extent required for the purpose of any legal (including arbitration and regulatory) proceedings arising out of this Agreement or any other agreement, document or arrangement entered into in connection with this Agreement;
  - (f) if and to the extent the information is or comes into the public domain through no fault of that Party;
  - (g) if such disclosure is to a Tax Authority in connection with the Tax affairs or reporting obligations of the disclosing party; or
  - (h) if such disclosure is to another Party (to the extent reasonably required).
- 17.5 Each Party shall ensure that any person to whom confidential information is disclosed pursuant to Clause 17.4(b) or 17.4(g) is made aware of the obligations of confidentiality contained in this Clause and complies with Clause 11.4 and Clause 17.3 as if binding on it directly.

17.6 Each Party may disclose or use information otherwise required by Clause 11.4 or Clause 17.3 to be treated as confidential, or may make, or permit any person to make, any press release or other public announcement:

- (a) if and to the extent required by applicable law or regulation in any relevant jurisdiction; and
- (b) if and to the extent required or requested by any court, competent regulatory or governmental body, or securities exchange in any relevant competent jurisdiction, whether or not the requirement or request has the force of law,

and, provided that the Party using such information or making or permitting such disclosure, press release or announcement shall take all such steps as are reasonably practicable in the circumstances and permitted by law and subject to legal professional privilege (including litigation privilege and/or legal advice privilege), to notify and consult with the other Party or Parties before the relevant disclosure, release or announcement is made, and shall take into account its reasonable comments.

18. COSTS

18.1 Save as provided in this Agreement, each Party shall bear its own costs, expenses and Taxes in connection with the preparation, negotiation, execution and performance of this Agreement and the documents referred to in it.

18.2 The Sellers shall procure that the Paying Agent pay £704,963.80 to PwC Corporate Finance on Completion on behalf of the Target to discharge in full the Target's obligation to settle such fee.

19. NOTICES

19.1 Any notice, consent or other communication ("Notice") given under this Agreement shall be in writing and in English and signed by or on behalf of the Party giving it, and shall be delivered by hand or internationally recognised courier service or sent by prepaid recorded or next working day delivery post (or prepaid international recorded airmail if sent internationally) in accordance with the details set out below:

by hand or by post to the Purchaser:

For the attention of: Scott Graeff at 301 1st St SW #200, Roanoke, VA 24011, United States;

with a copy by email (which shall not constitute notice) to Aaron Binstock (abinstock@cooley.com) and Russell Anderson (randerson@cooley.com); and

**by hand or by post to the Sellers' Representative:**

For the attention of: Anu Mehta and Andrew Gautier, Lime Rock Partners V, L.P at 247 Riverside Avenue, Suite 3, Westport, CT06880, United States



with a copy by email (which shall not constitute notice) to Arran Mackenzie ([Arran.Mackenzie@addleshawgoddard.com](mailto:Arran.Mackenzie@addleshawgoddard.com)), Anu Mehta ([amehta@lrpartners.com](mailto:amehta@lrpartners.com)) and Andrew Gautier ([agautier@lrpartners.com](mailto:agautier@lrpartners.com)).

- 19.2 The Parties may from time to time notify each other of any other person or address for the receipt of Notices or copy Notices. Any such change shall take effect five (5) Business Days after notice of the change is received or (if later) on the date (if any) specified in the notice as the date on which the change is to take place.
- 19.3 Any Notice given in accordance with Clause 19.1 will be effective on receipt and, in the absence of evidence of earlier receipt, will be deemed to have been received:
- (a) at the time of delivery if delivered by hand or courier service; or
  - (b) if sent by pre-paid first class post or another next working day delivery service providing proof of postage or delivery to an address in the UK, at 9.00 am (at the place of receipt of the Notice) on the second Business Day after posting or at the time recorded by the delivery service;
  - (c) if sent by pre-paid international recorded airmail providing proof of postage or delivery to an address outside the UK, at 9:00am (at the place of receipt of the Notice) on the fifth Business Day after posting or at the time recorded by the delivery service,

save that if this means that any Notice would otherwise be deemed to be received outside normal business hours (normal business hours for this purpose being between 9.00am and 5.30 pm on a Business Day at the place of receipt of the Notice), such Notice will be deemed to be received at the start of normal business hours on the next Business Day.

- 19.4 The provisions of this Clause 19 shall not apply in relation to the service of process in any legal proceedings arising out of or in connection with this Agreement.

## 20. THIRD PARTY RIGHTS

Except as otherwise stated in this Agreement, a person who is not party to this Agreement shall have no right pursuant to the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement. This Clause shall not affect any right or remedy of a third party which exists or is available apart from that Act.

## 21. WAIVER

No delay, failure or omission (in whole or part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under this Agreement or by law shall be deemed to be, or be construed as, a waiver of that or any other right, power, privilege, claim or remedy, or operate so as to bar the enforcement, exercise or pursuance of that or any other right, power, privilege, claim or remedy, in any other instance at any other time.

## 22. SEVERANCE

- 22.1 If any provision of this Agreement is found by any court or administrative or regulatory body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

- 22.2 If any provision of this Agreement is so found to be invalid or unenforceable, but would be valid or enforceable if some part of the provision were deleted, restricted or limited in a particular manner, the provision in question shall apply with such deletions, restrictions or limitations as may be necessary to make it valid.
23. CUMULATIVE RIGHTS
- The rights and remedies provided by this Agreement are cumulative and (except as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.
24. PROVISIONS SURVIVING COMPLETION
- The provisions of this Agreement shall remain in full force and effect notwithstanding Completion.
25. COUNTERPARTS
- This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until each of the Parties has executed at least one counterpart.
26. ENTIRE AGREEMENT AND FRAUD
- 26.1 This Agreement and the Transaction Documents together constitute the entire agreement and understanding of the Parties relating to the Transactions and those documents and supersede any previous agreement between any of the Parties relating to the subject matter of this Agreement and those documents, which shall cease to have any further effect.
- 26.2 Nothing in this Agreement shall limit or exclude the liability of any Party for the fraud of that Party or any of its directors, or officers.
27. APPLICABLE LAW AND JURISDICTION
- 27.1 The validity, construction and performance of this Agreement and any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with this Agreement or its enforceability shall be governed by and construed in accordance with the law of England.
- 27.2 Each Party irrevocably submits to the exclusive jurisdiction of the courts of England over any claim, dispute or matter arising under or in connection with this Agreement or its enforceability or the legal relationships established by this Agreement (including non-contractual disputes or claims) and waives any objection to proceedings being brought in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inconvenient forum. Each Party further irrevocably agrees that a judgment in any proceedings brought in the courts of England shall be conclusive and binding upon each Party and may be enforced in the courts of any other jurisdiction.
- 27.3 Nothing in this Agreement shall affect the right to serve process in any manner permitted by law.

THIS AGREEMENT is made by or on behalf of the Parties on the date at the top of page 1.

SCHEDULE 1

THE SELLERS

Part A – The Founder Sellers and Target Shares

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Part B – The Investor Sellers and Target Shares

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Part C – Alison Goligher and Target Shares

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Part D – The Minority Sellers and Minority Shares

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## SCHEDULE 2

## THE TARGET COMPANIES

## Part A – The Target

Name: Silixa Ltd

Date and place of incorporation: 10 April 2007, England and Wales

Registered number: 06207412

Registered office: Silixa House, 230 Centennial Park, Elstree, Hertfordshire, WD6 3SN

Issued share capital: 889,590 Ordinary Shares of £0.01  
1,733,330 A Ordinary Shares of £0.01 each  
1,000 B Ordinary Shares of £0.01 each  
1,250,486 Preference Shares of \$4.00 each  
804,800 Preference Shares B of \$4.00 each  
520,986 Preference Shares C of \$4.00 each  
309,655 Preference Shares D of \$4.00 each  
330,000 Preference Shares E of \$4.00 each

Directors: Dylan Blackford, Mahmoud Farhadiroushan, Andrew Gautier-Winther, Alison Goligher, Ingebrigt Masvie, Tom Parker, Glynn Williams

Secretary: Rasheed Abayomi Amunikoro

Auditors: Lawrence Grant LLP

Accounting reference date: 31 December

Charges: Charge code 0620 7412 0006 in favour of HSBC UK Bank plc, Charge code 0620 7412 0005 in favour of HSBC UK Bank plc, Charge code 0620 7412 0004 in favour of HSBC UK Bank plc and Charge code 0620 7412 0003 in favour of HSBC Invoice Finance (UK) Limited.

## Part B – The Subsidiaries

Name:	Silixa B.V.
Date and place of incorporation:	25 November 2021 (registration date: 29 November 2021) Culemborg, the Netherlands
Registered number:	RSIN 863283664
Registered office:	Singel 250, 1016AB Amsterdam
Issued share capital:	100 shares of EUR1.00 each
Directors:	Glynn Williams and Abayomi Amunikoro
Secretary:	None
Shareholders (and shareholding):	The Target (100%)
Financial Year:	1 January to 31 December
Charges:	None
Name:	Silixa LLC
Date and place of incorporation:	25 October 2010, Austin, Texas, US
Registered number:	801334887
Registered office:	800 Brazos Suite 400, Austin, Texas 78701
Issued share capital:	n/a as this is an LLC
Governing authority:	Silixa Ltd
Officers:	Mahmoud Farhadiroushan (President) Abayomi Amunikoro (Secretary and Treasurer) Tom Parker (Vice President)
Secretary:	Abayomi Amunikoro
Members (and membership interest):	Silixa Ltd (100%)
Auditors:	DRDA, PLLC
Financial Year:	1 January to 31 December
Charges:	Lien in favour of Amegy Bank Business Credit pursuant to Purchase and Sale Agreement/Security Agreement dated 10 June 2016

Name:	Silixa Inc.
Date and place of incorporation:	5 November 2021, Alberta, Canada
Registered number:	2023863265 (and registered in British Columbia under A0122857)
Registered office:	400 3rd Avenue SW, Suite 3700, Calgary, Alberta, T2P 4H2
Issued share capital:	100 common shares
Directors:	Glynn Williams Abayomi Amunikoro
Officer	Zara Anderson
Secretary:	None
Shareholders (and shareholding):	The Target (100%)
Auditors:	BDO
Financial Year:	1 January to 31 December
Charges:	None

## SCHEDULE 3

## COMPLETION OBLIGATIONS

1. The Sellers shall deliver or make available to the Purchaser:
    - 1.1 the Disclosure Letter, duly executed by the Founder Sellers;
    - 1.2 the Purchase Price Schedule;
    - 1.3 the Minority SPA duly executed by the Minority Sellers;
    - 1.4 the stock transfer forms (in the Agreed Form) in favour of the Purchaser, or any nominee specified by the Purchaser for this purpose, from each Seller in respect of their respective Target Shares, duly executed by each Seller (or his, her or their attorney);
    - 1.5 the share certificates representing the Target Shares (if available);
    - 1.6 the Investment Agreement Deed of Termination duly executed by the Target and the Sellers and the relevant Minority Sellers;
    - 1.7 the resignation (in the Agreed Form) from their respective offices of each of the directors and secretaries of the Target Companies;
    - 1.8 the Service Agreements, duly executed by the relevant senior employees and the Target;
    - 1.9 the Consultancy Agreement, duly executed by the relevant individual and the Target;
    - 1.10 the Settlement Agreements, duly executed by the relevant individuals and the Target;
    - 1.11 confirmation from the Sellers that a determination has been made pursuant to rule 10.1A of each Option Plan;
    - 1.12 the adopted RSU Sub Plan to the Silixa Ltd 2020 Enterprise Management Incentive Plan (the "Target RSU Sub Plan") in the Agreed Form;
    - 1.13 the duly executed Deed Poll;
    - 1.14 duly executed assignments of intellectual property in a form approved by the Purchaser from each of Daniel Perez, Massimiliano Buonamico, Wilhelm Stapelberg;
    - 1.15 duly executed assignments of intellectual property in a form approved by the Purchaser from each of Christophe Ramanajoana, Alister Hale and Nick Holland and their respective personal services companies;
    - 1.16 statements for each bank account of the Target Companies at the close of business on the third Business Day preceding Completion;
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- 1.17 the Companies House online filing codes, seal (if any), electronic statutory registers, certificate of incorporation, electronic minute books of the Target Companies, complete and up-to-date up to (but not including) Completion;
- 1.18 a copy of the signed minutes of a meeting of the directors of each Target Company, in the Agreed Form, resolving that such Target Company should execute or sign each document to be executed or signed by or on behalf of it at Completion, authorising the execution or signing of those documents by each person executing or signing on behalf of such Target Company, and taking any other action reasonably required by the Purchaser as a result of Completion;
- 1.19 the FIRPTA Certificate; and
- 1.20 a properly completed and duly executed appropriate IRS Form W-8 or W-9, as applicable from the Target, each Seller and any other recipient of a payment pursuant to this Agreement.
2. Subject to the Sellers complying with paragraph 1, the Purchaser shall deliver to the Founder Sellers Counsel and Investor Sellers Counsel:
  - 2.1 the Disclosure Letter, duly executed for and on behalf of the Purchaser;
  - 2.2 the Minority SPA, duly executed for and on behalf of the Purchaser;
  - 2.3 a copy of the W&I Insurance Policy and evidence to the Sellers that the W&I Insurance Policy has been put on risk at Completion;
  - 2.4 a template Converted RSU Agreement; and
  - 2.5 a copy of the resolutions of the directors of the Purchaser resolving that the Purchaser should complete this Agreement, and execute or sign each other document to be executed or signed by or on behalf of it at Completion, and authorising the execution or signing of those documents by each person signing on behalf of the Purchaser and the Purchaser shall execute and deliver such documents.
3. At Completion, the Purchaser shall pay the premium payable under the W&I Insurance Policy in accordance with the terms of the W&I Insurance Policy.

## SCHEDULE 4

## WARRANTIES

## Part A – Fundamental Warranties

1. TITLE
  - 1.1 Each Seller is the legal and beneficial owner of the Target Shares set out alongside its name in Schedule 1, which are validly issued and free from Encumbrances, and is entitled to enjoy and exercise all of the rights of members in relation to the Target.
  - 1.2 Each Seller is not party to any transaction (other than the Transactions) pursuant to, or as a result of, which any of its Target Shares (or any of them) are, or may become, liable to be transferred or re-transferred to another person.
2. CAPACITY
  - 2.1 Each Seller has all necessary power and authority to enter into and the capacity to act and perform its obligations under this Agreement and all agreements and documents to be executed or signed by it or on its behalf pursuant to this Agreement.
  - 2.2 This Agreement, and all agreements and documents to be executed or signed by or on behalf of the Sellers pursuant to this Agreement, constitute, or will when executed or signed constitute, binding and enforceable obligations on the Sellers in accordance with their respective terms.
  - 2.3 The execution and delivery by the Sellers of this Agreement and each of the other documents to be executed or signed by or on behalf of the Sellers pursuant to this Agreement, and compliance with their respective terms shall not breach or constitute a default:
    - (a) under any agreement or instrument to which a Seller is a party or by which a Seller is bound;
    - (b) of any order, judgment, decree or other restriction applicable to a Seller; or
    - (c) under applicable Law; and
    - (d) will not require the consent of any third party or the providing of notice to, or the filing or registration with, any governmental authority.
  - 2.4 Each Seller has not:
    - (a) had a bankruptcy petition presented against it or been declared bankrupt, and no decision has been taken to appoint a trustee or receiver for any Seller;
    - (b) been served with a statutory demand, or is unable to pay its debts within the meaning of the Insolvency Act 1986;
    - (c) entered into, or has proposed to enter into, any composition or arrangement with, or for, its creditors (including an individual voluntary arrangement); or



- (d) been subject of any other event analogous to the foregoing in any jurisdiction.

## Part B – General Warranties

## 1. DEFINITIONS

In this Part B:

“Agency Worker” means any individual who is supplied by a third party to work for and under the supervision and direction of any Target Company, but excludes any Consultant;

“Anti-**Bribery Laws**” means all applicable laws and regulations relating to anti-bribery or anti-corruption in any jurisdiction (including the Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act);

“Competition Law” means all applicable competition, state aid, antitrust or merger control laws in any jurisdiction in which the Target Companies have material assets or carry on business or where their activities have an effect;

“**Computer Data**” means the computer-readable information or data owned or used by the Target Companies and stored in electronic form within Computer Software/Computer Hardware (but excluding Computer Software itself);

“Computer Hardware” means the computer hardware, equipment and ancillary equipment (other than the Computer Software and Computer Data) owned or used by the Target Companies and all related manuals and documentation;

“Computer Software” means the computer programs owned or used by the Target Companies and all related manuals and documentation;

“Computer **System**” means the Computer Hardware, Computer Data and Computer Software;

“Consultant” means any individual who is not an Agency Worker, Employee or Worker who has undertaken to do or perform personally or through a personal services company, or is supplied to do or perform personally or through a personal services company, any work or services for any Target Company, in business on their own account;

“Controller” has the meaning given to that term in Article 4(7) of the GDPR;

“Data Protection Legislation” means all applicable laws and regulations relating to the privacy, Processing, security or protection of Personal Data, including, where applicable, the Data Protection Act 2018, the GDPR and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

“Data Subject” has the meaning given to that term in Article 4(1) of the GDPR;

“Debenture” means the outstanding charges registered against the Target as set out in Part A of Schedule 2;

"Employee" means any person employed by any Target Company under a contract of employment;

"EU GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016;

"GDPR" means the EU GDPR and/or the UK GDPR (as applicable);

"Grant Funding" means any funding or other aid or assistance from any central, state or local government body or authority, any statutory undertaking, any other public body or authority, or any other body funded by public money;

"IT Assets" has the meaning given in paragraph 9.1;

"Material Counterparty" means any customer, client or supplier of a Target Company that represented at least 1% of the total purchases or supplies made by or to that Target Company representing the period of 12 months ending on the date of this Agreement;

"Pension Schemes" means the (i) UK Pension Scheme; (ii) the pension scheme used by Silixa Inc with Manulife and; (iii) the pension scheme used by Silixa LLC with Paychex, in each case as in force at Completion;

"Personal Data" has the same meaning as the term "personal data" under the Data Protection Legislation;

"Personal Data Breach" has the meaning given in Article 4(12) of the GDPR;

"Privacy Policies" means each of the Target Companies' external or internal privacy policies and notices;

"Processing" has the meaning given to that term in Article 4(2) of the GDPR, and "Process" and its derivatives shall be construed accordingly;

"Relevant Transfer" means a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 1981 or the Transfer of Undertakings (Protection of Employment) Regulations 2006, respectively (as amended and consolidated from time to time) and any legislation equivalent or similar to, or enacted to give effect to, the European Union's Council Directive 23/2001 in connection with the transfer of employees in any jurisdictions wheresoever;

"Restricted Country" means any country or geographic region subject to comprehensive economic sanctions administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, which currently includes: Crimea, Cuba, Iran, North Korea, Syria, and the so-called Donetsk and Luhansk People's Republic regions of Ukraine;

"Restricted Party" means (i) any person included on one or more of the Restricted Party Lists, (ii) any person owned by or acting on behalf of a person included on one or more of the Restricted Party Lists, or (iii) a person ordinarily resident in or an entity that is located in or organized under the laws of a Restricted Country;

"Restricted Party Lists" includes the list of sanctioned entities maintained by the United Nations; the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List, all administered by OFAC; the U.S. Denied Persons List, the U.S. Entity List, and the U.S. Unverified List, all administered by the U.S. Department of Commerce; the consolidated list of Persons, Groups and Entities subject to EU Financial Sanctions, as implemented by the EU Common Foreign & Security Policy; and similar lists of restricted parties maintained by other applicable governmental entities;

"Sanctions" means those applicable trade, economic and financial sanctions laws, regulations, embargoes, and restrictive measures (in each case having the force of law) administered, enacted or enforced from time to time by (i) the United States (including without limitation OFAC), (ii) the European Union and enforced by its member states, (iii) the United Nations, (iv) His Majesty's Treasury, or (v) other similar governmental authorities with regulatory authority over the Target Companies and their respective operations from time to time;

"Security Breach" means any security breach, compromise or other event, which leads to the unintended, accidental, unauthorised or unlawful destruction, loss, alteration, disclosure of, or access to the IT Assets or any portion of any of the foregoing, including (in each case) any and all data (including Personal Data), content, media, information or Software stored therein;

"Target Processor" means any person who Processes Personal Data on behalf of the Target Companies;

"Target Websites" means silixa.com, silixa.co.uk, silixa.org, silixa.info, silixa.net and silixaodb.com.

"UK GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended (including by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019);

"UK Pension Scheme" means the defined contribution pension scheme used by the Target for auto-enrolment provided by Aegon;

"US Employee Benefit Plan" means each "employee benefit plan" within the meaning of Section 3(3) of Employee Retirement Income Security Act of 1974, as amended ("ERISA") (whether or not subject to ERISA) and each other retirement, pension, profit-sharing, deferred compensation, bonus, cash incentive or commission, stock purchase, stock ownership, equity or equity-based incentive, transaction, change in control, retention, severance, vacation, paid time off, supplemental unemployment benefit, health or welfare, employment, independent contractor, fringe-benefit, or other benefit or compensatory plan, program, policy, practice, agreement, arrangement or Contract, whether formal or informal and whether written or unwritten that is sponsored, maintained, contributed to, required to be contributed to or with respect to which the Target Companies could reasonably be expected to have any liability or obligation with respect to any current or former Employee, Consultant, Agency Worker or Worker of the Target Companies in the US; and

"Worker" means any director or other individual, who is not an Employee, Consultant or Agency Worker and who is engaged by any Target Company under a contract to do or perform personally any work or services for the Target Companies where the Target Companies are not, by virtue of such contract, a client or customer of any profession or business carried on by the individual.

2. Target Shares and other securities
    - 2.1 The issued share capital set out in Part A of Schedule 2 constitutes the entire issued share capital of the Target.
    - 2.2 The issued share capital in respect of each Subsidiary set out in Part B of Schedule 2 constitutes the entire issued share capital of that Subsidiary.
    - 2.3 The persons listed as the shareholders of each Subsidiary in Part B of Schedule 2 are the legal and beneficial owners of the number of shares in the relevant Subsidiary set out against their names, which are validly issued and free from any Encumbrances, and are entitled to enjoy and exercise all their respective rights as a member in relation to that Subsidiary.
    - 2.4 No person has a right or has claimed to have a right (whether exercisable now or at a future date and whether contingent or not) to subscribe for, convert any security into or otherwise acquire, any shares, debentures or other securities of any Target Company, including pursuant to an option or warrant or under any similar agreement or arrangement.
    - 2.5 No Option shall be exercised in connection with the transactions recorded by this Agreement.
    - 2.6 No Target Company has been a party to any transaction pursuant to or as a result of which shares in any Subsidiary which are owned or purportedly owned by a Target Company are, or may become, liable to be transferred or re-transferred to another person.
    - 2.7 No share in the capital of any Target Company has been allotted at a discount or otherwise than as fully paid.
    - 2.8 The Target Shares are not "taxable Canadian property" within the meaning of the Income Tax Act (Canada).
    - 2.9 No Target Company has any agency, branch or other place of business or permanent establishment outside its place of incorporation.
  3. Accounts
    - 3.1 The Accounts have complied in all material respects with applicable law and UK GAAP as at the Accounts Date.
    - 3.2 The Accounts have been prepared in accordance with the policies, methodologies, categorisations, discretion and judgement in a manner consistent with the way in which the same were applied in the preparation of the accounts of the Target Companies in the two (2) financial years prior to the financial year ending on the Accounts Date.
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- 3.3 The Accounts give a true and fair view of the state of affairs of the Target Companies at the Accounts Date and of the profit or loss of the Target Companies for the financial year ended on such date.
- 3.4 The Accounts were not (save as they expressly disclose) affected by any unusual items or transactions not on an arm's length basis.
- 3.5 A complete and accurate copy of the Accounts that is the version that was signed off by the Target's auditors and directors is included in the Data Room.
4. Management Accounts and Locked Box Accounts
- 4.1 Each of the Management Accounts and the Locked Box Accounts:
- (a) have been prepared in good faith and in a manner consistent with the preparation of the Accounts; and
  - (b) are not misleading and provide an accurate reflection of the financial affairs of the Target Companies at the date to which they have been prepared and its results for the period covered by the Management Accounts and the Locked Box Accounts (as applicable).
- 4.2 A complete and accurate copy of the Management Accounts and the Locked Box Accounts is included in the Data Room.
5. Events since the Locked Box Accounts Date
- 5.1 Since the Locked Box Accounts Date as regards each Target Company, except in accordance with the terms of this Agreement or any agreement in the Agreed Form:
- (a) its business has been carried on in the ordinary course and so as to maintain the same as a going concern and the Target Company has not entered into any agreement, commitment or arrangement otherwise than in good faith and on arms' length terms;
  - (b) it has not acquired or disposed of or agreed to acquire or dispose of any business or any material asset (other than trading stock in the ordinary course of the business carried on by it) or assumed or acquired any material liability (including a contingent liability) that is not included in the Management Accounts or any shares, debentures or other securities or rights to share in the capital or profits of any undertaking;
  - (c) no dividend or other distribution (as defined by sections 1000, 1064 and 455, 459, and 460 of the CTA 2010) has been declared, made or paid to its members nor has it repaid any loan capital or other debenture;
  - (d) no material change has been made (or agreed to be made) in the emoluments or other terms of employment of any of its Employees who are in receipt of remuneration in excess of £50,000 per annum in base salary or of any of the directors of the Target Company nor has it paid or agreed to pay any bonus or special remuneration to any Employee;

- (e) it has not borrowed monies (except in the ordinary course of the business carried on by it or from its bankers under agreed loan facilities) or cancelled, reduced or waived any material debt, claim or right of such Target Company;
- (f) no Target Company has made any loan or advance to any other person;
- (g) there has been no increase of more than 3% in operating expenses, or decrease of more than 3% in turnover, of the Target Companies as a whole by comparison with the same period in the previous financial year or with the budget of the Target Companies for the current financial year, a complete and accurate copy of which is included in the Disclosure Documents;
- (h) no Target Company has made or agreed to make any single item of capital expenditure exceeding £20,000 nor have the Target Companies together made or agreed to make capital expenditure in aggregate exceeding £50,000;
- (i) there has not been any material adverse deterioration in the financial or trading position, operations or as far as the Founder Sellers are aware, prospects of the of the Target Company or Business (whether in consequence of normal trading or otherwise) and, so far as the Founder Sellers are aware, there are no circumstances likely to give rise to such a change other than circumstances likely to affect generally the industry in which the Target Company operates;
- (j) there has been no increase or decrease of more than 10% in the level of the stock-in-trade and work-in-progress of any Group Company;
- (k) no part of the Business has been affected to a material and adverse extent by the termination of any order or contract with a Material Counterparty nor so far as the Founder Sellers are aware are there any circumstances likely to lead to such termination;
- (l) no Target Company has incurred, or agreed to incur, any liability (whether actual or contingent) with a value exceeding £10,000 other than in the ordinary course of its business;
- (m) no Employee has been dismissed or made redundant;
- (n) no Target Company has modified, amended or adjusted the type or amount of insurance coverage maintained by the Target Company, other than in the ordinary course; and
- (o) no resolution of the shareholders of the Target Company has been passed or proposed or circulated to those shareholders.

6. Distributions

All dividends and distributions declared, made or paid by the Target Companies at any time in the six (6) years prior to the date of this Agreement were declared, made or paid in accordance with applicable law, the then articles of association or equivalent constitutional document of the Target Companies.

7. Litigation
- 7.1 No Target Company nor, so far as the Founder Sellers are aware, any person for whose acts and defaults it may be vicariously liable, is at present:
- (a) engaged whether as claimant, defendant or otherwise in any legal action, proceeding or arbitration which is either in progress or has been threatened in writing (including email) (other than as claimant in the collection of debts arising in the ordinary course of the business carried on by it none of which exceeds £5,000 and which do not exceed £10,000 in aggregate); or
  - (b) being prosecuted for any criminal offence.
- 7.2 No Target Company has received written notice (including email) that it is the subject of any governmental, regulatory or official investigation or inquiry.
- 7.3 There are no circumstances known to any of the Founder Sellers reasonably likely to lead to any such claim or legal action, proceeding or arbitration, prosecution, investigation or inquiry.
- 7.4 No Target Company nor any of its directors or officers, nor, so far as the Founder Sellers are aware, any Employees or any other person acting for or on behalf of the Target Company is being prosecuted for an offence, nor are they or, so far as the Founder Sellers are aware, been the subject of any investigation, or inquiry by, or on behalf of, any governmental, administrative or regulatory authority, in respect of any offence, under the Anti-Bribery Laws or under applicable anti-corruption laws or regulations of any other jurisdiction, and there are no circumstances known to any of the Founder Sellers reasonably likely to give rise to any such prosecution, investigation or inquiry.
- 7.5 The Target Companies have not received written notice that an officer, Employee, Worker, Consultant or other person who performs services for or on behalf of the Target Companies:
- (a) is engaged in or subject to any proceedings or investigation by any governmental, judicial or regulatory body; or
  - (b) has done or omitted to do any act or thing in the course of their employment with and/or engagement by the Target Companies in contravention of any law or regulation,

in each case which would be likely to have an adverse effect on the reputation or goodwill of the Target Companies. The Target Companies have not received written notice (including email) that any such proceedings or investigations are threatened against any such person.



8. Property

Title

- 8.1 Except for the Properties, no Target Company owns, lets, occupies or otherwise uses any property or has any legal or equitable right in relation to any property.
- 8.2 The Properties are all occupied solely by one or more of the Target Companies.
- 8.3 Each Target Company is the legal and beneficial owner of the specified interest in the Properties against which its name appears in Schedule 6.

Information

- 8.4 All of the information contained in Schedule 6 is complete and accurate.
- 8.5 Complete and accurate copies of the following are included in the Disclosure Documents:
- (a) the Leases and all supplemental and collateral documentation;
  - (b) any other documents granting or evidencing a right to use or occupy any of the Properties;
  - (c) up to date Land Registry official copies and title plans relating to the registered titles of the Properties; and
  - (d) any documents containing or referring to any other Encumbrances of which the Founder Sellers are aware (and to the extent that they are not formally documented summaries providing complete and accurate details of the same).

- 8.6 Each Target Company has in its possession or control all relevant title deeds and documents relating to the Properties against which its name appears in Schedule 6.

Encumbrances

- 8.7 The Properties are not subject to outgoing other than business and water rates and, in the case of Leasehold Properties, rent, insurance premiums, service charges and other payments due under the relevant Lease.
- 8.8 The Properties benefit from all necessary services for the business conducted at the Properties.
- 8.9 Access to and egress from the Properties from and to the public highway over the estates of which the Properties form part has been exercised with or without vehicles at all times and without interference or issue by the Target Company tenant and its authorised persons and at no cost.

Liabilities

- 8.10 No Target Company has any liability (whether actual or contingent) in respect of any land or buildings formerly owned or occupied by it or in respect of any related documentation other than as Disclosed.
- 8.11 No Target Company has any liability (whether actual or contingent) under any guarantee or indemnity in respect of any land or buildings.

Compliance, adverse notices and disputes

- 8.12 No Target Company has received a notice of material breach of:
- (a) any planning law or regulation or statutory obligation affecting any of the Properties or their use; or
  - (b) any environmental or health and safety law or regulation in relation to any of the Properties.

- 8.13 No Target Company has been notified of any outstanding compulsory purchase notice, closing demolition or clearance order, enforcement notice or stop notice affecting any of the Properties.
- 8.14 No Target Company is in dispute with any neighbouring owner with respect to any boundary wall or fence relating to any of the Properties, any easement or right over or means of access to or from any of the Properties, or any other matter relating to any of the Properties.
- 8.15 Each Target Company has obtained and complied with all registrations, licences, authorisations, permits and consents in respect of the Properties which it is required to have under any applicable law or regulation for the operation of its business and all such registrations, licences, authorisations, permits and consents are in full force and effect.

Leasehold Properties

- 8.16 In relation to each Leasehold Property set against its name in Schedule 6, each Target Company has paid the rent and is not in breach of the covenants on the part of the tenant and the conditions contained in the relevant Lease and in any supplemental or collateral documentation.
  - 8.17 All notices given and requirements notified by the landlord under any Lease have been complied with.
  - 8.18 All the Leases are subsisting.
  - 8.19 The licences, consents and approvals required from the landlords and any superior landlords under the Leases have been obtained.
  - 8.20 No rent review is outstanding or in progress under any of the Leases.
  - 8.21 As far as the Founder Sellers are aware, each Leasehold Property is validly elected for VAT by the Target Company's landlord.
  - 8.22 No notice to determine any Lease has been served on or by any Target Company.
  - 8.23 So far as the Founder Sellers are aware, the landlord of each Leasehold Property has observed and performed the covenants on the part of the landlord and the conditions contained in the relevant Lease and in any supplemental or collateral documentation.
9. Information Technology
- 9.1 All Computer Software, Computer Hardware, telecommunications and network equipment owned, leased or licensed in by or to the Target Companies (collectively, the "IT Assets"), which are material to the Business are in reasonable working order (subject to fair wear and tear) and are being regularly and properly maintained in all material respects in accordance with applicable laws and regulations.
  - 9.2 The IT Assets are sufficient to fulfil the current needs of the Business.
  - 9.3 Each element of the IT Assets which is:

- (a) owned by the Target Companies, is owned free from any Encumbrance; and
    - (b) not owned by the Target Companies, is used pursuant to agreement and/or licence between the Target Companies and a third party. A complete and accurate list of such agreements which are material to the Business is Disclosed.
  - 9.4 All IT Assets have the benefit of appropriate support and maintenance agreements which are Disclosed, or which form part of the Standard Inbound IP Contracts, none of which have a term that is due to expire on or before the date falling one (1) year following Completion.
  - 9.5 The Target Companies have in place, and have at all relevant times materially complied with, documented back-up, disaster recovery and other systems and procedures (which accord with standards required by good industry practice) to enable the Business to continue without material adverse change in the event of a failure of the Computer System.
  - 9.6 The Target Companies have not suffered (i) any material, repeated, persistent or prolonged failures or breakdowns of any of the IT Assets which have resulted in material, repeated, persistent or prolonged disruption to the Business; or (ii) a Security Breach which has resulted in any disruption to the Business.
  - 9.7 The Target Companies have in place, and have at all relevant times materially complied with, documented policies and procedures (which accord with standards required by good industry practice) regarding, without limitation, the use of appropriate virus-checking software, password protection procedures and the taking and storing of back-up copies of such data, to ensure the security of the IT Assets and the confidentiality, integrity and security of all data held on or processed by the IT Assets.
  - 9.8 In the six-month period immediately preceding the Completion Date, the Target Companies have procured performance of a penetration and vulnerability test in respect of the IT Assets by a suitably-qualified and competent third party provider, the results of which did not include any risks or vulnerabilities that:
    - (a) were categorised as 'very high', 'critical', 'urgent', 'high' or similar; and/or
    - (b) could reasonably be expected to result in a Security Breach.
  - 9.9 A copy of the standard terms and conditions of the Target Companies governing access to and use of the Target Websites available at <https://silixa.com/about-us/terms-conditions/>.
  - 9.10 The contents of the Target Websites comply in all material respects with all applicable laws and regulations in the United Kingdom.
  - 9.11 The Target Companies (and not any current or former Target employee, contractor, consultant or any other person) are the sole registrants of the domain names for the Target Websites, and any other customer-facing domain names used to conduct the Business.
  - 10. Assets, debts and stock
  - 10.1 None of the book debts included in the Accounts, or the Locked Box Accounts have been outstanding for more than three (3) months from their due dates for payment and, so far as
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the Founder Sellers are aware, all such debts have realised or will realise in the normal course of collection their full value save as provided in the Accounts, the Locked Box Accounts.

- 10.2 Other than in relation to the Debenture, the Target Companies have not granted any security over any part of their undertaking or assets.
- 10.3 There is no Encumbrance over any asset owned or used by the Target Companies for the purposes of their business (including any receivable or debt due to the Target Companies) and, save for any (i) assets used by the Target Companies pursuant to any lease, licence or similar arrangement, (ii) Inbound IP Contracts and (iii) IT Assets, the Target Companies are the owners of all assets used by the Target Companies for the purposes of their business.
11. Arrangements with connected persons
- 11.1 There are no loans made by the Target Companies to any of their directors or shareholders and/or any person connected with any of them and no debts or liabilities owing by the Target Companies to any of their directors or shareholders and/or any person connected with them as aforesaid.
- 11.2 Save as Disclosed, there are no existing contracts to which the Target Companies are a party and in which any of their directors or shareholders and/or any person connected with any of them is interested, other than this Agreement, the Disclosure Letter and any other Transaction Document.
- 11.3 No Seller nor any person connected with a Seller owns any property used by the Target Companies.
- 11.4 No business of the Target Companies as carried on at the date of this Agreement requires the provision of any goods or services by, or the use of any assets owned or leased by, any directors or shareholders of the Target Companies and/or any person connected with any of them.
- 11.5 No director and/or so far as the Founder Sellers are aware, any shareholder of the Target Companies and/or person connected with any of them is engaged, interested or concerned, directly or indirectly, in any business which is, or is reasonably likely to become, competitive with the business of the Target Companies.
- 11.6 The Target Companies have not transferred any asset to or received any asset from any directors or shareholders of the Target Companies and/or any person connected with any of them other than by way of (i) lawfully declared dividend, (ii) an existing arrangement which has been Disclosed; or (iii) remuneration paid in accordance with the relevant employment and/or engagement agreement.
12. Employment and Pensions
- 12.1 The following details (as applicable) of all officers, Employees, Agency Workers, Workers and Consultants of the Target Companies are set out in the Disclosure Letter or in the Disclosure Documents (with cross references to such Disclosure Documents included in the Disclosure Letter) on an anonymised basis:

- (a) the Target Company that engages and/or employs them;
  - (b) details of notice periods to terminate any applicable contract or, if a fixed term, the expiry date of the fixed term;
  - (c) the type of contract (whether full or part-time or other);
  - (d) the jurisdiction in which the individual works and/or is paid;
  - (e) commencement date of each contract;
  - (f) the date on which continuous service began;
  - (g) details of any period of leave for any reason (save for annual holidays or sickness absence of less than one continuous month);
  - (h) job title; and
  - (i) details of all remuneration, incentives and benefits (which the Target Companies are bound to provide, from time to time).
- 12.2 Complete and accurate copies of all template contracts of employment, written agreements and commitments, handbooks, policies and any other documents containing working practices or arrangements which apply to the employment or engagement of any of the officers, Employees, Agency Workers, Workers and Consultants are contained in the Disclosure Documents (together, the "Template Contracts"), together with a list setting out each officer, Employee, Agency Worker, Worker and Consultant to which each such Template Contracts applies.
- 12.3 No contract of or agreement with any Agency Worker, Consultant, Employee or Worker deviates or differs from the Template Contracts.
- 12.4 The Disclosure Letter contains details of all terms of employment and/or engagement in respect of each director of the Target Companies.
- 12.5 The Disclosure Letter contains anonymised details of any officer, Employee, Agency Worker, Worker or Contractor who is on maternity, paternity, shared parental, adoption, or parental leave or other leave or has been (or is expected to be) absent due to ill health for more than one continuous month and the reason for the absence.
- 12.6 Each Employee is employed exclusively in the business of the Target Companies and no employees work in the business of the Target Companies, other than the Employees.
- 12.7 The Disclosure Letter contains anonymised details of all persons engaged or employed by the Target Companies who are not Employees or Workers (including without limitation, any and all agency workers, self-employed persons, freelancers, consultants, contracted labor or agents) and no person is currently seconded to or from the Target Companies.
- 12.8 The Target Companies do not owe any amount to, nor do they have any outstanding obligations arising directly from any employment or engagement (as applicable) in respect of,

any of their present or former agency workers, workers, directors, officers, employees or consultants other than any remuneration and other benefits accruing in the ordinary course of employment or engagement (as applicable).

- 12.9 No Target Company is party to, bound by or proposing to introduce in respect of any of its current or former directors, officers, Employees, Workers, Consultants or Agency Workers, any redundancy payment scheme (providing benefits in excess of statutory redundancy pay), any incentive arrangement or scheme (including, without limitation, any share option or share award plan, commission, profit sharing or bonus scheme) and/or any termination payment, damages or compensation on or in connection with the termination of employment and/or engagement of any current or former director, officer, Employee, Worker, Consultant or Agency Worker and no Target Company operates any customary practice of making such payments.
- 12.10 No notice to terminate the employment and/or engagement of any officer, Employee, Agency Worker, Worker or Consultant (whether given or received by the relevant Target Company) is pending, outstanding or threatened, and there are no circumstances likely to give rise to such notice.
- 12.11 No offer of employment or engagement has been made by any Target Company that has not yet been accepted, or that has been accepted but where the employment or engagement has not yet commenced.
- 12.12 No officer, Employee, Agency Worker, Consultant or Worker (or former officer, employee, agency worker, consultant or worker) will be entitled, as a result of the entering into of this Agreement or Completion, to:
- (a) terminate their employment or engagement or cause their employment or engagement to be terminated;
  - (b) receive any payment, reward or benefit of any kind (including any enhancement in or improvement to their remuneration, benefits or terms and conditions of employment or engagement); or
  - (c) treat themselves as being dismissed or otherwise released from any obligation to any Target Company.
- 12.13 No gratuitous payment has been made or promised in connection with the actual or proposed termination or suspension of employment or variation of any contract of employment or of any contract for services of any present or former director, officer, employee, agency worker, worker or consultant of the Target Companies.
- 12.14 No Target Company has within the 12 months immediately preceding the Completion Date (other than as required by law and/or in the ordinary course of business and consistent with past practice):
- (a) offered or agreed to increase, the remuneration of; or
  - (b) offered or sought to alter, any of the benefits provided to and/or and of the terms and conditions of employment or engagement of,

any officer, Employee, Agency Worker, Consultant or Worker, nor are any negotiations for any such increase or alterations expected or likely to take place within the 12 months immediately following the Completion Date.

- 12.15 No proposal or commitment has been communicated to any officer, Consultant, Employee, Agency Worker or Worker regarding the introduction, award, increase or improvement of any remuneration in any form (howsoever arising) and/or any material benefit, which is pending and has not taken effect as at the date of this Agreement or Completion.
- 12.16 The Target Companies are not under any obligation to make any payment on redundancy and/or reduction in force in excess of any mandatory statutory payment as required under applicable law.
- 12.17 No Target Company has incurred any actual or contingent liability in connection with the termination of employment or engagement of any officer, Employee, Agency Worker, Consultant or Worker, or for failing to comply with any order for the reinstatement or re-engagement of any officer, Employee, Agency Worker, Consultant or Worker and no person formerly employed or engaged by the Target Companies, has at the Completion Date any right, now or in the future, to return to work or to be to be reinstated or re-engaged by the Target Companies.
- 12.18 No officer, Employee, Agency Worker, Consultant or Worker (or any former officer, employee, agency worker, consultant or worker) is bound by any subsisting restrictive covenant or other similar restriction in relation to a former employer or any other business or undertaking.
- 12.19 No Consultant (or former consultant), who has performed or is currently performing services for the Target Companies, has been incorrectly classified for any purpose as an independent contractor rather than as an employee or worker, or should properly be classified for any purpose as an independent contractor rather than as an employee or worker. the Target Companies have not incurred, and neither do they reasonably expect to incur, any liability relating to the statutory rights of employees and workers with respect to any misclassification of any person as an independent contractor rather than as an employee or worker and such Consultants (or former consultants) have no claims against the Target Companies whatsoever, including without limitation, arising from the application of any applicable labor, tax and/or social security laws and regulations in place and in force from time to time in the respective jurisdiction.
- 12.20 No individual who is, or has previously been, engaged by the Target Companies as a Consultant, contractor, or freelancer (or to otherwise provide services to the Target Companies), whether directly or through a personal services company or other intermediary, or who provides or has previously provided services to the Target Companies through an employment agency or business:
- (a) has been (or should have been) engaged or treated (including for tax purposes) as an employee or worker of the Target Companies and no such individual or tax authority has brought or intimated any claim or action against the Target Companies on this basis; or



- (b) has been engaged in circumstances falling within Chapter 8, Part 2 ITEPA such that the Target Companies have been, may be, or will become liable to account for income tax or to collect or account for any national insurance contributions in respect of such individual.
- 12.21 The Target Companies have complied with all material obligations imposed on them contractually in relation to each officer, Agency Worker, Consultant, Employee and Worker (and each former officer, Agency Worker, Consultant, Employee and Worker) and with all material legal and/or regulatory obligations imposed on them at any time relevant to the relations between them and any or all of their officers, Agency Workers, Consultants, Employees or Workers (or former officers, Agency Workers, Consultants, Employees or Workers) or between them and any recognised trade union, employee representation body, work councils or staff associations.
- 12.22 In relation to each officer, Employee, Agency Worker, Consultant or Worker (or any former officer, employee, agency worker, consultant or worker) of the Target Companies, and any representatives of such persons, the Target Companies have complied with all obligations, awards, orders, recommendations and declarations imposed on it or made by or under statute, statutory instrument, European Community law, common law or in equity, contract, collective agreement, terms and conditions of employment and/or engagement, staff handbook, company policy, custom and practice, or any codes of conduct and/or practice or any body with functions or powers in relation to employees or workers, and with any arbitration awards and declarations.
- 12.23 In respect of the Employees and Workers (and former employee and workers), the Target Companies have maintained adequate records in respect of PAYE income tax and national insurance contributions, statutory sick pay, statutory maternity, paternity, adoption and shared parental pay.
- 12.24 There is no liability, outstanding or contingent or anticipated, to or in respect of any officer, Employee, Agency Worker, Consultant or Worker (or any former officer, employee, agency worker, consultant or worker of the Target Companies) other than remuneration accrued and unpaid in respect of wages or salary or reimbursement of normal business expenses in each case for the month current at the Completion Date.
- 12.25 Each Target Company (where applicable) has afforded all Employees and Workers (and former employees and workers) the right to paid holiday under regulations 13 and 13A of the Working Time Regulations 1998 (SI 1998/1833) ("WTR 1998") and has not deterred or prevented any Employee or Worker (or former employee or worker) from taking such holiday whether or not requested.
- 12.26 In respect of each of the Employees and Workers (and all former employees and workers of each Target Company), all holiday pay for periods of holiday taken under regulation 13 of the WTR 1998 has been calculated and paid in accordance with the UK retained version of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.
- 12.27 Every officer, Employee, Agency Worker, Consultant and Worker has current permission to work and all other necessary permissions to enter and/or remain in the appropriate jurisdiction

in which they provide services of employment and/or engagement to the Target Companies and each Target Company has taken all necessary steps to comply (in respect of each officer, Employee, Agency Worker, Consultant and Worker working in the United Kingdom) with the Immigration, Asylum and Nationality Act 2006 and UK Home Office guidance (as amended from time to time) (where appropriate), and any other applicable immigration or work permit laws and regulations, including without limitation, compliance with applicable law, right to work checks (including the keeping of necessary records in connection with the same), and compliance with sponsor duties and reporting requirements to the UK Home Office (or such equivalent immigration body in the relevant jurisdiction) in relation to each officer, Employee, Agency Worker, Consultant or Worker (and all former officers, employees, agency workers, consultants and workers) in any relevant jurisdiction.

- 12.28 Where any Target Company is aware of a requirement to do so under the disability provisions of the Equality Act 2010, that Target Company has made any reasonably required adjustments within the workplace in relation to any officer, Agency Worker, Consultant, Employee or Worker in respect of whom such requirement arises.
- 12.29 The Target Companies have not made any loan or advance to any officer, Employee, Agency Worker, Worker or Consultant (or former officer, employee, agency worker, worker or consultant) that is still outstanding and the Target Companies are not under any subsisting obligation to make any such loan or advance.
- 12.30 No Employee or Worker is subject to a current disciplinary warning or formal procedure including in relation to their performance.
- 12.31 No dispute is outstanding, threatened or reasonably expected between any Target Company and any of its officers, Employees, Workers, Agency Workers or Consultants (or former officers, employees, agency workers, workers or consultants) with respect to their employment or engagement with the Target Company, their contract and/or the termination thereof.
- 12.32 No Target Company (i) has entered into any collective agreements, recognition agreements and/or arrangement with any trade union, employee representative or body of employees or their representatives (whether binding or not and nor is any application for recognition pending) and nor are there any works councils or staff associations or other employee representatives in place (and nor is any application for recognition pending); (ii) is involved in any industrial or trade dispute, or negotiation regarding a claim, (and no such claim or dispute is existing, pending or threatened), with any trade union, group or organisation of Employees or Workers or their representatives and there are no circumstances (including Completion) likely to give rise to such a dispute or claim; and (iii) has acted in any way that may be construed as giving any trade union, employee representative or body of employee or their representatives, work councils or staff associations or any other employee representatives in place, any legal entitlement in relation to recognition.
- 12.33 There are no employee benefit trusts, family benefit trusts or similar arrangements established by the Target Companies under which any current or former director of any Target Company or any Employee or Worker (or former employee or worker) may benefit in any form.

- 12.34 No Target Company (i) has within the period of seven years immediately preceding the Completion Date, been a party to a Relevant Transfer affecting any of the Employees or Workers (or former employees or workers) or any other person engaged (or formerly engaged) in the business of the Target Companies and there has been no variation (or purported variation) of the terms of employment or engagement of any Employee or Worker (or former employees or workers), or such other person for any reason as a result of or connected with a Relevant Transfer. There are no circumstances which are likely to give rise to a Relevant Transfer affecting any of the Employees or Workers (or former employees or workers) or any other person engaged in the business of the Target Companies; and (ii) has failed to comply with any duty or obligations arising under any Relevant Transfer and connected legislation.
- 12.35 In relation to all Employees and Workers (and former employees and workers of the Target Companies) employed to work in the United Kingdom who have been placed on furlough (or any other form of leave or reduced hours or reduced pay implemented in connection with Covid-19), each Target Company has at all times complied with:
- (a) each Treasury Direction made under Sections 71 and 76 of the Coronavirus Act 2020;
  - (b) all HMRC guidance in respect of furlough leave and making claims from the UK Government's Coronavirus Job Retention Scheme;
  - (c) any other governmental guidance in respect of such leave or reduced hours or pay; and;
  - (d) such Employees' and Workers' (and former employees' and workers') terms and conditions of employment or engagement.
- 12.36 The Pension Schemes are the only arrangement under which the Target Companies may have any obligation (whether or not legally binding) to provide or contribute towards pension or lump-sum benefits payable on retirement, death or ill-health in respect of its officers, workers and employees (the "Pensionable Employees"). No proposal or announcement has been made to any employee, worker or officer of the Target Companies as to the introduction, continuance, increase or improvement of, or the payment of a contribution towards, any other pension or lump-sum benefit payable on retirement, death or ill-health. The Disclosure Letter contains details of the rates at which the contributions to the Pension Schemes of the Target Companies and the officers, Employees and Workers are being paid and how they are calculated, and whether they are paid in advance or in arrears. All contributions, insurance premiums, tax and expenses due to and in respect of the Pension Schemes have been duly paid and there are no liabilities outstanding in respect of the Pension Schemes and the contributions in respect of the Pension Schemes have been paid at the rates set out in the most recent schedule of contributions or the most recent payment schedule.
- 12.37 There is no outstanding dispute or complaint in relation to the types of benefits described in warranty 12.36 and there have been no notices, fines, warnings or other sanctions issued by the Pensions Advisory Service, the Pensions Ombudsman, HMRC, and/or the Pensions Regulator in relation to such benefits.

- 12.38 All material documents relating to the UK Pension Scheme arrangements are set out in folder 4.2 of the Data Room.
- 12.39 The Target Companies have paid all contributions due from them as at the date of Completion under the UK Pension Scheme (other than with respect to any amounts paid in arrears and are outstanding as at Completion).
- 12.40 Each Target Company has complied with its automatic enrolment obligations as required by the Pensions Act 2008 and associated legislation.
- 12.41 The only obligation that the Target Companies have to the UK Pension Scheme is to pay contributions at the rate(s) set out in the Data Room.
- 12.42 No Target Company nor any person who is an "associate" of or "connected" with it (as such terms apply in sections 38 to 51 of the Pensions Act 2004) has contributed towards or participated in or had employees who participated in an occupational pension scheme to which section 75 of the Pensions Act 1995 applies, has applied or can apply.
- 12.43 No Target Company nor any predecessor or previous owner of the whole or any part of the Target Companies' business has been party to a Relevant Transfer affecting any of the Employees or Workers (or former employees or workers) or any other person engaged (or formerly engaged) in such in the past six years and there has been no variation (or purported variation) of the terms of employment or engagement of any Employee or Worker, former Employee or Worker or such other person for any reason as a result of or connected with a Relevant Transfer.
- 12.44 The UK Pension Scheme; (i) is a "personal pension scheme" as defined in Part 1 of the Pension Schemes Act 1993, (ii) is registered with HMRC in accordance with the Finance Act 2004, and (iii) is not liable to provide any benefits other than "money purchase benefits" within the meaning of section 181(1) of the Pension Schemes Act 1993.
- 12.45 The Target Companies have at all times complied with their legal obligations to, under and in respect of the Pension Schemes, and the UK Pension Scheme has been operated and administered in accordance with the terms of its governing documentation, all legal obligations, and the requirements of all regulatory bodies, including, without limitation, the Pensions Regulator and HMRC.
- 12.46 The Target Companies have complied with all applicable legal and administrative requirements in force from time to time as regards its automatic enrolment obligations in the UK and there are no circumstances which are reasonably likely to give rise to the Pensions Regulator issuing a written notice, fine or other sanction for non-compliance.
- 12.47 No Target Company has discriminated against, or in relation to, any Pensionable Employee on grounds of age, sex, disability, marital status, hours of work, fixed-term or temporary agency worker status, sexual orientation, race, religion or belief in providing pension or lump-sum benefits on retirement, death or ill-health.
- 12.48 No claims or complaints have been made or have been threatened in writing or are pending in relation to the Pension Schemes or otherwise in respect of the provision of (or failure to

provide) pension or lump-sum benefits on retirement, death or ill-health by the Pension Schemes in relation to any of the Pensionable Employees. There are no facts or circumstances likely to give rise to such claims or complaints.

- 12.49 The Target Companies do not have any current or contingent liability or obligation with respect to any US Employee Benefit Plans.
13. Statutory and legal requirements
- 13.1 All statutory, regulatory and court requirements applicable and material to the carrying on of the Business in Canada, the United Kingdom and United States of America, and so far as the Founder Sellers are aware, any other country (including without limitation, the production and sale of any products, technology or services by each Target Company), and the formation, continuance in existence, creation and issue of securities, management, or operation of the Target Companies have been complied with.
- 13.2 All material registrations, permits, authorities, licences and consents reasonably required for the carrying on of the Target Companies' business in the United Kingdom have been obtained and the Target Companies have complied in all material respects with all conditions applicable thereto.
- 13.3 So far as the Founder Sellers are aware, there are no circumstances which are reasonably likely to lead to the breach, suspension, alteration or cancellation of any such registrations, permits, authorities, licences or consents.
- 13.4 The Target Companies have obtained all export licences required for all products, technology or services exported by or on behalf of the Target Companies to or from each part of the world to or from which they makes such exports.
- 13.5 The Target Companies have not, and no officer, and so far as the Founder Sellers are aware, no Employee or other person acting or performing services for or on behalf of the Target Companies has (in the course of his duties) done or omitted to do any material act or thing in contravention of applicable law or regulation in any relevant jurisdiction and is not liable for any criminal or illegal act.
- 13.6 No person, not being a director of the Target Companies, has any actual or ostensible authority which is subsisting, whether under a power of attorney, agency agreement or otherwise, to commit the Target Companies to any obligation other than an obligation of a nature which it is usual for it to incur in the ordinary course of its business.
- 13.7 Copies of all present Privacy Policies are included in the Disclosure Documents. No Privacy Policies contain any deceptive or misleading statements concerning the Target Companies' privacy practices and Processing activities (having regard always to the standards and disclosures required by applicable Data Protection Legislation with respect to transparency with Data Subjects concerning such practices).
- 13.8 The Target Companies have introduced data protection policies and procedures concerning the Processing of Personal Data (details of which have been Disclosed), which accord with the standards required by Data Protection Data Protection Legislation and all relevant

members of each Target Company's staff receive regular and appropriate training in respect of such policies and procedures (having regard to their role and the Processing of Personal Data carried out in the performance of that role).

- 13.9 The Target Companies have not provided or otherwise made available any Personal Data to any third party other than:
- (a) a person, on whose behalf any Target Company acts as Processor and with whom the Target Companies have a valid and enforceable written Contract which incorporates the terms stipulated by Article 28 of the GDPR;
  - (b) a person who acts as a Target Processor in respect of their Processing of Personal Data so disclosed to them and with whom the Target Companies have a valid and enforceable written Contract which incorporates the terms stipulated by Article 28 of the GDPR; or
  - (c) a person who acts as an independent Controller in respect of their Processing of Personal Data so disclosed to them and with whom the Target Companies have a valid and enforceable written Contract that complies with all applicable requirements of Data Protection Legislation.
- 13.10 In respect of any Personal Data processed by the Target Companies, in the three (3) years immediately preceding the date of this Agreement, each Target Company:
- (a) has made all necessary registrations with, and/or paid any required data protection fees to, the Information Commissioner (and/or any other applicable data protection authority) in accordance with the Data Protection Legislation;
  - (b) has complied with the Data Protection Legislation in all material respects;
  - (c) has complied with all relevant, then current Privacy Policies and all contractual commitments that it has entered into relating to the Processing of Personal Data;
  - (d) has not received any enforcement notice, information notice, special information notice, monetary penalty notice or other notice, letter, claim or complaint from any person, including the Information Commissioner (and/or any other applicable data protection authority), alleging a breach by it of any of the provisions of the Data Protection Legislation or requesting an audit of the Target Companies' premises, systems or facilities or information as to the Target Companies' data protection policies or practices, and, so far as the Founder Sellers are aware, there are no circumstances which are likely to give rise to any such notice, letter, claim, complaint, notification or request being served, given or made;
  - (e) has not awarded compensation to an individual under the Data Protection Legislation, no claim for such compensation is outstanding, and, so far as the Founder Sellers are aware, there are no circumstances which might lead to any claim for such compensation being made;
  - (f) is not the subject of any current requests from Data Subjects in respect of any Personal Data of which the relevant Target Company is a Controller ("Data Subject

Requests"), and no Data Subject Requests are outstanding as at the Completion Date; and

- (g) has not received any warrant issued under the Data Protection Legislation authorising the Information Commissioner or other relevant data protection authorities to enter any premises of the Target Companies.

13.11 The Target Companies have established appropriate technical and organisational measures to enable them to:

- (i) fulfil Data Subject Requests in respect of Personal Data of which the Target Companies are a Controller; and
- (ii) assist any persons on whose behalf they Process Personal Data in meeting those persons' obligations to fulfil Data Subject Requests in respect of such Personal Data,

in accordance with the requirements of applicable Data Protection Legislation or, where applicable, any Contracts relevant thereto, (including with respect to any relevant timeframes prescribed therein).

13.12 In respect of all persons to whom the Target Companies have made/sent or will make/send direct marketing communications, the Target Companies have obtained all necessary consents from such persons to the making/sending of such communications, in accordance with the requirements of applicable Data Protection Legislation (where applicable).

13.13 The Target Companies have not transferred or otherwise made available any Personal Data to any Person located outside the UK or European Economic Area otherwise than in accordance with the requirements of applicable Data Protection Legislation relating to such cross-border transfer of Personal Data.

13.14 So far as the Founder Sellers are aware, the execution, delivery and performance of this Agreement does not cause, constitute or result in a material breach or violation by the Target Companies of (i) data protection provisions within Contracts governing the Processing of Personal Data; or (ii) Data Protection Legislation.

13.15 The Target Companies have put in place a response plan for Personal Data Breaches which accords with good industry practice and facilitates the Target Companies to comply with:

- (a) relevant requirements of applicable Data Protection Legislation (including Section 2 of Chapter IV of the GDPR); and
- (b) its applicable contractual commitments to third parties,

in the event of a Personal Data Breach.

13.16 The Target Companies use, and have used, efforts, which accord with good industry practice and accord with Data Protection Legislation, to ensure that all Personal Data in their possession or under their control is protected against a Personal Data Breach, or other misuse or unlawful Processing.

- 13.17 None of the Target Companies, nor, so far as the Founder Sellers are aware, any Target Processor, in respect of its Processing of Personal Data on behalf of the Target Companies, has, at any time in the three (3) years preceding the date of this Agreement, suffered or is suffering a Personal Data Breach.
- 13.18 The Target Companies have, in all material respects:
- (a) prepared and maintained comprehensive and accurate records of their Personal Data Processing activities as and if required to do so by applicable Data Protection Legislation (including Article 30 of the GDPR); and
  - (b) where required by applicable Data Protection Legislation, prepared and maintained accurate and up to date records of, all: (i) data protection impact assessments; (ii) 'legitimate interest assessments' (as that term is commonly understood in the context of the Processing of Personal Data and the GDPR); and (iii) 'data transfer assessments' in respect of the law and practice in each data importer's territory (including, in particular, those relating to relevant public authorities' rights to access transferred data and/or to compel the importer to disclose transferred data) in the context of any Personal Data disclosed, transferred or otherwise made available by or on behalf of the Target Companies to any person located outside the European Economic Area/UK.
- 13.19 Summary details of any Grant Funding provided to the Target Companies in the past three years are set out in the Disclosure Letter.
- 13.20 The Target Companies have complied in all respects with the terms and conditions on which any Grant Funding has been provided to the Target Companies.
- 13.21 No Grant Funding will be terminated or be required to be repaid as a result of the entry into this Agreement.
- 13.22 The Target Companies are not a "US business" within the meaning of the US Defense Production Act of 1950, as amended, including all implementing regulations thereof.
14. Anti-corruption and sanctions
- 14.1 Neither the Target Companies nor their directors or officers, nor, so far as the Founder Sellers are aware, any Employees or other person acting for or on behalf of any Target Company has at any time committed any offence under Anti-Bribery Laws (whether as a result of its or their own acts or omissions or those of any other person) or otherwise contravened any Anti-Bribery Laws.
- 14.2 The Target Companies have in place adequate procedures designed to prevent any director, officer, agent or Employee of any Target Company, or any other person who performs services for or on behalf of the Target Companies, from undertaking any conduct which could result in any Target Company committing an offence under the Anti-Bribery Laws or Sanctions.



- 13.3 None of the Target Companies nor their ultimate beneficial owners, officers or directors, nor, so far as the Founder Sellers are aware, any Employees or other person acting for or on behalf of any Target Company, is currently a Restricted Party.
- 13.4 At no time during the prior five (5) years has any Target Company, nor its officers or directors, nor, so far as the Founder Sellers are aware, any Employees or other person acting for or on behalf of any Target Company, engaged in any direct or indirect dealings or transactions in or with a Restricted Party or Restricted Country nor otherwise violated any Sanctions, nor is any Target Company currently engaged in any such activities.
15. Records and registers
- 15.1 The records (including computer records), statutory books, registers, minute books and books of account of the Target Companies required by applicable law to be kept by the Target Companies are up-to-date and have been maintained in all material respects in accordance with all legal requirements applicable thereto and contain accurate records of all matters required to be dealt with therein and all such books and all records which are its property are in its possession or under its control.
- 15.2 All accounts, documents and returns required to be delivered or made to the Registrar of Companies have been duly and correctly delivered or made.
- 15.3 The Target Companies have not received any written notice of any proceedings to rectify the register of members of any Target Company.
16. Assets sufficient for the Business
- 16.1 The assets and rights owned by the Target Companies or which the Target Companies have the right to use, together with any assets held under a finance lease, hire purchase agreement, rental agreement or credit sale agreement listed in the Disclosure Letter, comprise materially all of the assets and rights necessary in respect of the business of the Target Companies as carried on at the date of this Agreement.
- 16.2 The physical assets and equipment used by the Target Companies in the operation of their business are in reasonable working order and able to be used for the purposes for which they are intended and none are dangerous, obsolete or in need of replacement.
17. Ownership and possession of assets
- 17.1 All of the tangible assets owned by the Target Companies, or which the Target Companies have the right to use, are in the possession or under the control of the relevant Target Company.
- 17.2 No Target Company has been a party to any transaction pursuant to, or as a result of, which any asset or right owned or purportedly owned by such Target Company is, or may become, liable to be transferred or re-transferred to another person.

18. Insurance
- 18.1 Complete and accurate copies of all subsisting insurance policies held by the Target Companies are in the Data Room. In respect of such insurances:
- (a) all conditions have been complied with and premiums have been duly paid to date;
  - (b) the policies are in full force and effect; and
  - (c) the Disclosure Letter contains a summary of all insurance claims (open and closed) during the period of three (3) years ending on the date which is five Business Days prior to the date of this Agreement and so far as the Founder Sellers are aware, there are no circumstances which are reasonably likely to give rise to any claim and no insurance claim is outstanding.
- 18.2 The Target Companies maintain, and have at all material times maintained, adequate insurance against all risks required by applicable law or regulation to be covered by insurance.
- 18.3 No Target Company has been refused insurance during the period of six (6) years ending on the date of this Agreement.
19. Group structure
- The Target Companies do not have any interest in any debentures, or other securities of, or any other membership interest in, any undertaking and no Target Company is under a subsisting obligation to acquire any such interest.
20. Agreements and capital commitments
- 20.1 All customer or supplier agreements with a value of more than £150,000 under which any Target Company has rights or by which any Target Company is bound are included in the Disclosure Documents (the "Material Agreements").
- 20.2 Each Material Agreement is binding and enforceable in accordance with its terms and no Material Agreement is voidable by any party to it.
- 20.3 No Target Company:
- (a) has capital commitments with a value in excess of £150,000;
  - (b) is a party to any contract, arrangement or commitment (whether in respect of capital expenditure or otherwise) which is not in the ordinary course of business or which is not on arm's length terms;
  - (c) is a party to any contract, arrangement or commitment (whether in respect of capital expenditure or otherwise) which (i) is of an unusual, onerous or long-term nature; or (ii) involves obligations, restrictions or expenditure of an unusual, onerous or exceptional nature; or (iii) so far as the Founder Sellers are aware, is or is likely to be loss-making;

- (d) is a party to any contract, arrangement or commitment (whether in respect of capital expenditure or otherwise) which limits the ability of the Target Company to carry on any business anywhere in the world in any manner it thinks fit or under which any exclusive or sole rights are granted by or to the Target Company;
  - (e) has become bound and no person has become entitled (or with the giving of notice and/or the issue of a certificate and/or the passage of time or otherwise may become entitled) to require it to repay any loan capital or other debenture, redeemable preference share capital, borrowed money or grant made to it by any governmental or other authority or person prior to the stipulated due date;
  - (f) is a party to any Material Agreement which is or may become terminable as a result of the entry into or completion of this Agreement;
  - (g) has given or received notice to terminate or vary any Material Agreement and, so far as the Founder Sellers are aware, no party to any Material Agreement has indicated to the Target Company in writing (including email) an intention to terminate or seek variation of such Material Agreement;
  - (h) is bound by any guarantee or contract of indemnity or suretyship or entered into any security agreement or similar agreement under which any liability or contingent liability is outstanding;
  - (i) has entered into any agreement which requires or may require, or confers any right to require, the sale (whether for cash or otherwise) or the transfer by it of any non-cash asset which the Target Companies deem to have a value in excess of £20,000 (other than for the sale of the Target Products in the ordinary course of business);
  - (j) is a party to any joint venture, consortium, partnership, unincorporated association or profit sharing arrangement or agreement; or
  - (k) is in material breach or default of any agreement or arrangement to which it is a party and has not received written notice (including email) of any allegation of any such material breach or default.
- 20.4 No third party has given any guarantee or contract of indemnity or suretyship or entered into any security agreement or similar agreement, which is subsisting at the date of this Agreement, in respect of any obligation of any Target Company, and nor has any third party agreed to do so.
- 20.5 No customer has raised any material complaint with respect to any product provided by a Target Company.
- 20.6 No Target Company has recalled any products produced, manufactured or otherwise sold or distributed by a Target Company.
21. Debtors and creditors
- 21.1 There are no debts owing to the Target Companies (whether or not due for payment) other than trade debts incurred in the ordinary and proper course of business.

- 21.2 The Target Companies have not received a notice from any debtor notifying their intention to exercise any right of counterclaim, deduction or set off in relation to any debt owed by it. Target Companies have not received a notice from any debtor requesting that the Target Companies extend the time in which it is required to make payment of any debt.
- 21.3 The Data Room includes an accurate list of (as at the Locked Box Accounts Date):
- (a) all of the trade debtors (showing names and amounts owing) of the Target Companies which as at the Business Day prior to the date of this Agreement were unpaid at sixty (60) days after invoice; and
  - (b) all of the trade creditors (showing names and amounts owing) of the Target Companies which as at the Business Day prior to the date of this Agreement were unpaid at sixty (60) days after invoice.
- 21.4 The Disclosure Documents contain accurate details of the accounting policies used by the Target Companies in the Accounts to determine when a debt should be written off or released and when and the extent to which a provision should be made in relation to a debt regarded as bad or doubtful.
- 21.5 The Target Companies do not have any liability (whether actual or contingent) to pay any sum, (including any commission) to their auditors, solicitors or other professional advisers, in relation to the sale, or preparation for the sale, of the Target Shares.
- 21.6 There are no netting or setting-off arrangements between a Target Company and any third-party.
22. Bank accounts, borrowings and facilities
- 22.1 The Disclosure Letter contains accurate account details of all current, deposit and foreign currency accounts of the Target Companies.
- 22.2 Summary details of all limits on the Target Companies' bank overdraft facilities and all borrowings (including the amount of any penalty, prepayment fee, break fee, premium, interest or other amount comprised in the borrowings and details of any obligation on the Target Companies to deduct or withhold Tax on repayment on any borrowings) of the Target Companies are contained in the Data Room and the Target Companies are not in breach of any of their terms and none of such facilities or terms of borrowing will be terminated as a result of the entry into of this Agreement.
- 22.3 The Data Room includes complete and accurate copies of all agreements and other documents which relate to any facilities available to the Target Companies.
- 22.4 No event of default has occurred and, so far as the Founder Sellers are aware, there are no circumstances which are likely:
- (a) to entitle any person to require the early repayment by the Target Companies of any borrowings or the creation or enforcement of any Encumbrance; or
  - (b) to crystallise any Encumbrance,

in either case in accordance with the terms of any relevant agreement or instrument.

- 22.5 All charges (if any) in favour of the Target Companies which require registration have been duly registered and are valid and enforceable.
23. Significant customers and suppliers
- 23.1 The Disclosure Letter contains an accurate list of each Material Counterparty in each case giving details of the percentage of turnover or percentage supply of goods and services that each such Material Counterparty (as the case may be) was responsible for during the relevant year.
- 23.2 No Material Counterparty has indicated to the Target Companies in writing (including email) an intention to cease to deal with the Target Companies, or to deal with the Target Companies on a smaller scale, or to change the terms on which it deals with the Target Companies to the detriment of the Target Companies, after the date of this Agreement or as a result of the proposed acquisition of the Target Shares.
24. Criminal Finances Act
- 24.1 Each Target Company has complied with all applicable laws relating to tax evasion, and the prevention of the facilitation of tax evasion, including the Criminal Finances Act 2017.
- 24.2 As far as the Founder Sellers are aware, no associated person has committed a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence.
- 24.3 None of the Target Companies nor, so far as the Founder Sellers are aware, any employee, agent or other person who performs or has performed services for or on behalf of the Target Companies is or has been the subject of any investigation, enquiry or enforcement proceedings in relation to any offence under the Criminal Finances Act 2017 and there are no circumstances known to the Founder Sellers which are reasonably likely to lead to an investigation, enquiry or proceeding.
- 24.4 The Target Companies maintain such reasonable prevention policies and procedures as are required under applicable law to prevent the facilitation of tax evasion by directors, officers and Employees of the Target Companies and to ensure no activity, practice or conduct describe in paragraph 24.1 takes place.
25. Competition Law and Foreign Direct Investment
- 25.1 No Target Company is a party to or concerned in any agreement, concerted practice or course of conduct which in whole or in part infringes Competition Law.
- 25.2 No Target Company has in the six (6) years prior to Completion received written notice (including email) that it is the subject of any investigation, inquiry or proceedings in connection with any actual or alleged infringement of Competition Law.
- 25.3 No Target Company is, nor has ever been, in receipt of any payment, guarantee, financial assistance or other form of aid which would be construed as falling within Article 107 of the Treaty on the Functioning of the European Union or its only local equivalent and has not in

the six (6) years prior to Completion received written notice (including email) that it is or has been the subject of any actual or threatened investigation, complaint, action or decision in relation to the receipt or alleged receipt by it of any aid or alleged aid.

- 25.4 No Target Company is carrying on activities in the UK which are specified in any of the Schedules of the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021.
- 25.5 So far as the Founder Sellers are aware, no Target Company is engaged in any activity in respect of which any filing, registration or notification is required by any applicable foreign investment laws. For the purposes of this paragraph, "applicable foreign investment laws" means all foreign investment and national security laws in any jurisdiction that are designed or intended to legislate the screening of foreign individuals.
26. Share Options
- 26.1 Folder 13.6.4 in the Data Room contains accurate and complete copies, in relation to the Target Companies, of the rules and award agreements relating to all share incentive, share option or other incentive arrangements (including any employee benefit trust) relating to any officer, Employee, Agency Worker, Worker or Consultant of the Target Companies, or any former officer, employee, agency worker, worker or consultant of the Target Companies, or any person providing (or who has provided) services to the Target Companies, together with accurate and complete details of all awards, options, payments and other incentive arrangements granted or promised (whether contractually or otherwise) to be granted and the total potential liability or obligations of the Target Companies in respect of each individual arrangement.
- 26.2 Document 13.6.4.5 in the Data Room contains an accurate and complete schedule detailing all Options including whether such Options are EMI Options and the only options over, interests in or rights to acquire shares (including without limitation any employment-related security, employment-related securities options or interest in securities (each within the meaning of Part 5 of ITEPA) granted by, or relating to shares in, the Target Companies) ("Equity Incentives") are the Options.
- 26.3 Other than the Option Plans, the Target Companies do not operate any scheme or arrangement under which Equity Incentives or any other share benefits are provided in respect of any officer, Employee, Agency Worker, Worker or Consultant of the Target Companies, or any former officer, employee, agency worker, worker or consultant of the Target Companies and there is no subsisting commitment to introduce any such scheme or arrangement.
- 26.4 There are no subsisting Equity Incentives or any other share benefits under the share option scheme operated by the Target in 2012.
- 26.5 All agreements granting Options have been entered into under the terms of the relevant Option Plan and have been validly and duly executed as a deed and delivered by all parties thereto. All such Option agreements executed with an employee who is a Canadian resident for purposes of the Income Tax Act (Canada) provides for an exercise price that is no less

than the fair market value of the underlying Target share as at the date of such Option agreement.

- 26.6 The grant of all Options has been duly authorised and approved by the board of the Target and, where necessary, the shareholders of the Target.
- 26.7 There is no written notice (including email) that there is any dispute with any person holding Options or any person purporting to hold or be entitled to any Equity Incentives or with any person as to the existence of any Equity Incentives.
- 26.8 Other than as Disclosed, no Seller is a US or other non-UK taxpayer or resident, so far as the Founder Sellers are aware.
- 26.9 All Options have an exercise price in excess of the full consideration per Target Share including any Earn Out Consideration.
- 26.10 Each Non-Service Provider is liable for tax solely in the UK.
- 26.11 Each holder of any Unapproved Option is not resident for tax purposes or otherwise liable for tax in the UK.
- 26.12 All current and/or former directors, officers or employees of the Target Companies who have received any securities on exercise of options or other rights have validly exercised their options or other rights in accordance with the terms of such options or other rights.

27. Insolvency

27.1 No Target Company has:

- (a) been served with a statutory demand, or is unable to pay its debts within the meaning of the Insolvency Act 1986, respectively;
- (b) entered into, or has proposed to enter into, any composition or arrangement with, or for, its creditors (including an individual voluntary arrangement); or
- (c) been subject of any other event analogous to the foregoing in any jurisdiction.

28. Intellectual Property and Software

In this section 28:

"Confidential Information" means any and all trade secrets, confidential information (including business, financial and technical information), know-how and proprietary information and materials, in any format or medium, (i) relating to the Target Companies or the Business and/or (ii) received by the Target Companies from any other person (including any existing, previous and/or potential suppliers and/or customers) under an obligation or duty of confidentiality;

"Contract" means any contract, agreement, instrument, commitment, understanding, arrangement, permit, or undertaking of binding nature, whether oral or written (including any concession, franchise, license, lease, mortgage, indenture or other business arrangement);

"Inbound IP Contracts" means all licences, agreements, authorisations and permissions (in whatever form and whether express or implied) under which the Target Companies use or exploit any Intellectual Property owned by any third party (including the Standard Inbound IP Contracts);

"Intellectual Property" means any and all intellectual property and proprietary rights (in any jurisdiction, and whether statutory, common law or otherwise, and whether or not any of these rights are registered, and including applications, renewals and extensions and the right to apply for registration of any such rights), including Patents, Trade Marks, domain names, goodwill and rights in goodwill, database rights, designs and rights in designs, copyrights (including in Software), all inventions (whether patentable or not and whether or not reduced to practice), invention disclosures, trade secrets, know-how, and confidential and proprietary information, and all rights and forms of protection of a similar nature or having equivalent or similar effect;

"Open Source Software" means any Software that is distributed as free software or open source software, including any Software that is licensed under any licence described by the Open Source Initiative as set forth at <https://opensource.org/licenses>;

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or other similar binding requirement enacted, adopted, promulgated or applied by any governmental authority to which the Target Companies are subject;

"Outbound IP Contracts" means a written contract pursuant to which the Target Companies have granted a customer a non-exclusive, time-limited licence to use or exploit any Target Intellectual Property to the extent necessary to enable the customer to enjoy the full benefit of the products or services provided by the Target Companies, and including the Standard Outbound IP Contracts;

"Owned Intellectual Property" has the meaning given in paragraph 28.1;

"Patents" means any patents, utility models, and applications, disclosures and drafts relating thereto (and any patents or utility models that issue as a result of such applications) all related reissues, re-examinations, divisions, renewals, extensions, provisionals, continuations and continuations-in-part related to such patents, utility models and applications;

"Proprietary Software" means any Software forming part of the Owned Intellectual Property;

"Social Media" means any of LinkedIn, Twitter, Facebook, Instagram, YouTube and TikTok;

"Social Media Accounts" means any accounts, pages, handles in relation to Social Media which are registered by or on behalf of the Target Companies;

"Software" means computer programs, whether embodied in software, firmware or otherwise, (whether in, e.g., source code, object code, executable code or human readable form);

"Standard Form Customer Contracts" means the Target Companies' standard form contract(s) for the supply by the Target Companies of Target Products to their customers substantially in the form set out in the Data Room as document 3.3;



"Standard Inbound IP Contracts" means (a) written non-disclosure agreements entered into in the ordinary course of business, under which Target Companies receive Confidential Information; (b) "shrink wrap", "click wrap", and any other non-exclusive licence agreements for: (i) off-the-shelf or commercially available unmodified or standard Software; or (ii) non-bespoke or standard, commercially available, 'software as a-service' or cloud services, in each case (i) and (ii) that is not redistributed with, bundled with or integrated into any Target Products; and (c) any open source software licences that are permissive non-copyleft licences (as defined by the Open Source Initiative at <https://opensource.org/faq>);

"Standard Outbound IP Contracts" means (a) written non-disclosure agreements entered into in the ordinary course of business, under which the Target Companies disclose Confidential Information; and (b) the Standard Form Customer Contracts;

"Target Intellectual Property" means: (a) all Owned Intellectual Property; and (b) all Intellectual Property owned by a third party and used or held for use by the Target Companies;

"Target Intellectual Property Registrations" means all Owned Intellectual Property that is the subject of a registration (or application for registration) with any governmental authority or domain name registry; and

"Trade Marks" means all trade marks, service marks, trade dress, business and trading names, styles, logos and get-ups, (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) in any part of the world, including all goodwill associated with any of the foregoing.

Ownership and Sufficiency

- 28.1 Except for Intellectual Property licensed to the Target Companies pursuant to an Inbound IP Contract, the Target Companies exclusively own all right, title and interest in and to all Intellectual Property used or held for use for the Business (in each case by the Target Companies) or necessary to conduct the Business free and clear of all Encumbrances (the "Owned Intellectual Property").

Intellectual Property Particulars

- 28.2 The Disclosure Letter sets forth accurate particulars of all:
- (a) Target Intellectual Property Registrations;
  - (b) all Owned Intellectual Property that is not the subject of a Target Intellectual Property Registration and is material to the conduct of the Business; and
  - (c) all Intellectual Property that is licensed to the Target Companies pursuant to an Inbound IP Contract that is not a Standard Inbound IP Contract, together with, in each case, the name and Data Room reference for the relevant Inbound IP Contract.

Validity

- 28.3 Each of the Target Intellectual Property Registrations is valid, enforceable and subsisting.

- 28.4 There are no materials, information, facts or circumstances, and there has been no conduct (by the Target Companies or, so far as the Founder Sellers are aware, any other person), that would render any of the Target Intellectual Property Registrations (excluding applications) invalid or unenforceable or whereby any person is able to seek cancellation, rectification or any other modification of any such Target Intellectual Property Registrations.
- 28.5 As at the Completion Date, the Target Companies have taken all necessary actions, and there are no further actions that must be taken within ninety (90) days after the Completion Date, for the purposes of obtaining, maintaining, perfecting, preserving or renewing any Target Intellectual Property Registrations, including the payment of any registration, maintenance or renewal fees or the filing of any documents.

Exploitability

- 28.6 All Owned Intellectual Property is fully transferable, alienable, licensable and otherwise exploitable by the Target Companies without restriction and without payment or other obligation of any kind to any person.
- 28.7 No Owned Intellectual Property is the subject of any Proceedings, Order, Encumbrance or Contract which restricts the Target Companies' exploitation, transfer or licensing thereof, or which is otherwise inconsistent with the operation of the Business.
- 28.8 As far as the Founder Sellers are aware, no Target Intellectual Property (which is not Owned Intellectual Property) is the subject of any Proceedings, Order, or Encumbrance, which restricts the Target Companies' exploitation, transfer or licensing thereof in a manner which is inconsistent with the rights granted under the Inbound IP Contracts.

Target Intellectual Property and Target Products

- 28.9 Immediately after Completion and so far as the Founder Sellers are aware, the Target Companies will continue to be the sole owner of, and will have valid title to, all Owned Intellectual Property, and will have the right to use, license, transfer and otherwise exploit all other Target Intellectual Property in the same manner as, and on the same terms and conditions that the Target Companies had, immediately prior to Completion.
- 28.10 The Data Room contains a complete and accurate list of all products currently contained in the price lists published and/or sold by the Target Companies (the "Target Products").
- 28.11 The Disclosure Letter sets forth a complete and accurate list of all Software and/or Intellectual Property that:
- (a) are not exclusively owned by the Target Companies; and
  - (b) are embedded, incorporated or integrated into, or bundled or redistributed with, any Target Products (e.g. third party-owned software development kits),

together with, in each case, the name and Data Room reference for the relevant Inbound IP Contract under which the Target Companies derive the necessary rights of use in respect of such Software and/or Intellectual Property (with the exception of Standard Inbound IP Contracts).

Perfection of Ownership Rights

- 28.12 The Target Companies have required each of their current and former employees, contractors or consultants, and each other person, who has contributed to the conception, creation, development or reduction to practice of any Intellectual Property on behalf of the Target Companies to sign a valid and enforceable agreement that includes an effective and valid assignment to the Target Companies of the relevant party's right, title and interest in and to all Intellectual Property conceived, created, developed or reduced to practice by such person in the scope of such person's employment by or engagement with the Target Companies (such agreements, collectively, the "IP Assignment Agreements").
- 28.13 The Target Companies have not entered into any agreement or other arrangement which would have the effect of invalidating all or any part of any IP Assignment Agreement.
- 28.14 So far as the Founder Sellers are aware, no counterparty to any IP Assignment Agreement is in breach of any provision thereof related to Intellectual Property or confidentiality.

Inbound IP Contracts

- 28.15 All Inbound IP Contracts relating to Target Intellectual Property which is not Owned Intellectual Property are sufficient to enable the Target Companies to use, practice and exploit all such Target Intellectual Property in the manner in which the foregoing Target Intellectual Property has been used, practiced and exploited, and/or is currently being used, practiced or exploited by the Target Companies as at the date of Completion, and as far as the Founder Sellers are aware the obligations of all parties under each Inbound IP Contract have been fully complied with and no disputes exist in respect of any of them.

Outbound IP Contracts

- 28.16 The Target Companies have not: (i) transferred ownership of, or granted or agreed to grant any licence of or right to use or otherwise made available (except on a non-exclusive basis in the ordinary course of business, pursuant to an Outbound IP Contract), granted any covenant not to sue (or similar), or authorised the retention of any rights to use or joint ownership of, any Intellectual Property that is Target Intellectual Property to any third party, or (ii) permitted their rights in or to any Target Intellectual Property Registrations to lapse.

Intellectual Property Contracts Generally

- 28.17 All Inbound IP Contracts and all Outbound IP Contracts:
- (a) are valid and binding;
  - (b) have not been the subject of any material breach or material default by the Target Companies, nor, so far as the Founder Sellers are aware, the relevant counterparties thereto; and
  - (c) so far as the Founder Sellers are aware, the obligations of all parties under each of the same have been fully complied with and no disputes exist in respect of any of them.

Confidentiality

- 28.18 The Target Companies have taken reasonable measures to protect and maintain the confidentiality of, and the rights of the Target Companies in, the Target's Confidential Information.
- 28.19 The Target Companies have taken reasonable measures to protect and maintain the confidentiality of any Confidential Information disclosed to it by any other person in accordance with any applicable obligation or duty of confidentiality subject to which such Confidential Information was disclosed.

No Violation of the Target's Rights

- 28.20 The Target Companies have not commenced or threatened any Proceedings, or asserted any allegation or claim, against any person for infringement, misappropriation, misuse, or violation of any Target Intellectual Property.
- 28.21 So far as the Founder Sellers are aware, no person has infringed, misappropriated, misused or violated, or is infringing, misappropriating, misusing, or violating, any Target Owned Intellectual Property.

No Violation of Third Party Rights

- 28.22 Neither the conduct of the Business nor the Target Companies' creation, use, license, transfer or exploitation of any Target Intellectual Property infringes, misappropriates, misuses or violates, or has infringed, misappropriated, misused or violated, any person's rights in or to any Intellectual Property.
- 28.23 The Target Companies have not received notice of any actual or threatened Proceedings between any Target Company and any other person relating to any Target Intellectual Property.

Social Media

- 28.24 The Disclosure Letter sets out a true and complete list of all Social Media Accounts that the Target Companies use, operate or maintain, including in connection with marketing or promoting any Target Companies' products and/or services.
- 28.25 The Disclosure Letter lists, for each such Social Media Account, all usernames, passwords and log-in details, required for unfettered access to and control of the Social Media Accounts.
- 28.26 All use of the Social Media Accounts by the Target Companies complies with and has complied with all applicable laws and all terms and conditions, terms of use, terms of service and other contracts applicable to such Social Media Accounts in all material respects.

Source Code

- 28.27 The Target Companies possess full and complete source code versions of the current releases or separate versions of the Proprietary Software, together with any Software that is not Proprietary Software that is incorporated or embedded in any Proprietary Software.

- 28.28 The Target Companies have not disclosed or delivered to any escrow agent or any other person any of the source code for any Proprietary Software, nor any Software that is not Proprietary Software that is incorporated or embedded in any Proprietary Software.
- 28.29 The Target Companies have not granted to any person any right, contingent or otherwise, to obtain access to or use any source code for any Proprietary Software.
- 28.30 Open Source. A list of all material Open Source Software incorporated in any Proprietary Software or Target Products by the Target Companies is contained in the Data Room, which also:
- (a) describes how such Open Source Software is used (including any integration/interaction with any Proprietary Software or Company Products);
  - (b) describes whether such Open Source Software is linked (and, if so, how (e.g., 'dynamic' or 'static' linking)) to any other Software;
  - (c) states whether such Open Source Software is (or is intended to be) distributed by or for the Target Companies and, if so, describes the nature of that distribution (e.g., distributed in or with any Proprietary Software or Company Products);
  - (d) states whether such Open Source Software is (or is intended to be) offered or made available on a 'software-as-a-service' or similar basis by or for the Target Companies (as part of any Proprietary Software, Company Products or otherwise); and
  - (e) states whether (and, if so, how) such Open Source Software was modified by or for Proprietary Software or Company Products.
- 28.31 No Copyleft. The Target Companies have not, nor so far as the Founder Sellers are aware, has any person on the Target Companies' behalf, used any Open Source Software that are subject to a "copyleft licence" (as that term is generally understood in the context of Open Source Materials, and as further defined by the Open Source Initiative at <https://opensource.org/faq>) in a manner that does or might:
- (a) impose a requirement or condition that any Proprietary Software or Target Product, or any portion thereof be:
    - (i) disclosed, distributed or made available in source code form;
    - (ii) licensed for the purpose of making modifications or derivative works; or
    - (iii) redistributable at no charge; or
  - (b) otherwise impose any other material limitation, restriction, or condition on the right or ability of the Target Companies to use or distribute any Proprietary Software or Company Product or to enforce any rights in or to any Intellectual Property (excluding, for the avoidance of doubt, any customary notice requirements).

Part C – Excluded Liability Warranties

Each of the General Warranties in Part B of this Schedule but only to the extent they relate to any potential liability arising out of:

1. any failure by a Target Company to file form I-9 in the United States of America for employment eligibility verification;
2. any of the Target Products being unsafe, defective, incorrectly labelled or not in compliance with applicable laws and/ or regulations;
3. any error, omission or other breach of any professional duty owed by a Target Company to customers of the Target Companies; and/or
4. any defect or deficiency in the adequacy, physical condition or existence of any inventory and production, optical and technical equipment used or held by any Target Company, which includes any obsolete, unusable, unsaleable property, stock inventory or other physical asset.

## Part D – Purchaser Warranties

1. CAPACITY AND INSOLVENCY
  - 1.1 The Purchaser has all necessary power and authority to enter into, and the capacity to act and perform its obligations under, this Agreement and all agreements and documents to be executed or signed by it or on its behalf pursuant to this Agreement.
  - 1.2 This Agreement, and all agreements and documents to be executed or signed by or on behalf of the Purchaser pursuant to this Agreement, constitute, or will when executed or signed constitute, binding and enforceable obligations on the Purchaser in accordance with their respective terms, subject to laws of general application relating to or affecting the rights of creditors, and general principles of equity.
  - 1.3 The execution and delivery by the Purchaser of this Agreement and each of the other documents to be executed or signed by or on behalf of the Purchaser pursuant to this Agreement, and compliance with their respective terms shall not breach or constitute a default under:
    - (a) any agreement or instrument to which the Purchaser is a party or by which the Purchaser is bound; or
    - (b) any order, judgment, decree or other restriction applicable to the Purchaser, and will not require the consent of any third party.
  - 1.4 The Purchaser has not:
    - (a) had a bankruptcy petition presented against it or been declared bankrupt;
    - (b) been served with a statutory demand, or is unable to pay its debts within the meaning of the Insolvency Act 1986, respectively;
    - (c) entered into, or has proposed to enter into, any composition or arrangement with, or for, its creditors (including an individual voluntary arrangement); or
    - (d) been subject of any other event analogous to the foregoing in any jurisdiction.

## SCHEDULE 5

## TAXATION

## Part A - Tax definitions and interpretation

## 1. Definitions

Words and expressions defined in or for the purposes of this Agreement shall, except where expressly defined in this Schedule or where the context otherwise requires, have the same meanings in this Schedule and:

"Accounts Relief" means any Relief (including any Right to Repayment) which has been taken into account in computing (and thereby reducing), or in obviating the need for, any provision for deferred tax in the Locked Box Accounts, or which is reflected or shown as an asset in the Locked Box Accounts;

"CTA 2009" means the Corporation Tax Act 2009;

"CTA 2010" means the Corporation Tax Act 2010;

"Event" means any act, omission, event, transaction or occurrence and includes, without limitation, the receipt or accrual of any income, profit or gains, the declaration, making or payment of any distribution, any constructive or deemed distribution, becoming, being or ceasing to be a member of any group, fiscal unity, consolidation or partnership or associated or connected with any person, death, any winding up or dissolution, any residence or change in residence of any person for Tax purposes, the expiry of any period, the entering into of this Agreement and the Minority SPA, and Completion;

"Financial Limitation" means the provisions of Clauses 9.2 to 9.4 inclusive.

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003;

"Overprovision" means the amount by which any provision for Tax (but not, for the avoidance of doubt, any provision for deferred Tax, and only to the extent that such provision for Tax relates to a matter giving rise to an Excluded Liability Tax Covenant Claim) as stated in the Locked Box Accounts is overstated applying the accounting policies, principles and practices adopted in relation to the preparation of the Locked Box Accounts except where such overstatement arises as a result of (or otherwise attributable to):

- (a) a change in Laws, a change in accounting practice or the accounting bases on which the Target values its assets or any voluntary act or omission of the Target or any member of the Purchaser's Group, in each case occurring after Completion;
- (b) a Saving, a utilisation of a Purchaser's Relief or any payment or Relief to which paragraph 3 of Part C (Recovery from third parties) applies; or
- (c) the fact that the profits of the Target for any period prior to Locked Box Accounts Date are less than as stated in the Locked Box Accounts;



"PAYE" means the assessment, collection and recovery of Tax in respect of PAYE income (as defined in and pursuant to ITEPA and the PAYE regulations made thereunder);

"Payroll Tax" means employer's and employee's social security and pension contributions and income tax accountable via PAYE or payroll (including National Insurance contributions, apprenticeship levy, tax in respect of PAYE income, as defined in and pursuant to ITEPA and regulations made thereunder), and any similar Tax, contributions, levies withholdings and deductions in any jurisdiction, together with all penalties, fines, charges, surcharges and interest relating to any of the foregoing, or resulting from a failure to comply with the provisions of any enactment relating to any Payroll Tax within this definition, including in connection with the failure to make any return, the making of any incomplete or incorrect return, or the failure to maintain records;

"Payroll Tax Claim" means any Tax Claim which relates to Payroll Tax arising in connection with any of the Shareholders;

"Purchaser's Relief" means (i) any Accounts Relief, (ii) any Relief attributable to a period after Completion or arising in respect of any Event occurring after Completion, (iii) any Relief of any member of the Purchaser's Group (other than the Target) or (iv) a Relief which arises in the ordinary course of the Target's business in respect of, (a) the period starting on the Locked Box Accounts Date and ending on Completion, or (b) any Event occurring in the ordinary course of the Target's business during that period;

"**Purchaser's Tax Group**" means the Purchaser and any company which at any relevant time is connected or associated with or in the same group of companies, fiscal unity or consolidation as the Purchaser for the purposes of any Tax or Relief, and "member of the Purchaser's Tax Group" shall have a corresponding meaning;

"R&D Claim" means any claim for relief for expenditure incurred on research and development including under any of the provisions of Part 13 CTA 2009 or an R&D expenditure credit (as defined for the purposes of section 104A CTA 2009) under any of the provisions of Chapter 6A of Part 3 CTA 2009;

"Relief" means any relief, loss, allowance, claim, credit, deduction, exemption or set-off in respect of Tax or relevant to the computation of Tax or any income, profits or gains for the purposes of Tax, or any Right to Repayment, including any amount payable by a Tax Authority as a result of any R&D Claim, and:

- (a) any reference to the "use or set-off" of a Relief shall be construed accordingly and shall include use or set-off in part;
- (b) references to the "loss" of a Relief (including the loss of any Accounts Relief, and any other defined Relief) shall include the loss, non-availability, non-existence, reduction, counteraction, disallowance, withdrawal, clawback, cancellation or failure to obtain such Relief, or its utilisation or set-off by any person other than a member of the Purchaser's Tax Group, and shall also include such Relief being available only in a reduced amount, and "lose" and "lost" shall be construed accordingly;

"Right to Repayment" means any right to a repayment of Tax or a payment in respect of Tax and includes any repayment supplement or interest in respect thereof;

"Saving" means the reduction in whole or in part of any liability of the Target to make an actual payment of corporation Tax (at a time when the Target is a member of the Purchaser's Tax Group) which it would otherwise have been liable to make (and in respect of which the Founder Sellers are not liable to make any payment under this Schedule, otherwise than by reason of any Financial Limitation) by virtue of the set-off against such liability of any Relief arising wholly as a result of a liability to Tax in respect of which the Founder Sellers have made a payment to the Purchaser in full discharge of a Tax Claim in circumstances where the relevant Relief is not attributable to (i) a change in Laws, a change in accounting practice or the accounting bases on which the Target values its assets or any voluntary act or omission of the Target or any member of the Purchaser's Group, in each case occurring after Completion, (ii) any Overprovision (iii) a Purchaser's Relief or (iv) any payment or Relief to which paragraph 3 of Part C (Recovery from third parties) applies;

"Shareholders" means the Sellers and the Minority Sellers;

"Tax" or "Taxation" means all forms of direct and indirect tax, duty, levy, charge, contribution, rate, tariff and impost whether of the United Kingdom or any other jurisdiction and any other amount payable to any Tax Authority (including, for the avoidance of doubt, Payroll Tax), all related withholdings or deductions and all penalties, fines, charges, surcharges and interest relating to any of the foregoing or resulting from a failure to comply with the provisions of any enactment relating to any Taxation within this definition, including (i) any fine under Part 3 of Criminal Finances Act 2017 and (ii) in connection with the failure to make any return, the making of any incomplete or incorrect return, the failure to maintain records;

"Tax Authority" means HM Revenue & Customs and any other authority, body or official (whether in the United Kingdom or elsewhere) competent to assess, demand, impose, administer or collect Tax or make any decision or ruling on any matter relating to Tax and any other person who has a right to demand or recover amounts of, or in respect of, or on account of, Tax or a Tax Liability;

"Tax Claim" means a claim under the Tax Covenant or a Tax Warranty Claim;

"Tax Demand" means any notice, demand, assessment, letter, claim or other document or action taken by or on behalf of any Tax Authority, or the submission to a Tax Authority of any self-assessment, notice, letter or other document by or on behalf of the Target, from which it appears that there is or may be a Tax Liability or other liability in respect of which a Tax Claim may be made for which the Founder Sellers are or may be liable (disregarding for this purpose any Financial Limitations);

"Tax Liability" means:

- (a) any liability to make an actual payment or increased payment of, in respect of, or on account of, Tax (whether or not presently payable and whether or not discharged at Completion), in which case the amount of the Tax Liability shall be the amount of the actual payment or the increase in the amount of the payment;

- (b) the loss (in whole or in part) of any Accounts Relief (other than a Right to Repayment, and otherwise than by way of use or set-off), in which case the amount of the Tax Liability shall be the Tax which would have been saved by the Target but for such loss, the amount of such Tax being calculated on the basis of the relevant rates of Tax current at Completion on the assumption that the Target has sufficient profits fully to utilise the relevant Accounts Relief and that the Accounts Relief is used in priority to any other Relief available to the Target or, where the Accounts Relief in question would not have operated as a deduction from gross income, profits or gains, the amount of the Relief which would otherwise have been obtained or the amount by which such Relief is reduced, as the case may be;
- (c) the loss (in whole or in part) of any Accounts Relief which is a Right to Repayment, in which case the amount of the Tax Liability is the amount of the Right to Repayment; and
- (d) the use or set-off (in whole or in part) of any Purchaser's Relief to reduce or eliminate any liability to make an actual payment of Tax in respect of which, but for such use or set-off, the Founder Sellers would have been liable in respect of a Tax Claim (disregarding any Financial Limitations), in which case the amount of the Tax Liability shall be the amount for which the Founder Sellers would have been liable but for such use or set-off (disregarding any Financial Limitations);

in each case regardless of whether there is or may be any right of reimbursement or recovery against any other person;

"TCGA" means the Taxation of Chargeable Gains Act 1992;

"VAT" means value added tax imposed by HM Revenue & Customs, the competent Tax Authority for the United Kingdom, and any tax imposed in substitution for it, and any similar Tax in any other relevant jurisdiction including any Tax on sales, use or turnover; and

"VATA" means the Value Added Tax Act 1994.

## 2. Interpretation

In this Schedule:

- (a) references in this Schedule to the Target are to each Target Company and as if the provisions of this Schedule were set out in full in respect of each Target Company;
- (b) any reference to something occurring (including a Tax Liability arising) in "the ordinary course of business" shall, without prejudice to the generality thereof, be deemed not to include:
  - (i) anything which involves, or leads directly or indirectly to, the receipt by the Target of a Tax Claim in respect of any liability to Tax of, or properly attributable to, another person;
  - (ii) anything which relates to or involves the acquisition or disposal of an asset or the supply of services (including the lending of money, or the hiring or

- licensing of tangible or intangible property) in a transaction which is not entered into on arm's length terms;
- (iii) anything which involves the transfer of any asset between a Target and a Shareholder (or any person connected with a Shareholder);
  - (iv) anything which relates to or involves the making of a distribution for Tax purposes, the creation, cancellation or re-organisation of share or loan capital, the creation, cancellation or repayment of any intra-group debt or any company becoming or ceasing or being treated as ceasing to be a member of a group of companies or as becoming or ceasing to be associated with any other company for any Tax purposes;
  - (v) anything which relates to a transaction or arrangement which includes, or a series of transactions or arrangements which includes, any step or steps having no commercial or business purpose apart from the reduction, avoidance or deferral of a Tax Liability;
  - (vi) anything which relates to the waiver, release or repayment of any debt;
  - (vii) anything which gives rise to a deemed (as opposed to actual) profit; or
  - (viii) any Event which gives rise to any fine, penalty, charge, interest or other imposition relating to Tax;
- (c) persons shall, without limitation, be treated as "connected" for the purposes of this Schedule if they are treated as connected for any Tax purpose;
  - (d) "profits" includes income, profits or gains of any description and from any source and any other consideration, value, receipt or measure by reference to which Tax is chargeable or assessed, and profits earned on or before a certain date or in respect of a certain period and includes profits treated as, or deemed to be, earned on or before that date or in respect of that period for Tax purposes;
  - (e) any reference to Tax, Relief or any other amount being "payable" shall include any Tax, Relief or other amount which would have been payable but for being set off or netted off against any other amount, and any reference to the "payment" of any Tax, Relief or other amount shall include the discharge or utilisation of such Tax, Relief or other amount through being set off or netted off against any other amount;
  - (f) any reference to an Event or the consequence of an Event occurring on or before Completion shall include, without limitation, any Event which is deemed for relevant Tax purposes to be the case or to occur for Tax purposes on or before Completion or by reference to which Tax is calculated or imposed on or before Completion;
  - (g) in any case falling within (b), (c) or (d) of the definition of Tax Liability, the Tax Liability shall be treated as arising in respect of an Event which occurred on or before Completion;

- (h) any reference to any form of Tax, Relief, legislation, law or legal or Tax concept which exists in the United Kingdom or any jurisdiction includes a reference to any equivalent or substantially equivalent Tax, Relief, legislation, law or legal or Tax concept in any other relevant country or jurisdiction;
- (i) any stamp duty or transfer tax which is charged or chargeable on any document (or in the case of a document which is outside the United Kingdom would be so charged or chargeable if the document were in the United Kingdom) or in respect of any transaction and which it is necessary to incur or which is incurred in order to:
  - (i) establish or register the title of the Target to any asset owned at Completion;
  - (ii) prove to a Tax Authority any expenditure incurred by the Target; or
  - (iii) enable the Target or the Purchaser to produce the relevant document in evidence in any civil proceedings or before any arbitrator or referee or to use the document for any other official purpose,

and any interest, penalty, charge, surcharge, fine or other similar imposition relating to such stamp duty or transfer tax shall be deemed to be a liability of the Target to make an actual payment of Tax, and the execution of the document or (in the case of a bearer instrument) the issue of the instrument shall be deemed to be the Event which gave rise to such liability; and

- (j) any assessment, demand or other liability which is received or arises in respect of a claim made, or payment received, by the Target on or before Completion under or in connection with the any measures announced in connection with the COVID-19 pandemic (such as the United Kingdom's Coronavirus Job Retention Scheme or its equivalent in any other jurisdiction) shall (in each case) be deemed to be an Event occurring in connection with the Target prior to Completion for the purposes of this Schedule.

## Part B – Tax Warranties

1. Payments of Tax
    - 1.1. The Target has in the last six years: (i) duly and punctually paid all Tax which it has become liable to pay and was due to be paid prior to the date of this Agreement; (ii) deducted, withheld or collected for payment (as appropriate) all Tax due to have been deducted, withheld or collected for payment and has accounted for or paid all such Tax to the relevant Tax Authority to the extent due to be paid prior to the date of this Agreement; and (iii) not deferred payment or agreed with any Tax Authority to defer payment of any Tax.
    - 1.2. The Target is not, and has not at any time within the last six years been, liable to pay any interest, fine, penalty or surcharge in respect of any unpaid Tax or as a result of a default in respect of any Tax matter or has otherwise been subject to the operation of any penal provision under any enactment relating to Tax nor so far as the Founder Sellers are aware are there any circumstances by reason of which the Target is likely to become liable to pay, any penalty, fine, surcharge or interest.
  2. Compliance
    - 2.1. All returns, computations, accounts, reports, statements, assessments, claims, elections, disclaimers, notices and any other information which are or have been required by Laws to be made or given by the Target for any Tax purposes in the last six years have been made or given both within the requisite periods and on a proper basis and were when made, and in all material respects remain, true and accurate and none of them is, or so far as the Founder Sellers are aware is likely to be, the subject of any enquiry, query or dispute with any Tax Authority.
    - 2.2. The Target has in the last six years complied in all material respects with all statutory requirements, regulations, notices, orders, directions and conditions relating to all relevant Taxes, including the terms of any agreement made with any Tax Authority.
    - 2.3. The Target maintains such records and other information in relation to Tax which it is legally required to maintain; and such records enable the Tax liabilities and Reliefs of the Target to be calculated accurately in all material respects.
  3. Tax Disputes and tax sharing arrangements
    - 3.1. The Target is not, nor has it been at any time within the last six years, involved in any dispute with or investigation, audit, discovery or enquiry by any Tax Authority or any enquiry into any Tax return and, so far as the Founder Sellers are aware, no such dispute, investigation, audit, discovery or enquiry is, planned, or threatened.
    - 3.2. The Target is not a party to, is not bound by, and does not have any obligations, under any Tax sharing agreement or Tax indemnification agreement.
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4. Provisions in Locked Box Accounts
    - 4.1. The provisions or reserve for Tax appearing in the Locked Box Accounts have been made in accordance with generally accepted accounting principles.
    - 4.2. Provision has been made and shown in the Locked Box Accounts for deferred taxation in accordance with generally accepted accounting principles.
  5. Position since the Locked Box Accounts Date
    - 5.1. In respect of the period starting immediately after the Locked Box Accounts Date, the Target has no liabilities for Tax other than (i) corporation tax (in the UK) or corporate income tax (elsewhere) in respect of trading profits arising in the ordinary course of the business of the Target, (ii) Payroll Tax payable in respect of amounts that the Target is contractually obliged to pay to its employees and directors in respect of that period, and (iii) liabilities for or in respect of VAT on supplies of goods and services made by the Target in the ordinary course of its business.
    - 5.2. No accounting period of the Target for corporation taxes or other corporate income tax purposes has ended, and the Target has not made any distribution, since the Locked Box Accounts Date.
  6. Secondary Liabilities

As far as the Founder Sellers are aware, the Target is not, nor is likely to become, liable to make to any person (including any Tax Authority) any payment in respect of any liability to Tax which is primarily or directly chargeable against, or attributable to, any person other than the Target.
  7. Obligation to Deduct or Withhold Tax

There is no obligation on the Target to deduct or withhold tax on repayment of any borrowings which the Target has in respect of any premium, interest or other amount comprised in those borrowings and whether there is or would be any obligation on the Target to pay an increased sum.
  8. Clearances, Consents and Special Arrangements

All clearances and consents obtained by the Target from any Tax Authority in the last six years have been fully provided in the Data Room and were based on full and accurate disclosure of all the facts and circumstances material to the decision of the Tax Authority. The Target has complied in all material respects with any conditions to which any such consents or clearances are subject. No Tax Authority has agreed, with effect for any of the last six years or prospectively, to operate any special arrangement (being an arrangement not based on a strict and detailed application of the relevant legislation) in relation to the Tax affairs of the Target.
  9. Large Companies
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- 9.1. If the Target is a large company within the meaning of regulation 3 of the Corporation Tax (Instalment Payment) Regulations 1998, the Disclosure Letter gives details of instalments of corporation tax paid in respect of the current accounting period and preceding accounting period and instalments expected to be payable in respect of the current accounting period of the Target (ignoring the effect of the Target being acquired under the terms of this Agreement).
- 9.2. The Target is not a qualifying company within the meaning of Schedule 46 to the Finance Act 2009.
10. Tax residence
- The Target is, always has been, and will be at Completion, a resident for Tax purposes solely in its country of incorporation, formation or organisation. The Target is not, never has been and will not be at Completion resident for any purpose in any other jurisdiction and, except for Silixa LLC's permanent establishment in Canada, does not have, has never had and will not have at Completion, any branch, office, permanent establishment or other taxable presence in any other jurisdiction.
11. Close Companies
- The Target has never been a close investment-holding company as defined in section 34 of the CTA 2010.
12. Benefits to Connected Persons
- 12.1. The Target has not in the last six years provided any benefit or facility to any Shareholder, or to any director or employee of the Target (or to any person connected with any such Shareholder, director or employee), the provision of which has been treated as a distribution.
- 12.2. No loan or advance in the last six years has been (or has been treated as having been) incurred, made or agreed to be made by the Target to any Shareholder, or to any director or employee of the Target (or any person connected with any such Shareholder, director or employee), the Target has not since the Locked Box Accounts Date released, written off or agreed to release or write off the whole or part of any such loan or advance, and no such loan or advance remains outstanding.
- 12.3. No arrangements are, or in the last six years have been, in place that give rise or could give rise to a charge to tax under section 464A CTA 2010.
13. Distributions
- 13.1. No distribution or deemed distribution, within the meaning of section 1000 or sections 1022-1027 CTA 2010, has been made (or will be deemed to have been made) by the Target in the last six years except dividends shown in its audited accounts, and the Target is not bound to make any such distribution.
- 13.2. The Target has not, within the period of six years preceding the date of this Agreement, been engaged in, or been a party to, any of the transactions set out in Chapter 5 of Part 23 CTA 2010 (demergers).



## 14. Inheritance, Estate or Gift Tax

The Target is not liable, and, so far as the Founder Sellers are aware, there are no circumstances in existence as a result of which it may become liable, to be assessed to inheritance, estate or gift tax or any other Taxation as donor or donee of any gift, or transferor or transferee of value and, so far as the Founder Sellers are aware, there are no circumstances in existence as a result of which it may become liable in respect of inheritance, estate or gift tax has arisen or could arise for the Target or any charge in relation to unpaid inheritance, estate or gift tax has arisen or could arise in respect of the assets of the Target or the Target Shares.

## 15. Employment and Withholding Taxes

15.1. No person has acquired a right to acquire shares or securities, or has acquired any shares or securities (including, for the avoidance of doubt, any conditional share capital), which in either case may give rise to a liability in respect of any Payroll Tax for the Target, including upon the exercise or disposal of that right or upon the acquisition or disposal of those shares or securities.

15.2. In relation to all employment-related securities (within the meaning of section 421(B)(8) of ITEPA) in relation to which the Target is or has been the employer (as defined in section 421B(8) ITEPA), each relevant employee within the scope of UK Tax has entered into an election pursuant to section 431(1) ITEPA in the form approved by HM Revenue & Customs within 14 days of the acquisition of employment-related securities (by him or any other person) and in relation to all securities options (as defined for the purposes of Chapter 5 Part 7 ITEPA), such an election is required to be entered into by each relevant employee within the scope of UK Tax as a condition of exercise of the option.

15.3. Neither the Target nor any employee benefit trust or other third party has made, or agreed to make, any payment to, or provided or agreed to provide any benefit for, any director or former director, officer, employee or consultant (or associate of any of the foregoing) of the Target, whether as compensation for loss of office, termination of employment or otherwise, which is not allowable as a deduction in calculating the profits of the Target for Tax purposes.

15.4. The Disclosure Letter contains details of any payments or loans made to, any assets made available or transferred to, or any assets earmarked, however informally, for the benefit of, any employee or former employee (or anyone connected with such employee or former employee) of the Target by an employee benefit trust or another third party, falling within the provisions of Part 7A of ITEPA and details of any trust or arrangement capable of conferring such a benefit.

15.5. No part of the Purchase Price or the consideration payable for the Minority Shares will be treated as employment income, whether as employment income of any Shareholder or any other person.

15.6. There is no arrangement, formal or informal:

- (a) involving any Shareholder to redistribute (or which has the effect of redistributing) any consideration receivable under this Agreement or the consideration receivable under the Minority SPA; or
  - (b) for any payment to be made to, or for any benefit to be received by, any current, former or prospective employee or office holder in connection with this Agreement or the Minority SPA or the transactions contemplated by this Agreement or the Minority SPA.
- 15.7. No consultant, contractor or adviser of the Target, or person who otherwise provides or has in the last six years provided services to the Target, whether directly or through a personal services company or other intermediary, should be or should have been treated for any relevant Tax purposes as an employee of the Target.
- 16. R&D Claims

All R&D Claims by the Target have been duly made on a proper basis within applicable time limits, and no Tax Authority has disputed or challenged, or otherwise notified the Target that it intends to dispute or challenge, the Target's entitlement to make any such claim and/or the amount of any such claim.
- 17. Groups

The Target is not and has never been a member of a group of companies for any Tax purposes, including for the purposes of section 170 TCGA or Part 5 CTA 2010, other than with another Target.
- 18. Transfer Pricing

All transactions or arrangements made or entered into by the Target have been made on arm's length terms to the extent required by Law and the processes by which prices and terms have been arrived at have, in each case, been fully documented to the extent required by Law. The Target is not, nor has it been in the last six years, involved in any correspondence, enquiry or dispute or received any notice in any jurisdiction from a Tax Authority concerning the adjustment of profits of associated enterprises for Tax purposes.
- 19. Transfer Taxes
  - 19.1. There is no instrument to which the Target is a party and which is necessary to establish the Target's rights or title to any asset, which is or could be liable to real estate Tax, securities transfer Tax, issuance Tax or stamp duty (or any similar duty or Tax in any jurisdiction) which has not been duly stamped or in respect of which the relevant Tax has not been paid.
  - 19.2. Neither entering into this Agreement or the Minority SPA nor Completion will result in the withdrawal of any stamp duty, stamp duty land tax, or any securities or real estate transfer or registration Tax relief granted on or before Completion which will affect the Target and the Target has not made any claim for relief or exemption under section 42 of the Finance Act 1930, section 151 of the Finance Act 1995 or Schedule 7 to the Finance Act 2003 in respect of any interest in UK land or buildings which was transferred or granted to it at any time within the last six years.

## 20. Tax Avoidance

- 20.1. The Target has not been involved in any scheme, arrangement, transaction or series of transactions: (a) in which the main purpose, or one of the main purposes was to have been: (i) the avoidance, deferral or reduction of Tax; (ii) the production of a loss for Tax purposes with no corresponding commercial loss, or (b) which contain one or more steps which have no commercial purpose other than avoiding, deferring or saving Tax or obtaining a Tax advantage.
- 20.2. The Target has not entered into or been party to any transactions, schemes or arrangements which either were notifiable arrangements for the purposes of Part 7 of the Finance Act 2004 or was a notifiable scheme for the purposes of Schedule 11A to the VATA 1994.

## 21. Loan Relationships

All financing costs, including interest, discounts and premiums payable by the Target in respect of its loan relationships within the meaning of Chapter 2 Part 5 CTA 2009 (or any similar legislation in any other jurisdiction) are eligible to be brought into account by the Target as a debit for the purposes of that legislation and to the extent that they are from time to time recognised in the Target's accounts (assuming that the accounting policies and methods adopted for the purpose of the Accounts continue to be so adopted).

## 22. Capital Allowances

The Target has in its possession details of all capital allowances claimed by it in respect of the accounting period ended on the Locked Box Accounts Date in respect of each asset or pool of assets in respect of which separate computations for capital allowances are required to be made or, as a result of any election, are made.

## 23. VAT

- 23.1. The Target (i) is, in each jurisdiction where it ought to have been so registered, a duly registered taxable person for the purposes of VAT, (ii) is not, nor has in the last three years been, wholly or partly exempt for such purposes, and (iii) is not subject to any conditions imposed by or agreed with any Tax Authority, (iv) is not and has never been a member of a VAT group, and (v) has not at any time within the last six years, acted as agent of any person not resident in the United Kingdom for the purposes of section 47 of VATA or been appointed as a VAT representative of any person for the purposes of section 48 of VATA (VAT representatives).
- 23.2. All claims made by the Target for refunds of VAT in the last six years have been made on a proper basis within applicable time limits, and no Tax Authority has disputed or challenged, or otherwise notified the Target that it intends to dispute or challenge, the Target's entitlement to make any such claim and/or the amount of any such claim.
- 23.3. The Target (i) has not agreed any special method of attributing, accounting or otherwise in relation to VAT with a Tax Authority, (ii) does not own any assets or capital items which may be subject to any adjustment to, or repayment of, VAT previously claimed by the Target and (iii) does not own any land or buildings (including any interest in or right or licence over any

land or buildings) in respect of which it (or any member of its group) has exercised a VAT option to tax.

24. **UK land**

Less than 75% of the total market value of the Target's qualifying assets derive (directly or indirectly) from interests in UK land for the purposes of Schedule 1A to TCGA.

25. **Construction Industry Scheme**

The Target is not required to register as a contractor under the provisions of section 59 of the Finance Act 2004 or any similar legislation in any other jurisdiction and the expenditure incurred by the Target on construction, refurbishment and fitting-out works in the twelve-month period ending on the date of this Agreement is less than £1 million.

26. **COVID-19 pandemic**

The Target has not been notified that a Tax Authority or other governmental authority intends to recover any payment (or part thereof) received by the Target under any measure or arrangement introduced in connection with the COVID 19 pandemic (whether by assessment to Tax or otherwise), and there are no circumstances in respect of which a Tax Authority could make such recovery.

27. **EMI Options**

27.1. In advance of the date of grant of any EMI Options, the Target had agreed the "market value" of the shares over which such Options were granted with the Shares & Assets Valuation Division of HMRC (the "HMRC Agreed Value").

27.2. All EMI Options were granted at an exercise price that was equal to or greater than the HMRC Agreed Value and within the period that the HMRC Agreed Value remained valid in respect of the shares to be subject to the EMI Options.

27.3. No facts or circumstances had arisen in between the date of the HMRC Agreed Value and the grant of the EMI Options that might mean that the exercise price of those EMI Options was no longer equal to or greater than the market value of the shares under those EMI Options on the date of grant.

27.4. All EMI Options met, at the time of grant, and continue to meet (or, if already exercised, continued to meet until the time of exercise) all of the requirements for enterprise management incentive options under Schedule 5 to ITEPA, including but not limited to:

(a) the requirement at paragraph 37(2)(b) of Schedule 5 to ITEPA relating to the contents of the applicable Option; and

(b) the requirement at paragraphs 5, 6 and 7 of Schedule 5 to ITEPA relating to the maximum values of EMI Options.

27.5. The Target is, and has been at all relevant times, a "qualifying company" for the purposes of paragraph 8 of Schedule 5 to ITEPA.

- 27.6. There have been no:
- (a) disqualifying events in respect of any EMI Options under section 533 to section 536 (inclusive) of ITEPA;
  - (b) material amendments to any of the terms of any EMI Options; or
  - (c) previous or proposed exercise of discretions by the grantor of such EMI Options which would impact the tax favoured status of the EMI Options.
- 27.7. Where a disqualifying event has occurred under section 535 of ITEPA in relation to an employee and that former employee's EMI Option has not lapsed, the Target has a record of, or has the ability to accurately calculate, the income tax due on any subsequent exercise of such EMI Options held by such former employee.
- 27.8. The Option Plans have been registered with HMRC for the purposes of Schedule 5 to ITEPA. No notice of HMRC's intention to enquire into the Option Plans has been received by the relevant Target Company and the Target Company has not been notified of any penalty imposed or proposed to be imposed in relation to the Option Plans.
- 27.9. All EMI Options have been validly notified to HMRC within 92 days of the relevant date of grant.
- 27.10. There have been no disputes (or potential disputes) with HMRC as to whether the EMI Options are qualifying options for the purposes of paragraph 1(2) of Schedule 5 to ITEPA.
- 27.11. The Option Plans are the only HMRC tax-advantaged employee share option schemes operated by the Target Companies and the only subsisting EMI Options granted by the Target are those identified as such in folder 13.6.4.5 in the Data Room.
- 27.12. All holders of EMI Options are UK tax taxpayer or resident and current Employees.
- 27.13. Any deduction or withholding as required by law to be made from any sum payable (or treated as being payable) by any party under this Agreement is owed to HMRC and no other Tax Authority.
28. Non-UK Taxes

- 28.1. Paragraphs 1 to 27 above shall, for the avoidance of doubt, apply with adaptation if necessary in relation to Tax outside the United Kingdom and accordingly any reference in those paragraphs to any form of Tax or Relief or any statutory provision relating to Tax in the United Kingdom shall be deemed to include a reference to the equivalent or substantially equivalent form of Tax or Relief or statutory provision relating to Tax in any other relevant taxing jurisdiction.
- 28.2. Silixa LLC is currently, and has been at all times since formation, taxed as a corporation for US federal income tax purposes. The Target is validly classified as a corporation for US federal income tax purposes, and has been at all times since formation.
- 28.3. Neither the Purchaser nor any of its connected persons (including the Target following Completion) will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) beginning after the Completion Date as a result of: (1) any adjustment under Section 481 of the Code (or any similar provision of state, local or non-U.S. Law) required as a result of a change in method of accounting made prior to the Completion Date, (2) any written "closing agreement" with a Tax Authority executed prior to the Completion Date, (3) any instalment sale or open transaction disposition made prior to the Completion Date, (4) any prepaid amounts received or deferred revenue accrued prior to the Completion Date or (5) any election under Section 108(i) or Section 965 of the Code made prior to the Completion Date.
- 28.4. Silixa LLC has not entered into or participated in any "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2) (or any similar provision of state, local or non-US Law).
- 28.5. Silixa LLC does not own any "United States real property interests" within the meaning of Section 897(c) of the Code.
- 28.6. Silixa LLC has not distributed stock of another person, and has not had its stock distributed by another person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code.

- 28.7. There is no joint venture, contract or other arrangement to which Silixa LLC is a party that is treated as a partnership for Tax purposes.
- 28.8. The Target is not and never has been a (1) "controlled foreign corporation" within the meaning of Section 957(a) of the Code, (2) a "passive foreign investment company" within the meaning of Section 1297(a) of the Code, (3) a "foreign personal holding company" as defined in the Code, or (4) a "surrogate foreign corporation" within the meaning of Section 7874(a)(2)(B) of the Code or a "domestic corporation" under Section 7874(b) of the Code. The Target has not elected to be treated as a U.S. corporation under Section 897(i) of the Code.
- 28.9. Except for CTTV Investments LLC, none of the Sellers or the Minority Sellers (or their direct or indirect owner(s)) is a "United States person" within the meaning of Section 7701(a)(30) of the Code.
- 28.10. The Target (1) has never been a member of an affiliated, combined, consolidated or unitary group for Tax purposes other than a group the common parent of which was the Target, and (2) has no liability for the Taxes of any person (other than liability for Taxes of the Target) under United States Treasury Regulations Section 1.1502-6 (or any corresponding or similar provision of US state or local or non-US Law, including any arrangement for group or consortium relief or similar arrangement), as a transferee or successor, by operation of Law, by Contract, or otherwise.

## Part C - Tax Covenant

## 1. COVENANT TO PAY

## 1.1 Liability to pay

The Founder Sellers covenant with the Purchaser to pay to the Purchaser an amount equal to any Tax Liability (i) of the Target and (ii) in respect of the matters falling within subparagraphs (c) to (k) below, of the Purchaser or any member of the Purchaser's Group, arising directly or indirectly in respect of or as a consequence of or by reference to:

- (a) any income, profits or gains earned, accrued or received by or which arose to the Target on or before Completion;
- (b) any Event which occurred in relation to the Target on or before Completion;
- (c) a failure to discharge Tax by any company or person with which the Target has been, or has been treated as being, connected or otherwise associated on or before Completion, or by any company or person which at any time after Completion is treated as connected or associated in any way with, any Shareholder for any Tax purpose (other than the Target);
- (d) any liability for any inheritance, estate or gift tax or any similar Tax which:
  - (i) has at Completion given rise to a charge on any of the Target Shares or assets of the Target or given rise to a power to sell, mortgage or charge any of the Target Shares or assets of the Target; or
  - (ii) after Completion gives rise to a charge on any of the Target Shares or assets of the Target or gives rise to a power to sell, mortgage or charge any of the Target Shares or assets of the Target and which arises as a result of a transfer of value occurring or being deemed to occur on or before Completion (whether or not in conjunction with the death of any person whenever occurring),

PROVIDED THAT any right to pay Tax by instalments shall be disregarded and the provisions of section 213 Inheritance Tax Act 1984 (or any similar legislation in any other jurisdiction) shall not apply to any payment falling to be made under this Schedule;

- (e) an option or other right to acquire shares or other securities, or interest in shares or other securities, granted or acquired on or before Completion or in respect of the exercise or cancellation of any such option or right or any other Event in relation to such option or right;
- (f) any shares or other securities, or interest in shares or other securities, acquired on or before Completion or as a result of a right or obligation (whether or not legally binding) created on or before Completion;



- (g) any person (other than the Target, the Purchaser or any member of the Purchaser's Group) making a payment or providing a loan, benefit or payment (otherwise than with the express written agreement of the Purchaser or, after Completion, the Target) to any person to the extent that, and in circumstances where, such payment or benefit constitutes remuneration for acts undertaken for, or services rendered to, the Target by any current or former officer or employee of the Target on or before Completion;
- (h) any of the consideration for the sale of the Target Shares or the Minority Shares being subject to Payroll Tax;
- (i) a relevant step (as defined in Part 7A ITEPA ("Part 7A")) being taken by a relevant third party person (as defined in Part 7A) pursuant to an arrangement entered into on or before Completion by, or on behalf of, or involving any Shareholder, the Target or any employee benefit trust or in connection with any incentive arrangements to which any Shareholder or the Target is a party;
- (j) any Event contemplated by this Agreement or the Minority SPA, including, without limitation: (i) any payment of any part of the Purchase Price or consideration for the Minority Shares; (ii) the allocation of consideration or liabilities between the Shareholders pursuant to this Agreement or the Minority SPA; (iii) any waiver or release pursuant to Clause 2.3 or Clause 6 or (iv) the bearing of any fees or other costs incurred in connection with any transaction contemplated by this Agreement or the Minority SPA;
- (k) the waiver of any loan arising in connection with the exercise, on or before Completion, of any share option;
- (l) the failure or delay by any person to reimburse any amount in respect of income tax arising in connection with any of the circumstances or Events described in subparagraphs (e) to (k).

#### 1.2 R&D Claims

Without prejudice to the provisions of paragraph 1.1, the Founder Sellers covenant with the Purchaser to pay to the Purchaser an amount equal to any Tax Liability or other liability which arises as a consequence of or by reference to (i) any R&D Claim made by the Target on or before Completion or (ii) the 2023 R&D Claim, in respect of which any R&D Tax Credit Deferred Consideration, or any Minority R&D Tax Credit Deferred Consideration (as defined in the Minority SPA) has been paid by the Purchaser, being wholly or partially disallowed by any Tax Authority.

#### 1.3 Costs and expenses

Without prejudice to the provisions of paragraphs 1.1 and 1.2, the Founder Sellers covenant with the Purchaser to pay to the Purchaser an amount equal to all reasonable costs and expenses incurred or payable by the Purchaser or any member of the Purchaser's Group or the Target in connection with or in consequence of any Tax Liability, Tax Claim and dealing

with any associated Tax Demand in respect of which the Founder Sellers are liable under this Schedule (or would be, disregarding any Financial Limitations).

## 2. EXCLUSIONS

### 2.1 Exclusions

The covenants in paragraphs 1.1 and 1.2 of this Part C and the covenant in Part E shall not cover any Tax Liability and the Founder Sellers shall not be liable under the Tax Warranties in respect of a Tax Liability if and to the extent that:

- (a) provision or reserve in respect of the Tax Liability has been made in the Locked Box Accounts;
- (b) the Tax Liability or other liability arises in the ordinary course of business of the Target in consequence of or in respect of or by reference to any Event occurring, or any income, profits or gains earned, accrued or received, after the Locked Box Accounts Date but on or before Completion;
- (c) the Tax Liability was paid or discharged before Completion and such payment or discharge was reflected in the Locked Box Accounts;
- (d) the Tax Liability arises as a result of any increase in rates of Tax or any change in legislation or published guidance or practice or concession of general application of any Tax Authority, in each case made after Completion, other than a change introduced to target Tax avoidance;
- (e) the Tax Liability arises as a result of a change after Completion in any accounting policy, or the length of any accounting period for Tax purposes, of the Target other than a change in accounting policy required to bring the accounting principles and practices of the Target into line with generally accepted accounting principles applicable at the relevant time on or before Completion subject to any retrospective change in law or retrospective change in generally accepted accounting practice;
- (f) the Tax Liability results directly from a voluntary act of the Target or the Purchaser after Completion outside the ordinary course of the business of the Target or the Purchaser, as the case may be, as carried on immediately prior to Completion and which act the Target or the Purchaser (as appropriate) was aware (or ought reasonably to have been aware) would give rise to such Tax Liability, save where such act is:
  - (i) pursuant to a legally binding obligation of the Target or the Purchaser entered into on or before Completion;
  - (ii) contemplated by this Agreement or the Minority SPA;
  - (iii) at the written request or with the written consent of any of the Founder Sellers;

(iv) pursuant to an obligation imposed on the Target or any member of the Purchaser's Group by any Law; or

(v) necessary to comply with any decision of any court or tribunal,

provided that, for the avoidance of doubt, any voluntary disclosure to or filing or other communication with any Tax Authority shall not be a transaction or voluntary act to which this sub-paragraph 2.1(f) applies.

(g) such Tax Liability arises as a result of the making of the Section 338(g) Election;

(h) a Relief (other than a Purchaser's Relief) is available at no cost to the Purchaser, the Target or any member of the Purchaser's Group to eliminate or reduce the Tax Liability;

(i) the Tax Liability arises as a result of the failure of the Target (save in circumstances falling within any of the provisions of paragraphs 2.1(f)(i) to (v) (inclusive)) to make any claim, election, surrender or disclaimer or give any notice or consent to do anything after Completion where the making, giving or doing of that thing was validly taken into account in computing any provision for Tax in the Locked Box Accounts, provided that in each case the Founder Sellers notified the Purchaser in writing within a reasonable period of time to enable the Purchaser to do such thing, and in any case no later than within 5 Business Days of Completion, of the requirement relating to, and provide full details in respect of, the making, giving or doing of such claim, election, surrender or disclaimer, notice, consent or other thing;

(j) in the case of an Excluded Liability Tax Claim only the Tax Liability constitutes interest or penalties which arise as a result of a failure by any member of the Purchaser's Tax Group to pay the Tax Liability in respect of that Excluded Liability Tax Claim having been put in funds by the Founder Sellers.

## 2.2 Exclusions carve out

Notwithstanding any other provision in this Schedule, the exclusions set out in paragraph 2.1 (with the exception of sub-paragraphs 2.1(a) and 2.1(c)) shall not apply to limit any liability of the Founder Sellers in respect of any Payroll Tax Claim.

## 3. RECOVERY FROM THIRD PARTIES

If the Target makes a recovery and actually receives a payment from any person (other than the Target, any member of the Purchaser's Group or any Tax Authority) of any amount in respect of the Tax Liability in respect of which the Founder Sellers have made a payment under this Schedule, a sum equal to the lesser of:

(a) the amount of any payment so received, after deduction therefrom of an amount equal to any reasonable costs and expenses incurred in obtaining it (and not previously reimbursed by the Founder Sellers to the Purchaser) and any Tax liability incurred in respect of it (or any Tax which would have been payable but for the availability of a Purchaser's Relief); and

- (b) the amount paid by the Founder Sellers under this Schedule in respect of the Tax Liability in question,
  - (i) shall first be set off against any payment then due from the Founder Sellers under this Schedule;
  - (ii) to the extent there is an excess, a refund shall be made to the Founder Sellers of any previous payment made by the Founder Sellers under this Schedule and not previously refunded under any provision of this Agreement up to the amount of such excess; and
  - (iii) to the extent that the excess referred to in paragraph 1.1(b)(iii) is not exhausted thereunder, the remainder of that excess shall be carried forward and set off against any future payment which becomes due from the Founder Sellers under this Schedule.

4. OVERPROVISIONS AND SAVINGS

If the auditors for the time being of the Target determine (at the written request of the Sellers' Representative and sole cost and expense of the Founder Sellers) or if the parties otherwise agree in writing that there has been an Overprovision or Saving then the amount of any Overprovision or Saving shall:

- (a) first be set off against any payments then due from the Founder Sellers under this Schedule;
- (b) if there is an excess, a refund shall be made to the Founder Sellers of any previous payment or payments made by the Founder Sellers under this Schedule (and not previously refunded under this Agreement) up to the amount of such excess; and
- (c) if such excess as referred to in paragraph 4(b) is not exhausted, the remainder of that excess shall be carried forward and set off against any future payment or payments which become due from the Founder Sellers under this Schedule.

5. TAX AFFAIRS
- 5.1 The Sellers' Representative and the Sellers shall give the Purchaser such assistance, information and documentation as may reasonably be required to enable the Purchaser to prepare, submit and deal with all computations, returns, claims and other documentation of or correspondence to or from the Target relating to Tax, and deal with all matters relating to such matters, in respect of all fiscal or accounting periods of any Target ending on or before Completion and in respect of the accounting period current at Completion in respect of any Event on or before Completion.
- 5.2 Subject to the other provisions of this paragraph 5, the Purchaser (or the Purchaser's duly authorised agent) shall have conduct of the Tax affairs of the Target in respect of all accounting periods of the Target whether ending prior to, on or after Completion including conduct in respect of:
- (a) preparing and submitting any Tax returns of the Target (including any related accounts, computations, attachments) (the "Company Tax Returns"), and all other claims, elections, surrenders, disclaimers, notices and consents for the purposes of Tax (the "Tax Documents") to the extent that such Company Tax Returns and such Tax Documents have not been submitted before Completion; and
  - (b) dealing with, and seeking to resolve, any queries raised by a Tax Authority relating to the Tax Documents.
- 5.3 The Purchaser will not submit any Company Tax Returns, or any Tax Documents or any other material correspondence relating thereto, for any accounting period (i) ending on or prior to Completion or (ii) commencing prior to but ending after Completion, but in which case only to the extent relating to an Event occurring on or before Completion, to any Tax Authority, in each case to the extent, in the reasonable view of the Purchaser, such Company Tax Returns, Tax Documents or correspondence relate to the 2023 R&D Claim or may give rise to an Excluded Liability Tax Claim, without first giving the Sellers' Representative a reasonable opportunity, to comment on such Company Tax Returns, or such Tax Document and/or such material correspondence relating thereto, and, before it is submitted to a Tax Authority, shall take into account any reasonable comments and/or amendments to such Company Tax Returns or Tax Document proposed by the Sellers Representative in writing within 10 Business Days.
- 5.4 Without prejudice to paragraph 5.3 above, the Purchaser shall procure that, to the extent that Company Tax Returns of the Target (i) are in respect of any accounting period (a) ending on or prior to Completion or (b) commencing prior to but ending after Completion, but in which case only to the extent relating to an Event occurring on or before Completion, and (ii) may, in the reasonable view of the Purchaser, give rise to an Excluded Liability Tax Claim, such Company Tax Returns are prepared on a basis that is consistent with past Company Tax Returns sent to the Tax Authority except where necessary to comply with applicable law, applicable accounting practice, or a groupwide policy adopted by the Purchaser.
- 5.5 If a matter falls within the provisions of both this paragraph 5 and paragraph 6, the provisions of paragraph 6 shall apply in priority to the provisions of this paragraph 5.

## 6. NOTIFICATION OF CLAIMS AND CONDUCT OF DISPUTES

### 6.1 Notification of claims by the Purchaser

If the Purchaser or the Target becomes aware of any Tax Demand which is reasonably expected to give rise to an Excluded Liability Tax Claim, the Purchaser shall give notice to the Sellers' Representative of that Tax Demand (including so far as practicable, and to the extent known to the Purchaser, reasonably sufficient details of such Tax Demand and the amount of any Excluded Liability Tax Claim in respect thereof) as soon as reasonably practicable (and in any event not more than 15 Business Days after the Purchaser becomes aware of such Tax Demand), provided that the giving of such notice shall not be a condition precedent to the liability of the Founder Sellers under this Schedule.

### 6.2 Notification of claims by the Founder Sellers

If any Founder Seller becomes aware of any Tax Demand (prior to the Sellers' Representative being notified by the Purchaser), they shall, or shall procure that the Sellers' Representative shall, as soon as reasonably practicable (and in any event not more than 15 Business Days after such Founder Sellers becomes aware of such Tax Demand) give notice in writing of such Tax Demand to the Purchaser specifying the details of which they are aware, and, on receipt of such notice, the Purchaser shall be deemed to have given the Sellers' Representative notice of the Tax Demand in accordance with the provisions of paragraph 6.1.

### 6.3 Conduct of Tax Demand

- (a) Subject to paragraph 6.3(b), if the Sellers indemnify the Purchaser (and any member of the Purchaser's Group) and the relevant Target to the Purchaser's reasonable satisfaction against all liabilities and damages (including any additional Tax Liability) and all reasonable costs and expenses that may be incurred as a result of taking such action, the Purchaser shall take and shall procure that the relevant Target shall take such reasonable action as the Sellers' Representative may reasonably request by notice in writing given to the Purchaser to avoid, dispute, defend, resist, appeal or request an internal HMRC review, or compromise any Tax Demand to the extent that such Tax Demand, in the reasonable view of the Purchaser, has given or may give rise to an Excluded Liability Tax Claim (the "Relevant Tax Demand").
- (b) The Purchaser shall not be obliged to take, or procure the taking of, any action under paragraph 6.3(a) in respect of any Relevant Tax Demand:
  - (i) if the Sellers' Representative does not request the Purchaser to take any action under paragraph 6.3(a) or the Sellers fail to indemnify the Purchaser or the relevant Target as required by that paragraph in a reasonable period of time, and in any case, no later than:
    - (A) the date being 10 Business Days after the date the notice referred to in paragraph 6.1 or 6.2 has been given (or deemed to have been given) by the Purchaser or the Target; and

- (B) the date being 10 Business Days prior to the last date on which an appeal may be made against the Tax Liability to which the Relevant Tax Demand relates;
  - (ii) where the Tax Authority alleges that any of the Founder Sellers (or any Target before Completion) has been engaged in fraudulent conduct or deliberate default relating to the Tax Liability that is the subject matter of the Relevant Tax Demand and the Tax Authority refused to withdraw such allegations after representations made by the Sellers' Representative;
  - (iii) if the Relevant Tax Demand involves an appeal to, or contesting the Relevant Tax Demand before, any court, tribunal, appellate body or judicial authority, including the Tax Chamber of the First-tier Tribunal or higher tribunal or court, unless the Founder Sellers have obtained and delivered to the Purchaser the written opinion (or settled note of conference) of Tax counsel of at least seven years' standing (at their own cost), that, after the disclosure of all relevant information and documents and having regard to all relevant circumstances, the appeal has a reasonable prospect of success; or
  - (iv) where such action would allow any Seller, its agents or professional advisors, or the Sellers' Representative to take on or take over, or require the Purchaser or the Target to delegate to any Seller, its agents or professional advisors, or the Sellers' Representative the conduct of any action or proceedings of any nature arising in connection with the Relevant Tax Demand.
- (c) The Sellers' Representative shall be kept reasonably informed about the conduct of any Relevant Tax Demand and:
- (i) the Purchaser shall, as soon as reasonably practicable, forward to the Sellers' Representative any communication or document received from the Tax Authority in relation to the Relevant Tax Demand; and
  - (ii) any communication or document to be sent to the Tax Authority in relation to the Relevant Tax Demand shall be submitted in draft to the Sellers' Representative and the Purchaser shall take into account all reasonable representations or amendments made by the Sellers' Representative in writing within 5 Business Days to the draft before it is sent to the Tax Authority,
- (d) If paragraph 6.3(a) shall not apply by virtue of paragraph 6.3(b), the Purchaser shall be free to deal with the Relevant Tax Demand in such way and on such terms as the Purchaser, in its absolute discretion, considers fit.
- (e) Notwithstanding any other provision of this paragraph 6.3, the Purchaser shall have sole conduct of any Tax Demand (other than a Relevant Tax Demand).

**6.4 W&I Insurance Policy**

In no event shall this paragraph 6 require the Purchaser or the Target to take any action, or refrain from taking any action, or permit the Founder Sellers or the Sellers' Representative to take any action, which the Purchaser reasonably considers could vitiate the W&I Insurance Policy or would cause the Purchaser to be in breach of any provision of the W&I Insurance Policy or in any way conflict with any obligations under or terms of the W&I Insurance Policy or give rise to a claim under the W&I Insurance Policy.

**7. DUE DATE OF PAYMENT****7.1 Due date of payment**

Where the Founder Sellers become liable to make any payment pursuant to a Tax Claim, the due date for the making of the payment shall be the date falling five Business Days after the date of service by the Purchaser of a written notice on the Sellers' Representative demanding payment or (if later):

- (a) in the case of a Tax Liability or other liability which involves an actual payment of Tax, five Business Days before the latest date on which such payment of Tax is due to be made to the relevant Tax Authority;
- (b) in the case of a Tax Liability which results from loss of an Accounts Relief (other than a Right to Repayment), five Business Days before the latest date on which a payment of Tax is due to be made to a Tax Authority which would not have been due had such Accounts Relief been available (based on the assumptions set out in paragraph (b) in the definition of Tax Liability);
- (c) in the case of a Tax Liability which results from the loss of an Accounts Relief which is a Right to Repayment, on the date on which such Right to Repayment would otherwise have become due; and
- (d) in the case of a Tax Liability which results from the use or set-off of a Purchaser's Relief, the latest date on which the relevant Tax would have been due but for such use or set-off.

**7.2 Due date of Tax**

For the purposes of the provisions in paragraph 7.1 above, it shall be assumed that the latest date on which a payment of Tax is due is the last date on which payment can be made to the relevant Tax Authority without incurring any interest, charge, penalty, fine or surcharge in respect thereof and on the assumption that no appeal is made against any assessment or Tax Demand.

**8. FIRPTA CERTIFICATE**

The Sellers shall have delivered to the Purchaser with respect to, and on behalf of, Silixa LLC, (i) an original signed statement conforming to the requirements of Sections 1.1445-2(c)(3) and 1.897-2(h)(1)(i) of the United States Treasury Regulations and (ii) an original signed notice to be delivered to the IRS in accordance with Section 1.897-2(h)(2) of the



United States Treasury Regulations together with written authorisation for the Purchaser to deliver such notice to the IRS on behalf of Silixa LLC, each dated as of the Completion Date, duly executed by an authorised officer or other authorised signatory of Silixa LLC, and in form and substance reasonably satisfactory to the Purchaser (collectively, the "FIRPTA Certificate").

## Part D – Excluded Liability Tax Warranties

1. Section 280G

No Tax Liability or loss of corporate tax deduction will arise to the Target in connection with the payment of “excess parachute payments” within the meaning of Section 280G(b)(1) of the Code, including any excise Tax under Section 4999 of the Code, by reason of any transaction contemplated by this Agreement or the Minority SPA.
2. Payroll Tax
  - 2.1 No person has acquired a right to acquire shares or securities, or has acquired any shares or securities (including, for the avoidance of doubt, any conditional share capital), which in either case may give rise to a liability in respect of any Payroll Tax for the Target, including upon the exercise or disposal of that right or upon the acquisition or disposal of those shares or securities.
  - 2.2 In relation to all employment-related securities (within the meaning of section 421(B)(8) of ITEPA) in relation to which the Target is or has been the employer (as defined in section 421B(8) ITEPA), each relevant employee within the scope of UK Tax has entered into an election pursuant to section 431(1) ITEPA in the form approved by HM Revenue & Customs within 14 days of the acquisition of employment-related securities (by him or any other person) and in relation to all securities options (as defined for the purposes of Chapter 5 Part 7 ITEPA), such an election is required to be entered into by each relevant employee within the scope of UK Tax as a condition of exercise of the option.
  - 2.3 Neither the Target nor any employee benefit trust or other third party has made, or agreed to make, any payment to, or provided or agreed to provide any benefit for, any director or former director, officer, employee or consultant (or associate of any of the foregoing) of the Target, whether as compensation for loss of office, termination of employment or otherwise, which is not allowable as a deduction in calculating the profits of the Target for Tax purposes.
  - 2.4 The Disclosure Letter contains details of any payments or loans made to, any assets made available or transferred to, or any assets earmarked, however informally, for the benefit of, any employee or former employee (or anyone connected with such employee or former employee) of the Target by an employee benefit trust or another third party, falling within the provisions of Part 7A of ITEPA and details of any trust or arrangement capable of conferring such a benefit.
  - 2.5 No part of the Purchase Price or the consideration payable for the Minority Shares will be treated as employment income, whether as employment income of any Shareholder or any other person.
  - 2.6 There is no arrangement, formal or informal:
    - (a) involving any Shareholder to redistribute (or which has the effect of redistributing) any consideration receivable under this Agreement or the consideration receivable under the Minority SPA; or

- (b) for any payment to be made to, or for any benefit to be received by, any current, former or prospective employee or office holder in connection with this Agreement or the Minority SPA or the transactions contemplated by this Agreement or the Minority SPA.
- 2.7 No consultant, contractor or adviser of the Target, or person who otherwise provides or has in the last six years provided services to the Target, whether directly or through a personal services company or other intermediary, should be or should have been treated for any relevant Tax purposes as an employee of the Target.

Part E- Excluded Liability Tax Covenant

1. The Founder Sellers covenant with the Purchaser to pay to the Purchaser an amount equal to: (A) any Tax Liability or other liability (i) of the Target and (ii) in respect of the matters falling within sub-paragraphs (c) to (k) of paragraph 1.1 of Part C, of the Purchaser or any member of the Purchaser's Group, arising directly or indirectly in respect of or as a consequence of or by reference to any matter referred to in sub-paragraphs (a) to (k) of paragraph 1.1 of Part C, (B) any amount falling within paragraph 1.2 of Part C and (C) any amount falling within paragraph 1.3 of Part C, in each case to the extent comprising or relating to:
  - (a) any Tax Liability or loss of corporate tax deduction in connection with the payment of "excess parachute payments" within the meaning of Section 280G(b)(1) of the Code, including any excise Tax under Section 4999 of the Code; or
  - (b) any Payroll Tax.

SCHEDULE 6  
PROPERTIES

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## SCHEDULE 7

## EARN OUT

In this Schedule, the following words and expressions shall have the following meanings unless expressly provided otherwise:

"2024 Gross Profit" has the meaning given in paragraph 3.6 of Part B of this Schedule;

"2024 Revenue" has the meaning given in paragraph 3.1 of Part B of this Schedule;

"Base Level Gross Profit Consideration" means [\*\*\*];

"Base Level Revenue Consideration" means [\*\*\*];

"Company Accounts" means the audited accounts of the Target Companies for Financial Year 2024 and shall be drawn in accordance with the following accounting policies that shall be applied in the following order of priority:

- (a) adopting the same format applied to the Locked Box Accounts;
- (b) adopting the accounting bases, principles, policies, treatments and categorisations in respect of Gross Profit and Revenue as applied for the purposes of the Accounts, the Management Accounts and the Locked Box Accounts;
- (c) adopting the accounting bases, principles, policies, treatments, and categorisations applied for the purposes of the Accounts, the Management Accounts and the Locked Box Accounts;
- (d) in accordance with UK GAAP,

for the avoidance of doubt, in the preparation of the Company Accounts, the terms of paragraph (a) shall take precedence over the terms of paragraph (b), the terms of paragraph (b) shall take precedence over the terms of paragraph (c) and the terms of paragraph (c) shall take precedence over the terms of paragraph (d);

"Disagreement Notice" has the meaning given in paragraph 3.2 of Part A of this Schedule;

"Draft Profit and Revenue Statement" means a draft profit and revenue statement setting out the Purchaser's calculation of the Gross Profit and Revenue for Financial Year 2024;

"Earn Out Consideration" has the meaning given to in in paragraph 4 of Part B of this Schedule;

"Earn Out Payment Date" means five (5) Business Days following agreement or determination of the Earn Out Consideration (if due);

"Financial Year 2024" means the period from 1 January 2024 and ending on 31 December 2024;

"Gross Profit" means Revenue as defined and calculated in line with historic management accounts less;

- (i) materials;
  - (ii) direct labour;
  - (iii) shipping;
  - (iv) subcontractor costs;
  - (v) direct travel and subsistence;
  - (vi) any research and development not capitalised.
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For the avoidance of doubt, Gross Profit should be calculated in line with the same practices and methodologies as the historic management accounts;

"Gross Profit Forecast" means the Gross Profit forecast for Financial Year 2024 totalling [\*\*\*];

"Independent Accountant" means any independent chartered accountant appointed pursuant to paragraph 6 of Part A of this Schedule and in accordance with Schedule 8;

"Minimum Threshold" means achievement by the Target of the Minimum Gross Profit Threshold and the Minimum Revenue Threshold;

"Minimum Gross Profit Threshold" means achievement by the Target of [\*\*\*] of the Gross Profit Forecast;

"Minimum Revenue Threshold" means achievement by the Target of [\*\*\*] of the Revenue Forecast;

"Profit and Revenue Statement" means the statement of the Earn Out Consideration in the form set out in Part C of this Schedule;

"Resolution Period" has the meaning given to it in paragraph 5 of Part A of this Schedule;

"Revenue" means global sales income generated resulting from;

- (i) sale of products;
- (ii) rental/lease of equipment;
- (iii) consultancy;
- (iv) data services;
- (v) engineering services;
- (vi) freight;
- (vi) any other services provided by the company

For the avoidance of doubt Revenue should be calculated in line with the same practices and methodologies as the historic management accounts.

"Revenue Forecast" means the Revenue forecast for Financial Year 2024 totalling [\*\*\*];

"Review Period" has the meaning given to it in paragraph 3 of Part A of this Schedule; and

"UK GAAP" means generally accepted accounting principles in the United Kingdom.

## Part A – Determination of Earn Out Consideration

1. The Purchaser shall ensure that the Company Accounts and Draft Profit and Revenue Statement are delivered to the Sellers' Representative no later than 1 May 2025 and, in any event, within five Business Days of the Company Accounts being available.
  2. The Seller's Representative shall, within twenty (20) Business Days from receipt of the Company Accounts and Draft Profit and Revenue Statement (the "Review Period"), deliver to the Purchaser:
    - 2.1. a written notice stating whether it agrees with the Draft Profit and Revenue Statement and the Purchaser's calculation of Gross Profit, Revenue and Earn Out Consideration;
    - 2.2. a written notice stating that it disagrees with the Draft Profit and Revenue Statement and/or the Purchaser's calculation of Gross Profit, Revenue and Earn Out Consideration (the "Disagreement Notice"). Any Disagreement Notice shall include reasonable details of the reasons for each disagreement and any suggested adjustment to the calculation of the Earn Out Consideration.
  3. If the Sellers' Representative fails to deliver a Disagreement Notice during the Review Period it shall, with effect from the expiry of the Review Period, be deemed to agree the Draft Profit and Revenue Statement and the amount of Earn Out Consideration specified therein.
  4. If a Disagreement Notice is validly served by the Sellers' Representative in accordance with paragraph 2.2, the Purchaser and the Sellers' Representative shall attempt in good faith to resolve those matters referred to in the Disagreement Notice as being in dispute and no others and agree the final form of the relevant Draft Profit and Revenue Statement and the calculation of the Earn Out Consideration within ten (10) Business Days after the date on which the Seller's Representative serves the Disagreement Notice on the Purchaser.
  5. In the absence of agreement between the Purchaser and the Sellers' Representative within the ten Business Day time period referred to in paragraph 4 above (the "Resolution Period"), at any time following the expiry of the Resolution Period either the Seller Representative or the Purchaser may, by written notice to the other, require the disputed matters to be referred for determination by an Independent Accountant in accordance with Schedule 8.
  6. The Draft Profit and Revenue Statement as agreed or deemed agreed between the Purchaser and the Sellers Representative, or as revised and determined by the Independent Accountant, in each case in accordance with this Schedule 7, shall (subject to Schedule 8) be final and binding on the Parties for all purposes and shall constitute the Profit and Revenue Statement for the purposes of this Agreement.
  7. The Purchaser and the Sellers Representative shall promptly provide to each other, each other's accountants and professional advisers and any Independent Accountant appointed pursuant to paragraph 4 of this Schedule 7, access to and copies of all such documents and information as are in their possession or under their control (other than the working papers of any of their professional advisers) and access upon reasonable notice and during normal working hours to all relevant personnel as may in any case be reasonably requested for the
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purpose of preparing or reviewing the Draft Profit and Revenue Statement and any Disagreement Notice, or making a determination pursuant to paragraph 5. Nothing shall require any party to disclose or provide access to any documents or information which are legally privileged or which that party is required by law or other legally binding obligation to keep confidential.

8. Each Party shall bear and pay its own costs incurred in connection with the preparation, review and agreement of the Draft Profit and Revenue Statement and the calculation of the Earn Out Consideration.

## Part B – Earn Out Consideration

1. There shall be no Earn Out Consideration payable by the Purchaser unless the Minimum Threshold is achieved.
2. In determining whether the Minimum Threshold has been met or surpassed, the Purchaser shall apply [\*\*\*] to the measurement of the Gross Profit Forecast and the Revenue Forecast such that the Target will need to achieve the requisite percentage in both Gross Profit and Revenue in order for the Minimum Threshold to be satisfied.
3. In the event that 2024 Revenue and 2024 Gross Profit (the “2024 Financials”) meet or exceed the Minimum Threshold then the following payments shall be made:

## Gross Revenue Payment

- 3.1. in the event that Revenue for 2024 (“2024 Revenue”) is equal to the Minimum Revenue Threshold then the Purchaser shall pay to the Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; or
- 3.2. in the event that 2024 Revenue exceeds the Minimum Revenue Threshold and is less than one hundred percent (100%) of the Revenue Forecast, then the Purchaser shall pay to the Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; and
- 3.3. in the event that 2024 Revenue is equal to one hundred percent (100%) of the Revenue Forecast, then the Purchaser shall pay to the Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to the Base Level Revenue Consideration (i.e. £6,500,000); or
- 3.4. in the event the 2024 Revenue is equal to or exceeds [\*\*\*] of the Revenue Forecast, then the Purchaser shall pay to the Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; or
- 3.5. in the event the 2024 Revenue exceeds one hundred per cent (100%) of the Revenue Forecast but is less than [\*\*\*] of the Revenue Forecast then the Purchaser shall pay to the Sellers and the Minority Sellers (in aggregate) to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to the Relevant Percentage of the Base Level Revenue Consideration where “Relevant Percentage” is the percentage achieved of the Revenue Forecast [\*\*\*].

## Gross Profit Payment

- 3.6. in the event that Gross Profit for 2024 ("2024 Gross Profit") is equal to the Minimum Gross Profit Threshold then the Purchaser shall pay to the Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; or
  - 3.7. in the event that 2024 Gross Profit exceeds the Minimum Gross Profit Threshold and is less than one hundred percent (100%) of the Gross Profit Forecast, then the Purchaser shall pay to the Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; and
  - 3.8. in the event that 2024 Gross Profit is equal to one hundred percent (100%) of the Gross Profit Forecast, then the Purchaser shall pay to the Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to the Base Level Gross Profit Consideration (i.e. £6,500,000); or
  - 3.9. in the event the 2024 Gross Profit is equal to or exceeds [\*\*\*] of the Gross Profit Forecast, then the Purchaser shall pay to the Sellers and the Minority Sellers (in aggregate), to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to [\*\*\*]; or
  - 3.10. in the event the 2024 Gross Profit exceeds one hundred per cent (100%) of the Gross Profit Forecast but is less than [\*\*\*] of the Gross Profit Forecast then the Purchaser shall pay to the Sellers and the Minority Sellers (in aggregate) to be distributed in accordance with the Adjusted Waterfall Distribution, an amount equal to the Relevant Percentage of the Base Level Gross Profit Consideration where "Relevant Percentage" is the percentage achieved of the Gross Profit Forecast [\*\*\*].
4. The payment due to the Sellers and the Minority Sellers (in aggregate) (if any) following determination or agreement of the 2024 Financials in accordance with this Part B shall be the "Earn Out Consideration".
  5. The total aggregate Earn Out Consideration shall not be greater than £19,500,000.

Part C – Pro Forma Gross Profit and Revenue Statement

To: [Sellers' Representative]

[Address]

Dear [Sellers' Representative]

Gross Profit and Revenue Statement in relation to the Earn Out Consideration

We refer to the share purchase agreement by which Luna Innovations Inc acquired the entire issued share capital of Silixa Ltd dated [●] December 2023 (the "SPA"). Capitalised words and phrases used in this letter shall have the meanings given in the SPA.

We enclose a copy of the Company Accounts in respect of Year 2024.

On the basis of the Company Accounts and having applied Part B of the SPA:

The Gross Profit for Financial Year 2024 is [£X]

The Revenue for Financial Year 2024 is [£Y]

As such the Earn Out Consideration [is/is not] payable by the Purchaser [and amounts to £X] [and shall be paid on the Earn Out Payment Date in accordance with the SPA].

Yours faithfully,

.....

for and on behalf of Luna Innovations Inc

## Part D– Earn Out Protections

1. **Sellers' Undertakings**
  - 1.1 Each Seller severally agrees and undertakes to the Purchaser that during the period starting on (and including) the Completion Date and ending on (and including) 31 December 2024 he, she or they shall:
    - (a) not take any action, or allow anything to be done which he is reasonably able to prevent, which in either case is effected with the deliberate intention of inflating artificially the Revenue, Gross Profit and/ or Earn Out Consideration; and
    - (b) to the extent and for so long as that Seller is an employee or officer of or a consultant to any of the Target Companies or any other member of the Purchaser's Group, not at any time in the performance of his, her or their duties and in the management of the business and operations of any of the Target Companies act in any way other than to promote the success of the Target Companies for the benefit of its members as a whole provided this shall not prejudice or limit each Seller's right to procure that the Target meets the conditions for the earn out.
  - 1.2 Without limiting the previous paragraphs, each of the Sellers, to the extent and for so long as that Seller is an employee or officer of or a consultant to any of the Target Companies or any other member of the Purchaser's Group, agrees and undertakes to ensure that during the period starting on (and including) the Completion Date and ending on (and including) the Earn Out Payment Date, no Target Company shall make any changes to the accounting policies used by the Target to prepare its accounts, management accounts and any other financial statements, without the prior written consent of the Purchaser (acting reasonably and without delay (a decision in writing to be provided by the Purchaser no later than 10 Business Days following written request)).
2. **Purchaser's Undertakings**
  - 2.1 Subject to paragraphs 2.3 and 2.4 below, the Purchaser agrees and undertakes on behalf of itself and each member of the Purchaser's Group (but excluding the Target Companies) (such companies being the "Relevant Purchaser Group") to the Sellers that during the period starting on (and including) the Completion Date and ending on (and including) 31 December 2024 (the "Earn Out Period"), it shall not (and it shall procure that no other member of the Purchaser's Group shall), whether directly or indirectly, take any action or omit to take any action (or cause or permit any action to be taken or omitted) or take any action or omit to take any action (or cause or permit anything to be done) in bad faith that (i) diverts, redirects or defers from the Target Companies any trading, business opportunities, revenue or earnings which would in the usual and ordinary course of business have been attributable to the Target Companies, or; (ii) allow anything to be done which the Purchaser and/or any other member of the Relevant Purchaser Group is reasonably able to prevent which, with the intention of reducing the Earn Out Consideration diverts or defers from the Target Companies any

trading, business opportunities, revenue or earnings which would in the usual and ordinary course of business have been attributable to the Target Companies; or (iii) distorts the financial performance of the Target Companies.

- 2.2 Without limiting paragraph 2.1 but subject to paragraphs 2.3, 2.4 and 2.6 the Purchaser agrees and undertakes to exercise its rights as a shareholder of the Target to vote in general meetings and, to the extent it has appointed representatives to the board of the Target, its right to vote at board meetings of the Target to ensure that during the Earn Out Period:
- (a) the Target shall not enter into any agreement or incur any commitment which is not on arms' length terms and in the ordinary course of its business and on reasonable commercial terms;
  - (b) the Target shall not cease to carry on all or a material part of its business;
  - (c) the Target shall not sell or otherwise dispose of all or substantially all of its business, assets or undertaking or a material part of its business, or enters into any agreement to do so;
  - (d) the Target shall not make, commence, or settle any claims (including insurance claims) or any legal (including arbitration or regulatory) proceedings for a sum in excess of £50,000 or, in the case of any settlement, where the amount to be recovered by the Target is more than £50,000 below the amount claimed by the Target;
  - (e) the Target shall not make any changes to the accounting policies used by the Target to prepare its accounts, management accounts and any other financial statements;
  - (f) it shall not sell, transfer or otherwise dispose of, or grant any Encumbrance over, any of the shares in the capital of the Target (or enter into any agreement to do so);
  - (g) it shall not cause or permit any of the following:
    - (i) a change to the accounting reference date of any of the Target Companies;
    - (ii) a material change to the scope or nature of the business of the any of the Target Companies;
    - (iii) the proposal or passing of a resolution to wind up any of the Target Companies; and
  - (j) it shall procure that each Target Company has sufficient working capital to continue to carry on its business.
- 2.3 Nothing in paragraphs 2.1, or 2.2 shall require the Purchaser or any member of the Purchaser's Group to take any action, or refrain from taking any action, where to do so would result, or be likely to result, in any director of any member of the Purchaser's Group (including



the Target Companies) being in breach of any statutory or fiduciary duty or being in breach of any applicable law or regulation in any relevant jurisdiction.

- 2.4 The Purchaser shall be permitted to take any action or cause or allow any action to be taken by the Target (the "Proposed Activity") which would otherwise contravene paragraphs 2.1, or 2.2 provided that before such Proposed Activity is undertaken or permitted, either:
- (a) the prior written consent of the Sellers' Representative and the Founder Sellers is obtained; or
  - (b) an adjustment to the calculation of the Gross Profit and/or the Revenue to ensure that the effect of the Proposed Activity on those calculations is neutral (the "Adjustment") is either:
    - (i) agreed in writing between the Sellers' Representative, the Founder Sellers and the Purchaser on or before the date falling 15 Business Days after the date on which the Purchaser notifies the Sellers' Representative in writing of the Proposed Activity and its proposed Adjustment in relation to it; or
    - (ii) in the event the Purchaser, the Founder Sellers and the Sellers' Representative are not able to agree the Adjustment within the period referred to in paragraph 2.4(b)(i), determined by an Independent Accountant who shall be appointed to deliver such a determination by the Purchaser and the Sellers' Representative in accordance with Schedule 8,

and any Adjustment agreed or determined in accordance with this paragraph 2.4 shall be final and binding on the parties for all purposes. The Purchaser and the Sellers' Representative shall promptly provide to each other, each other's accountants and professional advisers, and any Independent Accountant appointed pursuant to paragraph 2.4(b)(ii), access to and copies of all such documents and information as are in their possession or under their control (other than the working papers of any of their professional advisers) and access upon reasonable notice and during normal working hours to all relevant personnel as may in any case be reasonably requested for the purpose of agreeing or determining any Adjustment. Nothing shall require any party to disclose or provide access to any documents or information which are legally privileged or which that party is required by law or other legally binding obligation to keep confidential.

- 2.5 The Purchaser shall procure that the Purchaser and the Target Companies shall keep proper records and books of account containing all information and data necessary for the determination of Earn Out Consideration.
- 2.6 Nothing in this Schedule shall prevent the Purchaser from:
- (a) placing any operations or human resources personnel into the Target Companies either at its own cost or, with the consent of the Seller's Representative, the cost of a Target Company; or

- (b) engaging on behalf of a Target Company, accountants as is chosen by the Purchaser to conduct financial audits of the Target Companies (or any of them) at the cost of the Target.

## SCHEDULE 8

## APPOINTMENT OF INDEPENDENT ACCOUNTANT

1. Any matter which is referred, in accordance with this Agreement, for determination by an Independent Accountant shall be referred by either the Sellers' Representative or the Purchaser to:
  - (a) an independent chartered accountant whose identity and terms of appointment are agreed between the Sellers' Representative and the Purchaser; or
  - (b) failing such agreement on or before the date falling ten (10) Business Days after the date on which an individual is first proposed by either Party to the other for the purpose, either Party shall be entitled to request the President for the time being of the Institute of Chartered Accountants of England and Wales to appoint the Independent Accountant and agree the terms of their appointment on the Party's behalf.
2. The Purchaser and the Sellers Representative shall co-operate with each other fully and promptly in relation to appointing the Independent Accountant including, without limitation:
  - (a) taking all necessary actions to agree (and shall not unreasonably withhold or delay their consent to) the Independent Accountant's terms of appointment; and
  - (b) agreeing and signing any engagement letter, terms of reference or other documentation in connection with the Independent Accountant's appointment.
3. Except for any procedural matters or as otherwise expressly provided in this Schedule 8, the scope of the Independent Accountant's remit shall:
  - (a) be limited to determining the unresolved matters in the Disagreement Notice relating to:
    - (i) whether the Draft Profit and Revenue Statement has been prepared, and the corresponding calculation of the Earn Out Consideration has been made, in accordance with the requirements of Schedule 7;
    - (ii) whether any errors have been made in the preparation of the Draft Profit and Revenue Statement and the corresponding calculation of the Earn Out Consideration; and
    - (iii) any consequential amendments, corrections or modifications that are required for the Draft Profit and Revenue Statement to have been prepared, and the corresponding calculation of the Earn Out Consideration to have been made, in accordance with the requirements of Schedule 7.
  - (b) include awarding interest as part of their decision; and

- (c) include making a determination as to the proper interpretation or construction of any provision of this Agreement where this is necessary to enable the determination of the amount of the Earn Out Consideration.
- 4. In making his, her or their determination, the Independent Accountant shall:
  - (a) decide on the procedure and timetable to be followed in the determination, save that such procedure shall allow the Sellers' Representative and the Purchaser and their respective professional advisers to make written and oral representations to the Independent Accountant, shall require the Sellers' Representative and the Purchaser to provide each other with copies of or access to any information or documents provided to the Independent Accountant at the same time as they are provided or made available to the Independent Accountant, and shall permit each Party to be present during any oral submissions made by the other Party to the Independent Accountant;
  - (b) be required to determine only those matters that this Agreement provides are capable of being referred to the Independent Accountant for determination; and
  - (c) be entitled to take legal advice on any matter relevant to his, her or their determination.
- 5. The Independent Accountant shall act as an expert and not as an arbitrator. He shall not be obliged to give reasons for his, her or their determination which shall, save in the case of fraud or manifest error, be final and binding on all parties for all purposes. Other than in the case of fraud, no right of appeal shall exist in relation to that determination. Where there is a manifest error the relevant part of the determination shall be void and shall be referred back to the Independent Accountant for correction. The Independent Accountant shall be required to deliver his, her or their determination and any calculation, statement or accounts required to be provided by the Independent Accountant by this Agreement to the Purchaser and the Sellers' Representative in writing as soon as reasonably practicable and in any event within thirty (30) Business Days after his, her or their appointment.
- 6. The fees and expenses of the Independent Accountant together with VAT thereon ("Costs") will be borne among the Sellers (on the one hand) and the Purchaser (on the other hand):
  - (a) in circumstances where the Independent Accountant determines that the amount in dispute between the Parties is an amount between the figure contended by the Purchaser (the "**Purchaser's position**") and the figure contended by the Sellers' Representative (the "**Seller's position**"), in proportion to the difference between (i) the delta between the Purchaser's position and the Independent Accountant's determination and (ii) the delta between the Seller's position and the Independent Accountant's determination;
  - (b) in circumstances where the Independent Accountant's determination reflects the Seller's position, the Purchaser shall bear 100% of the Costs; or
  - (c) in circumstances where the Independent Accountant's determination reflects the Purchaser's position, the Sellers shall bear 100% of the Costs.

7. The Sellers' Representative and the Purchaser shall each use all reasonable endeavours to co-operate with the Independent Accountant to enable the Independent Accountant to reach his, her or their determination within the time period set by this Agreement including by co-operating with any timetable and procedure set by the Independent Accountant and making available documents, information and personnel. The Seller's Representative and the Purchaser shall act reasonably and co-operate in good faith to give effect to the provisions of this Schedule 8 and shall not do anything to hinder or prevent the Independent Accountant from making their determination.
8. In the event that any Independent Accountant appointed pursuant to this Schedule 8 dies or becomes unwilling or incapable of acting, then the matters to be determined by the Independent Accountant shall be referred for determination to a replacement Independent Accountant and this Schedule 8 shall apply to the appointment of that replacement as if he were the first Independent Accountant appointed.

SCHEDULE 9  
LOCKED BOX ACCOUNTS

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WHEREAS this Agreement is dated on the date first specified above.

Signed by MAHMOUD )  
FARHADIROUSHAN ) /s/ Mahmoud Farhadiroushan  
)

Signed by TOM PARKER )  
 ) /s/ Tom Parker  
)

Signed by ALISON GOLIGHER )  
 ) /s/ Alison Goligher  
)

SIGNED by )  
CTTV INVESTMENTS LLC )  
acting by ) /s/ Kemal Anbarci  
Kemal Anbarci, Vice - President )

Signed for and on behalf of Lime Rock )  
Partners V, L.P. ) /s/ Andrew Gautier  
 ) .....  
Andrew Pierre Gautier-Winther, Attorney for and on behalf  
of LRP GP V, Inc., the general partner of Lime Rock  
Partners GP V, L.P., the general partner of Lime Rock  
Partners V, L.P

Signed by )  
EQUINOR VENTURES AS )  
on being signed by ) /s/ Mons Torp Jakobsen  
Mons Torp Jakobsen ) .....  
Authorized Signatory )  
who is permitted to execute under the laws of Norway

Signed by )  
LUNA INNOVATIONS INC acting )  
by )  
Scott A. Graeff )  
Print Full Name )  
/s/ Scott A. Graeff .....  
Authorized signatory )



**Certificate of Designations  
Series B Convertible Preferred Stock**

On December 20, 2023, the Board of Directors of Luna Innovations Incorporated, a Delaware corporation (the “**Company**”), adopted the following resolution designating and creating, out of the Five Million (5,000,000) authorized and unissued shares of preferred stock of the Company, Sixty Five Thousand (65,000) authorized shares of a series of preferred stock of the Company titled the “Series B Convertible Preferred Stock”:

**RESOLVED** that, pursuant to the Certificate of Incorporation, the Bylaws and applicable law, a series of preferred stock of the Company titled the “Series B Convertible Preferred Stock,” and having a par value of \$0.001 per share and an initial number of authorized shares equal to Sixty Five Thousand (65,000), is hereby designated and created out of the Five Million (5,000,000) authorized and unissued shares of preferred stock of the Company, which series has the rights, designations, preferences, voting powers and other provisions set forth below:

SECTION 1 DEFINITIONS.

“**Affiliate**” of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person.

“**Attribution Parties**” means, collectively, the following Persons: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Initial Issue Date, directly or indirectly managed or advised by such Holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of such Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Person whose beneficial ownership of the Common Stock would or could be aggregated with such Holder’s and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Ownership Limitation.

“**Bankruptcy Triggering Event**” means each of the following events:

- (a) the Company or any of its Subsidiaries is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent;
- (b) the Company or any of its Subsidiaries begins an Insolvency Proceeding; or
- (c) an Insolvency Proceeding is begun against the Company or any of its Subsidiaries and is not dismissed or stayed within thirty (30) days.

“**Bankruptcy Triggering Event Repurchase**” has the meaning set forth in **Section 8(c)**.

“**Bloomberg**” means Bloomberg Financial Markets.

“**Board of Directors**” means the Company’s board of directors.

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

“**Bylaws**” means the Amended and Restated Bylaws of the Company, as the same may be further amended, amended and restated or supplemented from time to time.

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

“**Cash Settlement**” has the meaning set forth in **Section 11(e)(i)**.

“**Certificate**” means any Physical Certificate or Electronic Certificate.

“**Certificate of Designations**” means this Certificate of Designations, as amended, amended and restated or supplemented in accordance with its terms from time to time.

“**Certificate of Incorporation**” means the Company’s Amended and Restated Certificate of Incorporation, dated as of June 7, 2006, as the same may be further amended, amended and restated or supplemented in accordance with its terms from time to time.

“**Change of Control**” means any of the following events:

(a) a “person” or “group” (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company, its Wholly Owned Subsidiaries or a Holder (together with its Affiliates), has become, or, has obtained rights (whether by means of warrants, options or otherwise) to become, the direct or indirect “beneficial owner” (as defined below) of shares of the Company’s common equity representing more than fifty percent (50%) of the voting power of all of the Company’s then-outstanding common equity;

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

such surviving, continuing or acquiring company or other transferee, as applicable, comply with the provisions of **Section 11(h)**;

(c) the Company or its stockholders adopt a plan relating to the liquidation, dissolution or winding up of the Company; or

(d) at any time, the Company shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100.0%) of each class of outstanding capital stock of each subsidiary of the Company free and clear of all Liens (except Liens created by the Credit Agreement).

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

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

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

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

“**Common Stock**” means the common stock, \$0.001 par value per share, of the Company, subject to **Section 11(h)**.

“**Common Stock Change Event**” has the meaning set forth in **Section 11(h)**.

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

(a) either (i) each Conversion Share would be eligible to be offered, sold or otherwise transferred by the Holder of such share pursuant to Rule 144 under the Securities Act (or any successor rule thereto), without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice; or (ii) the offer and sale of such Conversion Share by such Holder are registered pursuant to an effective registration statement under the Securities Act and such registration statement is reasonably expected by the Company to remain effective and usable by the Holder to sell such Conversion Share continuously during the period from, and including, the date the related Mandatory Conversion Notice is sent to, and including, the thirtieth (30th) calendar day after the date such Conversion Share is issued *provided, however*, that each Holder shall supply all information reasonably requested by the Company for inclusion, and required to be included, in any registration statement or prospectus supplement related to the resale of the Conversion Shares; *provided, further*, that if a Holder fails to provide such information to the Company within fifteen (15) calendar days following any such request, then this **clause (a)(ii)** shall automatically be deemed to be satisfied with respect to such Holder;

(b) each Conversion Share referred to in **clause (a)** above (i) will, when sold or otherwise transferred pursuant to, in the case of **clause (a)(i)** above, Rule 144, or, in the case of **clause (a)(ii)** above, the registration statement referred to in such **clause**) be admitted for book-entry settlement through the Depository with an “unrestricted” CUSIP number, (ii) will not be represented by any Certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws unless required by law; and (iii) will, when issued, be listed and admitted for trading, without suspension or material limitation on trading, on an Eligible Market);

(c) each Conversion Share referred to in **clause (a)** above may be issued in full without violating **Section 11(g)** hereof and without violating the rules or regulations of the applicable Eligible Market on which the Common Stock is then listed for trading;

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

(e) the Company has not delivered a notice pursuant to **Section 7(a)** with respect to an anticipated Change of Control (unless such notice has been subsequently withdrawn pursuant to **Section 7(b)**); and

(f) the Company shall not have provided such Holder any information that, at any time during the period from the applicable Mandatory Conversion Notice Date through and including the related Mandatory Conversion Date, constitutes material non-public information under the U.S. federal securities laws regarding the Company.

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

“**Company**” has the meaning set forth in the preamble.

“**Company Change of Control Notice**” has the meaning set forth in **Section 7(a)**.

“**Company Change of Control Repurchase**” has the meaning set forth in **Section 7(d)(i)**.

“**Company Change of Control Repurchase Date**” has the meaning set forth in **Section 7(d)(ii)**.

“**Company Change of Control Repurchase Notice**” has the meaning set forth in **Section 7(d)(iv)**.

“**Company Change of Control Repurchase Price**” has the meaning set forth in **Section 7(d)(iii)**.

“**Company Change of Control Repurchase Right**” has the meaning set forth in **Section 7(d)(i)**.

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

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

“**Conversion Consideration**” means, with respect to the conversion of any Convertible Preferred Stock, the type and amount of consideration payable to settle such conversion, determined in accordance with **Section 11**.

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

“**Conversion Price**” initially means, \$6.70; *provided, however*, that the Conversion Price is subject to adjustment pursuant to **Sections 11(f)**.

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

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

“**Credit Agreement**” means, collectively, (a) that certain Loan Agreement, dated as of December 1, 2020, by and between the Company and PNC Bank, National Association, (b) that certain Term Note, dated as of December 1, 2020, by and between the Company and PNC Bank, National Association, (c) that certain Amended and Restated Revolving Line of Credit Note, dated as of June 21, 2022, by and between the Company and PNC Bank, National Association and (d) that certain Amended and Restated Term Note Agreement, dated as of June 21, 2022, by and between the Company and PNC Bank, National Association, in each case, as such agreement was amended, restated or replaced prior to the Subscription Date.

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

“**Depositary**” means The Depository Trust Company or its successor.

“**Dilutive Issuance**” has the meaning set forth in **Section 11(f)(i)(3)**.

“**Disqualified Equity Interests**” means any Capital Stock that, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable,



pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) indebtedness or (ii) any other Capital Stock that would constitute Disqualified Equity Interests, in each case of **clauses (a) through (d)**, prior to the date that is ninety-one (91) days after the first date on which no shares of Convertible Preferred Stock remain outstanding.

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

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

“**Effective Price**” has the following meaning with respect to the issuance or sale of any shares of Common Stock or any Equity-Linked Securities:

(a) in the case of the issuance or sale of shares of Common Stock, the value of the consideration received or receivable by (or at the direction of) the Company or any of its Affiliates for such shares, expressed as an amount per share of Common Stock; and

(b) in the case of the issuance or sale of any Equity-Linked Securities, an amount equal to a fraction whose:

(i) numerator is equal to sum, without duplication, of (x) the value of the aggregate consideration received or receivable by (or at the direction of) the Company or any of its Affiliates for the issuance or sale of such Equity-Linked Securities; and (y) the value of the minimum aggregate additional consideration, if any, payable to purchase or otherwise acquire shares of Common Stock pursuant to such Equity-Linked Securities; and

(ii) denominator is equal to the maximum number of shares of Common Stock underlying such Equity-Linked Securities;

*provided, however, that:*

(w) for purposes of **clauses (a) and (b)(i)** above, all underwriting commissions, placement agency commissions or similar commissions paid to any broker-dealer by the Company or any of its Affiliates in connection with such issuance or sale (excluding any other fees or expenses incurred by the Company or any of its Affiliates) shall, without duplication, be added to the aggregate consideration referred to in such clause;

(x) for purposes of **clause (b)** above, if such minimum aggregate consideration, or such maximum number of shares of Common Stock, is not determinable at the time such Equity-Linked Securities are issued or sold, then (1) the initial consideration payable under such Equity-Linked Securities, or the initial number of shares of Common Stock underlying such Equity-Linked Securities, as applicable, will be used; and (2) at each time thereafter when such amount of consideration or number of shares becomes determinable or is otherwise adjusted (including pursuant to “anti-dilution” or similar provisions), there

will be deemed to occur, for purposes of **Section 11(f)(i)(3)** and without affecting any prior adjustments theretofore made to the Conversion Price, an issuance of additional Equity-Linked Securities;

(y) for purposes of **clause (b)** above, the surrender, extinguishment, maturity or other expiration of any such Equity-Linked Securities will be deemed not to constitute consideration payable to purchase or otherwise acquire shares of Common Stock pursuant to such Equity-Linked Securities; and

(z) the “value” of any such consideration will be the fair value thereof, as of the date such shares or Equity-Linked Securities, as applicable, are issued or sold, determined in good faith by the Board of Directors (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

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

“**Eligible Market**” means The New York Stock Exchange, The NYSE American, The Nasdaq Capital Market, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

“**Equity-Linked Securities**” means any rights, options or warrants to purchase or otherwise acquire (whether immediately, during specified times, upon the satisfaction of any conditions or otherwise) any shares of Common Stock.

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

“**Exchange Cap**” has the meaning set forth in **Section 11(g)**.

“**Exchange Cap Allocation**” has the meaning set forth in **Section 11(g)**.

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

“**Exempt Issuance**” means (a) the Company’s issuance or grant of shares of Common Stock or options to purchase shares Common Stock, or other equity-based awards (including restricted stock units), to employees (or prospective employees who have accepted an offer of employment), directors or consultants of the Company or any of its Subsidiaries, pursuant to plans (i) in existence as of the Initial Issue Date, or (ii) approved or amended by a majority of the independent members of the Board of Directors, or (iii) assumed by the Company or any of its Subsidiaries in connection with a transaction approved by a majority of the independent members of the Board of Directors; (b) the Company’s issuance of securities upon the exercise, exchange

or conversion of any securities that are exercisable or exchangeable for, or convertible into, shares of Common Stock and are outstanding as of the Initial Issue Date, provided that such exercise, exchange or conversion is effected pursuant to the terms of such securities, subject to customary adjustment provisions, as in effect on the Initial Issue Date; (c) the Company's issuance of the Convertible Preferred Stock pursuant to the Subscription Agreement and any shares of Common Stock upon conversion of the Convertible Preferred Stock issued thereunder; (d) the Company's issuance of securities pursuant to any present or future plan approved by a majority of the independent members of the Board of Directors providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in Common Stock, whether or not the Company bears the ordinary costs of administration and operation of the plan, including brokerage commissions; (e) the Company's issuance of securities pursuant to a present or future employee stock purchase plan approved by a majority of the independent members of the Board of Directors; or (f) the Company's issuance of securities in connection with a merger, acquisition of assets or other strategic transaction approved by a majority of the independent members of the Board of Directors. For purposes of this definition, "consultant" means a consultant that may participate in an "employee benefit plan" in accordance with the definition of such term in Rule 405 under the Securities Act.

**"Exercise Period"** means December 21, 2026.

**"Expiration Date"** has the meaning set forth in **Section 11(f)(i)(2)**.

**"Expiration Time"** has the meaning set forth in **Section 11(f)(i)(2)**.

**"Final Exchange Cap Allocation"** has the meaning set forth in **Section 11(g)**.

**"Group"** means a "group" as that term is used in Section 13(d) of the Exchange Act and Rule 13d-5 thereunder.

**"Holder"** means a person in whose name any Convertible Preferred Stock is registered in the Register.

**"Holder Change of Control Repurchase"** has the meaning set forth in **Section 8(b)**.

**"Holder Change of Control Repurchase Right"** has the meaning set forth in **Section 8(b)**.

**"Holder Optional Repurchase"** has the meaning set forth in **Section 8(a)**.

**"Holder Optional Repurchase Right"** has the meaning set forth in **Section 8(a)**.

**"Holder Optional Repurchase Trigger Date"** means the date that is the fourth (4<sup>th</sup>) anniversary of the Initial Issue Date.

**"Holder Repurchase"** means, collectively, a Holder Optional Repurchase, a Holder Change of Control Repurchase, a Holder Triggering Event Repurchase or a Bankruptcy Triggering Event Repurchase.

“**Holder Repurchase Date**” means the date fixed, pursuant to **Section 8(d)**, for the settlement of the repurchase of the Convertible Preferred Stock by the Company pursuant to a Holder Optional Repurchase, a Holder Change of Control Repurchase, a Holder Triggering Event Repurchase or a Bankruptcy Triggering Event Repurchase, as applicable.

“**Holder Repurchase Notice**” means a notice (including a notice substantially in the form of the “Holder Repurchase Notice” set forth in **Exhibit C**) containing the information, or otherwise complying with the requirements, set forth in **Section 8(f)(ii)** and **Section 8(f)(iii)**.

“**Holder Repurchase Price**” means the cash price payable by the Company to repurchase any share of Convertible Preferred Stock upon the applicable Holder Repurchase, calculated pursuant to **Section 8(e)**.

“**Holder Repurchase Right**” means, collectively, the Holder Optional Repurchase Right, the Holder Change of Control Repurchase Right and the Holder Triggering Event Repurchase Right.

“**Holder Triggering Event Repurchase**” has the meaning set forth in **Section 8(c)**.

“**Holder Triggering Event Repurchase Right**” has the meaning set forth in **Section 8(c)**.

“**Initial Exchange Cap Allocation**” has the meaning set forth in **Section 11(g)**.

“**Initial Issue Date**” means December 21, 2023.

“**Initial Liquidation Preference**” means one thousand dollars (\$1,000) per share of Convertible Preferred Stock.

“**Insolvency Proceeding**” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“**Investors**” shall have the meaning set forth in the Subscription Agreement.

“**Junior Stock**” means any class or series of the Company’s or its Subsidiaries’ stock whose terms do not expressly provide that such class or series will rank senior to, or equally with, the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively) or with respect to the distribution of assets upon the Company’s liquidation, dissolution or winding up. Junior Stock includes the Common Stock.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Liquidation Preference**” means, with respect to the Convertible Preferred Stock, an amount initially equal to the Initial Liquidation Preference per share of Convertible Preferred Stock, as adjusted from time to time pursuant to **Section 5(a)(ii)(y)** and **Section 5(a)(iii)**.

“**Majority Holders**” has the meaning set forth in **Section 10(a)(ii)(1)**.

“**Mandatory Conversion**” has the meaning set forth in **Section 11(c)(i)**.

“**Mandatory Conversion Date**” means a Conversion Date designated with respect to any Convertible Preferred Stock pursuant to **Section 11(c)(iii)**.

“**Mandatory Conversion Measurement Period**” has the meaning set forth in **Section 11(c)(i)**.

“**Mandatory Conversion Notice**” has the meaning set forth in **Section 11(c)(iv)**.

“**Mandatory Conversion Notice Date**” means, with respect to a Mandatory Conversion, the date on which the Company delivers to the Holders the Mandatory Conversion Notice for such Mandatory Conversion pursuant to **Section 11(c)(iv)**.

“**Mandatory Conversion Right**” has the meaning set forth in **Section 11(c)(i)**.

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

“**Officer**” means the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Controller, the Corporate Secretary, or any Vice-President of the Company.

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

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

“**Optional Conversion Date**” means, with respect to the Optional Conversion of any Convertible Preferred Stock, the first (1<sup>st</sup>) Business Day on which the requirements set forth in **Section 11(d)(ii)** for such conversion are satisfied.

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

“**Optional Conversion Settlement Date**” has the meaning set forth in **Section 11(e)(v)**.

**“Ownership Limitation”** has the meaning set forth in **Section 11(g)**.

**“Optional Shares”** shall have the meaning set forth in the Subscription Agreement.

**“Parity Stock”** means any class or series of the Company's or its Subsidiaries' stock ( other than the Convertible Preferred Stock) whose terms expressly provide that such class or series will rank equally with the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively) or with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up.

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

**“Permitted Transferees”** means (i) any investment fund, investment vehicle or account Controlled by any Holder or any Affiliate thereof, or (ii) any shareholder, limited partner, limited liability company member, other equity holder or Affiliate of any Holder or any such investment fund, investment vehicle or account thereof as a result of any distribution.

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

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

**“Preferred Stock Director”** has the meaning set forth in **Section 10(a)(i)**.

**“Public Announcement”** means the disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Company with the Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

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

**“Reference Property”** has the meaning set forth in **Section 11(h)**.

**“Reference Property Unit”** has the meaning set forth in **Section 11(h)**.

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

“**Registration Rights Agreement**” means the Registration Rights Agreement, dated as of the Subscription Date, by and among the Company and the Investors, as the same may be amended, amended and restated or supplemented in accordance with its terms from time to time.

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

“**Regular Dividend Payment Date**” means, with respect to any share of Convertible Preferred Stock, each March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each year, beginning on December 31, 2023 (or beginning on such other date specified in the Certificate representing such share).

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

“**Regular Dividend Rate**” means, with respect to any Regular Dividend, (i) paid in cash on the applicable Regular Dividend Payment Date, 8.50% per annum and (ii) otherwise, 10.00% per annum, in each case, subject to increase pursuant to **Section 9**.

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

“**Regular Dividends Election Termination Date**” has the meaning set forth in **Section 5(a)(ii)**.

“**Regulated Bank**” means a commercial bank with a consolidated combined capital and surplus of at least \$5,000,000,000 that is (i) a U.S. depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation; (ii) a corporation organized under section 25A of the U.S. Federal Reserve Act of 1913; (iii) a branch, agency or commercial lending company of a foreign bank operating pursuant to approval by and under the supervision of the Board of Governors of the Federal Reserve System under 12 CFR part 211; (iv) a non-U.S. branch of a foreign bank managed and controlled by a U.S. branch referred to in clause (iii); or (v) any other U.S. or non-U.S. depository institution or any branch, agency or similar office thereof supervised by a bank regulatory authority in any jurisdiction.

“**Related Party Transaction**” means any transaction for which disclosure is required pursuant to 17 CFR § 229.404, other than arrangements entered into between the Company and any of its officers, directors or employees, relating to his or her employment by, or his or her service as a director of or consultant to, the Company, as approved by the compensation committee of the Company’s Board of Directors.

“**Repurchase**” means, collectively, the Holder Repurchase and the Company Change of Control Repurchase.

“**Repurchase Date**” means, collectively, the Holder Repurchase Date and the Company Change of Control Repurchase Date.

“**Repurchase Notice**” means, collectively, the Holder Repurchase Notice and the Company Change of Control Repurchase Notice.

“**Repurchase Price**” means, collectively, the Holder Repurchase Price and the Company Change of Control Repurchase Price.

“**Repurchase Right**” means, collectively, the Holder Repurchase Right and the Company Change of Control Repurchase Right.

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

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

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

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

“**Senior Stock**” means any class or series of the Company’s or its Subsidiaries’ stock whose terms expressly provide that such class or series will rank senior to the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively) or with respect to the distribution of assets upon the Company’s liquidation, dissolution or winding up.

“**Series A Preferred Stock**” the preferred stock of the Company titled “Series A Convertible Preferred Stock,” par value \$0.001 per share.

“**Shelf Registration Statement**” shall have the meaning set forth in the Registration Rights Agreement.

“**Standard Settlement Period**” means the standard settlement period, expressed in a number of Trading Days, on the principal securities exchange or securities market on which the Common Stock is then traded as in effect on the date of delivery of the applicable Optional Conversion Notice.

“**Subscription Agreement**” means the Subscription Agreement, dated as of the Subscription Date, by and among the Company and the Investors, as the same may be amended, amended and restated or supplemented in accordance with its terms from time to time.

“**Subscription Date**” means December 21, 2023.

“**Subsequent Issue Date**” means each date (if any) the Optional Shares are issued to the Investors in accordance with the terms of the Subscription Agreement.



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

**“Successor Person”** has the meaning set forth in **Section 11(h)(iii)**.

**“Tender/Exchange Offer Valuation Period”** has the meaning set forth in **Section 11(f)(i)(2)**.

**“Total Subscription Shares”** means the number of shares of Convertible Preferred Stock issued on the Initial Issue Date plus the number of shares of Convertible Preferred Stock issued on each Subsequent Issue Date, if any.

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

**“Transaction Documents”** means this Certificate of Designations, the Subscription Agreement and the Registration Rights Agreement.

**“Transfer Agent”** means the Company or its successor.

**“Treasury Regulations”** means the Treasury regulations promulgated under the Code, as amended.

**“Triggering Event Notice”** has the meaning set forth in **Section 8(c)**.

**“Triggering Events”** means each of the following events or failure to comply therewith:

(a) (A) the suspension of the Common Stock from trading on an Eligible Market for a period of five (5) consecutive Trading Days or (B) the failure of the Common Stock to be listed on an Eligible Market;

(b) the Company's (A) failure to timely issue shares of Common Stock upon conversion by delivery of the required number of shares of Common Stock within five (5) Business Days after the applicable Conversion Date or (B) notice, written or oral, to any Holder, including by way of Public Announcement, or through any of its agents, at any time, of its intention not to comply with a request for conversion of any shares of Convertible Preferred Stock into shares of Common Stock that is tendered in accordance with the provisions of this Certificate of Designations, other than pursuant to **Section 11(g)**;

(c) the Company's failure to pay to such Holder any amount of Liquidation Preference, Dividends, Repurchase Price or other amounts when and as due under this Certificate of Designations or any other Transaction Document, only if such failure continues for a period of at least an aggregate of five (5) Business Days;

(d) the occurrence of any default (after lapse of any applicable cure periods) under any indebtedness of the Company or any of its Subsidiaries that aggregates to at least of \$1,000,000 which results (without giving effect to any consent or waiver made by the lenders thereunder) in the redemption, acceleration or other obligation to repay prior to maturity of such indebtedness; or

(e) other than as specifically set forth in another clause of this definition of "Triggering Event", the Company fails to comply with any provision of this Certificate of Designations and such failure has an adverse effect on the Holders, except, in the case of a failure to comply with a provision of this Certificate of Designations which is curable, only if such failure to comply remains uncured for a period of fifteen (15) Business Days.

**"Voting Cap"** has the meaning set forth in **Section 10(c)**.

**"Voting Right Expiration Date"** means the earlier of (i) the date on which the Investors (or their Permitted Transferees) no longer own beneficially and of record at least fifty percent (50%) of the Total Subscription Shares issued on the Initial Issue Date (without taking into account, for the purpose of this definition the accumulation of Dividends pursuant to **Section 5(a)(ii)(y)** and **Section 5(a)(iii)**) (counting in the numerator, for such purpose, any shares of Convertible Preferred Stock previously held by the Investors (or their Permitted Transferees) that were subsequently converted into Conversion Shares pursuant to a Mandatory Conversion or an Optional Conversion, for so long as the Investors (or their Permitted Transferees) continue to own beneficially and of record such underlying Conversion Shares (without taking into account, for the purpose of this definition the accumulation of Dividends pursuant to **Section 5(a)(ii)(y)** and **Section 5(a)(iii)**) and (ii) the date that there are no longer any shares of Convertible Preferred Stock outstanding.

**"Weighted Average Issuance Price"** has the meaning set forth in **Section 11(f)(i)(3)**.

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

**SECTION 2 RULES OF CONSTRUCTION.** For purposes of this Certificate of Designations:

- (a) “or” is not exclusive;
- (b) “including” means “including without limitation”;
- (c) “will” expresses a command;
- (d) the “average” of a set of numerical values refers to the arithmetic average of such numerical values;
- (e) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;
- (f) “herein,” “hereof” and other words of similar import refer to this Certificate of Designations as a whole and not to any particular Section or other subdivision of this Certificate of Designations, unless the context requires otherwise;
- (g) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise; and
- (h) the exhibits, schedules and other attachments to this Certificate of Designations are deemed to form part of this Certificate of Designations.

### SECTION 3 THE CONVERTIBLE PREFERRED STOCK.

- (a) *Designation; Par Value.* A series of stock of the Company titled the “Series B Convertible Preferred Stock” (the “**Convertible Preferred Stock**”) is hereby designated and created out of the Five Million (5,000,000) authorized and unissued shares of preferred stock of the Company. The par value of the Convertible Preferred Stock is \$0.001 per share.
- (b) *Number of Authorized Shares.* The total authorized number of shares of Convertible Preferred Stock is Sixty Five Thousand (65,000).
- (c) *Form, Dating and Denominations.*
  - (i) *Form and Date of Certificates Representing Convertible Preferred Stock.* Each Certificate representing any Convertible Preferred Stock will bear the legends required by **Section 3(f)** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the Depositary.
  - (ii) *Certificates.*
    - (1) *Generally.* The Convertible Preferred Stock will be originally issued initially in the form of one or more Electronic Certificates. Electronic Certificates may be exchanged for Physical Certificates, and Physical Certificates may be exchanged for Electronic Certificates upon request by the Holder thereof pursuant to customary procedures.

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

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

(iv) *Registration Numbers.* Each Certificate representing any Convertible Preferred Stock will bear a unique registration number that is not affixed to any other Certificate representing any other outstanding share of Convertible Preferred Stock.

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

(i) *Method of Payment.* The Company will pay all cash amounts due on any Convertible Preferred Stock by wire transfer of immediately available funds to an account of any Holder within the United States, so long as such Holder has delivered wire instructions to the Company no later than the Close of Business on the following date: (x) with respect to the payment of any declared cash Dividend due on a Dividend Payment Date for the Convertible Preferred Stock, the related Record Date; and (y) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due; *provided, however*, that if such Holder has failed to timely deliver such wire instructions, then the Company will pay all such cash amounts by check issued in the name of such Holder.

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

(iii) *Withholding.* The Company or any paying agent of the Company shall be entitled to deduct and withhold on all payments and distributions on the Convertible Preferred Stock to the extent required by applicable law. To the extent that any amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes of this Certificate of Designations as having been paid to the Person in respect of which such deduction or withholding was made. If any withholding or deduction is required by law to be made from any amount payable by or on behalf of the Holders pursuant to this Certificate of Designations then the Person paying the relevant amount will pay, together with the relevant amount, such additional sum as will ensure that, after the withholding or deduction is made, the Person receiving the relevant amount receives and retains the amount that it would have received and retained in the absence of such withholding or deduction.

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

(f) *Legends.*

(i) *Restricted Stock Legend.*

(1) Each Certificate representing any share of Convertible Preferred Stock will bear the Restricted Stock Legend.

(2) If any share of Convertible Preferred Stock is issued in exchange for, in substitution of, or to effect a partial conversion of, any other share(s) of Convertible Preferred Stock (such other share(s) being referred to as the “old share(s)” for purposes of this **Section 3(f)(i)(2)**), including pursuant to **Section 3(h)**, then the Certificate representing such share may bear the Restricted Stock Legend if the Certificate representing such old share(s) bore the Restricted Stock Legend at the time of such exchange or substitution, or on the related Conversion Date with respect to such conversion, as applicable if, in the reasonable determination of the Company, such Restricted Stock Legend is required by applicable law.

(ii) *Other Legends.* The Certificate representing any Convertible Preferred Stock may bear any other legend or text, not inconsistent with this Certificate of Designations, as may be required by applicable law or by any securities exchange or

automated quotation system on which such Convertible Preferred Stock is traded or quoted or as may be otherwise reasonably determined by the Company.

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

(iv) *Legends on Conversion Shares.*

(1) Each Conversion Share will bear a legend substantially to the same effect as the Restricted Stock Legend upon issuance if, in the reasonable determination of the Company, such Restricted Stock Legend is required by applicable law.

(2) Notwithstanding anything to the contrary in **Section 3(f)(iv)(1)**, a Conversion Share shall not bear a legend pursuant to **Section 3(f)(iv)(1)** if such Conversion Share is issued in an uncertificated form that does not permit affixing legends thereto, *provided* the Company may take measures (including the assignment thereto of a "restricted" CUSIP number) that it reasonably deems necessary to enforce the transfer restrictions referred to in such legend to the extent required by applicable law.

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

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

(1) *Generally.* Subject to this **Section 3(g)** and **Section 4.3** of the Subscription Agreement, Convertible Preferred Stock represented by any Certificate may be transferred or exchanged from time to time, and the Company will direct that each such transfer or exchange to be recorded in the Register.

(2) *No Services Charge; Transfer Taxes.* The Company will not impose any service charge on any Holder for any transfer, exchange or conversion of any Convertible Preferred Stock, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer or exchange of Convertible Preferred Stock, other than exchanges pursuant to **Section 3(h)** or **Section 3(o)** not involving any transfer.

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

Stock, and no fractional share of Convertible Preferred Stock may be transferred or exchanged.

(4) *Legends.* Each Certificate representing any share of Convertible Preferred Stock that is issued upon transfer of, or in exchange for, another share of Convertible Preferred Stock will bear each legend as provided in **Section 3(f)**.

(5) *Settlement of Transfers and Exchanges.* Upon satisfaction of the requirements of this Certificate of Designations to effect a transfer or exchange of any Convertible Preferred Stock as well as the delivery of all documentation reasonably required by the Transfer Agent or the Company in order to effect any transfer or exchange, the Company will direct such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the second (2nd) Business Day after the date of such satisfaction.

(ii) *Transfers of Shares Subject to Repurchase or Conversion.* Notwithstanding anything to the contrary in this Certificate of Designations, the Company will not be required to register the transfer of or exchange any share of Convertible Preferred Stock:

(1) that has been surrendered for conversion except to the extent that the Company fails to deliver the related Conversion Shares when due; or

(2) as to which a Repurchase Notice has been duly delivered pursuant to **Section 7(d)** or **Section 8(f)**, except to the extent that the Company fails to pay the related Repurchase Price when due.

(h) *Exchange and Cancellation of Convertible Preferred Stock to Be Converted or Repurchased.*

(i) *Partial Conversions or Repurchases of Convertible Preferred Stock.* If only a portion of a Holder's Convertible Preferred Stock represented by a Certificate (such Certificate being referred to as the "old Certificate" for purposes of this **Section 3(h)(i)**) is to be converted pursuant to **Section 11** or repurchased pursuant to a Repurchase, then, as soon as reasonably practicable after such Certificate is surrendered for such conversion or repurchase, as applicable, the Company will direct such Certificate to be exchanged for (1) one or more Certificates that (x) each represent a whole number of shares of Convertible Preferred Stock and, in the aggregate, represent a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock represented by such old Certificate that are not to be so converted or repurchased, as applicable, (y) are registered in the name of such Holder; and (z) bear a legend as provided in **Section 3(f)**, and deliver such Certificate(s) to such Holder; and (2) a Certificate representing a whole number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock represented by such old Certificate that are to be so converted

or repurchased, as applicable, which Certificate will be immediately converted or repurchased, as applicable, pursuant to the terms of this Certificate of Designations; *provided, however*, that the Certificate referred to in this **clause (2)** need not be issued at any time after which such shares subject to such conversion or repurchase, as applicable, are deemed to cease to be outstanding pursuant to **Section 3(n)**.

(ii) *Cancellation of Convertible Preferred Stock that Is Converted or Repurchased.* If a Holder's Convertible Preferred Stock represented by a Certificate (or any portion thereof that has not theretofore been exchanged pursuant to **Section 3(h)(i)**) (such Certificate being referred to as the "old Certificate" for purposes of this **Section 3(h)(ii)**) is to be converted pursuant to **Section 11** or repurchased pursuant to a Repurchase, then, promptly after the later of the time such Convertible Preferred Stock is deemed to cease to be outstanding pursuant to **Section 3(n)** and the time such Certificate is surrendered for such conversion or repurchase, as applicable, (A) such Certificate shall be cancelled pursuant to **Section 3(l)**; and (B) in the case of a partial conversion or repurchase, the Company shall issue, execute and deliver to such Holder, and cause the Transfer Agent to countersign one or more Certificates that (x) each represent a whole number of shares of Convertible Preferred Stock and, in the aggregate, represent a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock represented by such old Certificate that are not to be so converted or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear a legend as provided in **Section 3(f)**.

(i) *Status of Retired Shares.* Upon any share of Convertible Preferred Stock ceasing to be outstanding, such share shall be deemed to be retired and to resume the status of an authorized and unissued share of preferred stock of the Company, and such share cannot thereafter be issued or reissued as Convertible Preferred Stock. Any shares of Convertible Preferred Stock authorized but not issued pursuant to the Subscription Agreement after the expiration of the Exercise Period shall be restored to the status of authorized but unissued shares of the Company's preferred stock, without designation as to series.

(j) *Replacement Certificates.* If a Holder of any Convertible Preferred Stock claims that the Certificate(s) representing such Convertible Preferred Stock have been mutilated, lost, destroyed or wrongfully taken, then the Company shall issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(c)**, a replacement Certificate representing such Convertible Preferred Stock upon surrender to the Company or the Transfer Agent of such mutilated Certificate, or upon delivery to the Company or the Transfer Agent of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Transfer Agent and the Company. In the case of a lost, destroyed or wrongfully taken Certificate representing any Convertible Preferred Stock, the Company and the Transfer Agent may require the Holder thereof to provide such security or indemnity that is reasonably satisfactory to the Company and the Transfer Agent to protect the Company and the Transfer Agent from any loss that any of them may suffer if such Certificate is replaced. Every replacement Convertible Preferred Stock issued pursuant to this **Section 3(j)** shall, upon such replacement, be deemed to be outstanding Convertible Preferred Stock, entitled to all of the benefits of this Certificate of Designations equally and ratably with all other Convertible Preferred Stock then outstanding.



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

(l) *Cancellation.* The Company may at any time deliver Convertible Preferred Stock that any Holder has surrendered to the Company to the Transfer Agent for cancellation. The Company will direct the Transfer Agent to promptly cancel all shares of Convertible Preferred Stock so surrendered to it in accordance with its customary procedures.

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

(n) *Outstanding Shares.*

(i) *Generally.* The shares of Convertible Preferred Stock that are outstanding at any time will be deemed to be those shares of Convertible Preferred Stock that, at such time, have been duly executed by the Company and countersigned by the Transfer Agent, excluding those shares of Convertible Preferred Stock that have theretofore been (1) cancelled by the Transfer Agent or delivered to the Transfer Agent for cancellation in accordance with **Section 3(l)**; (2) paid in full upon their conversion or repurchase in accordance with this Certificate of Designations; or (3) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (ii), (iii), or (iv)** of this **Section 3(n)**.

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

(iii) *Shares to Be Converted.* If any Convertible Preferred Stock is to be converted, then, at the Close of Business on the Conversion Date for such conversion (unless there occurs a default in the delivery of the Conversion Consideration due pursuant to **Section 11** upon such conversion): (1) such Convertible Preferred Stock will be deemed to cease to be outstanding; (2) Regular Dividends will cease to accumulate on such Convertible Preferred Stock from and after such Conversion Date (without limiting the Company’s obligations pursuant to **Section 5(c)**); and (3) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive such Conversion Consideration as provided in **Section 11** (and, if applicable, declared Dividends as provided in **Section 5(c)**).

(iv) *Shares to Be Repurchased Pursuant to a Repurchase.* If, on a Repurchase Date, the Company holds consideration in kind and amount that is sufficient to pay the aggregate applicable Repurchase Price due on such date, then (unless there occurs a default in the payment of the applicable Repurchase Price) (1) the Convertible Preferred Stock to

be repurchased on such date will be deemed, as of such date, to cease to be outstanding (without limiting the Company's obligations pursuant to **Section 5(c)**); and (2) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive the applicable Repurchase Price as provided in **Section 7(d)** and **Section 8** (and, if applicable, declared Dividends as provided in **Section 5(c)**).

(o) *Notations and Exchanges.* Without limiting any rights of Holders pursuant to **Section 10**, if any amendment, supplement or waiver to the Certificate of Incorporation or this Certificate of Designations changes the terms of any Convertible Preferred Stock, then the Company may, in its discretion, require the Holder of the Certificate representing such Convertible Preferred Stock to deliver such Certificate to the Transfer Agent so that the Transfer Agent may place an appropriate notation prepared by the Company on such Certificate and return such Certificate to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Convertible Preferred Stock, issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(c)**, a new Certificate representing such Convertible Preferred Stock that reflects the changed terms. The failure to make any appropriate notation or issue a new Certificate representing any Convertible Preferred Stock pursuant to this **Section 3(o)** will not impair or affect the validity of such amendment, supplement or waiver.

(p) *CUSIP and ISIN Numbers.* The Company may use one or more CUSIP or ISIN numbers to identify any of the Convertible Preferred Stock, and, if so, the Company will use such CUSIP or ISIN number(s) in notices to Holders; *provided, however*, that the effectiveness of any such notice will not be affected by any defect in, or omission of, any such CUSIP or ISIN number.

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

#### **SECTION 5 DIVIDENDS.**

(a) *Regular Dividends.*

(i) *Payment of Regular Dividends.* The Convertible Preferred Stock will accumulate cumulative dividends at a rate per annum equal to the applicable Regular Dividend Rate on the Liquidation Preference thereof, regardless of whether or not declared or whether or not funds are legally available for their payment (such dividends that accumulate on the Convertible Preferred Stock pursuant to this sentence, "**Regular Dividends**"). Subject to the other provisions of this **Section 5** (including, for the avoidance of doubt, **Section 5(a)(iii)**), such Regular Dividends will be payable quarterly in arrears on each Regular Dividend Payment Date, to the Holders as of the Close of Business on the immediately preceding Regular Dividend Record Date. Regular Dividends on the Convertible Preferred Stock will be computed on the basis of a 360-day year comprised of

twelve 30-day months and will accumulate on a daily basis from, and including, the last date on which Regular Dividends have been paid or accumulated to the Liquidation Preference (or, if no Regular Dividends have been paid or accumulated to the Liquidation Preference, from, and including, the Initial Issue Date or Subsequent Issue Date, as applicable) to, but excluding, the next Regular Dividend Payment Date.

(ii) *Type of Payment.* Until December 31, 2026 (the “**Regular Dividends Election Termination Date**”), the Company may, at its election, either pay Regular Dividends (x) when, as and if declared by the Board of Directors in cash out of funds legally available for their payment by wire transfer of immediately available funds or (y) by accumulating the Regular Dividends as provided in **Section 5(a)(iii)**. From and after the Regular Dividends Election Termination Date, the Company shall pay Regular Dividends in accordance with **clause (x)** of the immediately preceding sentence. Prior to the Regular Dividends Election Termination Date, the Company shall notify the Holders in writing on or prior to the tenth (10<sup>th</sup>) Business Day immediately prior to each Regular Dividend Payment Date of its election to pay the Regular Dividends pursuant to **clause (x)** or **clause (y)** of the first sentence of this **Section 5(a)(ii)**, *provided*, that in the event the Company fails to timely deliver such notice to the Holders, the Company shall be deemed to have elected **clause (y)** of such sentence.

(iii) *Accumulation of Regular Dividends.* As of the Close of Business on any Regular Dividend Payment Date the dollar amount of the Regular Dividends (regardless of whether or not declared) that have accumulated on the Convertible Preferred Stock in respect of the Regular Dividend Period ending on, but excluding, such Regular Dividend Payment Date (expressed as an amount per share of Convertible Preferred Stock) will (without duplication) be added, effective immediately before the Close of Business on the related Regular Dividend Payment Date, to the Liquidation Preference of each share of Convertible Preferred Stock outstanding as of such time; provided, however, that such addition shall not occur nor be required if as of the Close of Business on such Regular Dividend Payment Date, the Company, in its sole and absolute discretion, has paid in cash the full amount of the Regular Dividends (regardless of whether or not declared) that have accumulated on the Convertible Preferred Stock in respect of the Regular Dividend Period ending on, but excluding, such Regular Dividend Payment Date.

(iv) *Construction.* Any Regular Dividends the amount of which is added to the Liquidation Preference thereof pursuant to **Section 5(a)(ii)(y)** and **Section 5(a)(iii)** will be deemed to be “declared” and “paid” on the Convertible Preferred Stock for all purposes of this Certificate of Designations.

(b) *Participating Dividends.*

(i) *Generally.* Subject to **Section 5(b)(ii)**, the Company shall not declare or pay any dividend or other distribution on the Common Stock (whether in cash, securities or other property, or any combination of the foregoing) on the Common Stock unless, at the time of such declaration and payment, an equivalent dividend or distribution is declared and paid, respectively, on the Convertible Preferred Stock in the form and manner set forth

below (such dividends or distributions on the Convertible Preferred Stock, “**Participating Dividends**,” and such corresponding dividend or distribution on the Common Stock, the “**Common Stock Participating Dividends**”), such that (1) the Record Date and the payment date for such Participating Dividends occur on the same dates as the Record Date and payment date, respectively, for such Common Stock Participating Dividends; and (2) the kind and amount of consideration payable per share of Convertible Preferred Stock in such Participating Dividends is the same kind and amount of consideration that would be payable in the Common Stock Participating Dividends in respect of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with **Section 11** but without regard to **Section 11(e)(ii)**, **Section 11(e)(iii)**, **Section 11(e)(iv)** and **Section 11(g)**) in respect of one (1) share of Convertible Preferred Stock that is converted with a Conversion Date occurring on such Record Date (subject to the same arrangements, if any, in such Common Stock Participating Dividends not to issue or deliver a fractional portion of any security or other property, but with such arrangement applying separately to each Holder and computed based on the total number of shares of Convertible Preferred Stock held by such Holder on such Record Date).

(ii) *Common Stock Change Events and Stock Splits, Dividends and Combinations.* **Section 5(b)(i)** will not apply to, and no Participating Dividends will be required to be declared or paid in respect of a Common Stock Change Event or an event for which an adjustment to the Conversion Price is required (or would be required without regard to **Section 11(f)(iii)**) pursuant to **Section 11(f)(i)(1)**, as to which **Section 11(h)** or **Section 11(f)(i)(1)**, respectively, will apply.

(c) *Treatment of Dividends Upon Repurchase or Conversion.* If the Repurchase Date or Conversion Date of any share of Convertible Preferred Stock is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, then the Holder of such share at the Close of Business on such Record Date will be entitled, notwithstanding the related Repurchase or conversion, as applicable, to receive, on or, at the Company’s election, before such Dividend Payment Date, such declared Dividend on such share. Solely for purposes of the preceding sentence, and not for any other purpose, a Dividend will be deemed to be declared only to the extent that it is declared for payment and actually paid in cash. Except as provided in this **Section 5(c)**, Regular Dividends on any share of Convertible Preferred Stock will cease to accumulate from and after the Repurchase Date or Conversion Date, as applicable, for such share, unless the Company defaults in the payment of the related Repurchase Price or Conversion Consideration, as applicable.

#### **SECTION 6 RIGHTS UPON LIQUIDATION, DISSOLUTION OR WINDING UP.**

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

(i) the Company Change of Control Repurchase Price; and

(ii) the amount such Holder would have received in respect of the number of shares of Common Stock that would be issuable (determined in accordance with **Section 11** but without regard to **Section 11(e)(ii)**, **Section 11(e)(iii)**, **Section 11(e)(iv)** and **Section 11(g)**) upon conversion of such share of Convertible Preferred Stock assuming the Conversion Date of such conversion occurs on the date of such payment.

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

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

#### SECTION 7 CHANGE OF CONTROL.

(a) *Change of Control Notice.* On or before the twentieth (20<sup>th</sup>) Business Day before the effective date (or anticipated effective date) of a Change of Control (or, if later, promptly after the Company discovers that a Change of Control may occur, but in no event less than ten (10) Business Days prior to the applicable Company Change of Control Repurchase Date), the Company will send to each Holder a notice (a "**Company Change of Control Notice**") of such Change of Control (either concurrently with or after the Public Announcement of the same information) containing the following information:

(1) a brief description of the events causing such Change of Control;

(2) the effective date (or anticipated effective date) of such Change of Control;

(3) the applicable Holder Repurchase Price per share of Convertible Preferred Stock, assuming for such purpose that the applicable Holder Repurchase Date is the effective date (or anticipated effective date) of such Change of Control;

(4) whether the Company elects to effect a Company Change of Control Repurchase and, if so, the Company Change of Control Repurchase Price per share of Convertible Preferred Stock, assuming for such purpose that the applicable Company Change of Control Repurchase Date is the effective date (or anticipated effective date) of such Change of Control and the number of shares of Convertible Preferred Stock the Company so elects to repurchase; and

(5) the Conversion Price in effect on the date of such notice and a description and quantification of any adjustments to the Conversion Price that may result from such Change of Control.

(b) *Withdrawal of Change of Control Notice.* If the underlying Change of Control has been terminated or cancelled and the Company has previously delivered a Company Change of Control Notice pursuant to **Section 7(a)** with respect to such Change of Control, the Company shall withdraw such Company Change of Control Notice by delivering a written notice of withdrawal to the Holders at any time before the effective date (or anticipated effective date) of such Change of Control that was previously contained in such original notice.

(c) *Optional Conversion Right or Holder Repurchase Right in Connection with a Change of Control.* Prior to the applicable Company Change of Control Repurchase Date, each Holder shall have the right (i) subject to **Section 11(b)(iii)**, to exercise an Optional Conversion in respect of any and all of its Convertible Preferred Stock prior to or contingent upon the consummation of such Change of Control or (ii) subject to **Section 8**, to exercise a Holder Repurchase Right in respect of any and all of its Convertible Preferred Stock.

(d) *Company Repurchase Right in Connection with a Change of Control.*

(i) *Company Change of Control Repurchase Right.* The Company will have the right (the “**Company Change of Control Repurchase Right**”) to repurchase (a “**Company Change of Control Repurchase**”) all, but not less than all, of the Convertible Preferred Stock for a cash purchase price equal to the applicable Company Change of Control Repurchase Price. A Company Change of Control Repurchase is contingent upon the consummation of such Change of Control. Any such Company Change of Control Repurchase shall not occur until such time as such Change of Control has been consummated, and if such Change of Control is not consummated, the Company’s election to effect such Company Change of Control Repurchase shall be deemed to be withdrawn.

(ii) *Company Change of Control Repurchase Date.* The Company Change of Control Repurchase Date for the Company Change of Control Repurchase of any share of Convertible Preferred Stock will be the date of the consummation of the Change of Control (a “**Company Change of Control Repurchase Date**”). The Company Change of Control Repurchase Price due in connection with such Change of Control shall be paid on the Company Change of Control Repurchase Date.

(iii) *Company Change of Control Repurchase Price.* The price (the “**Company Change of Control Repurchase Price**”) for any share of Convertible Preferred Stock to be repurchased upon a Company Change of Control Repurchase is an amount in cash equal to 150% of the Liquidation Preference of such share at the Close of Business on the applicable Company Change of Control Repurchase Date for such Company Change of Control Repurchase plus accumulated and unpaid Regular Dividends on such share from, and including, the last date on which Regular Dividends have been paid thereon (or, if no Regular Dividends have been paid, from, and including, the Initial Issue Date) to, but excluding, such Company Change of Control Repurchase Date (to the extent such accumulated and unpaid Regular Dividends are not included in such Liquidation Preference); *provided, however*, that if such Company Change of Control Repurchase Date is after a Regular Dividend Record Date for a declared Regular Dividend on the Convertible Preferred Stock that has been declared for payment in cash and on or before the next Regular Dividend Payment Date, then (1) pursuant to **Section 5(c)**, the Holder of such share at the Close of Business on such Regular Dividend Record Date will be entitled, notwithstanding such Company Change of Control Repurchase, to receive, on or, at the Company’s election, before such Regular Dividend Payment Date, such declared cash Regular Dividend on such share; and (2) the applicable Company Change of Control Repurchase Price will not include such declared cash Regular Dividend on such share (and, for the avoidance of doubt, any portion of the full Regular Dividend scheduled to be paid on such Dividend Payment Date that is not declared and paid in cash and is added to the Liquidation Preference of such share pursuant to **Section 5(a)(ii)(y)** and **Section 5(a)(iii)** will be included in the applicable Company Change of Control Repurchase Price).

(iv) *Company Change of Control Repurchase Notice.* To exercise its Company Change of Control Repurchase Right with respect to any shares of Convertible Preferred Stock, the Company must (x) send to each Holder of such shares a written notice of such exercise (a “**Company Change of Control Repurchase Notice**”) and (y) substantially contemporaneously therewith, make a Public Announcement of the information set forth in the Company Change of Control Repurchase Notice. Such Company Change of Control Notice must state:

- (1) that the Company has exercised its Company Change of Control Repurchase Right to cause the repurchase of the shares of Convertible Preferred Stock, briefly describing the Company Change of Control Repurchase Right under this Certificate of Designations;
- (2) the Company Change of Control Repurchase Date for such Company Change of Control Repurchase;
- (3) that shares of Convertible Preferred Stock subject to Company Change of Control Repurchase may be converted earlier at the option of the Holders thereof pursuant to an Optional Conversion at any time immediately before the applicable Change of Control;

(4) the Conversion Price in effect on the date of the Company Change of Control Repurchase Notice for such Company Change of Control Repurchase; and

(5) the amount and form of consideration Holders would receive upon consummation of such Change of Control with respect to the Common Stock issuable upon conversion of the Convertible Preferred Stock if the Convertible Preferred Stock are converted prior to the applicable Change of Control; and

(6) the CUSIP and ISIN numbers, if any, of the Convertible Preferred Stock.

#### SECTION 8 HOLDER REPURCHASE RIGHT.

(a) *Holder Optional Repurchase Right.* Subject to the other terms of this **Section 8**, each Holder will have the right (the “**Holder Optional Repurchase Right**”) to require the Company to repurchase (a “**Holder Optional Repurchase**”) all, or any whole number of shares that is less than all, of such Holder’s Convertible Preferred Stock on a Holder Repurchase Date occurring on or after the Holder Optional Repurchase Trigger Date (determined pursuant to **Section 8(d)**) for a cash purchase price equal to the applicable Holder Repurchase Price.

(b) *Holder Repurchase Right in Connection with a Change of Control.* Subject to the other terms of this **Section 8**, each Holder shall also have the right (the “**Holder Change of Control Repurchase Right**”) to require the Company to repurchase (a “**Holder Change of Control Repurchase**”) all, or any whole number of shares that is less than all, of such Holder’s Convertible Preferred Stock on a Holder Repurchase Date occurring on the date of the consummation of a Change of Control (for the avoidance of doubt, whether before or after the Holder Optional Repurchase Trigger Date) for a cash purchase price equal to the applicable Holder Repurchase Price. Any such Holder Change of Control Repurchase shall be contingent on and shall not occur until such time as such Change of Control has been consummated, and if such Change of Control is not consummated, such Holder Repurchase Notice shall automatically be deemed to be withdrawn.

(c) *Holder Repurchase Right in Connection with a Triggering Event.* Upon the occurrence of a Triggering Event, the Company shall within one (1) Business Day deliver written notice thereof via electronic mail (a “**Triggering Event Notice**”) to the Holders. Subject to the other terms of this **Section 8**, at any time after the earlier of a Holder’s receipt of a Triggering Event Notice and a Holder becoming aware of a Triggering Event, each Holder shall also have the right (the “**Holder Triggering Event Repurchase Right**”) to require the Company to immediately (for the avoidance of doubt, whether before or after the Holder Optional Repurchase Trigger Date) repurchase (a “**Holder Triggering Event Repurchase**”) all, or any whole number of shares that is less than all, of such Holder’s Convertible Preferred Stock for a cash purchase price equal to the applicable Holder Repurchase Price. Notwithstanding anything to the contrary herein, upon the occurrence of any Bankruptcy Triggering Event, the Company shall immediately pay to the Holders an amount in cash representing the applicable Holder Repurchase Price, without the



requirement for any notice or demand or other action by the Holders or any other Person, provided that any Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Triggering Event, in whole or in part, and any such waiver shall not affect any other rights of such Holder hereunder (a “**Bankruptcy Triggering Event Repurchase**”).

(d) *Holder Repurchase Date.* The Holder Repurchase Date for the Optional Repurchase of any share of Convertible Preferred Stock shall be the later of (A) be (i) in the case of a Holder Optional Repurchase pursuant to **Section 8(a)**, the sixtieth (60<sup>th</sup>) day after the date the Holder of such share has duly delivered the Holder Repurchase Notice relating to such share to the Company pursuant to **Section 8(f)**; *provided, however*, that such Holder Repurchase Notice may be delivered to the Company prior to the Holder Optional Repurchase Trigger Date as long as the Holder Optional Repurchase Date will occur on or after the Holder Optional Repurchase Trigger Date or, (ii) in the case of a Holder Change of Control Repurchase pursuant to **Section 8(b)**, the date of the consummation of the Change of Control or (iii) in the case of a Holder Triggering Event Repurchase or a Bankruptcy Triggering Event Repurchase pursuant to **Section 8(c)**, the date the Company is required to repurchase the Convertible Preferred Stock and (B) if the Company fails to timely pay the applicable Repurchase Price, the date such amount is paid, together with any additional amounts required by **Section 9**.

(e) *Holder Repurchase Price.* The Holder Repurchase Price for any share of Convertible Preferred Stock to be repurchased upon a Holder Repurchase is an amount in cash equal to the Liquidation Preference of such share plus accumulated and unpaid Regular Dividends on such share from, and including, the last date on which Regular Dividends have been paid thereon (or, if no Regular Dividends have been paid, from, and including, the Initial Issue Date) to, but excluding, such Holder Repurchase Date (to the extent such accumulated and unpaid Regular Dividends are not included in such Liquidation Preference); *provided, however*, that if such Holder Repurchase Date is after a Regular Dividend Record Date for a declared Regular Dividend on the Convertible Preferred Stock that has been declared for payment in cash and on or before the next Regular Dividend Payment Date, then (1) pursuant to **Section 5(c)**, the Holder of such share at the Close of Business on such Regular Dividend Record Date will be entitled, notwithstanding such Holder Repurchase, to receive, on or, at the Company’s election, before such Regular Dividend Payment Date, such declared cash Regular Dividend on such share; and (2) the applicable Holder Repurchase Price will not include such declared cash Regular Dividend on such share (and, for the avoidance of doubt, any portion of the full Regular Dividend scheduled to be paid on such Dividend Payment Date that is not declared and paid in cash and is added to the Liquidation Preference of such share pursuant to **Section 5(a)(ii)(y)** and **Section 5(a)(iii)** will be included in the applicable Holder Repurchase Price).

(f) *Procedures to Exercise the Holder Repurchase Right.*

(i) *Delivery of Holder Repurchase Notice and Shares of Convertible Preferred Stock to be Repurchased.* To exercise its Holder Repurchase Right for any share(s) of Convertible Preferred Stock, the Holder thereof must deliver to the Company:

(1) a duly completed, written Holder Repurchase Notice with respect to such share(s); and

(2) such share(s), to the extent represent by one or more Physical Certificate(s), duly endorsed for transfer;

*provided, however*, that, with respect to any Holder Optional Repurchase pursuant to **Section 8(a)**, no such Holder Optional Repurchase Notice may be delivered before, and each purported delivery of a Holder Optional Repurchase Notice will be deemed null and void if delivered before, the sixtieth (60<sup>th</sup>) Business Day before the Holder Optional Repurchase Trigger Date and, *provided further*, that with respect to any Holder Optional Repurchase pursuant to **Section 8(c)**, the Holder shall have no obligation to deliver any documents (other than a Triggering Event Repurchase Notice, when applicable).

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

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

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

(3) that such Holder is exercising its Holder Repurchase Right with respect to such share(s) and specify which Holder Repurchase Right; and.

(iii) *Delivery of Holder Repurchase Notice is Irrevocable.* Once delivered in accordance with this **Section 8(f)**, a Holder Repurchase Notice will be irrevocable subject to **Section 8(b)** (in the case of a Holder Change of Control Repurchase pursuant to **Section 8(b)** in connection with a Change of Control).

**SECTION 9 REPURCHASES.** In the event the Company fails to timely pay the applicable Repurchase Price in respect of any shares of Convertible Preferred Stock in connection with the exercise of any Repurchase Right, in addition to any other rights or remedies such Holder may have under applicable law, Regular Dividends shall continue to accrue and the applicable Regular Dividend Rate with respect to any such shares of Convertible Preferred Stock that have not been repurchased as required shall be increased by 2.00% per annum from and after the date of such breach. To the extent redemptions required by **Section 7(d)** or **Section 8** are deemed or determined by a court of competent jurisdiction to be prepayments of the Convertible Preferred Stock by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Certificate of Designations, but subject to **Section 11(g)**, until the applicable Repurchase Price is paid in full, the shares of Convertible Preferred Stock submitted for redemption under **Section 7(d)** or **Section 8** may be converted, in whole or in part, by a Holder into Common Stock pursuant to **Section 11**. The parties hereto agree that in the event of a Repurchase of any shares of Convertible Preferred Stock under **Section 7(d)** or **Section 8**, each Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable

substitute investment opportunity for such Holder. Accordingly, any redemption premium due under **Section 7(d)** or **Section 8** is intended by the parties to be, and shall be deemed, a reasonable estimate of a Holder's actual loss of its investment opportunity and not as a penalty. The Company will cause the applicable Repurchase Price for each share of Convertible Preferred Stock to be repurchased pursuant to a Repurchase to be paid to the Holder thereof on or before the applicable Repurchase Date. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to comply with its obligations under any Repurchase Right. Notwithstanding anything to the contrary in this Certificate of Designations, in the event of the Company's exercise of its Company Change of Control Repurchase Right pursuant to **Section 7(d)** and a Holder's exercise of its Holder Change of Control Redemption Right with respect to the same Change of Control, the Repurchase Right with the highest Redemption Price shall control and supersede the other Redemption Right.

**SECTION 10 DIRECTOR DESIGNATION RIGHT; VOTING RIGHTS.** The Convertible Preferred Stock will have no voting rights except as set forth in this **Section 10** or as provided in the Certificate of Incorporation or required by the Delaware General Corporation Law.

(a) *Board Designation Right.*

(i) From and after the Initial Issue Date, and until the Voting Right Expiration Date, the Convertible Preferred Stock, exclusively and as a separate class, shall have the right to designate and appoint one (1) individual to serve as a director on the Board of Directors (the "**Preferred Stock Director**") and the Company shall appoint the Preferred Stock Director to the Board of Directors. The Company shall take all reasonable actions within its control to give effect to the provisions of this **Section 10**.

(ii) *Removal and Vacancies of the Preferred Stock Director.*

(1) *Removal.* At any time until the Voting Right Expiration Date, the Preferred Stock Director may only be removed by the affirmative vote or consent (as the case may be) of Holders representing at least a majority of the outstanding shares of Convertible Preferred Stock then outstanding (the "**Majority Holders**"), given either at a special meeting of the Holders duly called for that purpose or pursuant to a written consent of the Holders, voting exclusively as a single class. Following the Voting Right Expiration Date, the Preferred Director may be removed by a vote of the Board of Directors.

(2) *Filling Vacancies.* Until the Voting Right Expiration Date, a vacancy occurring in the office of the Preferred Stock Director shall only be filled by the affirmative vote or written consent of the Majority Holders, given either at a special meeting of the Holders duly called for that purpose or pursuant to a written consent of the Holders, and the Company shall cause such Preferred Stock Director to fill such resulting vacancy.

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

(i) From the Initial Issue Date until the date there no longer remains at least fifty percent (50%) of the Total Subscription Shares outstanding, the Company shall not, and shall cause its Subsidiaries not to, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization, amendment to the Certificate of Incorporation or other organizational documents or otherwise) without, the prior affirmative vote or written consent of the Majority Holders, voting exclusively as a single class:

(1) any Related Party Transaction to be entered into after the Subscription Date;

(2) declaration or payment of any dividends or distributions, other than the declaration or payment of Regular Dividends in respect of Convertible Preferred Stock;

(3) pay or redeem, retire or purchase any Capital Stock, provided that Company may (i) repurchase Capital Stock of former or current employees, officers, directors or consultants pursuant to stock repurchase agreements, termination of employment or service or pursuant to rights of first refusal in the Company's bylaws, so long as a Triggering Event does not exist at the time of any such repurchase and would not exist after giving effect to any such repurchase, provided that the aggregate amount of all such repurchases does not exceed \$100,000 per fiscal year, (ii) make de minimis payments of cash in lieu of fractional shares upon conversion of convertible securities or upon any stock dividend, stock split or combination or (iii) repurchase or redeem Capital Stock from the Company's current or former employees in connection with tax withholding upon vesting or settlement of options, restricted stock units, performance share units or other similar equity awards or upon forfeiture or cashless exercise of options or other equity awards in accordance with the Company's equity incentive plans;

(4) sale, disposition, lease, license, spin-off, split-off or other transfer or divestiture of any businesses, business units or assets of the Company or any of its Subsidiaries (including the Capital Stock of any Subsidiary or other entity), in each case, in any transaction or series of related transactions involving consideration having a fair value in excess of \$30,000,000 (as determined in good faith by the Board of Directors), other than a transaction that constitutes a Change of Control effected in compliance with the terms of this Certificate of Designations; or

(5) agree or consent to any of the actions prohibited by this **Section 10(b)(i)**.

(ii) From the Initial Issue Date until the date there no longer remains at least twenty five percent (25%) of the Total Subscription Shares outstanding, the Company shall not, and shall cause its Subsidiaries not to, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization, amendment to the Certificate of Incorporation or other organizational documents or otherwise) without, the prior affirmative vote or written consent of the Majority Holders, voting exclusively as a single class, which consent shall not be unreasonably withheld:

(1) incurrence of any secured indebtedness for borrowed money unless permitted under the Credit Agreement (without giving effect to any consent or waiver made by the lenders thereunder);

(2) incurrence of unsecured indebtedness for borrowed money or issuance of any Disqualified Equity Interest;

(3) amend, restate or replace any Credit Agreement or seek waivers from lenders under any Credit Agreement, in each case, on terms and conditions that, taken as a whole, are (A) materially different from the Credit Agreement as in effect on the Subscription Date in a manner that is adverse to the Holders; provided, however, that the replacement of the Credit Agreement with an asset-based lending facility from a Regulated Bank of no more than \$25,000,000, an interest rate no higher than the then prevailing interest rate of the Credit Agreement and otherwise on terms and conditions no less favorable to the Company than those in the Credit Agreement, shall be deemed not to be adverse to the Holders for the purpose of this **clause (A)** or (B) materially and adversely affect the ability of the Company to make any payments required by this Certificate of Designations, including payment of Dividends, or perform its obligations in connection with any Repurchase or conversion pursuant to this Certificate of Designations; or

(4) agree or consent to any of the actions prohibited by this **Section 10(b)(ii)**.

(iii) From the Initial Issue Date until the date there no longer remains at least ten percent (10%) of the Total Subscription Shares outstanding, the Company shall not, and shall cause its Subsidiaries not to, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization, amendment to the Certificate of Incorporation or other organizational documents or otherwise) without, the prior affirmative vote or written consent of the Majority Holders, voting exclusively as a single class:

(1) authorization or creation, or increase in the authorized number of shares of, any class or series of, Parity Stock, or Senior Stock, or any Equity-Linked Security or other equity interest convertible into, any

Capital Stock of the Company or any of its Subsidiaries that constitutes Parity Stock or Senior Stock;

(2) issuance of any shares of Parity Stock or Senior Stock of the Company or any of its Subsidiaries, or any Equity-Linked Security or other equity interest convertible into any Parity Stock or Senior Stock of the Company or any of its Subsidiaries, including, without limitation, any shares of Series A Convertible Preferred; or

(3) agree or consent to any of the actions prohibited by this **Section 10(b)(iii)**.

(iv) From the Initial Issue Date until the date there no longer remains any Total Subscription Shares outstanding, the Company shall not, and shall cause its Subsidiaries not to, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization, amendment to the Certificate of Incorporation or other organizational documents or otherwise) without, the prior affirmative vote or written consent of the Majority Holders, voting exclusively as a single class:

(1) amendment, alteration, repeal or other modification to any provision of the Certificate of Incorporation (including this Certificate of Designations) in a manner that would adversely affect the powers, preferences, rights or privileges of the Convertible Preferred Stock; provided, however, that (i) any increase in the amount of the authorized Common Stock, and (ii) any amendment to the Certificate of Incorporation and any certificate of designations (but excluding this Certificate of Designations) necessary to implement a merger or consolidation that constitutes a Common Stock Change Event effected in compliance with the terms of this Certificate of Designations, will not be deemed to adversely affect the powers, preferences, rights or privileges of the Convertible Preferred Stock;

(2) exchange, reclassification or cancellation of any Capital Stock of the Company or any of its Subsidiaries, or any Equity-Linked Security or other equity interest convertible into any Capital Stock of the Company or any of its Subsidiaries, other than pursuant to a Common Stock Change Event effected in compliance with the terms of this Certificate of Designations; or

(3) agree or consent to any of the actions prohibited by this **Section 10(b)(iv)**.

(c) *Right to Vote with Holders of Common Stock on an As-Converted Basis.* Subject to the other provisions of, and without limiting the other voting rights provided in, this **Section 10**, and except as provided in the Certificate of Incorporation or required by the Delaware General Corporation Law, the Holders will have the right to vote together as a single class with the holders

of the Common Stock on each matter submitted for a vote or consent by the holders of the Common Stock, and, for these purposes, (i) the Convertible Preferred Stock of each Holder will entitle such Holder to be treated as if such Holder were the holder of record, as of the record or other relevant date for such matter, of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with **Section 11(e)**, including **Section 11(e)(ii)**) upon conversion of such Convertible Preferred Stock based on a Conversion Price equal to the greater of (i) the then applicable Conversion Price and (ii) \$6.82 (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction relating to the Common Stock occurring after the Subscription Date), but without giving effect to **Section 11(e)(iii)**, **Section 11(e)(iv)** and **Section 11(g)** and assuming such Convertible Preferred Stock were converted with a Conversion Date occurring on such record or other relevant date; and (ii) the Holders will be entitled to notice of all stockholder meetings or proposed actions by written consent in accordance with the Certificate of Incorporation, the Bylaws of the Company, and the Delaware General Corporation Law as if the Holders were holders of Common Stock. For the avoidance of doubt, the voting rights set forth in this **Section 10(c)** will not be limited or eliminated by the provisions in **Section 11(g)**. Notwithstanding anything to the contrary in this **Section 10(c)**, in no event shall the shares of Convertible Preferred Stock be entitled to have, on an as-converted basis and in aggregate, together with the votes attributable to any Conversion Shares issued upon conversion of the shares of Convertible Preferred Stock prior to the applicable date of determination, more than 6,935,934 votes (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction relating to the Common Stock occurring after the Subscription Date) (the “**Voting Cap**”), *provided, however*, that if the Company’s stockholders approve the voting of the Convertible Preferred Stock above the Voting Cap, the Voting Cap will cease to apply. In the event that all the shares of Convertible Preferred Stock are not entitled to vote due to the Voting Cap, the number of votes that each Holder is entitled to in terms of its shares of Convertible Preferred Stock shall be reduced on a pro rata basis such that the aggregate number of votes of the shares of Convertible Preferred Stock, after taking into account the votes attributable to any Conversion Shares issued prior to the applicable date of determination, is equal to the Voting Cap.

(d) *Procedures for Voting and Consents.*

(i) *Rules and Procedures Governing Votes and Consents.* If any vote or consent of the Holders will be held or solicited, including at a regular annual meeting or a special meeting of stockholders, then (1) the Board of Directors will adopt customary rules and procedures at its discretion to govern such vote or consent, subject to the other provisions of this **Section 10**; and (2) such rules and procedures may include fixing a record date to determine the Holders that are entitled to vote or provide consent, as applicable, rules governing the solicitation and use of proxies or written consents and customary procedures for the designation and appointment, by Holders, of the Preferred Stock Director; *provided, however*, that with respect to any voting rights of the Holders pursuant to **Section 10(c)**, such rules and procedures will be the same rules and procedures that apply to holders of the Common Stock with respect to the applicable matter referred to in **Section 10(c)**.

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

(iii) *Voting Standard for the Election of Preferred Stock Directors.* At any meeting in which the Convertible Preferred Stock is entitled to elect any Preferred Stock Director (including to fill any vacancy in the office of any Preferred Stock Director), the presence, in person or by proxy, of Majority Holders will constitute a quorum for such matter. The affirmative vote of a majority of the shares of Convertible Preferred Stock so present at such a meeting at which a quorum is present will be sufficient to elect the Preferred Stock Director.

(iv) *Written Consent in Lieu of Stockholder Meeting.* A consent or affirmative vote of the Holders pursuant to **Section 10(a)** or **Section 10(b)** may be given or obtained either in writing without a meeting or in person or by proxy at a regular annual meeting or a special meeting of stockholders.

#### SECTION 11 CONVERSION.

(a) *Generally.* Subject to the provisions of this **Section 11**, the Convertible Preferred Stock may be converted only pursuant to a Mandatory Conversion or an Optional Conversion.

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

(i) *Conversion Right; When Shares May Be Submitted for Optional Conversion.* Holders will have the right to submit all, or any whole number of shares that is less than all, of their shares of Convertible Preferred Stock pursuant to an Optional Conversion at or following the earlier to occur of (x) the first (1<sup>st</sup>) anniversary of the Initial Issue Date, and (y) immediately prior to (and conditioned upon) the consummation of a Change of Control; *provided, however*, that, notwithstanding anything to the contrary in this Certificate of Designations, shares of Convertible Preferred Stock that are subject to Mandatory Conversion may not be submitted for Optional Conversion after the Close of Business on the Business Day immediately before the related Mandatory Conversion Date.

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

(iii) *Contingent Conversion Notice.* A Holder delivering an Optional Conversion Notice hereunder in connection with a Change of Control may specify in such Optional Conversion Notice that its election to effect such conversion is contingent upon the consummation of or substantially simultaneous consummation of such Change of Control, in which case such Optional Conversion shall not occur until such time as is immediately prior to (and subject to) the consummation of such Change of Control, and if



such Change of Control is not consummated, such Optional Conversion Notice shall be deemed to be withdrawn.

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

(i) *Mandatory Conversion Right.* Subject to the provisions of this **Section 11**, the Company has the right (the “**Mandatory Conversion Right**”), exercisable at its election, to designate any Business Day after the first (1<sup>st</sup>) year anniversary of the Initial Issue Date as a Conversion Date for the conversion (such a conversion, a “**Mandatory Conversion**”) of all, or any portion that is a whole number, of the outstanding shares of Convertible Preferred Stock, but only if the Daily VWAP per share of Common Stock exceeds two hundred percent (200%) of the Conversion Price on each of at least thirty (30) consecutive Trading Days ending on, and including, the Trading Day immediately before the Mandatory Conversion Notice Date for such Mandatory Conversion (such period, the “**Mandatory Conversion Measurement Period**” and such price condition, the “**Mandatory Conversion Price Condition**”). Notwithstanding anything herein to the contrary, in no event shall the Company effect one or more Mandatory Conversion(s) with respect to more than fifteen percent (15%) of the Total Subscription Shares in the aggregate.

(ii) *Mandatory Conversion Prohibited in Certain Circumstances.* The Company will not exercise its Mandatory Conversion Right, or otherwise send a Mandatory Conversion Notice, with respect to any Convertible Preferred Stock pursuant to this **Section 11(c)** unless the Common Stock Liquidity Conditions are satisfied with respect to the Mandatory Conversion. Notwithstanding anything to the contrary in this **Section 11(c)**, the Company's exercise of its Mandatory Conversion Right, and any related Mandatory Conversion Notice, will not apply to any share of Convertible Preferred Stock as to which a Holder Repurchase Notice has been duly delivered, and not withdrawn, pursuant to **Section 8**.

(iii) *Mandatory Conversion Date.* The Mandatory Conversion Date for any Mandatory Conversion will be a Business Day that is during the first week of the Company's open trading window for its officers and directors.

(iv) *Mandatory Conversion Notice.* To exercise its Mandatory Conversion Right with respect to any shares of Convertible Preferred Stock, the Company shall (x) send to each Holder of such shares a written notice of such exercise (a “**Mandatory Conversion Notice**”) no earlier than the date of the Company's Public Announcement of its earnings immediately prior to the opening of the open trading window referenced in **Section 11(c)(iii)** and at least three (3) Trading Days prior to the applicable Mandatory Conversion Date and (y) contemporaneously therewith, make a Public Announcement of the information set forth in the Mandatory Conversion Notice. Such Mandatory Conversion Notice must state:

- (1) that the Company has exercised its Mandatory Conversion Right to cause the Mandatory Conversion of the shares, briefly describing

the Company's Mandatory Conversion Right under this Certificate of Designations;

(2) the number of shares of Convertible Preferred Stock subject to such Mandatory Conversion;

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

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

(5) the Conversion Price in effect on the Mandatory Conversion Notice Date for such Mandatory Conversion;

(6) to the extent the Company elects to seek settlement of such Mandatory Conversion in cash pursuant to **Section 11(e)(i)**, request that such Holder provide the Company, in writing, with its consent (which may be withheld in such Holder's sole and absolute discretion) to a Cash Settlement on or prior to the applicable Mandatory Conversion Date, which request may, at the Company's option, include a request for a waiver of the Common Stock Liquidity Conditions and/or the Mandatory Conversion Price Condition with respect to such Mandatory Conversion solely to the extent of such Cash Settlement, *provided* that such Holder shall be deemed to withhold such consent and not grant such waiver in the event such Holder fails to timely respond to the Company;

(7) the CUSIP and ISIN numbers, if any, of the Convertible Preferred Stock; and

(8) that such Mandatory Conversion Notice shall be deemed automatically rescinded with respect to such Holder if any of the Common Stock Liquidity Conditions and/or the Mandatory Conversion Price Condition are not satisfied (or waived in writing by such Holder) at any time prior to the applicable Mandatory Conversion Date.

(v) *Selection and Optional Conversion of Convertible Preferred Stock Subject to Partial Mandatory Conversion.* If less than all shares of Convertible Preferred Stock then outstanding are subject to Mandatory Conversion, then:

(1) the shares of Convertible Preferred Stock to be subject to such Mandatory Conversion will be selected by the Company pro rata among all Holders; and

(2) if only a portion of the Convertible Preferred Stock is subject to Mandatory Conversion and a portion of such Convertible Preferred Stock is subject to Optional Conversion, then the converted portion of such Convertible Preferred Stock will be deemed to be from the portion of such Convertible Preferred Stock that was subject to Mandatory Conversion.

(d) *Conversion Procedures.*

(i) *Mandatory Conversion.* If the Company duly exercises, in accordance with **Section 11(c)**, its Mandatory Conversion Right with respect to any share of Convertible Preferred Stock, then (1) the Mandatory Conversion of such share will occur automatically and without the need for any action on the part of the Holder(s) thereof; and (2) any shares of Common Stock due upon such Mandatory Conversion will be registered in the name of, and, if applicable, the cash due upon such Mandatory Conversion will be delivered to, the Holder(s) of such share of Convertible Preferred Stock as of the Close of Business on the related Mandatory Conversion Date.

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

(1) *Generally.* To convert any share of Convertible Preferred Stock pursuant to an Optional Conversion, the Holder of such share must complete, sign and deliver to the Company an Optional Conversion Notice. Notwithstanding anything to the contrary set forth herein, the Holder shall not be required to physically surrender its Physical Certificate to the Company, unless (A) the full number of shares of Convertible Preferred Stock represented by such Holder's Physical Certificate is being converted or (B) such Holder has provided the Company with prior written notice (which notice may be included in an Optional Conversion Notice) requesting reissuance of such Holder's Physical Certificate upon physical surrender of such Physical Certificate. The Holder and the Company shall maintain records showing the Liquidation Preference and Dividends, if any, converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of any Physical Certificate upon Conversion.

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

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

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

(e) *Settlement upon Conversion.*

(i) *Generally.* Subject to **Section 5(c)**, **Section 11(e)(ii)**, **Section 11(e)(iii)**, **Section 11(e)(iv)**, **Section 11(g)** and **Section 13(b)**, the consideration due upon settlement of the conversion of each share of Convertible Preferred Stock will consist of a number of shares of Common Stock equal to the quotient obtained by dividing (I) the sum of (x) the Liquidation Preference of such share of Convertible Preferred Stock immediately before the Close of Business on the Conversion Date for such conversion; and (y) an amount equal to accumulated and unpaid Dividends on such share of Convertible Preferred Stock from, and including, the last date on which Dividends have been paid thereon (or, if no Regular Dividends have been paid, from, and including, the Initial Issue Date) to, but excluding, the Conversion Date (but only to the extent such accumulated and unpaid Dividends are not included in the Liquidation Preference referred to in the preceding **clause (x)**); by (II) the Conversion Price in effect immediately before the Close of Business on such Conversion Date; *provided, however*, that a Holder and the Company may agree to instead settle any Conversion in cash based on the highest Daily VWAP of the Common Stock during the period beginning on the date of the applicable Conversion Date and ending on the date the Company makes the applicable cash (a “**Cash Settlement**”). In order to agree to a Cash Settlement (x) in the case of a Mandatory Conversion, the Company and the Holder shall follow the procedure set forth in **Section 11(c)(iv)(6)** or (y) in the case of an Optional Conversion, a Holder may request in an Optional Conversion Notice that the Company provide such Holder, in writing, with its consent (which may be withheld in the Company’s sole and absolute discretion) to a Cash Settlement on or prior to the applicable Optional Conversion Settlement Date, *provided* that the Company shall be deemed to withhold such consent in the event the Company fails to timely respond to such Holder. An agreement between the Company and a Holder to a Cash Settlement shall (x) only apply to the applicable Conversion and not to any future Conversion of such Holder’s shares of Convertible Preferred Stock (unless the Company and such Holder agree to settle any future Conversion in cash) and (y) only apply to such Holder and not to any other Holder (whether or not affiliated with such Holder).

(ii) *Payment of Cash in Lieu of any Fractional Share of Common Stock.* Subject to **Section 13(b)**, in lieu of delivering any fractional share of Common Stock otherwise due upon conversion of any Convertible Preferred Stock, the Company will on the applicable Optional Conversion Settlement Date or Mandatory Conversion Date pay cash based on the highest Daily VWAP of the Common Stock during the period beginning on the date of the applicable Conversion Date and ending on the date the Company makes the applicable cash payment.

(iii) *Payment of Cash in Lieu of any Shares of Common Stock in Excess of Exchange Cap.* In the event that the Company is prohibited as a result of the operation of **Section 11(g)(ii)** from issuing any shares of Common Stock for which an Optional Conversion Notice or Mandatory Conversion Notice has been delivered, the Company shall on the applicable Optional Conversion Settlement Date or Mandatory Conversion Date pay cash in exchange for cancellation of the shares of Convertible Preferred Stock subject to such Optional Conversion Notice or Mandatory Conversion Notice, at a price per share of Common Stock that would have been issuable upon such conversion if **Section 11(g)(ii)** were not in effect, equal to the highest Daily VWAP of the Common Stock during the period beginning on the date of the applicable Conversion Date and ending on the date the Company makes the applicable cash payment.

(iv) *Payment of Cash in Lieu of any Shares of Common Stock in Excess of Ownership Limitation.* In the event that the Company is prohibited as a result of the operation of **Section 11(g)(i)** from issuing any shares of Common Stock for which an Optional Conversion Notice has been delivered in connection with a Change of Control in accordance with **Section 7(c)(i)**, the Company shall on the applicable Optional Conversion Settlement Date pay cash in exchange for cancellation of the shares of Convertible Preferred Stock subject to such Optional Conversion Notice, at a price per share of Common Stock that would have been issuable upon such conversion if **Section 11(g)(i)** were not in effect, equal to the highest Daily VWAP of the Common Stock during the period beginning on the date of the applicable Conversion Date and ending on the date the Company makes the applicable cash payment.

(v) *Delivery of Conversion Consideration.* Except as provided in **Sections 11(f)(i)(2)** and **11(h)**, the Company will pay or deliver, as applicable, the Conversion Consideration due upon conversion of any Convertible Preferred Stock on or before the earlier of (i) the second (2<sup>nd</sup>) Business Day and (ii) the number of Trading Days comprising the Standard Settlement Period, in each case, immediately after the Conversion Date for such conversion (the “**Optional Conversion Settlement Date**”).

(f) *Conversion Price Adjustments.*

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

(1) *Stock Dividends, Splits and Combinations.* If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 11(h)** will apply), then the Conversion Price will be adjusted based on the following formula:

$$CP_t = CP_s \times \frac{OS_s}{OS_t}$$

where:

CP <sub>0</sub>	=	the Conversion Price in effect immediately before the Close of Business on the Record Date for such dividend or distribution, or immediately before the Close of Business on the effective date of such stock split or stock combination, as applicable;
CP <sub>1</sub>	=	the Conversion Price in effect immediately after the Close of Business on such Record Date or effective date, as applicable;
OS <sub>0</sub>	=	the number of shares of Common Stock outstanding immediately before the Close of Business on such Record Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and
OS <sub>1</sub>	=	the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

If any dividend, distribution, stock split or stock combination of the type described in this **Section 11(f)(i)(1)** is declared or announced, but not so paid or made, then the Conversion Price will be readjusted, effective as of the date the Board of Directors, or any Officer acting pursuant to authority conferred by the Board of Directors, determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Price that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(2) *Tender Offers or Exchange Offers.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act), and the value (determined as of the Expiration Time by the Board of Directors) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer differs from the average of the Daily VWAP for each of the ten (10) consecutive Trading Days commencing on, and including, the Trading Day next succeeding the last day on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) (the “**Expiration Date**”), then the Conversion Price will be adjusted based on the following formula:

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

where:

CP <sub>0</sub>	=	the Conversion Price in effect immediately before the time (the “ <b>Expiration Time</b> ”) such tender or exchange offer expires;
CP <sub>1</sub>	=	the Conversion Price in effect immediately after the Expiration Time;

SP	=	the average of the Daily VWAP for each of the ten (10) consecutive Trading Day period (the “ <b>Tender/Exchange Offer Valuation Period</b> ”) beginning on, and including, the Trading Day immediately after the Expiration Date;
OS <sub>0</sub>	=	the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
AC	=	the aggregate value (determined as of the Expiration Time by the Board of Directors) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer; and
OS <sub>1</sub>	=	the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

*provided, however*, that the Conversion Price will in no event be adjusted up pursuant to this **Section 11(f)(i)(2)**, except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Price pursuant to this **Section 11(f)(i)(2)** will be calculated as of the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period but will be given effect immediately after the Expiration Time, with retroactive effect. If the Conversion Date for any share of Convertible Preferred Stock to be converted occurs on the Expiration Date or during the Tender/Exchange Offer Valuation Period, then, notwithstanding anything to the contrary in this Certificate of Designations, the Company will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last Trading Day of the Tender/Exchange Offer Valuation Period.

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

(3) *Dilutive Issuances.* If, on or after the Subscription Date the Company or any of its Subsidiaries issues or otherwise sells any shares of Common Stock, or any Equity-Linked Securities, in each case at an Effective Price per share of Common Stock that is less than the Conversion Price in effect (before giving effect to the adjustment required by this **Section 11(f)(i)(3)**) as of the date of the issuance or sale of such shares or Equity-Linked Securities (such an issuance or sale, a “**Dilutive Issuance**”), then, effective as of the Close of Business on such date, the Conversion Price will be decreased to an amount equal to the Weighted Average Issuance Price. For these purposes, the “**Weighted Average Issuance Price**” will be equal to:

$$\frac{(CP \times OS) + (EP \times X)}{OS + X}$$

where:

- CP = such Conversion Price;  
 OS = the number of shares of Common Stock outstanding immediately before such Dilutive Issuance;  
 EP = the Effective Price per share of Common Stock in such Dilutive Issuance; and  
 X = the sum, without duplication, of (x) the total number of shares of Common Stock issued or sold in such Dilutive Issuance; and (y) the maximum number of shares of Common Stock underlying such Equity-Linked Securities issued or sold in such Dilutive Issuance;

*provided, however*, that (A) the Conversion Price will not be adjusted pursuant to this **Section 11(f)(i)(3)** solely as a result of an Exempt Issuance; (B) the issuance of shares of Common Stock pursuant to any Equity-Linked Securities will not constitute an additional issuance or sale of shares of Common Stock for purposes of this **Section 11(f)(i)(3)** (it being understood, for the avoidance of doubt, that the issuance or sale of such Equity-Linked Securities, or any re-pricing or amendment thereof, will be subject to this **Section 11(f)(i)(3)**); and (C) in no event will the Conversion Price be increased pursuant to this **Section 11(f)(i)(3)**. For purposes of this **Section 11(f)(i)(3)**, any re-pricing or amendment of any Equity-Linked Securities (including, for the avoidance of doubt, any Equity-Linked Securities existing as of the Initial Issue Date) will be deemed to be the issuance of additional Equity-Linked Securities, without affecting any prior adjustments theretofore made to the Conversion Price.

(ii) *No Adjustments in Certain Cases.*

(1) *Certain Events.* Without limiting the operation of **Sections 5(a)(ii)(1)** and **11(e)(i)**, the Company will not be required to adjust the Conversion Price except pursuant to **Section 11(f)(i)**. Without limiting the foregoing, the Company will not be required to adjust the Conversion Price on account of:

(A) except as otherwise provided in **Section 11(f)(i)**, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(B) except as provided in **Section 11(f)(i)(3)**, the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any such plan;



(C) except as provided in **Section 11(f)(i)(3)**, the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(D) except as provided in **Section 11(f)(i)(3)**, the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company outstanding as of the Initial Issue Date, provided such option, warrant, right or convertible or exchangeable security has not been amended after the Subscription Date to extend the term thereof, increase the number of shares of Common Stock issuable thereunder or decrease the exercise, exchange, conversion or other price thereof; or

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

(iii) *Adjustment Deferral.* If an adjustment to the Conversion Price otherwise required by this Certificate of Designations would result in a change of less than one percent (1%) to the Conversion Price, then the Company may, at its election, defer such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest of the following: (1) when all such deferred adjustments would result in a change of at least one percent (1%) to the Conversion Price; (2) the Conversion Date of any share of Convertible Preferred Stock; (3) the date of a Repurchase Notice for any Repurchase; and (4) the occurrence of any vote of the stockholders of the Company.

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

(v) *Determination of the Number of Outstanding Shares of Common Stock.* For purposes of **Section 11(f)(i)**, the number of shares of Common Stock outstanding at any time will (1) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (2) exclude shares of Common Stock held in the Company's treasury (unless the Company pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

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

(vii) *Notice of Conversion Price Adjustments.* Upon the effectiveness of any adjustment to the Conversion Price pursuant to **Section 11(f)(i)**, the Company will, as soon

as reasonably practicable (and, if such information constitutes material non-public information under U.S. federal securities laws, either concurrently with or after Public Announcement of the same information) and no later than ten (10) Business Days after the date of such effectiveness, send notice to the Holders containing (1) a brief description of the transaction or other event on account of which such adjustment was made; (2) the Conversion Price in effect immediately after such adjustment; and (3) the effective time of such adjustment.

(g) *Restriction on Conversions.* Notwithstanding anything to the contrary in this Certificate of Designations, no shares of Common Stock will be issued or delivered upon conversion of any Convertible Preferred Stock of any Holder, and no Convertible Preferred Stock of any Holder will be convertible, in each case to the extent, and only to the extent, that :

(i) following such issuance, delivery or conversion, such Holder together with its Attribution Parties collectively would beneficially own (as defined in Rule 13d-3 of the Exchange Act) in excess of such percentage set forth on such Holder's signature page attached to the Subscription Agreement (or, if such Holder is not an Investor, such percentage up to 9.99% elected by such Holder by written notice to the Company), of the then-outstanding shares of Common Stock (the "**Ownership Limitation**"); *provided* that the Ownership Limitation shall only apply to the extent that the Common Stock is deemed to constitute an "equity security" pursuant to Rule 13d-1(i) promulgated under the Exchange Act. Upon delivery of a written notice to the Company, any Holder may from time to time decrease its Ownership Limitation. Any Holder that has not elected to irrevocably waive its ability to increase its Ownership Limitation either on its signature page attached to the Subscription Agreement or in a written notice to the Company, may from time to time increase its Ownership Limitation. Any increase in the Ownership Limitation (x) shall not be in excess of 9.99% of the then-outstanding shares of Common Stock and (y) will not be effective until the sixty-first (61<sup>st</sup>) day after such notice is delivered to the Company. Any such increase or decrease in the Ownership Limitation will apply only to the Holder and its Attribution Parties and not to any other Holder.

For purposes of **Section 11(g)(i)**, in determining the number of outstanding shares of Common Stock, the Holders may rely on (I) the number of outstanding shares of Common Stock as stated in the Company's most recent quarterly or annual report filed with the Commission, or any current report filed by the Company with the Commission subsequent thereto, (II) a more recent public announcement by the Company, or (III) a written confirmation by the Company or the Transfer Agent, within two (2) Trading Days following a written request from a Holder, of the number of shares of Common Stock then outstanding. The provisions of this **Section 11(g)(i)** shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 11(g)(i)** to correct all or any portion hereof which may be defective or inconsistent with the intended beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation.

(ii) the issuance of Conversion Shares that would, together with any and all other Conversion Shares issued pursuant hereto, exceed 6,935,934 (as adjusted for any

stock dividend, stock split, stock combination, reclassification or similar transaction relating to the Common Stock occurring after the Subscription Date) without giving effect to any shares issuable upon conversion of the Convertible Preferred Stock (the "**Exchange Cap**"); *provided, however*, that if the Company's stockholders approve the issuance of Conversion Shares above the Exchange Cap, this **Section 11(g)(ii)** will cease to apply.

For purposes of **Section 11(g)(ii)**, (x) from and after the Initial Issue Date until the date that no Optional Shares remain issuable pursuant to the Subscription Agreement, no initial Holder shall be issued in the aggregate, pursuant to the terms of this Certificate of Designations, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the number of shares of Convertible Preferred Stock issued to such initial Holder pursuant to the Subscription Agreement on the Initial Issue Date and the denominator of which is the aggregate number of all shares of Convertible Preferred Stock issued to the initial Holders pursuant to the Subscription Agreement on such Initial Issue Date (with respect to each initial Holder, the "**Initial Exchange Cap Allocation**") and (y) from and after the date that no Optional Shares remain issuable pursuant to the Subscription Agreement, no initial Holder shall be issued in the aggregate, pursuant to the terms of this Certificate of Designations, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the number of shares of Convertible Preferred Stock issued such initial Holder pursuant to the Subscription Agreement on the Initial Issue Date and the Optional Share Purchase Closing Date (as defined in the Subscription Agreement) with respect to such initial Holder, if any, and the denominator of which is the aggregate number of all shares of Convertible Preferred Stock issued to the initial Holders pursuant to the Subscription Agreement on such Initial Issue Date and the Optional Share Purchase Closing Dates with respect to the initial Holders, if any (with respect to each initial Holder, the "**Final Exchange Cap Allocation**" and together with the Initial Exchange Cap Allocation, as applicable, the "**Exchange Cap Allocation**"). In the event that any initial Holder of shares of Convertible Preferred Stock shall sell or otherwise transfer any of such Holder's Convertible Preferred Stock, the transferee shall be allocated a pro rata portion of the Exchange Cap Allocation with respect to such portion of such Convertible Preferred Stock transferred, and the restrictions of the prior sentence of this **Section 11(g)(ii)** shall apply to such transferee with respect to the portion of the Exchange Cap allocated to such transferee. The foregoing shall apply similarly and equally to successive transfers of Convertible Preferred Stock.

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

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

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

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

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

(4) other similar event,

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

(A) from and after the effective time of such Common Stock Change Event, each share of Convertible Preferred Stock will remain outstanding (unless otherwise converted or repurchased in accordance with the terms hereof) and (I) the consideration due upon conversion of any Convertible Preferred Stock will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Section 11** or in **Section 12**, or in any related definitions, were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section 7**, each reference to any number of shares of Common Stock in such Sections (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units and (III) for purposes of the definition of “Change of Control,” the terms “Common Stock” and “common equity” will be deemed to mean the common equity (including depositary receipts representing common equity), if any, forming part of such Reference Property; and

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

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

(ii) *Compliance Covenant.* The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 11(h)**.

(iii) *Execution of Supplemental Instruments.* On or before the date the Common Stock Change Event becomes effective, the Company and, if applicable, the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the “**Successor Person**”) will execute and deliver such supplemental instruments, if any, as the Company reasonably determines are necessary or desirable to (1) provide for subsequent adjustments to the Conversion Price pursuant to **Section 11(f)(i)** in a manner consistent with this **Section 11(h)**; and (2) give effect to such other provisions, if any, as the Company reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to **Section 11(h)(i)**. If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such supplemental instrument(s) and such supplemental instrument(s) will contain such additional provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of Holders.

(iv) *Notice of Common Stock Change Event.* The Company will provide notices of each Common Stock Change Event to Holders (and, if such information constitutes material non-public information under U.S. federal securities laws, either concurrently with or after Public Announcement of the same information) no later than (A) twenty (20) Business Days prior to the anticipated effective date of any Common Stock Change Event and (B) the second (2nd) Business Day after the effective date of the Common Stock Change Event, together with a description of the kind and amount of the cash, securities or other property that constitutes the Reference Property.

(v) *Successive Common Stock Change Events.* The above provisions of this **Section 11** shall similarly apply to successive Common Stock Change Events.

## SECTION 12 CERTAIN PROVISIONS RELATING TO THE ISSUANCE OF COMMON STOCK.

(a) *Equitable Adjustments to Prices.* Whenever this Certificate of Designations requires the Company to calculate the average of the Daily VWAPs, or any function thereof, over a period of multiple days (including to calculate an adjustment to the Conversion Price), the Company will make appropriate adjustments, if any, to those calculations to account for any adjustment to the Conversion Price pursuant to **Section 11(f)(i)** that becomes effective, or any

event requiring such an adjustment to the Conversion Price where the Ex-Dividend Date, effective date or Expiration Date, as applicable, of such event occurs, at any time during such period.

(b) *Reservation of Shares of Common Stock.* For so long as the Convertible Preferred Stock remains outstanding, the Company will keep reserved, out of its authorized, unreserved and not outstanding shares of Common Stock, for delivery upon conversion of the Convertible Preferred Stock, a number of shares of Common Stock that would be sufficient to settle the conversion in full of all shares of Convertible Preferred Stock then outstanding, if any, without giving effect to any limitation on conversion set forth herein. To the extent the Company delivers shares of Common Stock held in the Company's treasury in settlement of any obligation under this Certificate of Designations to deliver shares of Common Stock, each reference in this Certificate of Designations to the issuance of shares of Common Stock in connection therewith will be deemed to include such delivery.

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

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

#### SECTION 13 CALCULATIONS.

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

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

SECTION 14 TAX TREATMENT. Notwithstanding anything to the contrary in this Certificate of Designations, for U.S. federal and other applicable state and local income tax purposes, it is intended that the Convertible Preferred Stock will not be treated as “preferred stock” within the meaning of Section 305(b)(4) of Code and Treasury Regulations Section 1.305-5(a). The Company will, and will cause its Subsidiaries and agents to, report consistently with, and take no positions or actions inconsistent with, the foregoing treatment unless otherwise required by a determination within the meaning of Section 1313(a) of the Code.

SECTION 15 NOTICES. The Company will send all notices or communications to Holders pursuant to this Certificate of Designations in writing and delivered personally or e-mail (with confirmation of receipt from the recipient, in the case of e-mail), or sent by nationally recognized overnight courier service to the Holder’s respective addresses shown on the Register. Notwithstanding anything in the Certificate of Designations to the contrary, any defect in the delivery of any such notice or communication will not impair or affect the validity of such notice or communication and the failure to give any such notice or communication to all the Holders will not impair or affect the validity of such notice or communication to whom such notice is sent.

SECTION 16 NO OTHER RIGHTS. The Convertible Preferred Stock will have no rights, preferences or voting powers except as provided in this Certificate of Designations or the Certificate of Incorporation or as required by applicable law. Without limiting the generality of the immediately preceding sentence, (a) the Holders shall not have any preemptive rights, (b) except as expressly provided in this Certificate of Designations, the shares of Convertible Preferred Stock shall not be redeemable or otherwise mature and the term of the Convertible Preferred Stock shall be perpetual, and (c) shares of Convertible Preferred Stock shall not be subject to or entitled to the operation of a retirement or sinking fund.

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

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

**LUNA INNOVATIONS INCORPORATED**

By: /s/ Scott A. Graeff  
Name: Scott A. Graeff  
Title: President and Chief Executive Officer

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**EXHIBIT A**

FORM OF CONVERTIBLE PREFERRED STOCK CERTIFICATE

**Luna Innovations Incorporated  
Series B Convertible Preferred Stock**

[Certificate No.: [ ]]

No. Shares\* [ ]

Luna Innovations Incorporated, a Delaware corporation (the “**Company**”), certifies that [ ] is the registered owner of [ ] shares of the Company’s Series B Convertible Preferred Stock (the “**Convertible Preferred Stock**”) represented by this certificate (this “**Certificate**”). The special rights, preferences and voting powers of the Convertible Preferred Stock are set forth in the Certificate of Designations of the Company establishing the Convertible Preferred Stock (the “**Certificate of Designations**”).

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

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

\* Insert number of shares for Physical Certificate only.

**IN WITNESS WHEREOF**, Luna Innovations Incorporated has caused this instrument to be duly executed as of the date set forth below.

**LUNA INNOVATIONS  
INCORPORATED**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

TRANSFER AGENT'S COUNTERSIGNATURE

Equiniti Trust Company, LLC (or any successor thereto that acts as the Company's transfer agent), as Transfer Agent, certifies that this Certificate represents shares of Convertible Preferred Stock referred to in the within-mentioned Certificate of Designations.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Authorized Signatory

**REVERSE OF SECURITY**

LUNA INNOVATIONS INCORPORATED (THE "COMPANY")

THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS, A SUMMARY OF THE POWERS, DESIGNATIONS AND PREFERENCES, OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND RIGHTS, AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES, WHICH ARE FIXED BY THE CERTIFICATE OF INCORPORATION OF THE COMPANY, AS AMENDED, AND THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES. SUCH REQUEST MAY BE MADE TO THE OFFICE OF THE SECRETARY OF THE COMPANY OR TO THE TRANSFER AGENT. THE BOARD OF DIRECTORS MAY REQUIRE THE OWNER OF A LOST OR DESTROYED STOCK CERTIFICATE, OR HIS LEGAL REPRESENTATIVES TO GIVE THE COMPANY A BOND TO INDEMNIFY IT AND ITS TRANSFER AGENTS AND REGISTRARS AGAINST ANY CLAIM THAT MAY BE MADE AGAINST THEM ON ACCOUNT OF THE ALLEGED LOSS OR DESTRUCTION OF AY SUCH CERTIFICATE.

INSERT RESTRICTIVE LEGENDS IN ACCORDANCE WITH SUBSCRIPTION AGREEMENT

FOR VALUE RECEIVED, \_\_\_\_\_ hereby sell, assign and transfer unto

\_\_\_\_\_  
(Insert assignee's social security or tax identification number)

\_\_\_\_\_  
(Insert address and zip code of assignee)

Shares of the Series B Convertible Preferred Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint \_\_\_\_\_ as agent to transfer the said shares of Series B Convertible Preferred Stock evidenced hereby on the books of the within-named Company with full power of substitution in the premises.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Series B Convertible Preferred Stock)

Signature Guarantee: \_\_\_\_\_ †

† Signature must be guaranteed by an “eligible guarantor institution” that is a bank, stockbroker, savings and loan association or credit union reasonably acceptable to the Company or meeting the requirements of any transfer agent appointed by the Company from time to time, which requirements include membership or participation in the Securities Transfer Agents Medallion Program (“**STAMP**”) or such other “signature guarantee program” as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**OPTIONAL CONVERSION NOTICE**

Luna Innovations Incorporated  
Series B Convertible Preferred Stock

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

- all of the shares of Convertible Preferred Stock
- § \_\_\_\_\_ shares of Convertible Preferred Stock

identified by CUSIP No. and Certificate No. .

check if Holder requests a Cash Settlement pursuant to **Section 11(e)(i)** of the Certificate of Designations for all the shares of Convertible Preferred Stock subject to this Optional Conversion Notice

check if Holder requests a Cash Settlement pursuant to **Section 11(e)(i)** of the Certificate of Designations for a portion the shares of Convertible Preferred Stock subject to this Optional Conversion Notice and specify such number of shares of Convertible Preferred Stock subject to such Cash Settlement request: \_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_ (Legal Name of Holder)

By: \_\_\_\_\_

Name:

Title:

Signature Guaranteed: \_\_\_\_\_

Participant in a Recognized Signature  
Guarantee Medallion Program

By: \_\_\_\_\_

Authorized Signatory

§ Must be a whole number.

**HOLDER REPURCHASE NOTICE**

Luna Innovations Incorporated  
Series B Convertible Preferred Stock

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

- Pursuant to Section 8(a)
- Pursuant to Section 8(b)
- Pursuant to Section 8(c)

; and (check one):

- all of the shares of Convertible Preferred Stock
- § \_\_\_\_\_ shares of Convertible Preferred Stock

identified by CUSIP No. and Certificate No. .

Date: \_\_\_\_\_  
\_\_\_\_\_ (Legal Name of Holder)

By: \_\_\_\_\_

Name:

Title:

Signature Guaranteed: \_\_\_\_\_

Participant in a Recognized Signature  
Guarantee Medallion Program

By: \_\_\_\_\_

Authorized Signatory

§ Must be a whole number.

**EXHIBIT D**

FORM OF RESTRICTED STOCK LEGEND

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





**SUBSCRIPTION AGREEMENT**  
**BY AND AMONG**  
**LUNA INNOVATIONS INCORPORATED**  
**AND**  
**THE ENTITIES LISTED ON EXHIBIT B HERETO**  
**Dated as of December 21, 2023**

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## SUBSCRIPTION AGREEMENT

This SUBSCRIPTION AGREEMENT dated as of December 21, 2023 (this “Agreement”), is by and among Luna Innovations Incorporated, a Delaware corporation (the “Company”), and the entities that are listed on Exhibit B attached hereto (each, an “Investor” and collectively, the “Investors”). Capitalized terms used but not defined herein have the meanings assigned to them in Exhibit A attached hereto.

WHEREAS, the Company has authorized a new series of its preferred stock titled the “Series B Convertible Preferred Stock,” par value \$0.001 per share, with an initial liquidation preference of \$1,000 per share (the “Series B Preferred Stock”), in an aggregate number of 65,000 shares;

WHEREAS, the Investors severally and not jointly desire to purchase from the Company, and the Company desires to issue and sell to the Investors, the number of shares of the Company’s Series B Preferred Stock set forth next to their name on Exhibit B attached hereto, on the terms hereinafter set forth;

WHEREAS, at the Initial Closing (as defined below), and as a condition of and inducement to the Investors’ willingness to enter into this Agreement, the Company and the Investors will enter into the Registration Rights Agreement; and

WHEREAS, concurrently with the execution and delivery of this Agreement, the Company is entering into an agreement for the sale and purchase of a proportion of a majority portion of the entire issued share capital of Silixa Ltd (the “Target”) by and among the Company and the Sellers thereto, in substantially the form attached hereto as Exhibit I (the “Purchase Agreement”). Pursuant to the Purchase Agreement and that certain Minority SPA (as defined in the Purchase Agreement), the Company and the Sellers intend to effect the purchase and sale of substantially all of the shares of the Target (the “Acquisition”). Upon consummation of the Acquisition, the Target will become a wholly-owned subsidiary of the Company.

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

### ARTICLE I.

#### PURCHASE AND SALE OF PURCHASED SHARES

Section 1.1 Purchase and Sale. On the terms set forth in this Agreement and subject to the satisfaction (or, to the extent permitted by applicable law, waiver by the party entitled to the benefit thereof) of the conditions set forth in Article V, at the Initial Closing, the Investors shall purchase, and the Company shall issue, sell, convey and deliver to the Investors, the number of shares of Series B Preferred Stock set forth next to their names on Exhibit B attached hereto under the heading “Purchased Shares” (the “Purchased Shares”) for an aggregate purchase price of \$50,000,000 and an initial liquidation preference of \$1,000 per share, free and clear of any liens, pledges, mortgages, security interests or other encumbrances or charges of any kind (other than

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Permitted Liens) for the purchase price set forth opposite the name of such Investor on Exhibit B under the heading “Applicable Purchase Price for the Purchased Shares” (the “Applicable Purchase Price”). The Series B Preferred Stock shall have the rights, powers, preferences and privileges set forth in the Certificate of Designations (the “Certificate of Designations”) attached hereto as Exhibit C.Initial Closing. On the terms set forth in this Agreement, the closing of the issuance, sale and purchase of the Purchased Shares (the “Initial Closing”) shall take place remotely via the exchange of final documents and signature pages, on December 21, 2023 or at such other times as the Company and the Investors may agree in writing. The date on which the Initial Closing is to occur is herein referred to as the “Initial Closing Date.”

Section 1.3 Closing Deliverables. At the Initial Closing:each Investor shall, severally and not jointly, (i) pay, or cause to be paid, to the Company the full amount of the Applicable Purchase Price payable by such Investor by wire transfer of immediately available funds to an account designated in writing by the Company at least two (2) Business Days prior to the Initial Closing Date, (ii) deliver to the Company a duly executed, valid, accurate and properly completed Internal Revenue Service Form W-9 or the applicable Form W-8, as applicable, and (iii) deliver to the Company a duly executed counterpart to the Registration Rights Agreement; and

(b) the Company shall (i) issue and deliver to each Investor evidence reasonably satisfactory to such Investor of the issuance of the applicable Purchased Shares in the name of such Investor by book-entry on the books and records of the Company, (ii) have filed the Certificate of Designations with the Secretary of State of the State of Delaware and provide evidence of such filing to the Investors, and (iii) deliver to the Investors a duly executed counterpart to the Registration Rights Agreement.

Section 1.4 Optional Shares.

(a) The Company hereby conveys to each Investor the option exercisable by each Investor on one or more occasions at any time from time to time on or prior to December 21, 2026 (the “Exercise Period”), to purchase up to an aggregate number of shares of Series B Preferred Stock set forth next to their names on Exhibit B attached hereto under the heading “Maximum Optional Shares” for up to an aggregate purchase price among all Investors of \$12,500,000 and an initial liquidation preference of \$1,000 per share (the “Optional Shares”) for up to an aggregate purchase price set forth opposite the name of such Investor on Exhibit B under the heading “Maximum Applicable Purchase Price for the Optional Shares” (such option, the “Optional Shares Election Option”). For the avoidance of doubt, an Optional Shares Election Option may be exercised by each Investor at any time from time to time during the Exercise Period, and need not be exercised by the Investors at the same time. By written notice to the Company, an Investor may terminate an Optional Shares Election Option at any time prior to the applicable Optional Share Purchase Closing (as defined below).

(b) An Optional Shares Election Option may, severally and not jointly, be exercised by an Investor or by an Affiliate of an Investor (the “Exercising Investor”) by delivering to the Company a written notice (each such notice, an “Exercise Notice”) stating that such Exercising Investor is exercising an Optional Shares Election Option and the number of Optional Shares to be purchased by such Exercising Investor at such Optional Share Purchase Closing.

(c) No later than five (5) Business Days following the date of the delivery of an Exercise Notice, the Company and the Exercising Investor shall mutually determine in writing the place and time for the closing of the issuance, sale and purchase of the applicable Optional Shares (each such closing, an “Optional Share Purchase Closing”). The obligations of the Company and the Exercising Investor to purchase the applicable Optional Shares at the applicable Optional Share Purchase Closing (the date thereof, the “Optional Share Purchase Closing Date”) shall be subject to the satisfaction (or, to the extent permitted by applicable law, waiver by the party entitled to the benefit thereof) of the conditions set forth in Article V applicable to an Optional Share Purchase Closing.

(d) Following the Company’s receipt of an Exercise Notice, the Company shall have the right to update and/or supplement the Disclosure Schedules (as defined below) prior to any Optional Share Purchase Closing to reflect any and all events, circumstances or changes that arise after the date of this Agreement by delivery to the Exercising Investor of one or more written updates and/or supplements (each, a “Disclosure Update”). The applicable Disclosure Schedules shall be deemed amended and supplemented by all information set forth in any such Disclosure Update and each of the representations and warranties made in this Agreement shall be deemed qualified by the Disclosure Update, unless the Exercising Investor delivers written notice to the Company within five (5) Business Days after receipt of the Disclosure Update rejecting the Disclosure Update and withdrawing its Exercise Notice, in which case the Exercise Notice shall be deemed withdrawn and, for the avoidance of doubt the Optional Shares Election Option shall continue in force and effect in accordance with the terms hereof as if the Election Notice had never been delivered. If the Exercising Investor does not reject the Disclosure Update in accordance with the immediately preceding sentence, the applicable sections of the Disclosure Schedules shall be deemed amended and supplemented by all information set forth in such Disclosure Update, each of the representations and warranties made in this Agreement shall be deemed qualified by the Disclosure Update, and subject to the satisfaction (or, to the extent permitted by applicable law, waiver by the party entitled to the benefit thereof) of the conditions set forth in Article V applicable to an Optional Share Purchase Closing, the Exercising Investor shall be obligated to purchase the applicable Optional Shares at the applicable Optional Share Purchase Closing.

(e) At each Optional Share Purchase Closing:

(i) the Exercising Investor shall (A) pay, or cause to be paid, to the Company the purchase price for the Optional Shares to be purchased by the Exercising Investor at the applicable Optional Share Purchase Closing by wire transfer of immediately available funds to an account designated in writing by the Company at least two (2) Business Days prior to such Optional Share Purchase Closing, and (B) deliver to the Company a duly executed, valid, accurate and properly completed Internal Revenue Service Form W-9 or the applicable Form W-8, as applicable; and

(ii) the Company shall issue and deliver to the Exercising Investor evidence reasonably satisfactory to the Exercising Investor of the issuance of the Optional Shares to be purchased by the Exercising Investor at the applicable Optional Share Purchase Closing in the name of the Exercising Investor by book-entry on the books and records of the Company.



## ARTICLE II.

### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Investors as of the date of this Agreement, as of the Initial Closing and as of each Optional Share Purchase Closing (except to the extent made only as of a specified date, in which case such representation and warranty is made as of such date) that, except (a) as set forth in the SEC Documents (other than disclosures in the “Risk Factors” or “Forward-Looking Statements” sections or similarly captioned sections of any such filings) and (b) as set forth on Exhibit E (the “Disclosure Schedule”) (all such exceptions disclosed in the Disclosure Schedule being numbered to correspond to the applicable Section of this Article II, provided, however, that any such exception shall be deemed to be disclosed with respect to each other representation or warranty to which the relevance of such exception is reasonably apparent on the face of such disclosure):

#### Section 2.1 Organization and Power.

(a) The Company is a corporation validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority necessary to own or lease its properties and to carry on its business as presently conducted, except (other than with respect to the Company’s valid existence and good standing) as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company is duly licensed or qualified to do business as a foreign corporation in each jurisdiction wherein the character of its property or the nature of the activities presently conducted by it, makes such qualification necessary, except where the failure to be so licensed or qualified has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Each of the Company’s Subsidiaries is a corporation, limited liability company, partnership or other entity validly existing and in good standing (where such concept is recognized under applicable law) under the laws of the jurisdiction of its incorporation or formation (as applicable), except, with respect only to each Subsidiary of the Company that would not constitute a Significant Subsidiary (as defined in Rule 1-02 of Regulation S-X (17 C.F.R. Part 210)), where the failure to be so existing and in good standing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of the Company’s Subsidiaries has all requisite corporate, limited liability company, partnership or other entity power and authority necessary to own or lease its properties and to carry on its business as presently conducted, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of the Company’s Subsidiaries is duly licensed or qualified to do business as a foreign corporation, limited liability company, partnership or other entity in each jurisdiction wherein the character of its property or the nature of the activities presently conducted by it, makes such qualification necessary, except where the failure to be so licensed or qualified has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

#### Section 2.2 Authorization, Etc.

(a) The Company has all necessary corporate power and authority and has taken all necessary corporate action required for the due authorization, execution, delivery and performance by the Company of this Agreement and each other agreement contemplated hereby, and the consummation by the Company of the transactions contemplated hereby and thereby, the filing of the Certificate of Designations with the Secretary of State of the State of Delaware and for the due authorization, issuance, sale and delivery of the Purchased Shares and the reservation, issuance and delivery of the Conversion Shares (as defined below) and the Optional Shares.

(b) The authorization, execution, delivery and performance by the Company of this Agreement and each other agreement contemplated hereby, and the consummation by the Company of the transactions contemplated hereby and thereby, including the filing of the Certificate of Designations and the issuance of the Purchased Shares, the Conversion Shares and if applicable, the Optional Shares do not and will not: (i) violate or result in the breach of any provision of the Certificate of Incorporation, Bylaws and Certificate of Designations; or (ii) with such exceptions that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (x) violate any provision of, constitute a breach of, or default under, any judgment, order, writ, or decree applicable to the Company or any of its Subsidiaries or any material contract, mortgage or credit agreement to which the Company or any of its Subsidiaries is a party; (y) violate any provision of, constitute a breach of, or default under, any applicable state, federal or local law, rule or regulation; or (z) result in the creation of any liens, pledges, mortgages, security interests or other encumbrances or charges of any kind upon any assets of the Company or any of its Subsidiaries or the suspension, revocation or forfeiture of any franchise, permit or license granted by a governmental authority to the Company or any of its Subsidiaries, other than liens under federal or state securities laws.

(c) No shareholder approval is required pursuant to the rules of the Nasdaq Stock Market in connection with the issuance of the Purchased Shares, Optional Shares or Conversion Shares, other than the approval by the Company's stockholders of the issuance of the Conversion Shares above the Exchange Cap (the parties acknowledge that the Company has no obligation to seek stockholder approval of the removal of the Exchange Cap). This Agreement has been, and the other agreements contemplated hereby, at the Initial Closing will be, duly executed and delivered by the Company. Assuming due execution and delivery thereof by each of the other parties hereto or thereto, this Agreement and the other agreements contemplated hereby will each be a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar legal requirement relating to or affecting creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law). The Company has taken all appropriate actions so that the restrictions on business combinations contained in Section 203 of the DGCL will not apply with respect to or as a result of the issuance of the Purchased Shares (or the Conversion Shares or the Optional Shares) to the Investors or the Transfer thereof to its Permitted Transferees in accordance with this Agreement, without any further action on the part of the stockholders of the Company or the Board of Directors.

Section 2.3 Government Approvals. No consent, approval or authorization of, or filing with, any court or governmental authority is or will be required on the part of the Company in connection with the execution, delivery and performance by the Company of this Agreement and the other agreements contemplated hereby, or in connection with the issuance of the Purchased Shares, the Conversion Shares or the Optional Shares, except for (a) the filing of the Certificate of Designations with the Secretary of State of the State of Delaware; (b) those which have already been made or granted, including the approval of the listing of the Conversion Shares with the Nasdaq Stock Market; (c) the filing of a Form D and current report on Form 8-K with the SEC; and (d) filings with applicable state securities commissions.

Section 2.4 Authorized and Outstanding Stock.

(a) The authorized capital stock of the Company consists of 100,000,000 shares of common stock, \$0.001 par value per share ("Common Stock"), and 5,000,000 shares of preferred stock, \$0.001 per value per share ("Preferred Stock"). Of such Preferred Stock, (i) 1,321,514 shares of Preferred Stock are designated as Series A Convertible Preferred Stock ("Series A Preferred Stock") and (ii) upon the filing of the Certificate of Designations with the Secretary of State of the State of Delaware, 65,000 shares will be designated as the Series B Preferred Stock. The Company does not have any other issued and outstanding shares of Preferred Stock.

(b) As of December 20, 2023, (i) 34,697,019 shares of Common Stock were issued and outstanding, (ii) 1,837,013 shares of Common Stock were held by the Company as treasury shares, (iii) 1,609,979 shares of Common Stock were reserved for issuance upon the exercise of outstanding options to purchase Common Stock or in connection with the settlement of outstanding vested or unvested restricted stock units or performance shares awards issued pursuant to the Stock Plans or the vesting of outstanding unvested restricted stock units not issued pursuant to the Stock Plans (assuming, in the case of any awards that are subject to the attainment of performance goals, that applicable performance goals are attained at the maximum level), (iv) no shares of Common Stock have been purchased by employees of the Company under the Company's employee stock purchase plan but have not yet been issued; (v) an additional 603,814 shares of Common Stock are reserved for future issuance to employees of the Company under the Company's employee stock purchase plan, and (vi) no shares of Series A Preferred Stock were issued and outstanding.

(c) All of the issued and outstanding shares of Common Stock of the Company are, and when issued in accordance with the terms hereof, the Purchased Shares will be, duly authorized and validly issued and fully paid and non-assessable. The shares of Common Stock issuable upon conversion of the Purchased Shares or Optional Shares (the "Conversion Shares") have been reserved for issuance and, when issued upon conversion thereof in accordance with the terms of the Certificate of Designations in accordance with their terms will be validly issued and fully paid and non-assessable and will not be subject to any preemptive right or any restrictions on transfer under applicable law or any contract to which the Company is a party, other than those under applicable state and federal securities and antitakeover laws, this Agreement and the Registration Rights Agreement. When issued in accordance with the terms hereof, the Purchased Shares and the Conversion Shares will be free and clear of all liens (other than Permitted Liens).

(d) Except as otherwise expressly described in this Agreement or in the Purchase Agreement: (i) no subscription, warrant, option, convertible security or other right issued by the Company to purchase or acquire any shares of capital stock of the Company is authorized or outstanding; (ii) there is not any commitment of the Company to issue any subscription, warrant, option, convertible security or other such right or to issue or distribute to holders of any shares of its capital stock; (iii) the Company has no obligation to purchase, redeem or otherwise acquire any shares of its capital stock or to pay any dividend or make any other distribution in respect thereof; and (iv) there are no agreements between the Company and any holder of its capital stock relating to the acquisition, disposition or voting of the capital stock of the Company. No person or entity is entitled to any preemptive right granted by the Company with respect to the issuance of any capital stock of the Company.

Section 2.5 Subsidiaries. The Company, directly or indirectly, owns of record and beneficially, free and clear of all liens, pledges, mortgages, security interests or other encumbrances or charges of any kind, other than Permitted Liens, all of the issued and outstanding capital stock or equity interests of each of its Subsidiaries. All of the issued and outstanding capital stock or equity interests of the Company's Subsidiaries has been duly authorized and validly issued, and in the case of corporations, is fully paid and non-assessable. There are no outstanding rights, options, warrants, preemptive rights, conversion rights, rights of first refusal or similar rights for the purchase or acquisition from any of the Company's Subsidiaries of any securities of such Subsidiaries nor are there any commitments to issue or execute any such rights, options, warrants, preemptive rights, conversion rights or rights of first refusal. Effective as of the consummation of the Acquisition, the Target will be a wholly-owned Subsidiary of the Company.

Section 2.6 Private Placement. Assuming the accuracy of the representations and warranties of the Investors set forth in Section 3.4 (Investment Representations), the offer and sale of the Purchased Shares pursuant to this Agreement will be exempt from the registration requirements of the Securities Act.

Section 2.7 SEC Documents; Financial Information. Except for that certain 8-K/A filed with the SEC by the Company on June 29, 2021, since January 1, 2021, the Company has timely filed (a) all annual and quarterly reports and proxy statements (including all amendments, exhibits and schedules thereto) and (b) all other reports and other documents (including all amendments, exhibits and schedules thereto), in each case required to be filed by the Company with the SEC pursuant to the Exchange Act and the Securities Act except, in the case of clause (b), where the failure to file has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. As of their respective filing dates (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), such SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act and the rules and regulations of the SEC thereunder applicable to such SEC Documents, and as of their respective dates (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing) none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Documents (the "Financial Statements") comply

as of their respective dates in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto (except as may be indicated in the notes thereto or, in the case of the unaudited statements, as permitted by Form 10-Q promulgated by the SEC), and present fairly in all material respects as of their respective dates the consolidated financial position of the Company and its Subsidiaries as at the dates thereof and the consolidated results of their operations and their consolidated cash flows for each of the respective periods, all in conformity with GAAP, applied on a consistent basis during the periods involved (except as may be indicated in such Financial Statements or the notes thereto and subject, in the case of the unaudited financial statements, to normal and recurring year-end and audit adjustments). There is no transaction, arrangement or other relationship between the Company and/or any of its Subsidiaries and an unconsolidated or other off-balance sheet entity that is required by applicable law to be disclosed by the Company in its SEC Documents and is not so disclosed. Since December 31, 2022 through the date hereof, no event has occurred that has had, or would reasonably be expected to have, a Material Adverse Effect. The Company satisfies the “registrant requirements” for use of Form S-3 set forth in General Instruction I.A to Form S-3 promulgated by the SEC. The Company and its Subsidiaries do not have any liabilities or obligations that would be required under GAAP, as in effect on the date of this Agreement, to be reflected on a consolidated balance sheet of the Company (accrued, absolute, contingent or otherwise), other than liabilities or obligations (i) reflected on, reserved against, or disclosed in the notes to, the Company’s most recent consolidated balance sheet included in the SEC Documents, (ii) that were incurred after the date of the Company’s most recent consolidated balance sheet included in the SEC Documents in the ordinary course of business, (iii) as expressly contemplated by this Agreement, the Purchase Agreement or otherwise incurred in connection with the transactions contemplated by this Agreement, (iv) that have been discharged or paid prior to the date of this Agreement, or (v) as have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 2.8 Internal Control Over Financial Reporting. The Company has disclosed, based on its most recent evaluation prior to the date hereof, to the Company’s outside auditors and the Audit Committee of the Board of Directors (a) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information and (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal control over financial reporting.

Section 2.9 Disclosure Controls and Procedures. The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act) that are designed to provide reasonable assurance that material information relating to the Company, including its Subsidiaries, that is required to be disclosed by the Company in the reports that it furnishes or files under the Exchange Act is reported within the time periods specified in the rules and forms of the SEC and that such material information is communicated to the Company’s management to allow timely decisions regarding required disclosure.

Section 2.10 Litigation. There is no litigation or governmental proceeding pending or, to the knowledge of the Company, threatened in writing, against the Company or any of its Subsidiaries or affecting any of the business, operations, properties or assets of the Company or any of its Subsidiaries which, in any such case, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is in default with respect to any order, writ, injunction, decree, ruling or decision of any court, commission, board or other government agency that is expressly applicable to the Company or any of its Subsidiaries which, in any such case, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 2.11 Compliance with Laws; Permits. The Company and its Subsidiaries are in compliance with all applicable laws, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company and its Subsidiaries possess all permits and licenses of governmental authorities that are required to conduct their business as currently conducted, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 2.12 Taxes. The Company and each of its Subsidiaries has filed all Tax Returns required to be filed within the applicable periods for such filings (with due regard to any extension) and has timely paid all Taxes required to be paid (whether or not shown as due on a Tax Return), except for any such failures to file or pay that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company and its Subsidiaries know of no basis for any such claim. There is no deficiency for any material amount of taxes has been asserted or assessed by any governmental authority in writing against the Company or any Subsidiary, which deficiency has not been paid or resolved. There are no material audit or other proceeding by any governmental authority is currently in progress, pending or threatened in writing against the Company or any Subsidiary with respect to any taxes due from such entities. Neither the Company nor any of its Subsidiaries are currently contesting any material tax liability before any governmental authority. The Company is not, and it has never been, a “United States real property holding corporation” within the meaning of Section 897 of the Code, and the Company has filed with the Internal Revenue Service all statements, if any, that are required under Section 1.897-2(h) of the Treasury Regulations.

Section 2.13 Employee and Labor Matters. Except where the failure to comply has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) the Company and its Subsidiaries are in compliance with all applicable laws relating to labor, employment, fair employment practices, terms and conditions of employment, and wages and hours, and with the terms of the ERISA Documents, and (b) each such ERISA Document is in compliance with all applicable requirements of ERISA. None of the Company, its Subsidiaries and their respective directors, officers, employees or agents has engaged in any transaction that would reasonably be expected to subject the Company or any of its Subsidiaries, directly or indirectly, to any tax or civil penalty that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Since January 1, 2021, there have not been any strikes, labor disputes, lockouts, slowdowns or other material labor disputes against the Company or any of its Subsidiaries pending, or to the knowledge of the Company, threatened. To

the knowledge of the Company, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the execution and delivery of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby do not and will not give rise to any right of termination or any payment right under any employment or consulting agreement to which the Company or any of its Subsidiaries is a party or any right of renegotiation on the part of any union under any collective bargaining agreement by which the Company or any of its Subsidiaries is bound.

Section 2.14 Environmental Matters. The Company and its Subsidiaries are in compliance with all applicable Requirements of Environmental Law, except where the failure to comply has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company and its Subsidiaries have not received within the past three years any written notice from any Governmental Entity of any violation or alleged violation of any Requirements of Environmental Law in connection with their respective properties, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 2.15 Registration Rights. Except as provided in this Agreement or the Registration Rights Agreement or disclosed in the SEC Documents, the Company has not granted any rights to register under the Securities Act any of its presently outstanding securities or any of its securities that may be issued subsequently.

Section 2.16 Investment Company Act. The Company is not, and immediately after giving effect to the sale of the Purchased Shares in accordance with this Agreement and the application of the proceeds thereof will not be required to be registered as, an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act.

Section 2.17 Nasdaq. As of the date hereof, the Company’s Common Stock is listed on the Nasdaq Stock Market, and no event has occurred, and the Company is not aware of any event that is reasonably likely to occur, that would result in the Common Stock being delisted from the Nasdaq Stock Market. The Company is in compliance in all material respects with applicable continued listing requirements of the Nasdaq Stock Market. The Company has filed with the Nasdaq Stock Market an additional shares listing application covering the Conversion Shares and has not received any objections from the Nasdaq Stock Market with respect to such application with respect to the transactions contemplated hereby or by the Purchase Agreement.

Section 2.18 Properties. Each of the Company and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business free and clear of any liens, pledges, mortgages, security interests or other encumbrances or charges of any kind, except, in each case, as would not reasonably be expected to result in a Material Adverse Effect, and for Permitted Liens. Except as have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) each of the Company and its Subsidiaries exclusively owns, or is validly licensed to use, or otherwise has the valid right to use, all trademarks, tradenames, copyrights, patents and other intellectual property used in, held for use in or necessary to its business as currently conducted free and clear of any liens, pledges,

mortgages, security interests or other encumbrances or charges of any kind, except for Permitted Liens, and (ii) neither the use thereof, or the operation of the Company's and its Subsidiaries businesses, by the Company and each Subsidiary infringes upon, violates or misappropriates (or has infringed upon, violated or misappropriated) the rights of any other Person. No claim or litigation regarding any trademarks, tradenames, copyrights, patents or other intellectual property owned by, used by, or held for use by the Company or its Subsidiaries (including any claims or litigations challenging the validity or enforceability thereof) is pending or, to the knowledge of the Company, threatened against the Company or any Subsidiary of the Company that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. All (i) trademark and service mark registrations and applications, (ii) patents and patent applications, (iii) copyright registrations and applications, and (iv) domain name registrations, in each case, owned or purported to be owned by the Company or a Subsidiary, is subsisting, valid, and enforceable, except, individually or in the aggregate, as would not reasonably be expected to result in a Material Adverse Effect. The Company and its Subsidiaries have taken commercially reasonable measures to maintain and protect their right, title and interest in all intellectual property owned or purported to be owned by the Company or a Subsidiary, and the Company has maintained the confidentiality of all confidential information and trade secrets in its possession, except, in each case, as would not reasonably be expected to result in a Material Adverse Effect.

Section 2.19 Privacy and Data Security. Except as would not reasonably be expected to result in a Material Adverse Effect, (a) the Company and its Subsidiaries have established written privacy policies applicable to the collection, use, disclosure, maintenance and transmission of Personal Data, (b) each of the Company and its Subsidiaries is in compliance in all material respects with their written privacy policies, contracts which impose requirements relating to the collection, processing, storage, disclosure, disposal or other handling of Personal Data, any applicable laws relating to privacy, data protection, anti-spam, personal information and similar consumer protection laws, and any applicable industry standards which impose requirements on the collection, processing, storage, disclosure, disposal or other handling of Personal Data (collectively, the "Privacy Requirements"). Except as would not reasonably be expected to result in a Material Adverse Effect, neither the operation by the Company or any of its Subsidiaries of any its websites nor the content thereof or data processed, collected, stored or disseminated by such entity in connection therewith, violates in any material respect any applicable law regarding privacy, data protection, anti-spam, personal information and similar consumer protection laws. Since January 1, 2021, none of the Company nor any of its Subsidiaries has experienced (i) incidents of unauthorized access or other security breaches, including any loss, misuse, damage, unauthorized access, unauthorized disclosure or unauthorized use of any Personal Data, or (ii) any other event that the Company or any of its Subsidiaries required a data breach notice to any Person or Governmental Entity under Privacy Requirements, except, in each case, as would not reasonably be expected to result in a Material Adverse Effect. Except as, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, the hardware, software, databases, web sites, mobile applications, servers, workstations, routers, hubs, switches, circuits, networks, communications networks, and other information technology owned, licensed, leased or otherwise used, distributed or held for use by the Company or its Subsidiaries (i) have not, within the three (3) years prior to the date of this Agreement, malfunctioned or failed in a manner that resulted in chronic or otherwise material disruptions to the operation of the business of the



Company and its Subsidiaries, and (ii) are adequate for the Company's and its Subsidiaries' businesses as currently conducted.

Section 2.20 Insurance. As of the date of this Agreement, the insurance policies of the Company and its Subsidiaries are in full force and effect and all premiums in respect of such insurance have been timely paid except, in each case, as would not reasonably be expected to result in a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect, the Company believes that the insurance maintained by or on behalf of the Company and the Subsidiaries is in such amounts and against such risks as is (a) customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) adequate for the type of business conducted by the Company and its Subsidiaries.

Section 2.21 Solvency. After giving effect to the transactions contemplated hereby: (a) the sum of the debts and liabilities, direct, subordinated, contingent or otherwise, on a consolidated basis of the Company and its Subsidiaries, does not exceed the fair value of the assets of the Company and its Subsidiaries on a consolidated basis, and the present fair saleable value of the property of the Company and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of the Company and its Subsidiaries on a consolidated basis on their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (b) the capital of the Company and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Company or its Subsidiaries, taken as a whole, contemplated as of the date hereof and (c) the Company and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. No Brokers or Finders. No Person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or claim against or upon the Company, any of its Subsidiaries or the Investors for any commission, fee or other compensation as a finder or broker because of any act of the Company or any of its Subsidiaries.

Section 2.23 Illegal Payments; FCPA Violations. Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, since January 1, 2021, none of the Company, any of its Subsidiaries or, to the knowledge of the Company, any officer, director, employee, agent, representative or consultant acting on behalf of the Company or any of its Subsidiaries (and only in their capacities as such) has, in connection with the business of the Company: (a) unlawfully offered, paid, promised to pay, or authorized the payment of, directly or indirectly, anything of value, including money, loans, gifts, travel, or entertainment, to any Government Official with the purpose of (i) influencing any act or decision of such Government Official in his or her official capacity; (ii) inducing such Government Official to perform or omit to perform any activity in violation of his or her legal duties; (iii) securing any improper advantage; or (iv) inducing such Government Official to influence or affect any act or decision of such Governmental Entity, except, with respect to the foregoing clauses (i) through (iv), as permitted under the U.S. Foreign Corrupt Practices Act or other applicable law; (b) made any illegal contribution to any political party or candidate; (c) made, offered or promised to pay any unlawful bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature, directly or indirectly, in connection with the business of the

Company, to any Person, including any supplier or customer; (d) knowingly established or maintained any unrecorded fund or asset or made any false entry on any book or record of the Company or any of its Subsidiaries for any purpose; or I otherwise violated the U.S. Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, as amended, or any other applicable anti-corruption or anti-bribery law.

Section 2.24 Economic Sanctions. Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Company is not in contravention of any sanction, and has not engaged in any conduct sanctionable, under U.S. economic sanctions laws, including applicable laws administered and enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, 31 C.F.R. Part V, the Iran Sanctions Act, as amended, the Comprehensive Iran Sanctions, Accountability and Divestment Act, as amended, the Iran Threat Reduction and Syria Human Rights Act, as amended, the Iran Freedom and Counter-Proliferation Act of 2012, as amended, and any executive order issued pursuant to any of the foregoing.

Section 2.25 No Integrated Offering. Neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Purchased Shares or the Optional Shares, as applicable, to be integrated with prior offerings by the Company for purposes of (i) applicable federal securities laws which would require the registration of any such securities under such laws, or (ii) any applicable shareholder approval provisions of the Nasdaq Stock Market.

Section 2.26 Shell Company Status. The Company is not, and to the knowledge of the Company, has never been, an issuer identified in, or subject to, Rule 144(i)(1) of the Securities Act.

#### Section 2.27 Purchase Agreement

(a) The Purchase Agreement has been duly and validly authorized, executed and delivered by the Company and the other parties thereto and constitutes a valid and binding agreement of the Company and the other parties thereto enforceable against the Company and the other parties thereto in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar legal requirement relating to or affecting creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

Section 2.28 No Additional Representations. Except for the representations and warranties made by the Company in this Article II, neither the Company nor any other Person makes any express or implied representation or warranty with respect to the Company or any Subsidiaries or their respective businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects, and the Company hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, neither the Company nor any other Person makes or has made any representation or warranty to the Investors,

or any of their Affiliates or representatives, with respect to (a) any financial projection, forecast, estimate, budget or prospect information relating to the Company or any of its Subsidiaries or their respective business, or (b) any oral or written information presented to the Investors or any of their Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated hereby. Notwithstanding anything to the contrary herein, nothing in this Agreement shall limit the right of the Investors and their Affiliates to rely on the representations and warranties expressly set forth in this Article II, nor will anything in this Agreement operate to limit any claim by any Investor or any of its respective Affiliates for Fraud.

Section 2.29 No Reliance on Investor Representations. The Company acknowledges and agrees, on behalf of itself and its Affiliates, that, except for the representations and warranties contained in Article III, neither the Investors nor any other Person, makes any express or implied representation or warranty with respect to the Investors, their Affiliates or their respective businesses, operations, assets, liabilities, employees, conditions or prospects, and the Company, on behalf of itself and its Affiliates, hereby disclaims reliance upon any such other representations or warranties.

### **ARTICLE III.**

#### **REPRESENTATIONS AND WARRANTIES OF THE INVESTORS**

Each Investor, severally and not jointly, represents and warrants to the Company as of the date of this Agreement, as of the Initial Closing and as of each Optional Share Purchase Closing (except to the extent made only as of a specified date, in which case such representation and warranty is made as of such date), as to itself only, that:

Section 3.1 Organization and Power. Each Investor is a limited liability company or a limited partnership, duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite limited liability company, limited partnership or other entity power and authority necessary to own its properties and to carry on its business as presently conducted.

Section 3.2 Authorization, Etc.

(a) Each Investor has all necessary limited liability company, limited partnership or other entity power and authority and has taken all necessary actions required for the due authorization, execution, delivery and performance by such Investor of this Agreement and the other agreements contemplated hereby and the consummation by such Investor of the transactions contemplated hereby and thereby.

(b) The authorization, execution, delivery and performance by each Investor of this Agreement and the other agreements contemplated hereby, and the consummation by such Investor of the transactions contemplated hereby and thereby do not and will not: (a) violate or result in the breach of any organizational documents of such Investor; or (b) with the exceptions that are not reasonably likely to have, individually or in the aggregate, a material adverse effect on

its ability to perform its obligations under this Agreement and the other agreements contemplated hereby: (i) violate any provision of, constitute a breach of, or default under, any judgment, order, writ, or decree applicable to such Investor or any material contract to which such Investor is a party; or (ii) violate any provision of, constitute a breach of, or default under, any applicable state, federal or local law, rule or regulation.

(c) This Agreement has been, and the other agreements contemplated hereby, at the Initial Closing will be, duly executed and delivered by each Investor. Assuming due execution and delivery thereof by the other parties hereto or thereto, this Agreement and the other agreements contemplated hereby will each be a valid and binding obligation of each Investor enforceable against such Investor in accordance with its terms, except as the enforceability may be limited by applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar legal requirement relating to or affecting creditors' rights generally and except as the enforceability is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

Section 3.3 Government Approvals. No consent, approval, license or authorization of, or filing with, any court or governmental authority is or will be required on the part of each Investor in connection with the execution, delivery and performance by such Investor of this Agreement and the other agreements contemplated hereby, except for: (a) those which have already been made or granted; (b) the filing with the SEC of a Schedule 13D or Schedule 13G to report ownership of the Purchased Shares or the Conversion Shares; (c) the filing with the SEC of any filings under Section 16 of the Exchange Act; or (d) those where the failure to obtain such consent, approval or license would not have a material adverse effect on the ability of such Investor to perform its obligations hereunder. Investment Representations. Each Investor is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

(b) Each Investor has been advised by the Company that neither the Purchased Shares nor, if applicable, the Optional Shares, have been registered under the Securities Act, that the Purchased Shares and, if applicable, the Optional Shares, will be issued on the basis of the statutory exemption provided by Section 4(a)(2) under the Securities Act or Regulation D promulgated thereunder, or both, relating to transactions by an issuer not involving any public offering and under similar exemptions under certain state securities laws, that this transaction has not been reviewed by, passed on or submitted to any federal or state agency or self-regulatory organization where an exemption is being relied upon, and that the Company's reliance thereon is based in part upon the representations made by each Investor in this Agreement. Each Investor acknowledges that it has been informed by the Company of, or is otherwise familiar with, the nature of the limitations imposed by the Securities Act and the rules and regulations thereunder on the transfer of securities.

(c) Each Investor is purchasing the Purchased Shares and, if applicable, the Optional Shares, for its own account and not with a view to, or for sale in connection with, any distribution thereof in violation of federal or state securities laws.

(d) By reason of its business or financial experience, each Investor has the capacity to protect its own interest in connection with the transactions contemplated hereunder.

(e) The Company has provided to each Investor all documents and information that such Investor has requested relating to an investment in the Company. Each Investor recognizes that investing in the Company involves substantial risks, and has taken full cognizance of and understands all of the risk factors related to the acquisition of the Purchased Shares and the Optional Shares. Each Investor has carefully considered and has, to the extent it believes such discussion necessary, discussed with such Investor's professional legal, tax and financial advisers the suitability of and risks relating to an investment in the Company, and each Investor has determined that the acquisition of the Purchased Shares and, if applicable, the Optional Shares, is a suitable investment for such Investor and that it can bear the economic risk of a total loss in respect of such investment. No Investor has relied on the Company for any tax or legal advice in connection with the purchase of the Purchased Shares or the Optional Shares. In evaluating the suitability of an investment in the Company, no Investor has relied upon any representations or other information relating to the Company (other than the representations and warranties of the Company expressly set forth in Article II).

Section 3.5 No Prior Ownership. As of the date of this Agreement and as of the Initial Closing, except as set forth on Schedule 3.5, each Investor does not have record or beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of any shares of the Company's Common Stock. No Brokers or Finders. No Person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or claim against or upon the Company, any of its Subsidiaries or any Investor for any commission, fee or other compensation as a finder or broker because of any act by each Investor.

Section 3.7 No Covered Transaction. No Investor is a Foreign Person within the meaning of 31 C.F.R. § 800.224. No Investor's direct or indirect participation in the transaction described in this Agreement would cause such transaction to be a "covered transaction" within the meaning of 50 U.S. Code § 4565(a)(4). No "Bad Actor" Disqualification. No Investor has taken any of the actions set forth in, and is subject to, the disqualification provisions of Rule 506(d)(1) of the 1933 Act.

Section 3.9 Financing. At the Initial Closing and, if applicable, the applicable Optional Share Purchase Closing, each Investor will have available funds necessary to consummate the purchase of the applicable Purchased Shares or Optional Shares, as applicable, in each case, on the terms and conditions contemplated by this Agreement. As of the date of this Agreement, neither Investor is aware of any reason why the funds sufficient to pay its pro rata share of the purchase price for the Purchased Shares or the Optional Shares will not be available on the Initial Closing Date or the applicable Optional Share Purchase Closing Date. No Additional Representations. Except for the representations and warranties made by the Investors (severally and not jointly) in this Article III, neither the Investors nor any other Person makes any express or implied representation or warranty with respect to the Investors, their Affiliates or their respective businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects, and the Investors, on behalf of themselves and their respective Affiliates and their respective directors, officers, employees, agents and other representatives, hereby disclaim any such other representations or warranties. Notwithstanding anything to the contrary herein, nothing in this Agreement shall limit the right of the Company and its Affiliates to rely on the representations, warranties, covenants and agreements expressly set forth in this Article III, nor

will anything in this Agreement operate to limit any claim by the Company and its Affiliates for Fraud.No Reliance. Each Investor acknowledges and agrees, on behalf of itself and its Affiliates, that, except for the representations and warranties contained in Article II, neither the Company nor any other Person, makes any express or implied representation or warranty with respect to the Company, its Subsidiaries or their respective businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects, and each Investor, on behalf of itself and its Affiliates, hereby disclaims reliance upon any such other representations or warranties. In particular, without limiting the foregoing disclaimer, each Investor acknowledges and agrees, on behalf of itself and its Affiliates, that neither the Company nor any other Person, makes or has made any representation or warranty with respect to, and each Investor, on behalf of itself and its Affiliates, hereby disclaims reliance upon (a) any financial projection, forecast, estimate, budget or prospect information relating to the Company, its Subsidiaries or their respective business, or (b) without limiting the representations and warranties made by the Company in Article II, any information presented to each Investor or any of its Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated hereby.

#### **COVENANTS OF THE PARTIES**

##### **Section 4.1 Board of Directors.**

(a) The Investors shall have the right to designate one director to the Board of Directors (the "Series B Director") to the extent provided in the Certificate of Designations.

(b) The Board of Directors shall elect, effective as of the Initial Closing, such Series B Director, which Series B Director shall initially be David Chanley (or such other individual designated by the Investors and reasonably acceptable to the Board of Directors following the review and evaluation of the individual's qualifications, suitability and independence including the completion of a customary background check or other investigation as the Board or any committee thereof may reasonably request), to the Board of Directors of the Company, to serve as a Director (as such term is defined in the Certificate of Incorporation) in accordance with the terms of the Certificate of Designations. For the avoidance of doubt, the Company may, but shall have no obligation to, appoint the Series B Director to any committee of the Board of Directors.

(c) Immediately following the appointment of the Series B Director to the Board of Directors, the Company shall (a) add such Series B Director as a covered party under the Company's current director and officer insurance policy and (b) enter into an Indemnification Agreement with the Series B Director.

(d) The parties hereto agree that the Series B Director shall not be entitled to compensation from the Company in connection with his or her services as a director, other than reimbursement from the Company for his or her reasonable out-of-pocket expenses incurred by him or her in connection with performing his or her duties as a member of the Board of Directors (or any committee thereof), including the reasonable out-of-pocket expenses incurred by such person for attending meetings of the Board of Directors (or any committee thereof), or in

connection with his or her service on the Board of Directors or other similar governing body of any Subsidiary of the Company (or any committee thereof), in each case, to the same extent as the Company provides such reimbursement to other members of the Board of Directors.

Section 4.2 Public Announcement. No later than 9:00 a.m. on the first Business Day after the date hereof, the Company shall issue a press release in the form attached as Exhibit F (the “Press Release”) and, no later than 5:30 p.m. on the fourth Business Day after the date hereof, the Company shall file a Current Report on Form 8-K (the “Announcement 8-K”) with the SEC describing the material terms of the transactions contemplated by this Agreement, including the Exhibits hereto, and attaching as exhibits any documents related to such transactions as are required by SEC rules and regulations.

Section 4.3 Restrictions on Transfer. (i) For so long as the Investors hold any Purchased Shares or Optional Shares, as applicable, until the earlier of (x) the occurrence of a Triggering Event or Bankruptcy Triggering Event (each as defined in the Certificate of Designations) and (y) a Change of Control (as defined in the Certificate of Designations), no Investor shall Transfer any of the Purchased Shares or the Optional Shares, as applicable (but excluding, for the avoidance of doubt, any Conversion Shares which shall be governed by clause (a)(ii) herein), to any Person without the prior written consent of the Company and (ii) until the earliest of (x) the one year anniversary of the Initial Closing Date, (y) the occurrence of a Triggering Event or Bankruptcy Triggering Event and (z) a Change of Control, no Investor shall Transfer any Conversion Shares to any Person without the prior written consent of the Company.

(b) Notwithstanding the foregoing, without the consent of the Company, each Investor may Transfer the Purchased Shares, the Optional Shares or the Conversion Shares, as applicable (i) to a Permitted Transferee of such Investor that agrees to be bound by the terms of this Agreement (including Section 4.5) pursuant to a written agreement in form and substance reasonably satisfactory to the Company which shall also set forth such Permitted Transferee’s Ownership Limitation (as defined in the Certificate of Designations); or (ii) transfers in connection with a total return swap or a bona fide loan or other financing arrangement, in each case entered into with a nationally recognized financial institution, including a pledge to such a financial institution to secure a bona fide debt financing and any foreclosure by such financial institution or transfer to such financial institution in lieu of foreclosure and subsequent sale of the securities (each, a “Permitted Loan”); provided, except as specified above, nothing contained in this Agreement or the Registration Rights Agreement shall prohibit or otherwise restrict the ability of any lender (or its securities’ affiliate) or collateral agent to foreclose upon, or accept a transfer in lieu of foreclosure, and sell, dispose of or otherwise transfer the Series B Preferred Stock and/or shares of Common Stock issued upon conversion of Series B Preferred Stock (including shares of Common Stock received upon conversion of the Series B Preferred Stock following foreclosure or transfer in lieu of foreclosure on a Permitted Loan) mortgaged, hypothecated and/or pledged to secure the obligations of the borrower following an event of default under a Permitted Loan; provided, further subject to the preceding provisions of this clause (ii), in the event that any lender or other creditor under a Permitted Loan transaction (including any agent or trustee on their behalf) or any affiliate of the foregoing exercises any rights or remedies in respect of the Series B Preferred Stock or the shares of Common Stock issuable or issued upon conversion of the Series B Preferred Stock or any other collateral for any Permitted Loan, no lender, creditor, agent or trustee on their

behalf or affiliate of any of the foregoing (other than, for the avoidance of doubt, an Investor or its Affiliates) shall be entitled to any rights or have any obligations or be subject to any transfer restrictions or limitations (other than limitations on conversion of the Series B Preferred Stock) hereunder except and to the extent for those expressly provided for in the Registration Rights Agreement.

(c) In any event, Restricted Securities shall not be Transferred except upon satisfaction of the conditions specified in Section 4.4, which conditions are intended to ensure compliance with the provisions of the Securities Act. Any attempted Transfer in violation of this Section 4.3 shall be void *ab initio*.

(d) At any time between the Initial Closing Date and the Voting Right Expiration Date, upon reasonable written notice from the Company to the Investors, the Investors will promptly provide the Company with information regarding the amount of the securities of the Company beneficially owned by each such Investor or Affiliates thereof and such information as may be reasonably requested to verify compliance with Section 4.5(b).

#### Section 4.4 Restrictive Legends.

(a) All Purchased Shares, Optional Shares and the Conversion Shares (unless otherwise permitted by the provisions of Section 4.4(d)) shall be stamped or otherwise imprinted with a legend in substantially the following form (in addition to any legend required under applicable state securities laws):

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

(b) In addition, for so long as the Purchased Shares, Optional Shares or the Conversion Shares are subject to the restrictions set forth in Section 4.3, each certificate representing such shares shall be stamped or otherwise imprinted with a legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN THE SUBSCRIPTION AGREEMENT, DATED AS OF December 21, 2023, BY AND AMONG THE COMPANY



AND THE INVESTORS NAMED THEREIN. THE COMPANY WILL MAIL TO THE HOLDER OF THIS CERTIFICATE A COPY OF SUCH SUBSCRIPTION AGREEMENT, AS IN EFFECT ON THE DATE OF MAILING, WITHOUT CHARGE, PROMPTLY AFTER RECEIPT OF A WRITTEN REQUEST THEREFOR.”

(c) Each Investor consents to the Company making a notation on its records and giving instructions to any transfer agent of the Purchased Shares, Optional Shares or the Conversion Shares in order to implement the restrictions on transfer set forth in this Section 4.4.

(d) Prior to any proposed Transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed Transfer, the applicable Investor shall give written notice to the Company of such Investor’s intention to effect such Transfer (“Transfer Notice”). Each such notice shall describe the manner and circumstances of the proposed Transfer in sufficient detail, and shall be accompanied by either (i) an opinion of legal counsel reasonably satisfactory to the Company to the effect that the proposed Transfer of the Restricted Securities may be effected without registration under the Securities Act, or (ii) any other evidence reasonably satisfactory to counsel to the Company, whereupon such Investor shall be entitled to Transfer such Restricted Securities in accordance with the Transfer Notice. Notwithstanding the foregoing, if the applicable Investor gives the Company a representation letter containing such representations as the Company may reasonably request, the Company will not require such legal opinion or such other evidence (A) in a routine sales transaction in compliance with Rule 144 under the Securities Act, or (B) in any transaction in which an Investor that is a partnership or limited liability company distributes Restricted Securities solely to its Affiliates (including affiliated fund partnerships), or partners or members of such Investor or its Affiliates for no consideration. Each certificate evidencing the Restricted Securities transferred shall bear the appropriate restrictive legend set forth in Sections 4.4(a) and (b), except that such certificate shall not bear the first such restrictive legend if such legend is not required in order to establish compliance with any provisions of the Securities Act. Upon the request of an Investor holding a certificate bearing the first such restrictive legend and, if necessary, the appropriate evidence as required by clause (i) or (ii) above, the Company shall, within two (2) Business Days of the request, remove the first such restrictive legend from such certificate and from the certificate to be issued to the applicable transferee if such legend is not required in order to establish compliance with any provisions of the Securities Act. If an Investor holds a certificate bearing the second restrictive legend, upon the written request of such Investor, the Company shall remove such restrictive legend from such certificate when the provisions of Section 4.3 are no longer applicable to the applicable shares represented by such certificate.

Section 4.5 Standstill. The Investors agree that, until the later of (i) the three year anniversary of the Initial Closing Date and (ii) six months following the Voting Right Expiration Date, the Investors shall not, and shall cause the entities controlled by them not to, directly or indirectly, without the prior written consent of a majority of the disinterested directors serving on the Company’s Board of Directors:

(a) other than Optional Shares and Conversion Shares, acquire, offer or seek to

acquire, agree to acquire or make a proposal to acquire, whether by private or open market purchase, a block trade, or a tender or exchange offer, beneficial ownership of, or any economic interest in, any right to direct the voting or disposition of, or any other right with respect to any equity securities or direct or indirect rights to acquire any equity securities of the Company, any securities convertible into or exchangeable for any such equity securities;

(b) other than permitted Transfers, enter into any options, puts, calls, swaps or other derivative or convertible instruments, hedging contracts or other derivative securities or similar contracts or instruments in any way related to the purchase or sale of Common Stock and/or price of shares of the Common Stock; provided that, from and after the one year anniversary of the Initial Closing Date, each Investor shall be entitled to enter into any such transactions so long as the aggregate number of shares of Common Stock (or the value thereof based on the last reported trading price of the Common Stock on the immediately preceding trading day) subject to all such transactions engaged in by such Investor on any given trading day does not exceed more than 45% of the number of Conversion Shares (or the value thereof based on the last reported trading price of the Common Stock on the immediately preceding trading day) then owned by such Investor and its Permitted Transferees, plus the number of any shares of Common Stock owned by the Investors, as of the date hereof, in the aggregate;

(c) (i) make or in any way encourage or participate in any “solicitation” of “proxies” or consents (whether or not relating to the election or removal of directors), as such terms are used in the rules of the SEC (but without regard to the exclusion set forth in Rule 14a-1(I)(2)(iv) promulgated under the Exchange Act), to vote, or knowingly seek to advise, encourage or influence any Person with respect to voting of, any voting securities of the Company or any securities convertible or exchangeable into or exercisable for any such voting securities, (ii) request, call or seek to call (or, for the avoidance of doubt, publicly support another Person’s request or call for) a meeting of the Company’s stockholders or action by written consent (or the setting of a record date therefor), other than of or by the holders of the Series B Preferred Stock voting as a separate class for the purpose of voting or consenting to the matters on which the holders of Series B Preferred Stock have the right to vote or consent to under Section 10 of the Certificate of Designations, (iii) initiate or be the proponent of any stockholder proposal for action by the Company’s stockholders, (iv) except as contemplated by this Agreement and the Certificate of Designations, seek, alone or in concert with others, representation on the Board of Directors or the removal of any director from the Board of Directors (including through any “withhold” or similar campaign), or (v) become a “participant” in any contested “solicitation” (as such terms are defined or used under the Exchange Act) for the election of directors with respect to the Company; provided that nothing in this paragraph (c) shall restrict the voting by proxy in the ordinary course of business;

(d) make any public announcement with respect to, or offer, seek, propose or indicate an interest in (in each case with or without conditions), either alone or in concert with others, any merger, consolidation, business combination, tender or exchange offer, recapitalization, reorganization or purchase of more than 50% of the assets, properties or securities of the Company or any Subsidiary of the Company, or any other extraordinary transaction involving the Company or any Subsidiary of the Company or any of their respective securities, or enter into any discussions, negotiations, arrangements, understandings or agreements (whether written or oral) with any other Person regarding any of the foregoing (it being understood that the foregoing shall not restrict a

Person from tendering shares, receiving payment for shares or otherwise participating in any such transaction on the same basis as other stockholders of the Company);

(e) except as contemplated by this Agreement and the Certificate of Designations, otherwise act, alone or in concert with others, to seek to control or influence, in any manner, the management, Board of Directors or business of the Company or any of its Subsidiaries, including (i) changing the Board of Directors or management of the Company, including any plans or proposals to declassify the Board of Directors or to change the number or term of directors or to fill any vacancies on the Board of Directors, (ii) any material change in the capitalization, capital allocation policy or dividend policy of the Company, or (iii) seeking to have the Company waive or make amendments or modifications to the Certificate of Incorporation or Bylaws, or other actions that may impede or facilitate the acquisition of control of the Company by any Person;

(f) advise, assist, knowingly encourage or direct any Person to do, or to advise, assist, knowingly encourage or direct any other Person to do, any of the foregoing;

(g) take any action that would require the Company to make a public announcement regarding any of the foregoing;

(h) enter into any agreements, arrangements or understandings with any third party (including security holders of the Company) with respect to any of the foregoing, including forming, joining or in any way participating in a "group" (as defined in Section 13(d)(3) of the Exchange Act) with any third party in connection with any of the foregoing (it being understood that each Investor and its Affiliates, or the Investors collectively, shall not be considered a "group" for purposes of this clause (h)); or

(i) except as contemplated by this Agreement and the Certificate of Designations, request the Company or any of its Representatives, directly or indirectly, to amend or waive any provision of this Section 4.5; provided that this clause shall not prohibit the making of a confidential request to the Board of Directors seeking an amendment or waiver of the provisions of this Section 4.5, which the Board of Directors may accept or reject in its sole discretion, so long as any such request is made in a manner that does not require public disclosure thereof by any Person;

provided, however, that subject to the terms of Section 4.3, nothing in this Section 4.5 will (i) prevent the Series B Director serving on the board of directors of the Company from taking any action while acting in such Series B Director's capacity as a director of the Company in accordance with his or her fiduciary duties as a director or (ii) limit the ability to vote or transfer shares of Common Stock, privately make and submit to the Board of Directors any proposal that is intended to be made and submitted on a non-publicly disclosed or announced basis (and would not reasonably be expected to require public disclosure by any Person), participate in rights offerings made by the Company to all holders of Common Stock, receive any dividends or similar distributions with respect to any securities of the Company, or tender shares of Common Stock into any tender or exchange offer. Notwithstanding the foregoing and excluding any purchase of debt or equity securities that may occur in connection with the transactions contemplated by this Agreement, nothing herein shall prevent either Investor from purchasing, selling or otherwise trading debt securities of the

Company if as a result of such purchase, sale or trade such Investor beneficially owns 9.9% or less of any particular series of the Company's outstanding debt securities.

Notwithstanding the foregoing, the restrictions in this Section 4.5 shall not apply upon the occurrence of a Triggering Event or Bankruptcy Triggering Event.

Section 4.6 Use of Proceeds. Subject to the terms of the Certificate of Designations (including the receipt of any required approvals thereunder), the Company shall use the proceeds from the sale of the Purchased Shares and Optional Shares, if any, to (a) fund the Acquisition and (b) partially repay outstanding borrowings under the Credit Agreement, and (c) otherwise for general corporate purposes.

Section 4.7 Financial Statements and Other Information. For so long as any shares of Series B Preferred Stock remain outstanding, the Company shall deliver to each Investor:

(i) as soon as available, but in any event within 90 days after the end of each fiscal year of the Company, its audited consolidated (and unaudited consolidating) balance sheet and audited consolidated (and unaudited consolidating) statements of operations and comprehensive income, stockholders' equity and cash flows as of the end of and for such fiscal year, and related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young LLP or other independent public accountants of recognized national standing to the effect that such financial statements present fairly in all material respects the financial condition, results of operations and cash flow of the Company and the Subsidiaries on a consolidated basis as of the end of and for such fiscal year in accordance with GAAP consistently applied and accompanied by a narrative management's discussion and analysis report describing the financial position, results of operations and cash flows of the Company and the consolidated Subsidiaries; and

(ii) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Company, its unaudited consolidated and consolidating balance sheet and unaudited consolidated and consolidating statements of operations and comprehensive income, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by the Chief Financial Officer of the Company (or equivalent) as presenting fairly in all material respects the financial condition, results of operations and cash flows of the Company and the Subsidiaries on a consolidated basis as of the end of and for such fiscal quarter and such portion of the fiscal year in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and reduced footnote disclosures, and accompanied by a narrative management's discussion and analysis report describing the financial position, results of operations and cash flows of the Company and the consolidated Subsidiaries;

(b) Notwithstanding the foregoing, financial statements and other reports required to be delivered pursuant to this Section 4.7 filed by the Company with the SEC and available on EDGAR (or such other free, publicly-accessible internet database that may be

established and maintained by the SEC as a substitute for or successor to EDGAR) shall be deemed to have been delivered to the Investors on the date on which the Company posts such documents to EDGAR (or such other free, publicly-accessible internet database that may be established and maintained by the SEC as a substitute for or successor to EDGAR); and

(c) Between the Initial Closing Date and the Voting Right Expiration Date, the Investors or their representatives shall have the reasonable right to (i) consult from time to time with the senior officers of the Company at its principal place of business or virtually (as determined by the Company) regarding operating and financial matters of the Company; provided that the exercise of such right does not materially interfere with the operations of the business of the Company and its Subsidiaries and (ii) receive any notices or information provided to or received from any lender, creditor, agent or trustee of the Company subject to the provisions of Section 4.8 below.

Section 4.8 Information; Confidentiality.

(a) From and after the date hereof, the Company shall not, and shall cause each of its Subsidiaries and its and each of their respective officers, directors and employees to not, and shall direct and use commercially reasonable efforts to cause its attorneys, representatives and agents to not, provide any Investor or their Affiliates (excluding the Series B Director serving on the Board of Directors of the Company) with any material non-public information under U.S. federal securities laws regarding the Company or any of its Subsidiaries if not specifically requested by such Investor or without the express prior consent of such Investor; provided that the Company shall have the ability to cure any inadvertent disclosure of material non-public information prohibited by this Section 4.8(a) by promptly making a public disclosure thereof and that a Disclosure Update made in connection with an Option Share Purchase Closing shall not be a violation of this Section 4.8(a) even if it may be deemed to contain material non-public information.

(b) Until the date that is six months following the Voting Right Expiration Date, the Investors shall, and shall cause their respective Affiliates and Representatives who actually receive Confidential Information to, keep confidential any information (including oral, written and electronic information) concerning the Company, its Subsidiaries or its Affiliates that may be furnished to the Investor, its Affiliates or its or their respective Representatives by or on behalf of the Company or any of its Representatives pursuant to this Agreement or in connection with the transactions contemplated hereby ("Confidential Information") and to use the Confidential Information solely for the purposes of monitoring, administering or managing the Investors' investment in the Company made pursuant to this Agreement; provided that Confidential Information will not include information that (a) was or becomes available to the public other than as a result of a breach of any confidentiality obligation in this Agreement by an Investor or its Affiliates or their respective Representatives, (b) was or becomes available to an Investor or its Affiliates or their respective Representatives from a source other than the Company or its Representatives; provided that such source is reasonably believed by such Investor or such Affiliates not to be subject to an obligation of confidentiality (whether by agreement or otherwise), (c) at the time of disclosure is already in the possession of an Investor or its Affiliates or their respective Representatives from a source other than the Company or any of its Subsidiaries or any

of their respective Representatives, (d) was independently developed by an Investor or its Affiliates or their respective Representatives without reference to, incorporation of, or other use of any Confidential Information; provided that the Investor may disclose Confidential Information (i) to its attorneys, accountants, consultants and financial and other professional advisors to the extent necessary to obtain their services in connection with its investment in the Company, (ii) to any Affiliate, partner, member, limited partners, prospective partners, prospective limited partners or prospective co-investors or other financing source of the Investor, or related investment fund of an Investor and its Affiliates or to any Permitted Transferee or potential transferee who would be a Permitted Transferee upon transfer and each of their respective directors, officers, employees, consultants and representatives (provided that the recipients of such Confidential Information are directed to abide by the confidentiality and non-disclosure obligations contained herein), (iii) as may be reasonably determined by the Investor to be necessary in connection with the Investor's enforcement of its rights in connection with this Agreement or its investment in the Company, or (iv) as may otherwise be required by law or legal, judicial or regulatory process; and provided, further, that (x) any breach of the confidentiality and use terms herein by any Person to whom an Investor and its Permitted Transferees may disclose Confidential Information pursuant to clauses (i) and (ii) of the preceding proviso shall be attributable to such Investor for purposes of determining such Investor's compliance with this Section 4.8, except those who have entered into a separate confidentiality or non-disclosure agreement or obligation with the Company, and (y) that such Investor takes commercially reasonable steps (at the Company's sole expense) to minimize the extent of any required disclosure described in clause (iv) of the preceding proviso.

(c) This Section 4.8 shall supersede and replace the Confidentiality Agreement in its entirety, and such Confidentiality Agreement shall, upon execution of this Agreement, automatically terminate and be of no further force or effect.

Section 4.9 Efforts to Consummate. Subject to the terms and conditions herein provided, each of the parties shall use reasonable best efforts to take, or cause to be taken, all action and to do, or cause to be done, all things reasonably necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement. Conditional Resignation. Promptly following the Voting Rights Expiration Date, the Series B Director shall deliver to the Company a letter resigning from the Board of Directors conditioned upon the Company's decision to accept such resignation.

## **CONDITIONS TO INITIAL CLOSING AND OPTIONAL SHARE PURCHASE CLOSING**

Section 5.1 Conditions to the Obligations of the Company and the Investors. The respective obligations of each of the Company and the Investors to effect the Initial Closing and any Optional Share Purchase Closing shall be subject to the satisfaction (or waiver, if permissible under applicable law) on or prior to the Initial Closing Date or the applicable Optional Share Purchase Closing Date, as applicable, of the following conditions:

(a) no temporary or permanent order, judgment, injunction, ruling, writ or decree of any Governmental Entity (including in respect of a claim brought by a third party) shall have been enacted, promulgated, issued, entered, amended or enforced by any Governmental

Entity nor shall any proceeding brought by a Governmental Entity seeking any of the foregoing be pending, or any applicable law shall be in effect enjoining or otherwise prohibiting consummation of the transactions contemplated by this Agreement (“Restraints”); and

(b) to the extent applicable, all required antitrust filings, notices and approvals shall have been made, given, or as applicable, received, and any waiting period associated therewith shall have expired or been terminated.

Section 5.2 Conditions to the Obligations of the Company to Effect the Initial Closing. The obligations of the Company to effect the Initial Closing shall be further subject to the satisfaction (or waiver, if permissible under applicable law) on or prior to the Initial Closing Date of the following conditions: the representations and warranties of the Investors contained in Article III shall be true and correct in all material respects as of the Initial Closing Date with the same effect as though made on and as of such date (other than those representations and warranties that address matters as of particular dates, which shall be true and correct in all material respects as of such dates);

(b) each Investor shall have complied with or performed in all material respects its obligations required to be complied with or performed by it pursuant to this Agreement at or prior to the Initial Closing; and

(c) the Acquisition shall have been consummated in accordance with the Purchase Agreement as in effect on the date hereof.

Section 5.3 Conditions to the Obligations of the Investors to Effect the Initial Closing. The obligations of the Investors to effect the Initial Closing shall be further subject to the satisfaction (or waiver, if permissible under applicable law) on or prior to the Initial Closing Date of the following conditions: the representations and warranties of the Company contained in Article II shall be true and correct in all respects as of the Initial Closing Date with the same effect as though made on and as of such date (other than those representations and warranties that address matters as of particular dates, which shall be true and correct as of such dates);

(b) the Company shall have complied with or performed in all material respects its obligations required to be complied with or performed by it pursuant to this Agreement at or prior to the Initial Closing;

(c) the Company shall have delivered to each Investor the deliverables set forth in Section 1.3(b);

(d) the Company shall have delivered a certificate, executed by an authorized officer of the Company and dated as of the Initial Closing Date, stating that the conditions set forth in Section 5.3(a) and Section 5.3(b) have been satisfied, in the form attached hereto as Exhibit G;

(e) the Company shall have delivered a certificate, executed by the Secretary of the Company and dated as of the Initial Closing Date, certifying as to (i) the resolutions as adopted by the Board of Directors in a form reasonably acceptable to the Investors approving the transactions contemplated by this Agreement, the other transaction documents and the Purchase

Agreement and the issuance of the Purchased Shares, Optional Shares and the Conversion Shares, (ii) the Certificate of Incorporation of the Company, (iii) the Bylaws of the Company, each as in effect at the Initial Closing and (iv) the signatures and authority of persons signing the transaction documents and related documents on behalf of the Company, in the form attached hereto as Exhibit H;

(f) the Investors shall have received the opinion of Cooley LLP, the Company's outside counsel, dated as of the Initial Closing Date, in form and substance reasonably acceptable to the Investors;

(g) pursuant to and in accordance with the rights set forth in Section 4.1(a) and the Certificate of Designations, the Board of Directors shall have elected, effective as of the Initial Closing, the initial Series B Director (as contemplated by Section 4.1) to the Board of Directors of the Company, to serve as a Director; and

(h) the Acquisition shall have been consummated in accordance with the Purchase Agreement as in effect on the date hereof and the Purchase Agreement shall not have been amended without the express written consent of the Investors.

Section 5.4 Conditions to the Obligations of the Company to Effect any Optional Share Purchase Closing. The obligations of the Company to effect any Optional Share Purchase Closing shall be further subject to the satisfaction (or waiver, if permissible under applicable law) on or prior to the applicable Optional Share Purchase Closing Date of the following conditions: the representations and warranties of the Exercising Investor contained in Article III shall be true and correct in all material respects as of the applicable Optional Share Purchase Closing Date with the same effect as though made on and as of such date (other than those representations and warranties that address matters as of particular dates, which shall be true and correct in all material respects as of such dates); and

(b) the Exercising Investor shall have complied with or performed in all material respects its obligations required to be complied with or performed by it pursuant to this Agreement and the Certificate of Designations during the period from the Initial Closing Date to the applicable Optional Share Purchase Closing Date.

(c) The Exercising Investor shall have delivered to the Company a certificate executed by an authorized officer of the Exercising Investor stating that all the conditions set forth in Section 5.4(a) and Section 5.4(b) have been satisfied.

Section 5.5 Conditions to the Obligations of an Exercising Investor to Effect any Optional Share Purchase Closing. The obligations of an Exercising Investor to effect any Optional Share Purchase Closing shall be further subject to the satisfaction (or waiver, if permissible under applicable law) on or prior to the applicable Optional Share Purchase Closing Date of the following conditions: the representations and warranties of the Company contained in Article II shall be true and correct in all respects as of the applicable Optional Share Purchase Closing Date with the same effect as though made on and as of such date (other than those representations and warranties that address matters as of particular dates, which shall be true and correct as of such dates) except



where the failure of such representations and warranties to be so true and correct (without giving effect to any materiality of Material Adverse Effect qualifications or exceptions contained therein) would not, individually or in the aggregate, have a Material Adverse Effect;

(b) the Company shall have complied with or performed in all material respects its obligations required to be complied with or performed by it pursuant to this Agreement and the Certificate of Designations during the period from the Initial Closing Date to the applicable Optional Share Purchase Closing Date;

(c) the Company shall have delivered to the Exercising Investor the deliverables set forth in Section 1.4(e)(ii);

(d) the Company shall have delivered a certificate, executed by an authorized officer of the Company and dated as of the applicable Optional Share Purchase Closing Date, stating that the conditions set forth in Section 5.5(a) and Section 5.5(b) have been satisfied, in the form attached hereto as Exhibit G;

(e) the Company shall have delivered a certificate, executed by the Secretary of the Company and dated as of the applicable Optional Share Purchase Closing Date, certifying as to (i) the resolutions as adopted by the Board of Directors in a form reasonably acceptable to the Exercising Investor approving the transactions contemplated by this Agreement, the other transaction documents and the Purchase Agreement and the issuance of the Purchased Shares, Optional Shares and the Conversion Shares, (ii) the Certificate of Incorporation of the Company, (iii) the Bylaws of the Company, each as in effect at the applicable Optional Share Purchase Closing and (iv) the signatures and authority of persons signing the transaction documents and related documents on behalf of the Company, in the form attached hereto as Exhibit H;

(f) the Exercising Investor shall have received the opinion of Cooley LLP, the Company's outside counsel, dated as of the applicable Optional Share Purchase Closing Date, in form and substance reasonably acceptable to the Exercising Investor; and

(g) the Company shall have paid the Investor Expenses and Facility Fee in accordance with Section 7.5 if not already paid in full at the Initial Closing.

## ARTICLE VI.

### TERMINATION

Section 6.1 Termination. This Agreement may be terminated and the transactions contemplated by this Agreement abandoned at any time prior to the Initial Closing:

(a) by the mutual written consent of the Company and the Investors;

(b) by either the Company or the Investors upon written notice to the other, if the Initial Closing has not occurred on or prior to December 21, 2023 (the "Termination Date"); provided that the right to terminate this Agreement under this Section 6.1(b) shall not be available to any party if any breach by such party of its representations and warranties set forth in this

Agreement or the failure of such party to perform any of its obligations under this Agreement has been a principal cause of or primarily resulted in the events specified in this Section 6.1(b);

(c) by either the Company or the Investors if any Restraint enjoining or otherwise prohibiting consummation of the transactions contemplated by this Agreement shall be in effect and shall have become final and non-appealable prior to the Initial Closing Date; provided that the party seeking to terminate this Agreement pursuant to this Section 6.1(c) shall have used reasonable best efforts to remove such Restraint to the extent applicable to such party or its Affiliates;

(d) by the Investors if the Company shall have breached any of its representations or warranties or failed to perform any of its covenants or agreements set forth in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 5.3(a) or Section 5.3(b) and (ii) is incapable of being cured prior to the Termination Date, or if capable of being cured, shall not have been cured within thirty (30) calendar days (but in no event later than the Termination Date) following receipt by the Company of written notice of such breach or failure to perform from the Investors stating the Investors' intention to terminate this Agreement pursuant to this Section 6.1(d) and the basis for such termination; provided that the Investors shall not have the right to terminate this Agreement pursuant to this Section 6.1(d) if the Investor is then in material breach of any of its representations, warranties, covenants or agreements hereunder which breach would give rise to the failure of a condition set forth in Section 5.2(a) or Section 5.2(b);

(e) by the Company if any of the Investors shall have breached any of their respective representations or warranties or failed to perform any of their covenants or agreements set forth in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 5.2(a) or Section 5.2(b) and (ii) is incapable of being cured prior to the Termination Date, or if capable of being cured, shall not have been cured within thirty (30) calendar days (but in no event later than the Termination Date) following receipt by the Investors of written notice of such breach or failure to perform from the Company stating the Company's intention to terminate this Agreement pursuant to this Section 6.1(e) and the basis for such termination; provided that the Company shall not have the right to terminate this Agreement pursuant to this Section 6.1(e) if the Company is then in material breach of any of its representations, warranties, covenants or agreements hereunder which breach would give rise to the failure of a condition set forth in Section 5.3(a) or Section 5.3(b); and

(f) by the Investors or the Company if the Purchase Agreement is terminated in accordance with its terms.

Section 6.2 Effect of Termination. Any termination of this Agreement as provided in Section 6.1 shall be effective upon delivery of written notice thereof to the other parties, specifying the provision hereof pursuant to which such termination is made, and this Agreement shall forthwith become null and void (other than this Section 6.2 and Article VII, all of which shall survive termination of this Agreement), and there shall be no liability on the part of the Investors or the Company in connection with this Agreement; except that no such termination shall relieve any party hereto from liability for damages to another party resulting from a willful and material

breach of this Agreement prior to the date of termination (including, for the avoidance of doubt, the failure to pay the Applicable Purchase Price for all of the Purchased Shares) or from Fraud.

## ARTICLE VII.

### MISCELLANEOUS

Section 7.1 Survival. Except in the case of Fraud, (i) the representations and warranties of the parties contained in Article II and Article III hereof made at the Initial Closing shall survive for twelve (12) months following the Initial Closing, and (ii) if applicable, the representations and warranties of the parties contained in Article II and Article III hereof made at any Optional Share Purchase Closing shall survive for twelve (12) months following such Optional Share Purchase Closing. All covenants and agreements of the parties contained herein shall survive the Initial Closing and any Optional Share Purchase Closing in accordance with their terms. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when one or more counterparts have been signed by a party and delivered to the other parties. Copies of executed counterparts of signature pages to this Agreement may be transmitted by PDF (portable document format) or facsimile and such PDFs or facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

Section 7.3 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

(b) Any dispute relating hereto shall be heard first in the Delaware Court of Chancery, and, if applicable, in any state or federal court located in of Delaware in which appeal from the Court of Chancery may validly be taken under the laws of the State of Delaware (each a "Chosen Court" and collectively, the "Chosen Courts"), and the parties agree to the exclusive jurisdiction and venue of the Chosen Courts. Such Persons further agree that any proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby or by any matters related to the foregoing (the "Applicable Matters") shall be brought exclusively in a Chosen Court, and that any proceeding arising out of this Agreement or any other Applicable Matter shall be deemed to have arisen from a transaction of business in the State of Delaware, and each of the foregoing Persons hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such Person may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such Chosen Court or that any such proceeding brought in any such Chosen Court has been brought in an inconvenient forum.

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

(d) Process in any such proceeding may be served on any Person with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. Without limiting the foregoing, each such Person agrees that service of process on such party as provided in Section 7.6 shall be deemed effective service of process on such Person.

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

Section 7.4 Entire Agreement; No Third Party Beneficiary. This Agreement, the Certificate of Designations and the Registration Rights Agreement contain the entire agreement by and among the parties with respect to the subject matter hereof and all prior negotiations, writings and understandings relating to the subject matter of this Agreement. This Agreement is not intended to confer upon any Person not a party hereto (or their successors and permitted assigns) any rights or remedies hereunder. Expenses. Except as otherwise expressly provided herein or in any other transaction document, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including accounting and legal fees, shall be paid by the party incurring such fees, costs and expenses; provided, that at or within two (2) Business Days following the Initial Closing the Company shall (i) reimburse the Investors or their designee(s) for expenses relating to the transactions contemplated hereby and other transactions between the Company and the Investors or their Affiliates, in an amount equal to \$750,000 (the "Investor Expenses") and (ii) pay to the Investors or their designee(s) a one-time structuring fee relating to the transactions contemplated hereby equal to \$500,000 (the "Facility Fee"), in each case, payable in cash or by offset against the Applicable Purchase Price pursuant to Section 7.14. This Section 7.5 shall supersede and replace the Expense Reimbursement Agreements in their entirety, and such Expense Reimbursement Agreements shall, upon execution of this Agreement, automatically terminate and be of no further force or effect.

Section 7.6 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier, one (1) Business Day after mailing; (c) if sent by e-mail transmission, when transmitted and receipt is confirmed; and (d) if otherwise actually personally delivered, when delivered; provided, that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement: If to the Company, to:

Luna Innovations Incorporated  
30<sup>1</sup> 1st Street SW, Suite 200  
Roanoke, VA 24011

E-mail: graeffs@lunainc.com  
Attention: Scott Graeff

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

Cooley LLP  
Reston Town Center  
11951 Freedom Drive  
14<sup>th</sup> Floor  
Reston Virginia 20190-5640  
E-mail: ddestefano@cooley.com  
Attention: Darren DeStefano

If to the Investors, to the address set forth on the signature pages hereto

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

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, NY 10022  
E-mail: Eleazer.Klein@srz.com; David.Curtiss@srz.com  
Attention: Eleazer Klein; David A. Curtiss

Section 7.7 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may be assigned in connection with a Transfer to a Permitted Transferee permitted by Section 4.3(b)(i), subject to the terms set forth therein. No other assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other parties hereto. Any purported assignment or delegation in violation of this Agreement shall be null and void ab initio.

Section 7.8 Headings. The Section, Article and other headings contained in this Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Agreement. Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by each party hereto. Any party hereto may, only by an instrument in writing, waive compliance by any other party or parties hereto with any term or provision hereof on the part of such other party or parties hereto to be performed or complied with. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor will any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The waiver by any party hereto of a breach of any term or provision hereof shall not be construed as a waiver of any subsequent breach. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder. Interpretation; Absence of Presumption. For the purposes hereof: (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the

context requires; (ii) the terms “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits) and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits, and Schedules to this Agreement unless otherwise specified; (iii) the word “including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless the context otherwise requires or unless otherwise specified; and (iv) the word “or” shall not be exclusive.

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

Section 7.11 Severability. Any provision hereof that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties will attempt in good faith to reform this Agreement in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. Specific Performance. The parties hereto agree that irreparable damage could occur and that a party may not have any adequate remedy at law in the event that any of the provisions of this Agreement are not performed in accordance with their terms or were otherwise breached. Accordingly, each party shall without the necessity of proving the inadequacy of money damages or posting a bond be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms, provisions and covenants contained therein, this being in addition to any other remedy to which they are entitled at law or in equity. Corporate Opportunities. Subject to the proviso set forth in the penultimate sentence of this Section 7.13, the Company, on behalf of itself and its Subsidiaries, to the fullest extent permitted by applicable law, (a) acknowledges and affirms that the Investors or their Affiliates, portfolio companies and Representatives, including any Series B Director (the “Investor Group”): (i) have participated (directly or indirectly) and will continue to participate (directly or indirectly) in private equity, venture capital and other direct investments in corporations, joint ventures, limited liability companies and other entities (“Other Investments”), including Other Investments engaged in various aspects of businesses similar to those engaged in by the Company and its Subsidiaries (and related services businesses) that may, are or will be competitive with the Company’s or any of its Subsidiaries’ businesses or that could be suitable for the Company’s or any of its Subsidiaries’ interests, (ii) do business with any client, customer, vendor or lessor of any of the Company or its Affiliates or any other Person with which any of the Company or its Affiliates has a business relationship, (iii) have interests in, participate with, aid and maintain seats on the board of directors or similar governing bodies of, or serve as officers of, Other Investments, (iv) may develop or become aware of business opportunities for Other Investments; and (v) may or will, as a result of or arising from the matters referenced in this Section 7.13, the nature of the Investor Group’s businesses and other factors, have conflicts of interest or potential conflicts of interest, (b) hereby

renounces and disclaims any interest or expectancy in any business opportunity (including any Other Investments or any other opportunities that may arise in connection with the circumstances described in the foregoing clauses (a)(i) through (a)(v) (each, a “Renounced Business Opportunity”)), (c) acknowledges and affirms that no member of Investor Group, including any Series B Director, shall have any obligation to communicate or offer any Renounced Business Opportunity to the Company or any of its Subsidiaries, and any member of Investor Group may pursue a Renounced Business Opportunity and (d) waives any claim against the Investor Group and each member thereof in connection with the foregoing, except, in the case of the foregoing clauses (b), (c) and (d), in the case of the Series B Director, for any such opportunity expressly offered to the Series B Director solely in his or her capacity as a director of the Company. The Company agrees that in the event that the Investor Group or any member thereof acquires knowledge of a potential transaction or matter which may constitute a corporate opportunity for both (x) the Investor Group and (y) the Company or its Subsidiaries, a member of the Investor Group shall not have any duty to offer or communicate information regarding such corporate opportunity to the Company or its Subsidiaries, except in the case of the Series B Director, for any such opportunity expressly offered to the Series B Director solely in his or her capacity as a director of the Company. To the fullest extent permitted by applicable law and except as set forth in this Section 7.13, the Company hereby waives any claim against the Investor Group and each member thereof that such member or the Investor Group is liable to the Company or its stockholders for breach of any fiduciary duty solely by reason of the fact that the Investor Group or such member of the Investor Group (A) pursues or acquires any corporate opportunity for its own account or the account of any Affiliate or other person, (B) directs, recommends, sells, assigns or otherwise transfers such corporate opportunity to another Person or (C) does not communicate information regarding such corporate opportunity to the Company.

Section 7.14 Net Funding. In order to simplify the cash movements in respect of (i) the payment of the purchase price set forth in Section 1.1 or the payment of any purchase price in connection with an Optional Share Purchase Closing in accordance with Section 1.4, (ii) the Investor Expenses and (iii) the Facility Fee, the Company and the Investors hereby agree that, at the option of the Investors, the then-outstanding amount of Investor Expenses and Facility Fee payable pursuant to Section 7.5 shall be deducted from such purchase price, whereupon, following the payment of such reduced purchase price amount, all obligations of the Investors under this Agreement in connection with its payment of such purchase price set forth in Section 1.1 or Section 1.4, as applicable, shall be deemed to have been satisfied in full as if the Investors had paid the full amount of the purchase price set forth in Section 1.1 or Section 1.4, as applicable to the Company. For the avoidance of doubt, any amount of Investor Expenses or Facility Fee not offset against the Applicable Purchase Price pursuant to this Section 7.14 shall be payable in cash.

Section 7.15 Public Announcement. Subject to each party’s disclosure obligations imposed by applicable law or the rules of any stock exchange upon which its securities are listed, each of the parties hereto will cooperate with each other in the development and distribution of all news releases and other public information disclosures with respect to this Agreement and any of the transactions contemplated by this Agreement, and neither the Company nor any Investor will make any such news release or public disclosure (other than the Press Release and the Announcement 8-K) without first consulting with the other, and, in each case, also receiving the other’s consent (which shall not be unreasonably withheld or delayed) and each party shall

reasonably coordinate with the party whose consent is required with respect to any such news release or public disclosure. Notwithstanding the foregoing, this Section 7.15 shall not apply to any press release or other public statement made by the Company or an Investor (a) that is consistent with prior disclosure and does not contain any information relating to the transactions that has not been previously announced or made public in accordance with the terms of this Agreement or (b) is made to its auditors, attorneys, accountants, financial advisors, limited partners or other Permitted Transferees. Indemnification. In consideration of each Investor's execution and delivery of this Agreement, and acquiring the applicable Purchased Shares, Optional Shares and, upon conversion of any Purchased Shares or Optional Shares, the Conversion Shares (collectively, the "Shares"), and without limiting any of the Company's other obligations under this Agreement, and notwithstanding Section 7.14 of this Agreement, the Company shall defend, protect, indemnify and hold harmless each Investor and all of their shareholders, partners, affiliates, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents, managers, advisors or other representatives (including, without limitation, White Hat Capital Partners LP) and all of their respective shareholders, partners, affiliates, members, officers, directors and employees (collectively, the "Indemnitees" and each, an "Indemnitee") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees (including requests for plaintiffs' attorneys' fee), liabilities and damages, and reasonable and documented out-of-pocket expenses in connection herewith or in connection with the transactions contemplated hereby (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable and documented attorneys' fees and expenses (collectively, the "Indemnified Liabilities"), actually incurred by any Indemnitee as a result of, arising out of, or relating to any cause of action, suit, claim, subpoena or other discovery request (and any appeals therefrom) brought or made against such Indemnitee, the Company or any of its affiliates (including any officers or directors of the Company or its affiliates) and arising out of, resulting from, or relating to the acquisition of the Shares, to the extent permitted under applicable law, and except for any claim asserted by the Company (other than a derivative action brought on behalf of the Company) or any claim asserted by any Indemnitee against any other Indemnitee. The Company shall not be liable for any settlement of any pending or threatened action or proceeding effected without its prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, and the Company shall have the right to settle any pending or threatened action or proceeding in respect of which indemnity has been sought hereunder without the consent of any Indemnitee so long as any and all monetary payments in connection therewith are paid by the Company and such settlement (i) includes a provision unconditionally releasing the applicable Indemnitees from liability in respect thereof and (ii) contains no admission of liability on behalf of any Indemnitee in respect thereof.

*(The next page is the signature page)*



The parties have caused this Subscription Agreement to be executed as of the date first written above.

COMPANY

LUNA INNOVATIONS INCORPORATED

By: /s/ Scott A. Graeff  
Name: Scott A. Graeff  
Title: Chief Executive Officer

[Signature Page to Subscription Agreement]

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INVESTORS

**WHITE HAT STRATEGIC PARTNERS II LP**

By: White Hat SP GP II LLC, its General Partner

By: /s/ David J. Chanley

Name: David J. Chanley

Title: Managing Partner

Ownership Limitation:

4.99%

9.99%

Irrevocably waives ability to increase Ownership  
Limitation:

Yes

No

[Signature Page to Subscription Agreement]

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**WHITE HAT LIGHTNING OPPORTUNITY LP**

By: WH Lightning GP LLC, its General Partner

By: /s/ David J. Chanley

Name: David J. Chanley

Title: Managing Partner

Ownership Limitation:

4.99%

9.99%

Irrevocably waives ability to increase Ownership  
Limitation:

Yes

No

[Signature Page to Subscription Agreement]

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**WHITE HAT STRUCTURED OPPORTUNITIES LP**  
By: WHSO GP LLC, its General Partner

By: /s/ David J. Chanley  
Name: David J. Chanley  
Title: Managing Partner

Ownership Limitation:

- 4.99%  
 9.99%

Irrevocably waives ability to increase Ownership  
Limitation:

- Yes  
 No

## **Exhibit A**

### **Defined Terms**

The following capitalized terms have the meanings indicated:

“Affiliate” of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person.

“Board of Directors” means the Company’s board of directors.

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

“Bylaws” means the Amended and Restated Bylaws of the Company, as the same may be further amended, amended and restated or supplemented from time to time.

“Certificate of Incorporation” means the Amended and Restated Certificate of Incorporation, dated as of June 7, 2006, as the same may be further amended, amended and restated or supplemented in accordance with its terms from time to time.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidentiality Agreement” means that certain Confidentiality and Non-Disclosure Agreement, dated as of February 6, 2023, by and between the Company and White Hat Capital Partners LP and its affiliates.

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

“Credit Agreement” has the meaning set forth in the Certificate of Designations.

“DGCL” means the General Corporation Law of the State of Delaware (as amended from time to time).

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

“ERISA Documents” means all material “employment benefit plans” as defined in Section 3(3) of ERISA that are maintained or sponsored by the Company or its Subsidiaries for the benefit of their respective current or former employees and with respect to which the Company or its Subsidiaries have any liability.

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

“Exempt Issuance” has the meaning set forth in the Certificate of Designations.

“Expense Reimbursement Agreements” means those certain letter agreements dated as of March 17, 2023, July 7, 2023 and October 4, 2023 between the Company and White Hat Capital Partners LP, as amended to date.

“Fraud” means actual, not constructive, common law fraud (under the laws of the State of Delaware), committed with scienter, in the making of the representations and warranties expressly given in this Agreement.

“GAAP” means generally accepted accounting principles as in effect in the United States.

“Government Official” means any officer or employee of a foreign governmental authority or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such foreign governmental authority or department, agency, or instrumentality, or for or on behalf of any such public international organization, or any political party, party official, or candidate thereof, excluding officials of the governments of the United States, the several states thereof, any local subdivision of any of them or any agency, department or unit of any of the foregoing.

“Governmental Entity” means any supranational, national, state, municipal, local or foreign government, any court, tribunal, arbitrator, administrative agency, commission or other governmental official, authority or instrumentality.

“Hazardous Substance” means any waste, substance, product or material defined or regulated as “hazardous” or “toxic” by any applicable law, rule, regulation or order described in the definition of “Requirements of Environmental Law,” including petroleum and any fraction thereof, and any radioactive materials and waste.

“Indemnification Agreement” means the Indemnification Agreement between the Company and the Series B Director in substantially the form attached as Exhibit 10.1 to the Company’s Annual Report on Form 10-K for the for the fiscal year ended December 31, 2022.

“Investment Company Act” mean the Investment Company Act of 1940, as amended.

“Material Adverse Effect” means a material adverse effect upon the financial condition, assets, liabilities or results of operations of the Company and its Subsidiaries, taken as a whole; provided, however, that any such effect resulting or arising from or relating to any of the following matters shall not be considered when determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur: (a) any change, development, occurrence or event affecting the industry in which the Company and its Subsidiaries operate; (b) any conditions affecting the United States general economy or the general economy in any geographic area in which the Company or its Subsidiaries operate or developments or changes therein or the

financial and securities markets and credit markets in the United States or elsewhere in the world; (c) political conditions, including the continuation, occurrence, escalation, outbreak or worsening of any hostilities, war, political action, acts of terrorism, sabotage or military conflicts, whether or not pursuant to the declaration of an emergency or war; (d) any conditions resulting from the existence, occurrence, continuation or worsening of any force majeure events, including any earthquakes, floods, hurricanes, tornadoes, tropical storms, fires or other natural or manmade disasters, any epidemic, pandemic or other similar outbreak (including any non-human epidemic, pandemic or other similar outbreak) or any other national, international or regional calamity; (e) changes in any law, rule, regulation or GAAP; (f) changes in the market price or trading volume of the Common Stock or any other equity, equity-related or debt securities of the Company or its Affiliates (it being understood that the underlying circumstances, events or reasons giving rise to any such change can be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur); (g) any failure to meet any internal or public projections, forecasts, estimates or guidance for any period (it being understood that the underlying circumstances, events or reasons giving rise to any such failure can be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur); (h) the announcement, execution or delivery of this Agreement or the consummation of the transactions contemplated by this Agreement, including the impact thereof on the relationships, contractual or otherwise, of the Company and its Subsidiaries with employees, suppliers, customers, partners, vendors or any other third Person; (i) any actions taken by, or at the written request of, the Investors; and (j) any action, suit or proceeding arising from allegations of breach of fiduciary duty or otherwise relating to this Agreement or the transactions contemplated hereby by any stockholder of the Company; provided, that any of the matters described in clauses (a), (b) or (c), will be taken into account for purposes of determining whether or not a Material Adverse Effect has occurred to the extent that such matter disproportionately and adversely affects the Company and its Subsidiaries, taken as a whole, as compared with other companies operating in the industry in which the Company and its Subsidiaries operate.

“Permitted Liens” means any liens incurred by the Investors or their respective Affiliates, restrictions arising under applicable federal and state securities laws, or restrictions imposed by this Agreement, the Certificate of Designations or the Registration Rights Agreement, as well as, except for purposes of Section 1.1 and Section 2.4(c) any of the following: (i) liens for Taxes, assessments and governmental charges or levies either not yet delinquent or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established to the extent required by GAAP; (ii) mechanics, carriers’, workmen’s, warehouseman’s, repairmen’s, materialmen’s or other liens or security interests that are not yet due or that are being contested in good faith and by appropriate proceedings; (iii) pledges or deposits to secure obligations pursuant to workers’ compensation law or similar legislation or to secure public or statutory obligations; (iv) pledges or deposits to secure the performance of appeal bonds, fidelity bonds and other obligations of a similar nature, in each case in the ordinary course of business; (v) easements, covenants and rights of way (unrecorded and of record) and other similar liens (or other encumbrances), and zoning, building and other similar codes or restrictions, in each case imposed by any governmental authority having jurisdiction over any real property and that do not adversely affect in any material respect, and are not violated by, the current use, operation or occupancy of such real property or the operation of the business of the Company and its Subsidiaries thereon; (vi) liens the existence of which are disclosed in the notes to the most

recent consolidated financial statements of the Company included in the SEC Documents; (vii) any non-exclusive license of any intellectual property granted by the Company or any of its Subsidiaries in the ordinary course of business; and (viii) liens to secure indebtedness under the Credit Agreement.

“Permitted Transferee” means (i) any investment fund, investment vehicle or account Controlled by any Investor or any Affiliate thereof, or (ii) any shareholder, limited partner, limited liability company member, other equityholder or Affiliate of any Investor or any such investment fund, investment vehicle or account thereof as a result of any distribution.

“Person” means an individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or a government or agency or political subdivision thereof.

“Personal Data” has the same meaning as “personal data,” “personal information,” or other analogous terms under Privacy Requirements, including information that allows the identification of a natural person or any data that, if it were subject to unauthorized access, would require notification under Privacy Requirements to the data subject.

“Registration Rights Agreement” means the Registration Rights Agreement by and among the Company and the Investors, in the form attached to the Agreement as Exhibit D.

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within or upon any building, structure, facility or fixture.

“Representatives” means a Persons’ Affiliates, employees, agents, consultants, accountants, attorneys or financial advisors and direct or indirect members or partners or Affiliates of the foregoing.

“Requirements of Environmental Law” means all requirements imposed by any law, rule, regulation, or order of any governmental authority which relate to (a) the environment, (b) the preservation or reclamation of natural resources, (c) the generation, management, Release or threatened Release of any Hazardous Substance, or (d) health and safety matters.

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

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



exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such equity security ceases to constitute a “restricted security” (as defined in Rule 144); and

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

“SEC” means the Securities and Exchange Commission.

“SEC Documents” means all reports, schedules, registration statements, proxy statements and other documents (including all amendments, exhibits and schedules thereto) filed by the Company with the SEC on or after January 1, 2022.

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

“Stock Plans” means the Company’s 2006 Equity Incentive Plan, 2016 Equity Incentive Plan and 2023 Equity Incentive Plan.

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

“Tax” and “Taxes” means all federal, state, local and foreign taxes (including, without limitation, income, franchise, property, sales, withholding, payroll and employment

taxes), assessments, fees or other charges imposed by any Governmental Entity, including any interest, additions to tax or penalties applicable thereto.

“Tax Return” means any return, report or similar filing (including the attached schedules) filed or required to be filed with respect to Taxes (and any amendments thereto), including any information return, claim for refund or declaration of estimated Taxes.

“Transfer” means, with respect to the applicable securities, any direct or indirect (a) sale, transfer, hypothecation, assignment, gift, bequest or disposition of such securities by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by realization upon any lien or by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings, but excluding any conversion or exchange of securities in connection with a merger or other business combination involving the Company) or (b) grant of any option, warrant or other right to purchase such securities. The term “Transferred” shall have a correlative meaning.

“Voting Right Expiration Date” has the meaning set forth in the Certificate of Designations.

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

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Target	<a href="#">Recitals</a>
Termination Date	6.1(b)
Transfer Notice	4.4(d)

**Exhibit B**

**Investors**

<b>Investor</b>	<b>Purchased Shares</b>	<b>Applicable Purchase Price for the Purchased Shares</b>	<b>Maximum Optional Shares</b>	<b>Maximum Applicable Purchase Price for the Optional Shares</b>
White Hat Strategic Partners II LP	6,300	\$6,000,000	1,500	\$1,500,000
White Hat Lightning Opportunity LP	4,200	\$4,000,000	1,000	\$1,000,000
White Hat Structured Opportunities LP	42,000	\$40,000,000	10,000	\$10,000,000
<b>Total:</b>	52,500	\$50,000,000	12,500	\$12,500,000

**Exhibit C**

**Form of Certificate of Designations**

**Exhibit D**

**Form of Registration Rights Agreement**

**Exhibit E**

**Disclosure Schedule**

**Exhibit F**

**Form of Press Release**



**Exhibit G**

**Form of Officer's Certificate**

**Exhibit H**

**Form of Secretary's Certificate**

**Exhibit I**

**Form of Purchase Agreement**



**REGISTRATION RIGHTS AGREEMENT**

**BY AND AMONG**

**LUNA INNOVATIONS INCORPORATED**

**AND**

**THE SIGNATORIES HERETO**

**Dated as of December 21, 2023**

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## REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (the “**Agreement**”) is entered into as of December 21, 2023, by and among Luna Innovations Incorporated, a Delaware corporation (the “**Company**”), and the entities that are signatories hereto (each, an “**Investor**” and collectively, the “**Investors**”). Capitalized terms used but not defined elsewhere herein are defined in Exhibit A.

Concurrently with this Agreement, the Company is entering into a Subscription Agreement with the Investors (as amended from time to time, the “**Subscription Agreement**”), pursuant to which, among other things, (i) the Company is selling to the Investors, and the Investors are, severally and not jointly, purchasing from the Company, an aggregate of 52,500 shares of a newly-created series of preferred stock of the Company titled “Series B Convertible Preferred Stock”, with a par value of \$0.001 per share (the “**Convertible Preferred Stock**”), and (ii) the Company is granting to the Investors an option to purchase, in the aggregate, up to 12,500 additional shares of Convertible Preferred Stock.

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

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

### ARTICLE I RESALE SHELF REGISTRATION

Section 1.1. Resale Shelf Registration Statement. Subject to the other applicable provisions of this Agreement, the Company shall file a registration statement covering the sale or distribution from time to time by the Holders, on a delayed or continuous basis pursuant to Rule 415 of the Securities Act of all of the securities that are Registrable Securities as of the time of such filing on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders) (the “**Resale Shelf Registration Statement**” and such registration, the “**Resale Shelf Registration**”), and if the Company is a WKSI as of the filing date, the Resale Shelf Registration Statement shall be an Automatic Shelf Registration Statement. If the Resale Shelf Registration Statement is not an Automatic Shelf Registration Statement, then the Company shall use its reasonable best efforts to cause such Resale Shelf Registration Statement to be declared effective by the Commission as promptly as practicable after the filing thereof, but in any event prior to the date that is twelve (12) months following the Initial Closing Date (the “**Effectiveness Deadline**”).



Section 1.2. Effectiveness Period. Once declared effective, the Company shall, within two (2) Business Days thereof, but in any event prior to the Effectiveness Deadline, file a prospectus supplement pursuant to Rule 424(b) of the Securities Act and, subject to the other applicable provisions of this Agreement, use its reasonable best efforts to cause the Shelf Registration Statement to be continuously effective and usable until the Registration Rights Termination Date (the “**Effectiveness Period**”).Subsequent Shelf Registration. If (i) any Shelf Registration ceases to be effective under the Securities Act for any reason at any time during the Effectiveness Period, or (ii) the Company issues additional Registrable Securities to a Holder that are not covered by any previously filed Shelf Registration, including, but not limited to, in an Optional Share Purchase Closing if such Optional Share Purchase Closing occurred following the filing of the initial Resale Shelf Registration Statement, the Company shall use its reasonable best efforts to, in the case of clause (i), promptly cause such Shelf Registration to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration), and in any event shall within fifteen (15) days of such cessation of effectiveness, amend such Shelf Registration in a manner reasonably expected to obtain the withdrawal of any order suspending the effectiveness of such Shelf Registration or, in the case of clause (i) or (ii), promptly file an amendment or a post-effective amendment to a previously filed registration statement or file an additional registration statement (each, a “**Subsequent Shelf Registration Statement**” and each such registration, a “**Subsequent Shelf Registration**”) for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by Holders thereof of all securities that are Registrable Securities as of the time of such filing. Notwithstanding the foregoing, in no event shall the Company be required to file more than two (2) Subsequent Shelf Registration Statements in any twelve (12) month period. If a Subsequent Shelf Registration is filed, the Company shall use its reasonable best efforts to (a) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after such filing, but in no event later than the date that is thirty (30) days after such Subsequent Shelf Registration is filed, or sixty (60) days after such Subsequent Shelf Registration is filed if such Subsequent Shelf Registration is reviewed by the staff of the SEC, and (b) keep such Subsequent Shelf Registration (or another Subsequent Shelf Registration) continuously effective until the end of the Effectiveness Period. Any such Subsequent Shelf Registration shall be a registration statement on Form S-3 to the extent that the Company is eligible to use such form, and if the Company is a WKSJ as of the filing date, such registration statement shall be an Automatic Shelf Registration Statement. Otherwise, such Subsequent Shelf Registration shall be on Form S-1 or another appropriate form and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders.Demand Registration. In addition to the foregoing, if a Shelf Registration is not effective under the Securities Act for any reason at any time during the Effectiveness Period, the Holders may request registration under the Securities Act of all or any portion of their Registrable Securities, and the Company shall file a registration statement (each, a “**Demand Shelf Registration Statement**” and each such registration, a “**Demand Shelf Registration**”) for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by Holders thereof of all securities that are Registrable

Securities as of the time of such filing. If a Demand Shelf Registration is filed, the Company shall use its reasonable best efforts to (a) cause such Demand Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after such filing, but in no event later than the date that is thirty (30) days or, if the Demand Shelf Registration is reviewed by the staff of the SEC, the date that is ninety (90) days after such Demand Shelf Registration is filed and (b) keep such Demand Shelf Registration (or another Demand Shelf Registration) continuously effective until the end of the Effectiveness Period. Any such Demand Shelf Registration shall be a registration statement on Form S-3 to the extent that the Company is eligible to use such form, and if the Company is a WKSI as of the filing date, such registration statement shall be an Automatic Shelf Registration Statement. Otherwise, such Demand Shelf Registration shall be on Form S-1 or another appropriate form and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders. Supplements and Amendments. The Company shall supplement and amend any Shelf Registration if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration if required by the Securities Act or as reasonably requested by the Holders covered by such Shelf Registration. Subsequent Holder Notice. If a Person becomes a Holder of Registrable Securities after a Shelf Registration becomes effective under the Securities Act, the Company shall, as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming a Holder and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration (a “**Subsequent Holder Notice**”): if required and permitted by applicable law, file with the Commission a supplement to the related prospectus or a post-effective amendment to the Shelf Registration so that such Holder is named as a selling securityholder in the Shelf Registration and the related prospectus in such a manner as to permit such Holder to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law;

(b) if, pursuant to Section 1.6(a), the Company shall have filed a post-effective amendment to the Shelf Registration that is not automatically effective, use its reasonable best efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is reasonably practicable, but in any event by the date that is ninety (90) days after the date such post-effective amendment is required by Section 1.6(a) to be filed; and

(c) notify such Holder as promptly as is reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 1.6(a).

Section 1.7. Underwritten Offering. Until the Registration Rights Termination Date, the Holders of Registrable Securities may from time to time after the Shelf Registration Statement becomes effective deliver a written notice to the Company (with copy to the other Holders) specifying that the sale of some or all of the Registrable Securities subject to the Shelf Registration is intended to be conducted through an underwritten offering, so long as the anticipated gross proceeds of such underwritten offering is not less than fifteen million dollars (\$15,000,000) (unless the Holders are proposing to sell all of their remaining Registrable Securities) (the “**Underwritten Offering**”), provided the Company shall not be required to cooperate with respect to more than

three (3) such Underwritten Offerings in any twelve month period. In the event of an Underwritten Offering: The Holders of a majority of the Registrable Securities participating in the Underwritten Offering shall select the managing underwriter or underwriters to administer the Underwritten Offering; provided, that the choice of such managing underwriter or underwriters shall be subject to the consent of the Company, which is not to be unreasonably withheld, conditioned or delayed.

(b) Notwithstanding any other provision of this Section 1.7, if the managing underwriter or underwriters of a proposed Underwritten Offering advises the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in such Underwritten Offering exceeds the number which can be sold in such Underwritten Offering in light of market conditions, the Registrable Securities shall be included on a pro rata basis upon the number of securities that each Holder shall have requested to be included in such offering. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters.

Section 1.8. Take-Down Notice. Until the Registration Rights Termination Date, subject to the other applicable provisions of this Agreement, at any time that any Shelf Registration Statement is effective, if a Holder delivers a notice to the Company (a "**Take-Down Notice**") stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement (a "**Shelf Offering**") and stating the number of Registrable Securities to be included in such Shelf Offering, then, subject to the other applicable provisions of this Agreement, the Company shall amend or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

Section 1.9. Block Trade. Until the Registration Rights Termination Date, if any Holder wishes to engage in an underwritten block trade or bought deal off of a Shelf Registration Statement (each, an "**Underwritten Block Trade**"), such Holder will notify the Company of the Underwritten Block Trade not less than two (2) Business Days prior to the day such offering is first anticipated to commence. The Company will promptly notify each other Holder of such Underwritten Block Trade and such notified Holders (each, a "**Potential Participant**") may elect whether or not to participate no later than the next Business Day (i.e. one (1) Business Day prior to the day such offering is to commence), if the initiating Holder initially provides two (2) Business Days' notice to the Company (unless a longer period is agreed to by the initiating Holder), and the Company will as expeditiously as possible use its reasonable best efforts to facilitate such Underwritten Block Trade (which may close as early as two (2) Business Days after the date it commences). Any Potential Participant's request to participate in an Underwritten Block Trade shall be binding on the Potential Participant; provided, that each such Potential Participant that elects to participate may condition its participation on the Underwritten Block Trade being completed within ten (10) Business Days of its acceptance at a price per share (after giving effect to any underwriters' discounts or commissions) to such Potential Participant of not less than ninety percent (90%) of the closing price for the shares on their principal trading market on the Business

Day immediately prior to such Potential Participant's election to participate (the "**Participation Conditions**").

Section 1.10. Terms of Offering. Subject to the Participation Conditions (to the extent applicable), all determinations as to whether to complete any Shelf Offering or Underwritten Block Trade and as to the timing, manner, price and other terms of any Shelf Offering or Underwritten Block Trade contemplated by Section 1.8 and Section 1.9 shall be determined by the initiating Holder, and the Company shall use its reasonable best efforts to cause any Shelf Offering or Underwritten Block Trade to occur as promptly as practicable.

## ARTICLE II COMPANY REGISTRATION

Section 2.1. Notice of Registration. Until the Registration Rights Termination Date, if at any time or from time to time the Company shall determine to file a registration statement with respect to an offering (or to make an underwritten public offering pursuant to a previously filed registration statement) of its Common Stock, whether or not for its own account (other than (i) a registration statement on Form S-4, Form S-8 or any successor forms, (ii) a registration relating solely to employment benefit plans, (iii) a registration the primary purpose of which is to register debt securities, or (iv) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of Registrable Securities), the Company will:

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

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

Section 2.2. Underwriting. The right of any Holder to registration pursuant to Section 1.7, Section 1.9 or this Article II shall be conditioned upon such Holder's participation in such underwriting and the inclusion of Registrable Securities in the underwriting to the extent provided herein. Each Holder proposing to distribute its securities through such underwriting shall (together with the Company and the other holders distributing their securities through such underwriting) enter into and perform such Holder's obligations under an underwriting agreement with the managing underwriter selected for such underwriting by the Company or by the stockholders of the Company who have the right to select the underwriters (such underwriting agreement to be in the form negotiated by the Company or such stockholders, as the case may be). Notwithstanding

any other provision of this Article II, if the managing underwriter or underwriters of a proposed underwritten offering with respect to which Holders of Registrable Securities have exercised their piggyback registration rights advise the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in the offering thereby and all other securities proposed to be sold in the offering exceeds the number which can be sold in such underwritten offering in light of market conditions, the Registrable Securities and such other securities to be included in such underwritten offering shall be allocated, (a) first, in the event such offering was initiated by the Company and there was no Mandatory Conversion (as defined in the Certificate of Designations) within 60 days prior to such offering, up to the total number of securities that the Company has requested to be included in such registration, (b) second, and only if all the securities referred to in clause (a) have been included, up to the total number of securities that the Holders have requested to be included in such offering (pro rata based upon the number of securities that each of them shall have requested to be included in such offering), (c) third, and only if all the securities referred to in clause (b) have been included, up to the total number of securities that the Company or other holders of securities that have contractual rights to be included in such registration have requested to be included in such offering (pro rata based upon the number of securities that each of them shall have requested to be included in such offering) and (d) fourth, and only if all the securities referred to in clause (c) have been included, all other securities proposed to be included in such offering that, in the opinion of the managing underwriter or underwriters can be sold without having such adverse effect. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters. Any securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

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

### ARTICLE III ADDITIONAL PROVISIONS REGARDING REGISTRATION RIGHTS

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

- (a) prepare and file with the Commission a registration statement with respect to such securities in accordance with the applicable provisions of this Agreement, provided that no Holder shall be identified as an underwriter in any such registration statement without the prior written consent of such Holder;
- (b) prepare and file with the Commission such amendments, including post-effective amendments, and supplements to such registration statement and the prospectus used in

connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement (including to permit the intended method of distribution thereof) and as may be necessary to keep the registration statement continuously effective for the period set forth in this Agreement;

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

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

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

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

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

(h) in connection with an underwritten public offering, cause its officers to use their reasonable best efforts to support the marketing of the Registrable Securities covered by such offering (including participation in "road shows" or other similar marketing efforts);

(i) if such securities are being sold through underwriters, (i) furnish, on the date that such Registrable Securities are delivered to the underwriters, an opinion, dated as of such date, of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and a “negative assurance letter,” dated as of such date, of the legal counsel representing the Company for purposes of such registration, in form and substance as is customarily given to underwriters, (ii) furnish, on the date of the underwriting agreement, and at the closing of the offering, a “cold comfort” letter dated as of each such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(j) use reasonable best efforts to list the Registrable Securities covered by such registration statement with any securities exchange on which the Common Stock is then listed;

(k) in connection with a customary due diligence review, make available for inspection by the Holders, any underwriter participating in any such disposition of Registrable Securities, if any, and any counsel or accountants retained by the Holders or underwriter (collectively, the “**Offering Persons**”), all financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information and participate in customary due diligence sessions in each case reasonably requested by any such representative, underwriter, counsel or accountant in connection with such registration statement, subject to customary confidentiality obligations to be agreed with the Offering Persons;

(l) cooperate with the Holders and each underwriter or agent participating in the disposition of Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(m) as promptly as is reasonably practicable notify the Holders (i) when the prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to such registration statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or other federal or state governmental authority for amendments or supplements to such registration statement or related prospectus or to amend or to supplement such prospectus or for additional information, (iii) of the issuance by the Commission of any stop order suspending the effectiveness of such registration statement or the initiation of any proceedings for such purpose, (iv) if at any time the Company has reason to believe that the representations and warranties of the Company or any of its subsidiaries contained in any agreement (including any underwriting agreement contemplated by Section 3.1(g) above) cease to be true and correct or (v) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose;

(n) notwithstanding any other provision of this Agreement, the Company shall not be obligated to effect any Underwritten Offering or Shelf Offering within thirty (30) days prior to the Company's good faith estimate of the date of filing of a registration statement for an underwritten public offering of the Company's securities and for no more than a period of time after such a filing as the directors and executive officers of the Company are restricted from transfer pursuant to any lock-up agreements entered into in connection with such underwritten public offering of the Company's securities, provided that such period shall not exceed ninety (90) days from the closing date of any such underwritten public offering and provided further that, for the avoidance of doubt, the Holders shall be entitled to the rights set forth in Section 2.1 with respect to any such underwritten offering; and

(o) notwithstanding any other provision of this Agreement, if the Board of Directors of the Company has determined in good faith that the disclosure necessary for continued use of the prospectus and registration statement by the Holders could be materially detrimental to the Company, the Company shall have the right not to file or not to cause the effectiveness of any registration covering any Registrable Securities and to suspend the use of the prospectus and the registration statement covering any Registrable Security for such period of time as its use would be materially detrimental to the Company by delivering written notice of such suspension to all Holders listed on the Company's records (which notice shall not contain material non-public information and which notice shall not be subject to any duty of confidentiality); provided, however, that in any 12-month period the Company may exercise the right to such suspension not more than twice. From and after the date of a notice of suspension under this Section 3.1(o), each Holder agrees to promptly suspend the use of the prospectus or registration statement until the earlier of (i) notice from the Company that such suspension has been lifted (which notice shall not contain material non-public information and which notice shall not be subject to any duty of confidentiality) or (ii) the day following the forty fifth (45<sup>th</sup>) day of suspension, at which time the Company shall be required to lift such suspension.

Section 3.2. Limitation on Subsequent Registration Rights. From and after the date hereof, the Company shall not, without the prior written consent of the Holders of a majority of the Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company that would (i) allow such holder or prospective holder to include such securities in any registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included; (ii) allow such holder or prospective holder to initiate a demand for registration of any securities held by such holder or prospective holder; or (iii) otherwise conflict with the rights granted to the Holders herein.

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



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

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

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

(c) such Holder or Holders shall, and they shall cause their respective Affiliates to, permit the Company and its representatives and agents to examine such documents and records and will supply in a timely manner any information as they may be reasonably request to provide in connection with the offering or other distribution of Registrable Securities by such Holder or Holders; and

(d) on receipt of written notice from the Company of the happening of any of the events specified in Section 3.1(m) or Section 3.1(o), or that requires the suspension by such Holder or Holders and their respective Affiliates of the distribution of any of the Registrable Securities pursuant to a registration statement, owned by such Holder or Holders, then such Holders shall, and they shall cause their respective Affiliates to, cease offering or distributing the Registrable Securities, pursuant to a registration statement, owned by such Holder or Holders until the offering and distribution of the Registrable Securities owned by such Holder or Holders may, pursuant to a registration statement, recommence in accordance with the terms hereof and applicable law.

Section 3.5. Rule 144 Reporting. With a view to making available the benefits of Rule 144 to the Holders, the Company agrees that, for so long as a Holder owns Registrable Securities, the Company will use reasonable best efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

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

#### ARTICLE IV INDEMNIFICATION

Section 4.1. Indemnification by Company. To the extent permitted by applicable law, the Company will, with respect to any Registrable Securities as to which registration or qualification or compliance under applicable “blue sky” laws has been effected pursuant to this Agreement, indemnify each Holder, each Holder’s current and former officers, directors, partners and members, and each Person controlling such Holder within the meaning of Section 15 of the Securities Act, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the Securities Act (collectively, the “**Company Indemnified Parties**”), against all expenses, claims, losses, damages and liabilities, joint or several, (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act, Exchange Act or state securities laws applicable to the Company in connection with any such registration, and the Company will reimburse each of the Company Indemnified Parties for any

reasonable legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred. The indemnity agreement contained in this Section 4.1 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), nor shall the Company be liable to a Holder in any such case for any such loss, claim, damage, liability or action (a) to the extent that it arises out of or is based upon a violation or alleged violation of any state or federal law (including any claim arising out of or based on any untrue statement or alleged untrue statement or omission or alleged omission in the registration statement or prospectus) which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by or on behalf of any Holder or (b) in the case of a sale directly by a Holder of Registrable Securities (including a sale of such Registrable Securities through any underwriter retained by such Holder engaging in a distribution solely on behalf of such Holder), such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and such Holder failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act.

Section 4.2. Indemnification by Holders. To the extent permitted by applicable law, each Holder will, if identified as a selling stockholder as to which such registration or qualification or compliance under applicable “blue sky” laws is being effected, indemnify, severally and not jointly, the Company, each of its current and former directors, officers, partners and members, and each Person who controls the Company within the meaning of Section 15 of the Securities Act (collectively, the “**Holder Indemnified Parties**”), against all expenses, claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by such Holder of any rule or regulation promulgated under the Securities Act, Exchange Act or state securities law applicable to such Holder, and will reimburse each of the Holder Indemnified Parties for any reasonable legal or any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein, provided, however, that in no event shall any indemnity under this Section 4.2 payable by a Holder exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or

alleged omission or violation. The indemnity agreement contained in this Section 4.2 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the applicable Holder (which consent shall not be unreasonably withheld or delayed), nor shall the Holder be liable for any such loss, claim, damage, liability or action where such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and the Company or the underwriters failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act.

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

Section 4.4. Contribution. If the indemnification provided for in this Article IV is held by a court of competent jurisdiction to be unavailable to an Indemnified Party, other than pursuant to its terms, with respect to any claim, loss, damage, liability or action referred to therein, then, subject to the limitations contained in Article IV, the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such

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

ARTICLE V  
TERMINATION OF REGISTRATION RIGHTS; ASSIGNMENT

Section 5.1. Termination of Registration Rights. This Agreement shall terminate on the Registration Rights Termination Date. The rights of any particular Holder to cause the Company to register securities under Articles I and II shall terminate with respect to such Holder upon the date upon which such Holder no longer holds any Registrable Securities.

Section 5.2. Assignment. The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to any Permitted Transferee in connection with any permitted transfer, assignment or other conveyance of Registrable Securities (other than a transfer pursuant to a registration statement or under Rule 144 promulgated under the Securities Act); provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee executes and delivers to the Company a joinder to this Agreement, in the form attached hereto as Exhibit B, agreeing to be bound by the terms and conditions of this Agreement as if such Person were a party hereto, whereupon such Person will be treated as a Holder for all purposes of this Agreement, with the same rights, benefits and obligations hereunder as a Holder with respect to the transferred Registrable Securities.

ARTICLE VI  
MISCELLANEOUS.

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

Section 6.2. Governing Law; Waiver of Jury Trial.

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

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

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

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

(e) Waiver of Jury Trial. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE

FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

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

Section 6.4. Expenses. Except as provided in Section 3.3, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including accounting and legal fees shall be paid by the party incurring such expenses.

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

If to the Company, to:

Luna Innovations Incorporated  
301 First Street SW, Suite 200  
Roanoke, VA 24011  
E-mail: [graeffs@lunainc.com](mailto:graeffs@lunainc.com)  
Attention: Scott Graeff

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

Cooley LLP  
Reston Town Center  
11951 Freedom Drive  
14<sup>th</sup> Floor  
Reston Virginia 20190-5640  
E-mail: [ddestefano@cooley.com](mailto:ddestefano@cooley.com)  
Attention: Darren DeStefano

If to the Investors, to the addresses set forth on the signature pages hereto

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

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, NY 10022  
E-mail: Eleazer.Klein@srz.com; David.Curtiss@srz.com  
Attention: Eleazer Klein; David A. Curtiss

Section 6.6. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as provided in Section 5.2, no assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other parties hereto. Any purported assignment or delegation in violation of this Agreement shall be null and void *ab initio*.

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

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

Section 6.9. Interpretation; Absence of Presumption.

(a) For the purposes hereof: (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires; (ii) the terms “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and paragraph references are to the Sections and paragraphs in this Agreement unless otherwise specified; (iii) the word “including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless



the context otherwise requires or unless otherwise specified; and (iv) the word “or” shall not be exclusive.

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

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

*(The next page is the signature page)*

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

**LUNA INNOVATIONS INCORPORATED**

By: /s/ Scott A. Graeff  
Name: Scott A. Graeff  
Title: Chief Executive Officer

[Signature Page to Registration Rights Agreement]

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**INVESTORS**

**WHITE HAT STRATEGIC PARTNERS II LP**

By: White Hat SP GP II LLC, its General Partner

By: /s/ David J. Chanley

Name: David J. Chanley

Title: Managing Partner

**WHITE HAT LIGHTNING OPPORTUNITY LP**

By: WH LIGHTNING GP LLC, its General Partner

By: /s/ David J. Chanley

Name: David J. Chanley

Title: Managing Partner

**WHITE HAT STRUCTURED OPPORTUNITIES LP**

By: WHSO GP LLC, its General Partner

By: /s/ David J. Chanley

Name: David J. Chanley

Title: Managing Partner

[Signature Page to Registration Rights Agreement]

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**EXHIBIT A**  
**DEFINED TERMS**

1. The following capitalized terms have the meanings indicated:

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

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

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

“**Certificate of Designations**” means the Certificate of Designations of the Company’s Series B Convertible Preferred Stock.

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

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

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

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

“**Permitted Transferee**” has the meaning given to such term in the Subscription Agreement.

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

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

“**Registrable Securities**” means (a) any shares of Common Stock issued or issuable upon conversion of any shares of Convertible Preferred Stock including three years’ worth of accumulated Regulated Dividends (as defined in the Certificate of Designations) at the Regular Dividend Rate (as defined in the Certificate of Designations) as if accumulated pursuant to Section 5(a)(i) of the Certificate of Designations, (b) any other shares of Common Stock issued or issuable to Holders upon adjustments to the Conversion Price (as defined in the Certificate of Designations)

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pursuant to the Certificate of Designations or acquired by the Holders in the open market or otherwise and (c) any Common Stock or other securities issued in respect of the securities described in clauses (a) or (b) above or this clause (c) upon any stock split, stock dividend, recapitalization, reclassification, merger, consolidation or similar event; provided, however, that the securities described in clauses (a), (b) and (c) above shall only be treated as Registrable Securities until the earliest of: (i) the date on which such security has been registered under the Securities Act and disposed of in accordance with an effective registration statement relating thereto; (ii) the date on which such security has been sold pursuant to Rule 144 (or another transaction that constitutes a sale under the Securities Act) and the security is no longer a Restricted Security; (iii) the Registration Rights Termination Date. and (iv) the date on which such security shall have ceased to be outstanding.

**“Registration Expenses”** means (a) all expenses incurred by the Company in complying with Articles I and II, including, without limitation, all registration, qualification, listing and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, blue sky fees and expenses, and the expense of any special audits incident to or required by any such registration; and (b) the reasonable fees and expenses of any one counsel to the Holders (and one local counsel, if necessary); provided, however, that, in the case of this clause (b), such fees and expenses shall not exceed \$50,000 with respect to any particular registration pursuant to Article I or II.

**“Registration Rights Termination Date”** means the earlier of (i) the date that no Investors or their Permitted Transferees hold any shares of Convertible Preferred Stock or shares of Common Stock issued upon conversion of the Convertible Preferred Stock or (ii) the date that (a) the sum of (I) the shares of Common Stock issuable upon conversion of the Convertible Preferred Stock issued and outstanding as of such date of determination (without giving effect to any Ownership Limitation or Exchange Cap (each as defined in the Certificate of Designations)) plus (II) the shares of Common Stock previously issued to the Investors or their Permitted Transferees upon conversion of the Convertible Preferred Stock and, to the knowledge of the Company (based on the transfer agent’s book entry records or the public ownership filings of any Holder), still held by the Investors or their Permitted Transferees, equals less than five percent (5%) (provided that, solely with respect to Section 2.1, the percentage set forth in this clause (ii)(a)(II) shall be ten percent (10%)) of the Common Stock issued and outstanding as of such date of determination and (b) the Registrable Securities are able to be sold pursuant to Rule 144 without any restrictions or limitation on transfer (and without the requirement for the Company to be in compliance with the current public information required under subsection (c)(1) of Rule 144).

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

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

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

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

“**Selling Expenses**” means all underwriting discounts, selling commissions and stock transfer taxes applicable to the securities registered by the Holders.

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

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

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

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

### INDEX OF TERMS

Term	Section
Agreement	Preamble
Applicable Matters	Section 6.2(b)
Chosen Court	Section 6.2(b)
Company	Preamble
Company Indemnified Parties	Section 4.1
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Demand Shelf Registration Statement	Section 1.4
Effectiveness Deadline	Section 1.1
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Holder Indemnified Parties	Section 4.2
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Investor	Preamble
Participation Conditions	Section 1.9
Potential Participant	Section 1.9
Resale Shelf Registration	Section 1.1

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Resale Shelf Registration Statement	Section 1.1
Subscription Agreement	Preamble
Subsequent Holder Notice	Section 1.6
Subsequent Shelf Registration	Section 1.3
Subsequent Shelf Registration Statement	Section 1.3
Underwritten Block Trade	Section 1.9
Underwritten Offering	Section 1.7

**EXHIBIT B**

**FORM OF JOINDER TO REGISTRATION RIGHTS AGREEMENT**

The undersigned is executing and delivering this Joinder (this “Joinder”) pursuant to the Registration Rights Agreement dated as of [•], 2023 (as the same may hereafter be amended, the “Registration Rights Agreement”), by and among Luna Innovations Incorporated, a Delaware corporation, and the other persons named as parties therein. Capitalized terms used herein have the meaning set forth in the Registration Agreement.

By executing and delivering this Joinder, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of the Registration Rights Agreement as a Holder of Registrable Securities in the same manner as if the undersigned were an original signatory to the Registration Rights Agreement and the undersigned will be deemed for all purposes to be a Holder and the undersigned’s shares of Common Stock issued or issuable upon conversion of any shares of Convertible Preferred Stock will be deemed for all purposes to be Registrable Securities under the Registration Rights Agreement.

Accordingly, the undersigned has executed and delivered this Joinder as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**HOLDER:**

[•]

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

[•]

[•]

[•]

[•]

Agreed and Accepted as of the \_\_\_ day of \_\_ ,  
20\_\_

**LUNA INNOVATIONS INCORPORATED**

By: \_\_\_\_\_

Name:

Title:









## Luna Acquires Silixa

Strengthens Portfolio of Distributed Fiber Optic Sensing Solutions  
Adds Significant New Growth Markets and Applications and Further Expands Global Footprint  
Conference Call Scheduled for Today, December 21st, at 11:00 AM ET

(ROANOKE, VA, December 21, 2023) – [Luna Innovations Incorporated \(NASDAQ: LUNA\)](#), a global leader in advanced fiber optic-based technology, today announced the strategic acquisition of Silixa, a UK-based leader in distributed fiber optic sensing solutions. The acquisition further propels Luna’s position in the fiber optic sensing market, adding capabilities in distributed acoustic sensing (DAS), distributed temperature sensing (DTS) and distributed strain sensing (DSS) that offer enhanced performance for applications in energy, natural environments, mining and defense.

Silixa is expected to achieve approximately \$30 million in 2023 revenue, representing approximately 15% annual growth on a constant currency basis. The purchase price consists of \$21.5 million in upfront cash consideration and up to an additional \$16.5 million in earnouts payable in 2025 upon the achievement of certain 2024 financial performance milestones. The transaction was funded with a portion of the proceeds from White Hat Capital Partners’ strategic investment in Luna, which was also announced today. Inclusive of modest cost synergies, the acquisition is expected to be accretive to non-GAAP earnings in the first year.

“The addition of Silixa not only elevates the portfolio of solutions we already offer in our key end markets, but also further strengthens our position as an enabler of energy transition by extending our reach into exciting new growth sectors, such as carbon capture and storage, as well as into monitoring processes that will help sustain ecosystems and safeguard fragile environments,” said Scott Graeff, President and Chief Executive Officer of Luna. “Silixa brings important technology capabilities and strong talent that we expect to leverage across our EMEA footprint, which we expect will drive profitable growth across our European enterprise.”

### Strategic Benefits

- *Enhances Luna’s Product Offerings:* Silixa’s highly complementary portfolio of sensing technologies and monitoring capabilities augments Luna’s current product portfolio. Silixa advances Luna’s solutions-based offerings with highly integrated monitoring and real-time data solutions that yield valuable insights and drive recurring revenue.
  - *Expands Luna’s Serviceable Addressable Market:* Silixa not only provides Luna access to emerging end markets, such as carbon capture and geotechnical monitoring, but also adds incremental capabilities and geographical reach within key existing end markets, such as energy and mining.
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- *Increases Luna's Scale:* In addition to greater financial and operational scale, Silixa brings proprietary sensing technologies, expanding Luna's industry-leading patent portfolio to nearly 1,000 with the addition of Silixa's 200+ patents. Silixa's established presence in the U.K. adds significant talent in sales, marketing, engineering and R&D, helping to round out Luna's EMEA organization.

"Today's announcement is a pivotal milestone in the history of Silixa and a testament to the hard work and dedication of our employees," said Co-Founders Mahmoud Farhadiroushan and Tom Parker, who are both continuing with Luna. "We're thrilled to be joining a company that shares our focus on innovation and our passion to provide solutions to some of the world's most critical challenges," added Glynn Williams, CEO at Silixa, who will remain as an advisor to Luna through 2024.

Needham & Company, LLC acted as financial advisor and Cooley LLP acted as legal counsel to Luna in the transaction. PWC acted as financial advisor and Addleshaw Goddard LLP acted as legal counsel to Silixa.

#### **Conference Call Details**

Luna will host a conference call at 11:00 AM ET today, December 21, 2023, to discuss the transaction. The investor conference call will be available via live webcast on the Luna website at [www.lunainc.com](http://www.lunainc.com) under the tab "Investor Relations." To participate by telephone, the domestic dial-in number is 1.800.715.9871 and the international dial-in number is 1.646.307.1963. Participants should ask to join the Luna Innovations Incorporated conference call, conference ID 2883309, and are advised to dial in at least fifteen minutes prior to the call. A replay of the conference call will be available on the company's website under "Webcasts and Presentations" for 30 days following the conference call.

#### **About Luna**

Luna Innovations Incorporated ([www.lunainc.com](http://www.lunainc.com)) is a leader in optical technology, providing unique capabilities in high-performance, fiber optic-based, test products for the telecommunications industry and distributed fiber optic-based sensing for a multitude of industries. Luna's business model is designed to accelerate the process of bringing new and innovative technologies to market.

#### **About Silixa**

Silixa is the leading independent provider of distributed fiber optic sensing solutions, offering an unrivalled technical portfolio of end-to-end solutions that enable temperature, strain and acoustic measurements at the highest fidelity in even the most hostile settings. Silixa was created to secure a safer, more sustainable future for people and planet by using accurate, distributed, continuous, real-time, high-resolution data. Silixa investors include Lime Rock Partners, Chevron Technology Ventures and Equinor Ventures.

#### **Forward-Looking Statement**

The statements in this release that are not historical facts constitute "forward-looking statements" made pursuant to the safe harbor provision of the Private Securities Litigation Reform Act of 1995 that involve risks and uncertainties. These statements include Luna's expectations regarding Silixa's projected 2023 revenue, the potential payment of earnout consideration in connection with future milestones, and the expected benefits of the acquisition of Silixa, including the potential for the

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transaction to be accretive to non-GAAP earnings in 2024, the expansion of Luna's service offerings, capabilities and geographic reach and scale, industry trends, revenue and market opportunities, market growth, customer relationships and operational efficacy related to its technology and/or products. Management cautions the reader that these forward-looking statements are only predictions and are subject to a number of both known and unknown risks and uncertainties, and actual results, performance, and/or achievements of Luna may differ materially from the future results, performance, and/or achievements expressed or implied by these forward-looking statements as a result of a number of factors. These factors include, without limitation, uncertainties regarding integration of the companies' respective employee bases, offerings and business operations, potential adverse reactions or uncertainties regarding the acquisition among the companies' customers, potential unknown liabilities and unforeseen expenses associated with the acquisition, potential performance shortfalls as a result of the diversion of management's attention caused by completing the acquisition and integrating the companies' operations, failure of demand for Luna's products and services to meet expectations, failure of target market to grow and expand and technological challenges, competitive forces and other risks and uncertainties set forth in Luna's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023, and Luna's other periodic reports and filings with the Securities and Exchange Commission ("SEC"). Such filings are available on the SEC's website at [www.sec.gov](http://www.sec.gov) and on Luna's website at [www.lunainc.com](http://www.lunainc.com). The statements made in this release are based on information available to Luna as of the date of this release and Luna undertakes no obligation to update any of the forward-looking statements after the date of this release.

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## **Luna Announces \$50 Million Strategic Investment from White Hat Capital Partners**

*Investment Proceeds Used to Fund Silixa Acquisition and Enhance Luna's Financial Flexibility to Pursue Strategic Growth Initiatives*

(ROANOKE, VA, December 21, 2023) – [Luna Innovations Incorporated \(NASDAQ: LUNA\)](#), a global leader in advanced fiber optic-based technology, today announced a \$50 million investment by White Hat Capital Partners (“White Hat”), an investment firm focused on sustainable value creation in technology companies serving mission-critical applications.

Proceeds from this strategic investment were partially used to fund the acquisition of Silixa, also announced today, and related transaction costs in the aggregate amount of approximately \$25 million. Remaining proceeds were used to repay the Company's outstanding \$17 million term loan with PNC Bank and strengthen the Company's balance sheet.

Luna expects to apply the proceeds of this investment across a range of initiatives already in process to accelerate growth and increase profitability, including:

- *Capitalizing on Inflection Point for Adoption of Fiber Optic Sensing Solutions:* Aging infrastructure and rising security concerns for pipelines and critical infrastructure have led to increased market adoption of fiber optic sensing technologies for structural health monitoring. Luna is well-positioned to implement its solutions and drive recurring revenue through continuous monitoring of these key assets, such as bridges, tunnels and pipelines.
- *Increasing Manufacturing Capacity to Meet Demand Arising from Strategic Partnerships:* Luna has cultivated strategic relationships with several large global customers that are now expanding their use of Luna's solutions, increasing demand for Luna's products.
- *Enhancing Investments in Innovation:* Luna intends to leverage its increased financial flexibility to execute against its robust product roadmap and continue to be a leading developer of innovative technologies with new applications, building upon its already large library of intellectual property.

In conjunction with the strategic investment, David Chanley joined Luna's Board of Directors. Mr. Chanley is a Co-Founder and Managing Partner of White Hat and has more than 20 years of experience in the technology sector. With this addition, Luna's Board expanded to eight members.

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“We are thrilled to welcome White Hat as a new partner,” said Scott Graeff, President and Chief Executive Officer of Luna. “David and his team bring years of experience advising and supporting technology companies, particularly in the optics and test & measurement industries. When I first met them, I was struck by how well they understood both our industry and our technologies. Their investment is not only a vote of confidence in the acquisition of Silixa, but also a strong endorsement of our strategic vision and market opportunities.”

“White Hat is excited to partner with the Luna management team to support the Company in its next stage of growth,” said David Chanley, Managing Partner at White Hat Capital Partners. “Our thorough evaluation highlighted the quality and depth of Luna’s management team and the promising addition of the talented team from Silixa. With additional scale and financial flexibility, Luna is uniquely positioned as the largest pure-play company to address the rising demand for fiber optic sensing solutions in its key end markets. These include pivotal roles in energy transition initiatives like carbon capture and storage (CCS) and electric vehicle (EV) adoption, as well as critical structural health monitoring and specialized aerospace & defense applications. We are eager to partner with Luna as the company accelerates its mission of enabling the future with fiber.”

#### **Summary of Investment Terms**

White Hat has initially purchased 52,500 shares of Series B convertible preferred stock at a purchase price of \$50.0 million. Each share has an initial liquidation preference of \$1,000 per share and subject to certain conditions and limitations will be convertible into shares of Luna common stock, beginning one year from issuance, at a conversion price of \$6.70 per share, representing a 10% premium to the Company’s 30-day volume-weighted average price. The preferred stock will accrue quarterly dividends payable, at the Company’s option, at either 8.5% annual rate if paid in cash or a 10% annual rate if paid in kind. Until December 21, 2026, White Hat will have the right to purchase up to an additional \$12.5 million of Series B convertible preferred stock at par and otherwise on the same terms. Further details concerning the transaction and the terms of the Series B convertible preferred stock will be included in a Current Report on Form 8-K to be filed by the Company with the Securities and Exchange Commission.

Cooley LLP acted as legal advisor to Luna and Schulte Roth + Zabel LLP acted as legal advisor to White Hat in the transaction.

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**About Luna**

Luna Innovations Incorporated ([www.lunainc.com](http://www.lunainc.com)) is a leader in optical technology, providing unique capabilities in high-performance, fiber optic-based, test products for the telecommunications industry and distributed fiber optic-based sensing for a multitude of industries. Luna's business model is designed to accelerate the process of bringing new and innovative technologies to market.

**About White Hat Capital Partners**

Founded in 2016, White Hat Capital Partners LP focuses on concentrated, value-oriented investments in publicly-traded technology companies. White Hat partners with its portfolio companies to improve strategy and capital allocation decisions, implement operational efficiencies and strengthen governance, all with a view toward improving corporate competitiveness and creating shareholder value. The Firm is based in New York. For more information, visit [www.whitehatcp.com](http://www.whitehatcp.com).

**Forward-Looking Statement**

The statements in this release that are not historical facts constitute "forward-looking statements" made pursuant to the safe harbor provision of the Private Securities Litigation Reform Act of 1995 that involve risks and uncertainties. These statements include statements concerning the application of the proceeds of the financing, the investors' potential investment exercise of their option to purchase additional Series B convertible preferred stock, Luna's ability to drive recurring revenue growth, the potential increased demand for Luna's products, Luna's expectations regarding technological capabilities, industry trends, revenue and market opportunities, market growth, customer relationships and operational efficacy related to its technology and/or products. Management cautions the reader that these forward-looking statements are only predictions and are subject to a number of both known and unknown risks and uncertainties, and actual results, performance, and/or achievements of Luna may differ materially from the future results, performance, and/or achievements expressed or implied by these forward-looking statements as a result of a number of factors. These factors include, without limitation, changes in market needs and technological challenges, competitive forces and other risks and uncertainties set forth in Luna's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023 and Luna's other periodic reports and filings with the Securities and Exchange Commission ("SEC"). Such filings are available on the SEC's website at [www.sec.gov](http://www.sec.gov) and on Luna's website at [www.lunainc.com](http://www.lunainc.com). The statements made in this release are based on information available to Luna as of the date of this release and Luna undertakes no obligation to update any of the forward-looking statements after the date of this release.

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# Acquisition of Silixa



December 21, 2023

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## Safe Harbor

### Safe Harbor Statement Under the Private Securities Litigation Reform Act of 1995

This presentation includes information that constitutes "forward-looking statements" made pursuant to the safe harbor provision of the Private Securities Litigation Reform Act of 1995 that involve risks and uncertainties. These statements include statements concerning Silixa's 2023 projected revenue, the potential payment of earnout consideration in connection with future milestones, and the expected benefits of the acquisition of Silixa, including the potential for the transaction to be accretive to non-GAAP net income 2024, the expansion of Luna's service offerings, capabilities and geographic reach and scale, the company's expectations regarding its technological and product capabilities, market growth and its market position, revenue growth, customer activity, engagement and prospects, customer problems, industry trends, recurring sales, margin, general product performance, the company's future financial performance, including guidance, and market recognition of key technologies and demand for its products, the company's overall growth potential, workforce, investment in innovation, capitalization and access to, and deployment of capital, sales models and tools, operational planning and execution, quality processes, research and development, strategic position and corporate and leadership governance, focus, discipline, values, strength, philosophy and culture. Management cautions the reader that these forward-looking statements are only predictions and are subject to a number of both known and unknown risks and uncertainties, and actual results, performance, and/or achievements of the company may differ materially from the future results, performance, and/or achievements expressed or implied by these forward-looking statements as a result of a number of factors.

These factors include, without limitation, uncertainties regarding integration of the companies' respective employee bases, offerings and business operations, potential adverse reactions or uncertainties regarding the acquisition among the companies' customers, potential unknown liabilities and unforeseen expenses associated with the acquisition, potential performance shortfalls as a result of the diversion of management's attention caused by completing the acquisition and integrating the companies' operations, failure of demand for Luna's products and services to meet expectations, failure of target market to grow and expand, and technological challenges competitive forces, and other risks and uncertainties set forth in the company's periodic reports and other filings with the Securities and Exchange Commission ("SEC"). Such filings are available on the SEC's website at [sec.gov](http://sec.gov) and on the company's website at [www.lunainc.com](http://www.lunainc.com).

The statements made in this presentation are based on information available to Luna as of the date of this presentation, December 21, 2023, and Luna undertakes no obligation to update any of the forward-looking statements after the date of this presentation, except as required by law.

### Adjusted Financial Measures

In addition to U.S. GAAP financial information, this presentation includes Adjusted EBITDA and Adjusted EPS, which are non-GAAP financial measures. These non-GAAP financial measures are in addition to, and not a substitute for or superior to, measures of financial performance prepared in accordance with U.S. GAAP. A reconciliation of Net Income to Adjusted EBITDA and Net Income to Adjusted EPS are included in the appendix to this presentation.

## Overview

- Highly complementary portfolio of acoustic, strain and temperature sensing technologies
- Extends Luna's market leading position in fiber-based sensing solutions
- Advances Luna's solutions-based offerings
  - Offer advanced, highly integrated solutions focused on recurring revenue
- Expands Luna's Serviceable Addressable Market (SAM)
  - Carbon capture, geotechnical monitoring, mining
- Provides access to proprietary Constellation fiber / Carina interrogator technologies that will extend the use cases and SAM
- Adds significant talent in sales, marketing, engineering and R&D, helping to round out Luna's EMEA organization
- Strengthens IP portfolio to nearly 1,000 patents

## Transaction Overview

<b>Total Consideration</b>	\$21.5 million in upfront cash consideration \$16.5 million in target earnout contingent upon achievement of certain performance milestones
<b>Silixa Financial Detail</b>	~\$30 million revenue expected for 2023, ~15% growth on constant currency basis With modest cost synergies, expected to be accretive to Non-GAAP earnings in year one
<b>Transaction Financing</b>	Upfront cash consideration funded with proceeds from White Hat's Strategic Investment

## Silixa at a Glance



Headquarters: Elstree, U.K.



~125 Employees



200+ Patents



Improvement in Data Quality  
from Proprietary DAS Solution



Current Addressable Market



2023E Revenue Growth <sup>1</sup>

1. Represents annual revenue growth expected for 2023 on a constant currency basis.

## Key End Markets

	Energy	Natural Environments	Mining	Industrial Digitalization	Defense
Overview	Solutions for both renewables sector and hydrocarbons	Solutions help assess environmental conditions and trends, help tackle global climate change challenges and predict environmental hazards	Distributed fiber optic sensing solutions to enhance productivity, minimize risks and ensure sustainability	Solutions for monitoring Carbon Capture Storage (CCS) facilities and other critical industrial infrastructure	Multiple defense clients in the U.S. and Europe
Use Cases	<ul style="list-style-type: none"> <li>▪ Geothermal Monitoring</li> <li>▪ Hydropower Embankment</li> <li>▪ Wind Power Cable Monitoring</li> <li>▪ Oilfield Services</li> </ul>	<ul style="list-style-type: none"> <li>▪ Hydrology</li> <li>▪ Marine / Shoreline Protection</li> <li>▪ Near-Surface Geophysics</li> <li>▪ Seismology</li> <li>▪ Dam / Embankment Monitoring</li> <li>▪ Geotech Monitoring</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tailings Dam Protection</li> <li>▪ Microseismic Detection</li> <li>▪ Process Flow Control</li> <li>▪ Rockmass Response</li> <li>▪ Mineral Exploration</li> </ul>	<ul style="list-style-type: none"> <li>▪ CO<sub>2</sub> Storage Management</li> <li>▪ Data Center Management</li> <li>▪ Process Control</li> </ul>	<ul style="list-style-type: none"> <li>▪ Customized Instrumentation</li> <li>▪ Precision Measurements</li> <li>▪ Advanced Flow Techniques</li> <li>▪ Geophysics</li> </ul>

# Silixa Product Portfolio

## Highly Complementary Suite of Products to Luna's Portfolio

### Distributed Acoustic Sensing (DAS)

Leading DAS solution allows continuous and remote acoustic monitoring over many kilometers, giving improved results with minimal disruption to operations.

### Distributed Temperature Sensing (DTS)

DTS solutions measure minute temperature changes along an optical fiber, with the finest spatial resolution.

### Distributed Strain Sensing (DSS)

Interferometric DSS (iDSS) technology can be used to detect static or dynamic strain, providing leading performance in terms of strain resolution, spatial resolution and measurement speed.

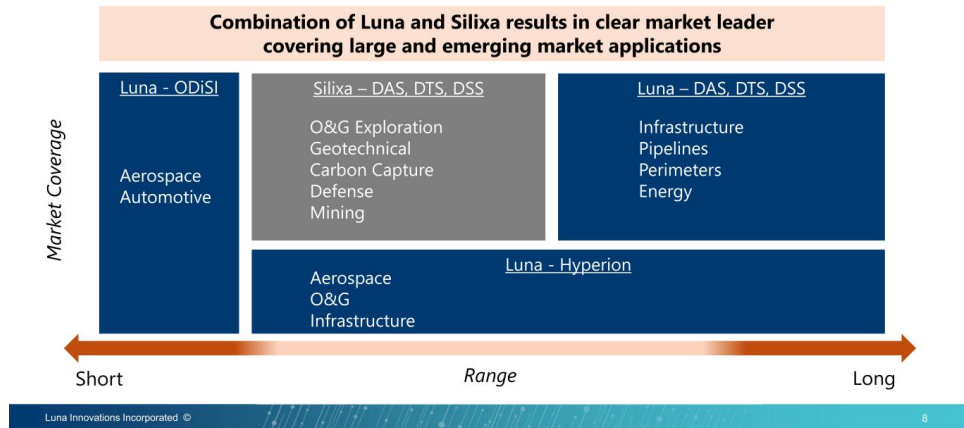
### Services and Data Analytics

Offers data processing and interpretation services in addition to cutting-edge optoelectronics technologies.

Silixa's IP portfolio protects methods for achieving higher resolution and sensitivity than other techniques



## Combined Product Portfolio





*White Hat Strategic Investment*

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## Long-Term Partnership with White Hat Capital Partners

Security:	Series B Convertible Preferred Stock
Amount:	\$50,000,000
Investor Option:	Up to \$12,500,000 over 3 years at Investor's option
Conversion Price:	\$6.70 / share; 10% premium to 30-day VWAP
Dividend Rate:	Years 1 – 3: 8.5% cash / 10% PIK, at Luna's option Year 4: 8.5% cash
Use of Proceeds:	~\$25,000,000 to fund acquisition of Silixa ~\$17,000,000 to repay PNC term loan in full ~\$8,000,000 for general corporate purposes



Strong endorsement from shareholder-aligned partner

David Chanley to join Luna's Board of Directors

Significant experience in optics and test & measurement industries

White Hat team to support Luna on key growth initiatives

Enhanced financial flexibility with strengthened balance sheet and PIK dividend option on preferred

## Summary

LUNA + SILIXA

### Creates Leading Player in Key Market Verticals

- Highly complementary product portfolio enhances Luna's existing solutions
- Expands Luna's SAM

### Increases Luna's Operational Scale

- Adds significant talent in key areas to round out Luna's EMEA organization
- Enhances global footprint

### Accelerates Growth and Profitability

- Drives organic and inorganic growth through product, sales and marketing synergies
- Cross-selling opportunities

