UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported)**: November 28, 2023** (November 27, 2023)

Velo3D, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**001-39757**	**98-1556965**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

511 Division Street **Campbell, California**	**95008**
(Address of principal executive offices)	(Zip Code)

(408) 610-3915
Registrant's telephone number, including area code

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

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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, par value $0.00001 per share	VLD	New York Stock Exchange
Warrants to purchase one share of common stock, each at an exercise price of $11.50 per share	VLD WS	New York Stock Exchange

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

Securities Exchange Agreement, Amendment to Securities Purchase Agreement

As previously reported, on August 14, 2023 (the "Prior Closing Date"), Velo3D, Inc. (the "Company") issued and sold $70 million aggregate principal amount of senior secured convertible notes (the "Prior Notes"), convertible into shares of the Company's common stock, par value $0.00001 per share ("Common Stock"), to High Trail Investments ON LLC and an affiliated institutional investor (the "Purchasers") pursuant to a Securities Purchase Agreement, dated August 10, 2023 (the "Purchase Agreement"), by and among the Company and the Purchasers. The entry into the Purchase Agreement, the issuance and sale of the Prior Notes and related matters were reported in Current Reports on Form 8-K filed by the Company with the U.S. Securities and Exchange Commission (the "Commission") on August 15, 2023 and August 21, 2023, which disclosure is incorporated herein by reference. Refer to Note 9, "Long-Term Debt" and Note 10, "Equity Instruments" in Part I, Item 1 of the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2023 for further information.

On November 27, 2023, the Company entered into a Securities Exchange Agreement (the "Exchange Agreement") with the Purchasers, pursuant to which (i) the Company will make a cash payment to the Purchasers of $15.0 million to repay $12.5 million of aggregate principal amount of the Prior Notes, together with accrued and unpaid interest (which interest rate shall be at the Default Interest rate provided in the Prior Notes and accrue as of October 1, 2023), (ii) the remaining Prior Notes will be exchanged for (A) $57.5 million aggregate principal amount of new senior secured notes (the "Exchange Notes") and (B) 10,000,000 shares of Common Stock (the "Exchange Shares"), and (iii) the Company will make a cash payment to the Purchasers of accrued and unpaid interest (which interest rate shall be at the Default Interest rate provided in the Prior Notes and accrue as of October 1, 2023) on the remaining Prior Notes being exchanged. The Exchange Agreement includes customary representations, warranties and covenants by the Company. In addition, the Exchange Agreement prohibits the Company, subject to certain exceptions, from effecting or entering into an agreement to effect any issuance involving a Variable Rate Transaction (as defined in the Exchange Agreement) for so long as the Exchange Notes remain outstanding. Further, pursuant to the Exchange Agreement, subject to certain exceptions, the Purchasers have agreed not to sell or transfer the Exchange Shares until the earliest to occur of: (i) a "fundamental change" (as defined in the Exchange Notes) or public announcement of a proposed "fundamental change"; (ii) a default or an event of default under the Exchange Notes; and (iii) 90 days after the Closing Date (as defined below).

The closing of the issuance and exchange of the Exchange Notes and the Exchange Shares (the "Closing") is expected to occur on or about November 28, 2023 (the "Closing Date"), subject to customary closing conditions.

In addition, the Company entered into an amendment to the Purchase Agreement (the "Purchase Agreement Amendment"), which (i) will extend the period of time for the Purchasers to elect to purchase up to $35 million of additional senior secured convertible notes (the "Additional Convertible Notes") under the Purchase Agreement to two years from the Prior Closing Date and (ii) will amend and restate the form of senior secured convertible note related to any such Additional Convertible Notes. The amended and restated form of note will delete the covenant contained in the Prior Notes that requires the Company to maintain minimum levels of quarterly revenue through the quarter ended June 30, 2026, include the Cash Burn Covenant (as defined below) and include certain conforming changes related to the issuance of the Exchange Notes. The Purchase Agreement Amendment will become effective upon the Closing.

Copies of the Exchange Agreement and the Purchase Agreement Amendment are included in this Current Report on Form 8-K as Exhibits 10.1 and 10.2, respectively, and are incorporated herein by reference. The summary description of the terms of the Exchange Agreement and the Purchase Agreement Amendment in this report are qualified in their entirety by reference to Exhibits 10.1 and 10.2.

Voting Agreements

In connection with the entry into the Exchange Agreement, on or before the Closing, the Company expects the Company's officers and directors to enter into voting agreements (the "Voting Agreements") with the Company

pursuant to which the Company's officers and directors will agree to, among other things, vote at any annual or special meeting of the Company's stockholders their shares of Common Stock to approve the issuance of the shares of Common Stock issuable pursuant to the Exchange Notes and to provide a proxy to the Company to vote such shares accordingly.

A copy of the form of Voting Agreement is included in this Current Report on Form 8-K as Exhibit 10.3 and is incorporated herein by reference. The summary description of the terms of the Voting Agreement in this report is qualified in its entirety by reference to Exhibit 10.3.

Second Supplemental Indenture and Exchange Notes

In connection with the issuance of the Exchange Notes, the Company expects to enter into a Second Supplemental Indenture (the "Second Supplemental Indenture"), which amends and supplements the indenture dated as of August 14, 2023 (the "Base Indenture") between the Company and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the "Trustee"), pursuant to which the Exchange Notes will be issued.

The Exchange Notes will be senior secured obligations of the Company and will be effectively senior to all of the Company's unsecured indebtedness to the extent of the collateral securing the Exchange Notes. Aside from the foregoing, the Exchange Notes will rank pari passu with all of the Company's other senior indebtedness and senior to any of the Company's subordinated indebtedness.

As of the Closing Date, the Exchange Notes will be secured by a first lien security interest in the Company's and its wholly-owned subsidiary Velo3D US, Inc.'s ("Velo3D US") assets, including, but not limited to, the Company's intellectual property (subject to prior liens and other customary exclusions, in each case, acceptable to High Trail Investors ON LLC, as collateral agent (the "Collateral Agent"), in its sole discretion) other than the Company's and Velo3D US's non-U.S. assets (the "Initial Collateral") as described below under "—Amendment to Security Agreement". The Exchange Notes provide that at or before 45 days after the Closing Date (which period may be extended in the reasonable discretion of the Collateral Agent), the Company will deliver to the Collateral Agent such additional security documents, in form and substance reasonably acceptable to the Collateral Agent, which perfect a first lien security interest in all the Company's remaining assets (subject to prior liens and other customary exclusions, in each case, acceptable to the Collateral Agent in its sole discretion).

The Exchange Notes will bear interest at 6.00% per annum, payable quarterly in cash on January 1, April 1, July 1 and October 1 of each year, commencing on January 1, 2024, and will mature on August 1, 2026 (the "Maturity Date"). When the Company repays principal on the Exchange Notes pursuant to the terms of the Exchange Notes, it will be required to pay 120% of the principal amount repaid (the "Repayment Price") plus accrued and unpaid interest.

On the first day of each three-month period beginning on January 1, 2024 (a "Partial Redemption Date"), the Company will redeem a portion of the principal amount of the Exchange Notes at the Repayment Price plus accrued and unpaid interest, unless the Holder cancels such redemption. The aggregate principal amount of the Exchange Notes that will be redeemable on a Partial Redemption Date will be $8,750,000 for a Repayment Price of $10,500,000.

Subject to certain exceptions, upon the completion of certain equity financings, holders of the Exchange Notes will have the right to require the Company to use up to 25% of the gross proceeds of the equity financing to redeem all or a portion of the principal amount of the Notes at the Repayment Price plus accrued and unpaid interest.

Holders of the Exchange Notes will also have the right to require the Company to repurchase all or a portion of their Exchange Notes upon the occurrence of certain corporate events constituting a "fundamental change" at 100% of the Repayment Price plus accrued and unpaid interest.

The Exchange Notes contain customary affirmative and negative covenants (including covenants that limit the Company's ability to incur debt, make investments, transfer assets, engage in certain transactions with affiliates and merge with other companies, in each case, other than those permitted by the Exchange Notes) and events of default.

Furthermore, the Company will be required to maintain a minimum of $35 million of unrestricted cash and cash equivalents and to maintain minimum levels of Available Cash (as defined in the Exchange Notes), calculated monthly based on a rolling three-month lookback period beginning with the three-month period ending on December 31, 2023, specified in the Exchange Notes (the "Cash Burn Covenant"). If an event of default occurs, the holders of the Exchange Notes may declare the Exchange Notes due and payable for cash in an amount equal to the Event of Default Acceleration Amount (as defined in the Exchange Notes). If an event of default occurs and the Company fails to pay the Event of Default Acceleration Amount when due in accordance with the Exchange Notes, then the holders may elect to receive such unpaid portion of the Event of Default Acceleration Amount, entirely or partially, in shares of Common Stock calculated based on dividing Event of Default Acceleration Amount by the lowest of the 10 daily volume weighted average prices of the Common Stock immediately prior to the applicable event of default stock payment date.

Copies of the form of Second Supplemental Indenture and the form of Exchange Notes are included in this Current Report on Form 8-K as Exhibits 4.1 and 4.2, respectively, and are incorporated herein by reference. The summary descriptions of the terms of the Second Supplemental Indenture and the Exchange Notes in this report are qualified in their entirety by reference to Exhibits 4.1 and 4.2.

Amendment to Security Agreement

In connection with the Closing, the Company and Velo3D US expect to enter into an amendment (the "Security Agreement Amendment") to the U.S. security agreement with the Collateral Agent entered into on August 14, 2023, which created a first lien security interest in the Company's and such subsidiary's assets, including, but not limited to, the Company's intellectual property (subject to prior liens and other customary exclusions, in each case, acceptable to the Collateral Agent in its sole discretion) and perfected a first lien security interest in the Initial Collateral (the "Initial Security Agreement Terms"). The Security Agreement Amendment reaffirms the Initial Security Agreement Terms in connection with the issuance of the Exchange Notes.

A copy of the form of Security Agreement Amendment is included in this Current Report on Form 8-K as Exhibit 10.4 and is incorporated herein by reference. The summary description of the terms of the Security Agreement in this report is qualified in its entirety by reference to Exhibit 10.4.

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

The information required by this Item 2.03 relating to the Exchange Notes and the Second Supplemental Indenture is set forth under Item 1.01 above and is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information required by this Item 3.02 relating to the Exchange Notes and the Exchange Shares is set forth under Item 1.01 above and is incorporated herein by reference.

The Exchange Notes and the Exchange Shares will be issued as securities exchanged by the Company with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange in accordance with Section 3(a)(9) of the Securities Act of 1933, as amended (the "Securities Act").

Item 7.01 Regulation FD Disclosure.

The Company previously furnished a Current Report on Form 8-K with the Commission on November 6, 2023 with the Company's results for the three and nine months ended September 30, 2023 compared to the three and nine months ended September 30, 2022 (the "Earnings 8-K"). Subsequent to the Earnings 8-K, the Company has observed continuing delays in customer orders for its 3D printer systems ("bookings"), which in part relate to transitional disruption resulting from the implementation of the operational realignment initiatives and go-to-market and service strategies described in the Earnings 8-K. In addition, the Company believes the uncertainty regarding

the Company's financial situation as a result of the negotiations with the holders of the Prior Notes may have impacted, and may continue to impact the Company's bookings in the near term, including because the Company has determined the Closing will not address the substantial doubt about the Company's ability to continue as a going concern and the Company expects it will need to engage in additional financings following the Closing to fund its operations in the near term. As a result, the Company believes it is prudent to withdraw the fourth quarter and full year 2023 revenue and gross margin guidance that the Company previously provided in the Earnings 8-K, and such guidance should not be relied on in making an investment decision in the Company.

The information furnished with this Item 7.01 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any other filing under the Securities Act or the Exchange Act, except as expressly set forth by specific reference in such a filing.

Item 9.01. Financial Statement and Exhibits.

(d) Exhibits.

Exhibit Number	Description
4.1	Form of Second Supplemental Indenture by and between the Company and U.S. Bank Trust Company, National Association, as trustee.
4.2	Form of Note.
10.1†	Securities Exchange Agreement, dated November 27, 2023, by and among the Company, High Trail Investors ON LLC and HB SPV I Master Sub LLC.
10.2†	Amendment to Securities Purchase Agreement, dated November 27, 2023, by and among the Company, High Trail Investors ON LLC and HB SPV I Master Sub LLC.
10.3	Form of Voting Agreement (included as Exhibit D to the Securities Exchange Agreement filed as Exhibit 10.1).
10.4	Form of Amendment to Security Agreement by and among the Company, Velo3D US, Inc. and High Trail Investors ON LLC, as collateral agent.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

† Portions of this exhibit (indicated with markouts) have been redacted in accordance with Item 601(b)(10)(iv).

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995 and other federal securities laws. Any statements contained herein that do not describe historical facts, including, but not limited to, statements regarding the timing of the Closing and related matters, the Company's expectations regarding its need to engage in additional financings and the Company's ability to continue as a going concern These statements are subject to risks and uncertainties, including the failure of closing conditions to be satisfied, and actual results may differ materially from these statements. Such risks and uncertainties include, among others, the risks identified in the Company's filings with the Commission. Any of these risks and uncertainties could materially and adversely affect the Company's results of operations, which would, in turn, have a significant and adverse impact on the price of the Company's securities. The Company cautions you not to place undue reliance on any forward-looking statements, which speak only as of the date they are made. The Company undertakes no obligation to update publicly any forward-looking statements to reflect new information, events or circumstances after the date they were made or to reflect the occurrence of unanticipated events, except as required by applicable law.

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.

Velo3D, Inc.

Date: November 28, 2023

By: /s/ Benyamin Buller

Name: Benyamin Buller

Title: Chief Executive Officer

Exhibit 4.1

VELO3D, INC.,
Company
AND
U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
Trustee
SECOND SUPPLEMENTAL INDENTURE
Dated as of November [•], 2023
Supplementing and Amending that Certain Indenture
Dated as of August 14, 2023
Senior Secured Notes

SECOND SUPPLEMENTAL INDENTURE, dated as of November [•], 2023 (this "Second Supplemental Indenture") to the Indenture dated as of August 14, 2023, (the "Indenture"), in each case between Velo3D, Inc., a Delaware corporation (herein called the "Company"), having its registered office at 511 Division Street., Campbell, California 95008, and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the "Trustee"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Indenture.

RECITALS OF THE COMPANY

WHEREAS, the Company has heretofore made, executed and delivered to the Trustee the Indenture, providing for the issuance from time to time of the Company's debt securities to be issued in one or more series;

WHEREAS, pursuant to the terms of the Indenture and this Second Supplemental Indenture, the Company has duly authorized the creation and issuance of its Senior Secured Note due 2026 (the "Note") in an aggregate principal amount not to exceed $57,500,000;

WHEREAS, Section 8.1 of the Indenture provides that, without the consent of any Securityholders, the Company, when authorized by a Board Resolution, and the Trustee may amend, restate or supplement the Indenture or the Securities of one or more Series to provide for the issuance of, and establish the form and terms and conditions of, Securities of any Series as permitted by the Indenture;

WHEREAS, pursuant to the terms of the Indenture and the Supplemental Indenture, dated August 14, 2023 (the "First Supplemental Indenture"), between the Company and the Trustee, the Company has duly authorized the creation and issuance of its Senior Convertible Note due 2026 (the "Prior Note") in an aggregate principal amount not to exceed $105,000,000;

WHEREAS, Section 8.2 of the Indenture provides that, with the consent of the Securityholders of not less than a majority in aggregate principal amount of the outstanding Securities of such Series affected by such amendment without notice to any Securityholder, the Company, when authorized by a Board Resolution, and the Trustee may amend the Indenture or the Securities of one or more Series;

WHEREAS, this Second Supplemental Indenture is authorized by the resolutions adopted by the Board of Directors of the Company by unanimous written consent, effective as of November 20, 2023 and all requirements necessary to make this Second Supplemental Indenture a valid instrument in accordance with its terms and to make the Note, when executed by the Company and authenticated and delivered by the Trustee or an authenticating agent, the valid obligation of the Company, have been done and performed, and the execution and delivery of this Second Supplemental Indenture has been duly authorized in all respects;

NOW, THEREFORE, THIS SECOND SUPPLEMENTAL INDENTURE WITNESSETH

For and in consideration of the provisions set forth herein, it is mutually agreed, for the equal and proportionate benefit of all Securityholders, from time to time, as follows:

1. *Establishment*

There is hereby established a new series of Securities to be issued under the Indenture and this Second Supplemental Indenture, to be designated as the Note. The Note shall be in substantially the form set forth in Annex A hereto.

Upon execution of this Second Supplemental Indenture, the Note in an initial aggregate principal amount of $57,500,000 shall be executed by the Company and delivered to the Trustee, and the Trustee shall thereupon authenticate and deliver such Note in accordance with a written order of the Company.

2. *Covenants*

In addition to the covenants set forth in Articles 4 and 5 of the Indenture, the covenants that apply to the Note are set forth in the form of Note attached as Annex A hereto. To the extent of any inconsistency between, on the one hand, the Indenture and this Second Supplemental Indenture and on the other hand, the attached form of Note, the attached form of Note will modify or amend any provision of this Second Supplemental Indenture and the Indenture in so far as it applies to this series of Securities.

3. *Amendments to Indenture and First Supplemental Indenture*

Amendment to Indenture. Section 2.1 of the Indenture is amended and restated in its entirety to read as follows:

> "The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more Series. All Securities of a Series shall be identical except as may be set forth in a Board Resolution, a supplemental indenture or an Officers' Certificate detailing the adoption of the terms thereof pursuant to the authority granted under a Board Resolution. In the case of Securities of a Series to be issued from time to time, the Board Resolution, Officers' Certificate or supplemental indenture may provide for the method by which specified terms (such as interest rate, Stated Maturity, record date or date from which interest shall accrue) are to be determined. Securities may differ between Series in respect of any matters, PROVIDED, that all Series of Securities shall be equally and ratably entitled to the benefits of the Indenture."

Amendment to First Supplemental Indenture. The form of Prior Note attached as Annex A to the First Supplemental Indenture is hereby amended and restated in its entirety with the form of Prior Note attached as Annex B hereto.

4. *Miscellaneous Provisions*

Other Terms of Indenture and First Supplemental Indenture. Except insofar as herein otherwise expressly provided, (i) all provisions, terms and conditions of the Indenture are in all respects ratified and confirmed and shall remain in full force and effect and (ii) all provisions, terms and conditions of the First Supplemental Indenture are in all respects ratified and confirmed and shall remain in full force and effect.

Terms Defined. All terms defined in the Indenture shall have the same meanings when used herein.

Separability Clause. In case any provision in this Second Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Governing Law. This Second Supplemental Indenture shall be governed by and construed in accordance with the law of the State of New York.

Further Instruments. The parties hereto will execute and deliver such further instruments and do such further acts and things as may reasonably be required to carry out the intent and purpose of this Second Supplemental Indenture.

Trust Indenture Act. If any provision of this Second Supplemental Indenture limits, qualifies or conflicts with another provision that is required to be included in this Second Supplemental Indenture by the Trust Indenture Act of 1939, as amended, the required provision shall control.

Counterparts. This Second Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute one and the same instrument. The exchange of copies of this Second Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Second Supplemental Indenture as to the parties hereto and may be used in lieu of the original Second Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The Trustee agrees to accept and act upon notice, instructions or directions pursuant to this Indenture sent by unsecured e-mail,

facsimile transmission or other similar unsecured electronic methods. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk or interception and misuse by third parties.

The Trustee. The Trustee makes no representation or warranty as to the validity or sufficiency of this Second Supplemental Indenture or with respect to the recitals contained herein, all of which recitals are made solely by the other parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have caused this Second Supplemental Indenture to be duly executed, as of the day and year first above written.

VELO3D, INC.

By: _____

Name:

Title:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: _____

Name:

Title:

[Signature Page to Second Supplemental Indenture]

In connection with the exchange of the Company's outstanding Prior Notes issued pursuant to the Indenture, as supplemented by the First Supplemental Indenture, for the Notes to be issued pursuant to the Indenture, as supplemented by this Second Supplemental Indenture, and the Securities Exchange Agreement, between the Company and the undersigned holders of the Prior Notes, each of such undersigned holders of Prior Notes, representing 100% of the aggregate principal amount of the outstanding Prior Notes immediately prior to such exchange, hereby consent to the amendments to the Indenture and the First Supplemental Indenture set forth in Section 3 of this Second Supplemental Indenture:

HOLDER:

HB SPV I MASTER SUB LLC

By: _____

Name:

Title: Authorized Signatory

HOLDER:

HIGH TRAIL INVESTMENTS ON LLC

By: _____

Name:

Title: Authorized Signatory

Exhibit 4.2

Velo3D, Inc.

Form of Senior Secured Note due 2026

Velo3D, Inc.

Senior Secured Note due 2026

Certificate No. A-[ ]

Velo3D, Inc., a Delaware corporation (the "**Company**"), for value received, promises to pay to [ ] (the "**Initial Holder**"), or its registered assigns, one hundred twenty percent (120%) of the principal sum of [ ] ($[ ]) (such principal sum, the "**Principal Amount**," and one hundred twenty percent (120%) of such Principal Amount, the "**Maturity Principal Amount**;" *provided* that each of the Principal Amount and the Maturity Principal Amount is subject to reduction as provided herein) on August 1, 2026, and to pay any outstanding interest thereon, as provided in this Note, in each case, as provided in and subject to the other provisions of this Note, including the earlier redemption or repurchase of this Note.

This Note has been issued pursuant to the Indenture, dated as of August 14, 2023 (the "**Base Indenture**"), by and between the Company and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the " **Trustee**"), as amended and supplemented by the Second Supplemental Indenture, dated as of [ ], 2023 (the "**Supplemental Indenture**" and, the Base Indenture as amended and supplemented by the Supplemental Indenture, the "**Indenture**"), by and between the Company and the Trustee. The terms of this Note include those stated in the Indenture.

Unless otherwise indicated, references herein to "dollars" or "$" are to U.S. dollars.

Additional provisions of this Note are set forth on the other side of this Note.

[*The Remainder of This Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, Velo3D, Inc. has caused this instrument to be duly executed as of the date set forth below.

Velo3D, Inc.

Date: [ ] By: __

Name: [ ]
Title: [ ]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Dated as of [ ]

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee, certifies that this is one of the Notes described in the within-named Indenture.

Date: [ ] By: __

Authorized Signatory

(Signature Page to Senior Note due 2026, Certificate No. A-[ ])

Velo3D, Inc.

Senior Secured Note due 2026

This Note (this "**Note**") is issued by Velo3D, Inc., a Delaware corporation (the "**Company**"), and is a Note that may be authenticated and delivered for original issue under the Indenture referred to below and pursuant to the Securities Exchange Agreement referred to below in an aggregate principal amount not to exceed fifty-seven million five hundred thousand dollars ($57,500,000) and designated as the Company's "Senior Secured Notes due 2026" (collectively, the "**Notes**")

This Note is subject to the terms of the Indenture.

Section 1. Definitions.

Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture to the extent defined therein.

"**Affiliate**" has the meaning set forth in Rule 144 under the Securities Act.

"**ATM Issuance**" means an Equity Issuance made pursuant to an ATM Program, other than an Equity Issuance in which a single identified investor or group of identified investors purchases in excess of three million dollars ($3,000,000) in the aggregate of Common Stock or warrants exercisable for any class of Common Stock in connection with any such Equity Issuance.

"**ATM Program**" means an "at-the-market" offering within the meaning of Rule 415(a)(4) of the Securities Act.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issue Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

"**Available Cash**" means, as of any date of determination, (A) the sum of (i) the Company's Cash and Cash Equivalents and (ii) any Cash paid by the Company to the Holder or any Other Holder pursuant to (x) Section 1 of the Securities Exchange Agreement or (y) this Note, any Other Note, any Prior Note (as defined in the Securities Exchange Agreement) or any Subsequently Purchased Note during the applicable Quarterly Cash Burn Period less (B) any Cash raised from any financings or series of related financings during the applicable Quarterly Cash Burn Period, including for the avoidance of doubt, from the sale and issuance of the Company's Capital Stock, Convertible Securities, Equity-Linked Securities or Indebtedness (including, for the avoidance of doubt, Cash actually received in connection with the exercise or settlement of any Convertible Securities or Equity-Linked Securities).

"**Authorized Denomination**" means, with respect to the Notes, a principal amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof, or, if such principal amount then-outstanding is less than $1,000, then such outstanding principal amount.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

"**Business Combination Event**" has the meaning set forth in **Section 8.**

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which commercial banks in The City of New York are authorized or required by law or executive order to close or be closed, or, with respect to any payment on this Note, the Place of Payment; *provided*, *however*, for clarification, commercial banks in The City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are open for use by customers on such day.

"**Capital Lease**" means, with respect to any Person, any leasing or similar arrangement conveying the right to use any property, whether real or personal property, or a combination thereof, by that Person as lessee that, in conformity with GAAP, is required to be accounted for as a capital lease on the balance sheet of such Person.

"**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a Capital Lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"**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.

"**Cash**" means all cash and liquid funds.

"**Cash Burn Measurement Date**" has the meaning set forth in **Section 7(R)**.

"**Cash Equivalents**" means, as of any date of determination, any of the following: (i) securities issued or directly and fully guaranteed or insured by the government of the United States, Canada, Japan, the United Kingdom, Switzerland or any country that is a member of the European Union or any agency or instrumentality thereof, in each case maturing not more than two years from the date of acquisition; (ii) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of $250,000,000 and whose long-term debt is rated "A" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency); (iii) repurchase obligations for underlying securities of the types described in clauses (i) and (ii) above entered into with any financial institution meeting the qualifications specified in clause (ii) above; (iv) commercial paper issued by a Person (other than an Affiliate of the Company) rated at least "A-1" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency), and in each case maturing within one year after the

date of acquisition; (v) readily marketable direct obligations issued by any state or commonwealth of the United States of America or the District of Columbia or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case with maturities not exceeding two years from the date of acquisition; (vi) Indebtedness issued by Persons (other than an Affiliate of the Company) with a rating of "A" or higher from S&P or "A-2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized rating agency), in each case with maturities not exceeding two years from the date of acquisition; and (vii) investment funds investing at least 95% of their assets in Cash and securities of the types described in clauses (i) through (vi) above.

"**Cash Sweep Amount**" means, with respect to any Cash Sweep Financing, twenty five percent (25.0%) of the gross proceeds from any such financing; *provided*, *however*, that in no event shall the aggregate amount of the gross proceeds of any Cash Sweep Financing that the Company is required to redeem in respect of this Note and all Other Notes exceed twenty five percent (25.0%) of the gross proceeds of such Cash Sweep Financing.

"**Cash Sweep Certification**" has the meaning set forth in **Section 4(D)(ii)**.

"**Cash Sweep Financing**" means any Equity Issuance other than ATM Issuances; provided, however, that (i) the issuance of shares of Common Stock pursuant to the Notes shall not constitute a Cash Sweep Financing; and (ii) any Equity Issuances occurring prior to the earlier to occur of (x) the Company raising twenty million dollars ($20,000,000) in gross proceeds from Equity Issuances after the Issue Date (provided that, for the avoidance of doubt, if an aggregate amount of Equity Issuance is made after the Issuance Date in excess of twenty million dollars ($20,000,000), all amounts in excess of twenty million dollars ($20,000,000) shall constitute Cash Sweep Financing) and (y) [ ][1], shall not constitute a Cash Sweep Financing.

"**Cash Sweep Notice**" has the meaning set forth in **Section 4(D)(iii)**.

"**Cash Sweep Payment**" has the meaning set forth in **Section 4(D)(i)**.

"**Collateral**" has the meaning set forth in **Section 7(Y).**

"**Collateral Agent**" means High Trail Investments ON LLC in its capacity as collateral agent for the Trustee, the Holder and each Other Holder, together with any successor thereto in such capacity.

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

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Stock**" means the common stock, par value $0.00001 per share, of the Company.

"**Compliance Certificate**" has the meaning set forth in **Section 7(J)(ii)**.

"**Contingent Obligation**" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (A) any Indebtedness or other obligations of another Person, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is

[1] Ninetieth (90th) calendar day after the Issue Date.

otherwise directly or indirectly liable; (B) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (C) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

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

"**Copyright License**" means any written agreement granting any right to use any Copyright or Copyright registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

"**Copyrights**" means all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof, or of any other country.

"**Covering Price**" has the meaning set forth in **Section 5(C)**.

"**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock on The New York Stock Exchange (or the principal, in terms of volume, Eligible Exchange on which the Common Stock is listed for trading) as displayed under the heading "Bloomberg VWAP" on Bloomberg page "VLD <EQUITY> VAP" (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 VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"**Default**" means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

"**Default Interest**" has the meaning set forth in **Section 9(D)**.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(A) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

(B) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock convertible or exchangeable solely at the option of the Company or a

Subsidiary of the Company; provided that any such conversion or exchange will be deemed an incurrence of Indebtedness or Disqualified Stock, as applicable); or

(C) is redeemable at the option of the holder thereof, in whole or in part,

(D) in the case of each of clauses (A), (B) and (C), at any point prior to the one hundred eighty-first (181st) day after the Maturity Date.

"**DTC**" means The Depository Trust Company.

"**Eligible Exchange**" means any of The New York Stock Exchange, The NYSE American LLC, The Nasdaq Stock Market, The Nasdaq Capital Market, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

"**Equity Interest**" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including preferred stock or membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the Securities Act), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

"**Equity Issuance**" shall mean (a) any issuance or sale by the Company or any of its Subsidiaries of any Equity Interests (including any Equity Interests issued upon exercise or conversion of any Equity Rights) or any Equity Rights, or (b) the receipt by the Company or any of its Subsidiaries of any capital contribution (whether or not evidenced by any Equity Interest issued by the recipient of such contribution), in each case for bona fide capital-raising purposes and other than (i) any issuance of Equity Interests upon the exercise of any Equity Rights outstanding as of the date hereof provided, that such issuance is made pursuant to the terms of such Equity Rights in effect on the date hereof and such Equity Rights are not amended to increase the number of such Equity Interests or to decrease the exercise price, exchange price or conversion price of Equity Rights, (ii) Equity Interests issuable upon the exercise of any Equity Rights or upon the lapse of forfeiture restrictions on awards made pursuant to an Approved Stock Plan (as defined in the Securities Exchange Agreement) (including Equity Interests withheld by the Company for the purpose of paying on behalf of the holder thereof the exercise price of stock options or for paying taxes due as a result of such exercise, vesting, settlement or lapse of forfeiture restrictions) or (iii) Common Stock issuable upon the exercise of stock options or upon the lapse of forfeiture restrictions on awards made pursuant to, any stock option exchange program of the Company that is approved by the Board of Directors or the compensation committee thereof or the Company's stockholders, whether now in effect or hereafter implemented.

"**Equity-Linked Securities**" means any rights, obligations, 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.

"**Equity Rights**" shall mean, with respect to any Person, any then-outstanding subscriptions, options, warrants, commitments, preemptive rights, convertible debt, or other Equity-Linked Securities or agreements of any kind for the issuance or sale, of any additional Equity Interests of any class, or partnership or other ownership interests of any type in, such Person.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**Event of Default**" has the meaning set forth in **Section 9(A)**.

"**Event of Default Acceleration Amount**" means, with respect to the delivery of a notice pursuant to **Section 9(B)(ii)** declaring this Note to be due and payable immediately on account of an Event of Default, a cash amount equal to one hundred and ten percent (110%) of the Maturity Principal Amount of this Note excluding interest (or such lesser principal amount accelerated pursuant to such notice) plus the accrued and unpaid interest on this Note.

"**Event of Default Notice**" has the meaning set forth in **Section 9(C)**.

"**Event of Default Stock Payment**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Date**" means any date on which the Holder delivers an Event of Default Stock Payment Notice pursuant to **Section 5(C)** hereunder.

"**Event of Default Stock Payment Delivery Date**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Notice**" has the meaning set forth in **Section 5(C)**.

"**Excess Shares**" has the meaning set forth in **Section 5(D)**.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended.

"**Freely Tradable**" means, with respect to any shares of Common Stock issued or issuable pursuant to this Note, that (A) such shares are (or, when issued, will be) issued by the Company pursuant to an effective registration statement or Section 3(a)(9) under the Securities Act and would not constitute "restricted securities" within the meaning of Rule 144 under the Securities Act and without any requirement for registration under any state securities or "blue sky" laws; (B) such shares are (or, when issued, will be) (i) represented by book-entries at DTC and identified therein by an "unrestricted" CUSIP number; (ii) not represented by any certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (iii) listed and admitted for trading, without suspension or material limitation on trading, on an Eligible Exchange; and (C) no delisting or suspension by such Eligible Exchange has been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (x) a writing by such Eligible Exchange or (y) the Company falling below the minimum listing maintenance requirements of such Eligible Exchange.

"**Fundamental Change**" means any of the following events:

(E) a "person" or "group" (within the meaning of Section 13(d)(3) of the Exchange Act), other than (x) the Company or its Wholly Owned Subsidiaries, (y) the employee benefit plans of the Company or its Wholly Owned Subsidiaries, or (z) the Holder or any of its Affiliates (including an "group" including the Holder or any of its Affiliates) files any report with the Commission indicating that such person or group has 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;

(F) 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 (other than solely to one or more of the Company's Wholly Owned Subsidiaries); 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 (other than a subdivision or combination, or solely a change in par value, of the Common Stock); *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 Fundamental Change pursuant to this **clause (B)**; or

(G) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company.

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.

"**Fundamental Change Notice**" has the meaning set forth in **Section 6(C)**.

"**Fundamental Change Repurchase Date**" means the date as of which this Note must be repurchased for cash in connection with a Fundamental Change, as provided in **Section 6(B)**.

"**Fundamental Change Repurchase Price**" means, with respect to this Note (or any portion of this Note to be repurchased) upon a Repurchase Upon Fundamental Change, a cash amount equal to one hundred (100%) of the Maturity Principal Amount of this Note excluding interest (or such lesser principal amount accelerated pursuant to such notice), plus accrued and unpaid interest on this Note to be so repurchased.

"**GAAP**" means generally accepted accounting principles in the United States of America, as in effect from time to time; provided the definitions set forth in this Note and any financial calculations required thereby shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

"**Holder**" means the person in whose name this Note is registered on the books of the Registrar, which initially is the Initial Holder.

The term "**including**" means "including without limitation," unless the context provides otherwise.

"**Indebtedness**" means, indebtedness of any kind, including, without duplication (A) all indebtedness for borrowed money or the deferred purchase price of property or services, including reimbursement and other obligations with respect to surety bonds and letters of credit, (B) all obligations evidenced by notes, bonds, debentures or similar instruments, (C) all Capital Lease Obligations, (D) all Contingent Obligations, and (E) Disqualified Stock.

"**Indenture**" means that certain Indenture, dated as of August 14, 2023, by and between the Company and the Trustee, as amended and supplemented by the Second Supplemental Indenture, dated as of [ ], 2023, by and between the Company and the Trustee.

"**Independent Investigator**" has the meaning set forth in **Section 7(S)**.

"**Initial Holder**" has the meaning set forth in the cover page of this Note.

"**Intellectual Property**" means all of the Company's Copyrights; Trademarks; Patents; Licenses; trade secrets and inventions; mask works; the Company's applications therefor and reissues, extensions, or renewals thereof; and the Company's goodwill associated with any of the foregoing, together with the Company's rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith.

"**Interest Payment Date**" means (A) each January 1, April 1, July 1 and October 1 of each calendar year, beginning on January 1, 2024; and (B) if not otherwise included in clause (A), the Maturity Date.

"**Investment**" means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person or the purchase of any assets of another Person for greater than the fair market value of such assets to solely the extent of the amount in excess of the fair market value.

"**Investment Grade Securities**" means: (1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents); (2) securities that have a rating equal to or higher than "Baa3" (or equivalent) by Moody's or "BBB-" (or equivalent) by S&P, or an equivalent rating by another internationally recognized rating agency, but excluding any debt securities or loans or advances between and among the Company and its Subsidiaries; (3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2), which fund may also hold immaterial amounts of cash pending investment or distribution; and (4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

"**Issue Date**" means [ ], 2023.

"**License**" means any Copyright License, Patent License, Trademark License or other license of rights or interests.

"**Lien**" means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, and any lease in the nature of a security interest; provided, that for the avoidance of doubt, licenses, strain escrows and similar provisions in collaboration agreements or research and development agreements that do not create or purport to create a security interest, encumbrance, levy, lien or charge of any kind shall not be deemed to be Liens for purposes of this Note.

"**Market Disruption Event**" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal, in terms of volume, Eligible Exchange (or, if the Common Stock is not then listed on an Eligible Exchange, on the principal, in terms of volume, U.S. national or regional

securities exchange on which the Common Stock is listed for trading) 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.

"Market Stock Payment Price" means, with respect to any Event of Default Stock Payment Date, an amount equal to one hundred percent (100%) of the lowest of the ten (10) Daily VWAPs immediately prior to such Event of Default Stock Payment Date.

"**Maturity Date**" means August 1, 2026.

"**Maturity Principal Amount**" has the meaning set forth in the cover page of this Note; *provided*, *however*, that the Maturity Principal Amount of this Note will be subject to reduction pursuant to **Section 4**, **Section 5** and **Section 6**.

"**Maximum Percentage**" has the meaning set forth in **Section 5(D)**.

"**Moody's**" means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

"**Note Documents**" means the Securities Exchange Agreement, this Note, the Security Agreements (as defined in the Securities Exchange Agreement), the Amendments to Security Documents (as defined in the Securities Exchange Agreement) and the other Transaction Documents. The Company shall provide copies of all Note Documents to the Trustee.

"**Obligation**" means all liabilities, indebtedness and obligations (including interest accrued at the rate provided in the applicable Note Document after the commencement of a bankruptcy proceeding, whether or not a claim for such interest is allowed) of the Company, any Security Agreements or any other Note Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

"**Open of Business**" means 9:00 a.m., New York City time.

The term "**or**" is not exclusive, unless the context expressly provides otherwise.

"**Other Holder**" means any person in whose name any Other Note is registered on the books of the Registrar.

"**Other Notes**" means any Notes that are of the same series as this Note and that are represented by one or more certificates other than the certificate representing this Note.

"**Partial Redemption Date**" means, with respect to this Note, (A) each of January 1, 2024, April 1, 2024, July 1, 2024, October 1, 2024, January 1, 2025, April 1, 2025, July 1, 2025, October 1, 2025, January 1, 2026, April 1, 2026 and July 1, 2026 and (B) if not otherwise included in **clause (A)**, the Maturity Date.

"**Partial Redemption Notice**" has the meaning set forth in **Section 4(A)**.

"**Partial Redemption Payment**" means, for any date that is a Partial Redemption Date, an amount equal to one hundred twenty percent (120%) of [ ][2], as determined by Holder in its sole discretion; *provided*, *however*, that the Company shall not be required to partially redeem more than such amount in aggregate in respect of this Note on any Partial Redemption Date; *provided*, *further*, that the Holder and the Company may agree to increase the size of any Partial Redemption Payment by mutual written consent and notice to the Trustee.

"**Patent License**" means any written agreement granting any right with respect to any invention covered by a Patent that is in existence or a Patent application that is pending, in which agreement the Company now holds or hereafter acquires any interest.

"**Patents**" means all letters patent of, or rights corresponding thereto, in the United States or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States or any other country.

"**Permitted Indebtedness**" means (A) Indebtedness evidenced by the Notes and any Subsequently Purchased Notes; (B) Indebtedness actually disclosed pursuant to the Securities Exchange Agreement as of the date of the Securities Exchange Agreement; (C) Indebtedness to trade creditors incurred in the ordinary course of business consistent with past practices; (D) Indebtedness that also constitutes a Permitted Investment; (E) Subordinated Indebtedness of the Company; (F) reimbursement obligations in connection with letters of credit or similar instruments that are secured by Cash or Cash Equivalents and issued on behalf of the Company or a Subsidiary thereof in an aggregate amount not to exceed two hundred fifty thousand dollars ($250,000) at any time outstanding; (G) Indebtedness consisting of capital and operating lease obligations and Indebtedness secured by Liens permitted under clause (M) of the definition of "Permitted Liens" hereunder; provided, however, all of such Indebtedness under this clause (G), plus all Indebtedness secured by Liens permitted under clause (M) of the definition of "Permitted Liens" (without duplication) shall not exceed One Million Four Hundred Thousand Dollars ($1,400,000.00) in the aggregate; and (H) Contingent Obligations that are guarantees of Indebtedness described in clauses (A) through (G).

"**Permitted Intellectual Property Licenses**" means (A) Intellectual Property licenses actually disclosed pursuant to the Securities Exchange Agreement as of the date of the Securities Exchange Agreement, and (B) non-perpetual Intellectual Property licenses granted in the ordinary course of business on arm's length terms consisting of the licensing of technology, the development of technology or the providing of technical support which may include licenses with unlimited renewal options solely to the extent such options require mutual consent for renewal or are subject to financial or other conditions as to the ability of licensee to perform under the license; provided such license was not entered into during an Event of Default or continuance of a Default.

"**Permitted Investment**" means: (A) Investments actually disclosed pursuant to the Securities Exchange Agreement, as in effect as of the Issue Date; (B) Cash and Cash Equivalents; (C) Investments accepted in connection with Permitted Transfers; (D) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of the Company's business; (E) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers in the ordinary course of business and consistent with past practice, provided that this clause (E) shall not apply to Investments of the Company in any Subsidiary thereof; (F) Investments consisting of (i) loans not involving the net transfer on a substantially

[2] NTD: For High Trail Investments ON LLC this amount will be $3,500,000. For HB SPV I Master Sub LLC, this amount shall be $5,250,000.

contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of capital stock of the Company pursuant to employee stock purchase plans or other similar agreements approved by the Company's Board of Directors and (ii) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, provided that the aggregate of all such loans outstanding may not exceed two hundred fifty thousand dollars ($250,000) at any time; (G) Investments in Wholly Owned Subsidiaries; (H) Permitted Intellectual Property Licenses; and (I) additional Investments that do not exceed one million dollars ($1,000,000) in the aggregate in any twelve (12) month period.

"**Permitted Liens**" means any and all of the following: (A) Liens in favor of Holder or the Collateral Agent; (B) Liens actually or deemed to be disclosed pursuant to the Securities Exchange Agreement, as in effect as of the Issue Date, and Liens securing any Subsequently Purchased Notes; (C) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; provided, that the Company maintains adequate reserves therefor in accordance with GAAP; (D) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of business; provided, that the payment thereof is not yet required; (E) Liens arising from judgments, decrees or attachments in circumstances which do not constitute a Default or an Event of Default hereunder; (F) the following deposits, to the extent made in the ordinary course of business: deposits under workers' compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (G) leasehold interests in leases or subleases and licenses granted in the ordinary course of the Company's business and not interfering in any material respect with the business of the licensor; (H) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (I) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets); (J) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms; (K) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (L) Liens on Cash or Cash Equivalents securing obligations permitted under clauses (C) and (F) of the definition of Permitted Indebtedness; (M) purchase money Liens, or Liens in respect of equipment leases, (i) on equipment acquired or held by the Company incurred for financing the acquisition or lease of the equipment securing no more than One Million Four Hundred Thousand Dollars ($1,400,000.00) in the aggregate amount outstanding; provided, however, all of the Indebtedness securing the Liens permitted under this clause (M), plus all Indebtedness permitted under clause (G) of the definition of "Permitted Indebtedness" (without duplication) shall not exceed One Million Four Hundred Thousand Dollars ($1,400,000.00) in the aggregate, or (ii) existing on equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the equipment; and (N) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (B) through (J) and (N) above (other than any Indebtedness repaid with the proceeds of this Note); provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

"**Permitted Quarterly Cash Burn**" means, for the applicable Quarterly Cash Burn Period set forth in the table below, the applicable corresponding dollar amount set forth in the table below:

Quarterly Cash Burn Period:	Permitted Quarterly Cash Burn
10/1/23 - 12/31/23	$25,000,000
11/1/23 - 1/31/24	$23,000,000
12/1/23 - 2/29/24	$22,000,000
1/1/24 - 3/31/24	$20,000,000
2/1/24 - 4/30/24	$18,000,000
3/1/24 - 5/31/24	$17,000,000
4/1/24 - 6/30/24	$15,000,000
5/1/24 - 7/31/24	$13,000,000
6/1/24 - 8/31/24	$12,000,000
7/1/24 - 9/30/24	$10,000,000
8/1/24 - 10/31/24	$9,000,000
9/1/24 - 11/30/24	$8,000,000
10/1/24 - 12/31/24 and thereafter	$5,000,000

"**Permitted Transfers**" means (A) dispositions of Cash, Cash Equivalents or Investment Grade Securities in the ordinary course of business and consistent with past practice for fair value consideration in the form of Cash, Cash Equivalents or Investment Grade Securities, (B) dispositions of inventory, goods and other assets, leases, assignments or subleases of any real or personal property, and Permitted Intellectual Property Licenses entered into, in each case, in the ordinary course of business and consistent with past practice, (C) dispositions of worn-out, obsolete or surplus property at fair market value in the ordinary course of business; (D) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (E) transfers consisting of Permitted Investments in Wholly Owned Subsidiaries under clause (G) of Permitted Investments; (F) other transfers of assets to any Person other than to a joint venture and which have a fair market value of not more than fifty thousand dollars ($50,000) in the aggregate in any twelve (12) month period; (G) dispositions in connection with Permitted Liens; or (H) the disposition of all or substantially all of the assets of the Company and its Subsidiaries in a manner permitted pursuant to **Section 8** and any disposition that constitutes a Fundamental Change.

"**Person**" or "**person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Principal Amount**" has the meaning set forth in the cover page of this Note; *provided*, *however*, that the Principal Amount of this Note will be subject to reduction (A) pursuant to **Section 4**, **Section 5** and **Section 6**.

"**Quarterly Cash Burn Period**" means the three-calendar month period ending on and including the applicable Cash Burn Measurement Date.

"**Quarterly Cash Burn Reference Date**" means the last calendar day of the calendar month immediately preceding the first calendar day of the applicable Quarterly Cash Burn Period.

"**Registrar**" has the meaning set forth in the Indenture.

"**Related Parties**" has the meaning set forth in **Section 21(B)**.

"**Reported Outstanding Share Number**" has the meaning set forth in **Section 5(D)**.

"**Repurchase Upon Fundamental Change**" means the repurchase of any Note by the Company pursuant to **Section 6**.

"**Required Holders**" means holders of a majority of the aggregate principal amount of the Notes, so long as any Notes remain outstanding; *provided*, that such majority must include High Trail Investments ON LLC or HB SPV I Master Sub LLC, so long as High Trail Investments ON LLC or HB SPV I Master Sub LLC or any of their affiliates hold any Notes.

"**Required Reserve Amount**" has the meaning in **Section 7(Q)**.

"**Requisite Stockholder Approval**" means the stockholder approval contemplated by Section 312.03(b) of the NYSE Listed Company Manual with respect to the issuance of shares of Common Stock pursuant to the terms of the Notes in excess of the limitations imposed by such rule; *provided*, *however*, that the Requisite Stockholder Approval will be deemed to be obtained if, due to any amendment or binding change in the interpretation of the applicable listing standards of The New York Stock Exchange, such stockholder approval is no longer required for the Company to settle any issuance of shares of Common Stock pursuant to the terms of the Notes by delivering shares of Common Stock without limitation pursuant to **Section 5(E)**.

"**Rule 144**" means Rule 144 promulgated under the Securities Act.

"**S&P**" means Standard & Poor's Ratings Services or any successor to the rating agency business thereof.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Securities Exchange Agreement**" means that certain Securities Exchange Agreement, dated as of November 27, 2023, between the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC providing for the issuance of the Notes. The Trustee shall not been deemed to have any knowledge of or have any obligation to monitor the terms of the Securities Exchange Agreement.

"**Securities Purchase Agreement**" means that certain Securities Purchase Agreement, dated as of August 10, 2023, between the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC providing for the issuance of the Prior Notes (as defined in the Securities Exchange Agreement), as amended by First Amendment to Securities Purchase Agreement, dated as of November 27, 2023, between the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC. The Trustee shall not been deemed to have any knowledge of or have any obligation to monitor the terms of the Securities Purchase Agreement.

"**Significant Subsidiary**" means, with respect to any Person, any Subsidiary of such Person that constitutes a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

"**Stated Interest**" has the meaning set forth in **Section 4(B)**.

"**Stated Interest Rate**" means, as of any date, a rate per annum equal to six percent (6.0%).

"**Subordinated Indebtedness**" means Indebtedness subordinated to the Notes pursuant to a written agreement between the Holder and the applicable lender in amounts and on terms and conditions satisfactory to the Holder in its sole discretion.

"**Subsequently Purchased Notes**" has the meaning set forth in the Securities Purchase 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 (i) 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 (ii) 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 Corporation**" has the meaning set forth in **Section 8(A)**.

"**Trademark License**" means any written agreement granting any right to use any Trademark or Trademark registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

"**Trademarks**" means all trademarks (registered, common law or otherwise) and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof.

"**Trading Day**" means any day on which (A) trading in the Common Stock generally occurs on the principal, in terms of volume, Eligible Exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on an Eligible Exchange, on the principal,

in terms of volume, U.S. national or regional securities exchange on which the Common Stock is listed for trading; and (B) there is no Market Disruption Event; provided that the Holder, by written notice to the Company, may waive any such Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"**Transaction Documents**" means, collectively, the Securities Exchange Agreement, the Notes, the Security Agreements, the Amendments to Security Documents, the Indenture, the Securities Purchase Agreement, each Voting Agreement (as defined in the Securities Exchange Agreement) and the Irrevocable Transfer Agent Instructions (as defined in the Securities Exchange Agreement) and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated by the Securities Exchange Agreement and thereby, as may be amended from time to time.

"**Trust Indenture Act**" means the U.S. Trust Indenture Act of 1939, as amended.

"**Trustee**" means U.S. Bank Trust Company National Association in its capacity as trustee under the Indenture.

"**UCC**" means the Uniform Commercial Code as the same is, from time to time, in effect in the State of New York.

"**Undelivered Shares**" has the meaning set forth in **Section 5(C)**.

"**VWAP Market Disruption Event** " means, with respect to any date, (A) the failure by 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, the principal, in terms of volume, Eligible Exchange on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any 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, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"**VWAP Trading Day** " means a day on which (A) there is no VWAP Market Disruption Event; provided that the Holder, by written notice to the Company, may waive any such VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal, in terms of volume, Eligible Exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on an Eligible Exchange, on the principal, in terms of volume, U.S. national or regional securities exchange on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"**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.

"**Withheld Shares**" has the meaning set forth in **Section 5(E)**.

Section 2. Persons Deemed Owners.

The Holder of this Note will be treated as the owner of this Note for all purposes.

Section 3. Registered Form.

This Note, and any Other Note issued in exchange therefor or in substitution thereof, will be in registered form, without coupons.

Section 4. Partial Redemption Payments; Interest; Maturity Date Payment; Prepayment.

(A) *Partial Redemption Payments.* On each Partial Redemption Date, the Company shall redeem a Partial Redemption Payment of this Note (in an Authorized Denomination). Such Partial Redemption Payment may be canceled by the Holder at any time prior to the receipt of the applicable Partial Redemption Payment from the Company. The Company shall pay the Holder the Partial Redemption Payment by wire transfer of immediately available funds on the applicable Partial Redemption Date. Any Partial Redemption Payment paid pursuant to this **Section 4(A)** shall reduce the Principal Amount by such paid amount divided by one and twenty hundredths (1.20). If this Note (or any portion of this Note) is to be redeemed pursuant to this **Section 4(A)**, then, from and after the date the related Partial Redemption Payment is paid in full, this Note (or such portion) will cease to be outstanding and interest will cease to accrue on this Note (or such portion). The Company shall deliver to the Trustee a written notice of any Partial Redemption Payment, including the applicable amount of the Partial Redemption Payment (a "**Partial Redemption Notice**"), within two (2) Business Days after the applicable Partial Redemption Date.

(B) *Interest*. Except as provided in **Section 9(D)**, this Note will accrue interest (the "**Stated Interest**") at a rate per annum equal to the Stated Interest Rate. Stated Interest on this Note will (i) accrue on the Principal Amount of this Note; (ii) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the Issue Date) to, but excluding, the date of payment of such Stated Interest; (iii) be paid to Holder in cash on each Interest Payment Date in accordance with **Section 5(A)**; (iv) with respect to the amount of interest then accrued on the portion of the Principal Amount being redeemed in connection with a Cash Sweep Payment, be paid to the Holder in arrears as of the date of such Cash Sweep Payment in accordance with this **Section 4**, as applicable; (v) with respect to the amount of interest then accrued on the portion of the Principal Amount being redeemed on a Partial Redemption Date, be paid to the Holder in arrears as of each such date in accordance with this **Section 4**, as applicable; (vi) with respect to the amount of interest then accrued on the portion of the Principal Amount being repurchased on a Fundamental Change Repurchase Date, be paid to the Holder in arrears as of each such date in accordance with **Section 6**, as applicable; and (vi) be computed on the basis of a 360-day year comprised of twelve 30-day months.

(C) *Maturity Date Payment*. On the Maturity Date, the Company will pay the Holder an amount in cash equal to the Maturity Principal Amount for the then-outstanding Principal Amount of this Note plus any accrued and unpaid interest on this Note.

(D) *Cash Sweep Payments*.

(i) For purposes of this Note, any payment made to the Holder pursuant to **Section 4(D)** shall be referred to as a **"Cash Sweep Payment"**. All Cash Sweep Payments shall be accompanied by accrued and unpaid interest on the amount repaid.

(ii) Concurrently with the completion of any Cash Sweep Financing, the Company shall certify to Holder in writing (i) the amount of the applicable Cash Sweep Financing and (ii) the calculation of the potential Cash Sweep Amount with respect to such

Cash Sweep Financing (including a certification that such Cash Sweep Amount was calculated in accordance with the terms hereof) (such certification a "**Cash Sweep Certification**"); provided, however, that, unless consented to by the Holder in writing, in the event that the extent of such Cash Sweep Financing and Cash Sweep Amount is such that the information required in such certification would constitute material non-public information regarding the Company, then the Company shall also concurrently publicly disclose such material non-public information on a Current Report on Form 8-K or otherwise.

(iii) The Holder shall have the right to require the Company, exercisable by delivery of written notice to the Company (with a copy to the Trustee) of exercise of such right (a "**Cash Sweep Notice**"), to redeem all or a portion of this Note in cash within three (3) Business Days following the delivery of such Cash Sweep Notice (regardless of whether the Company actually delivers a Cash Sweep Certification) for all or a portion of the Cash Sweep Amount with respect to such Cash Sweep Financing. If the Holder or any Other Holder elects to redeem all or a portion of any Other Notes for all or a portion of the Cash Sweep Amount with respect to the same Cash Sweep Financing, the Trustee shall then select the redemption portions of the principal of this Note and such Other Notes on a pro rata basis to the extent practicable or such other method the Trustee deems fair and appropriate. The Company shall pay the Holder the Cash Sweep Payment by wire transfer of immediately available funds. Any Cash Sweep Payment paid pursuant to this **Section 4(D)** shall reduce the Principal Amount by such paid amount divided by one and twenty hundredths (1.20). If this Note (or any portion of this Note) is to be redeemed pursuant to this **Section 4(D)**, then, from and after the date the related Cash Sweep Payment is paid in full, this Note (or such portion) will cease to be outstanding and interest will cease to accrue on this Note (or such portion).

(E) *Prepayment*. The Company may not prepay this Note without the written consent of the Required Holders.

Section 5. Method of Payment; When Payment Date is Not a Business Day.

(A) *Method of Payment*. The Company will pay all cash amounts due under this Note by wire transfer of immediately available funds to the account of the Holder as set forth in a written notice of an account of such Holder delivered by the Holder to the Company at least one (1) Business Day before the date such amount is due.

(B) *Delay of Payment when Payment Date is Not a Business Day*. If the due date for a payment on this Note as provided in this Note is not a Business Day, then, notwithstanding anything to the contrary in this Note, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay.

(C) *Event of Default Stock Payments.* If an Event of Default occurs and the Company fails to pay the Event of Default Acceleration Amount when due in accordance with this Note, then the Holder may elect to receive such unpaid portion of the Event of Default Acceleration Amount, entirely or partially, in shares of Common Stock (an "**Event of Default Stock Payment**"), and shall deliver to the Company (with a copy to the Trustee) a written notice of such election stating which portion thereof the Holder has elected to receive in shares of Common Stock (an "**Event of Default Stock Payment Notice**"). On or before the second (2nd) Business Day following the date of delivery of any Event of Default Stock Payment Notice hereunder (the "**Event of Default Stock Payment Delivery Date**"), the Company shall issue and deliver to the Holder, a number of validly issued, fully paid and Freely Tradable shares of Common Stock equal to the quotient (rounded up to the closest whole number) obtained by dividing the Event of Default Acceleration Amount (or applicable portion thereof) by the Market

Stock Payment Price as of the date of delivery of the Event of Default Stock Payment Notice; *provided*, that, if the Company fails to timely issue and deliver to the Holder such shares of Common Stock, then the Holder may revoke its election to receive shares of Common Stock and elect to receive such Event of Default Acceleration Amount (or any portion thereof) in cash at any time prior to delivery of such shares of Common Stock. Any portion of the Event of Default Acceleration Amount not paid in shares of Common Stock because the Holder did not elect, or effectively revoked its election, to receive shares of Common Stock for such Event of Default Acceleration Amount (or applicable portion thereof) will be paid in cash; provided, that the Holder may deliver multiple Event of Default Stock Payment Notices in accordance with this **Section 5(C)** to the extent that any portion of the Event of Default Acceleration Amount remains unpaid when due in accordance with this Note. If (x) the Company shall fail for any reason or for no reason on or prior to the applicable Event of Default Stock Payment Delivery Date to deliver shares of Common Stock in accordance with this **Section 5(C)** (such shares to which Holder is entitled referred to as the "**Undelivered Shares**"); and (y) the Holder (whether directly or indirectly, including by any broker acting on the Holder's behalf or acting with respect to such Undelivered Shares) purchases any shares of Common Stock (whether in the open market or otherwise) to cover any such Undelivered Shares (whether to satisfy any settlement obligations with respect thereto of the Holder or otherwise), then, without limiting the Holder's right to pursue any other remedy available to it (whether hereunder, under applicable law or otherwise), the Holder will have the right, exercisable by notice to the Company, to cause the Company to either:

(i) pay, on or before the second (2nd) Business Day after the date such notice is delivered, cash to the Holder in an amount equal to the aggregate purchase price (including any brokerage commissions and other out-of-pocket costs) incurred to purchase such shares (such aggregate purchase price, the "**Covering Price**"); or

(ii) promptly deliver, to the Holder, such Undelivered Shares in accordance with this Note, together with cash in an amount equal to the excess, if any, of the Covering Price over the product of (x) the number of such Undelivered Shares; and (y) the Daily VWAP per share of Common Stock on the date of delivery of the related Event of Default Stock Payment Notice.

To exercise such right, the Holder must deliver notice of such exercise to the Company, specifying whether the Holder has elected clause (i) or (ii) above to apply. If the Holder has elected clause (i) to apply, then the Company's obligation to deliver the Undelivered Shares in accordance with this Note will be deemed to have been satisfied and discharged to the extent the Company has paid the Covering Price in accordance with clause (i). Nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock as required pursuant to the terms hereof. In addition to the foregoing, if the Company fails for any reason to deliver Common Stock to the Holder by the applicable Event of Default Stock Payment Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each one thousand dollars ($1,000) of Undelivered Shares (based on the Daily VWAP on the applicable Event of Default Stock Payment Delivery Date), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the Event of Default Stock Payment Delivery Date until the cash amount set forth in **Section 5(C)(i)** is paid to the Holder or the shares of Common Stock are delivered to the Holder pursuant to **Section 5(C)(ii)**. Under no circumstances shall the Trustee be responsible for holding or delivering shares of Common Stock to the Holder.

(D) *Beneficial Ownership Limitation*. Notwithstanding anything to the contrary contained herein, the Company shall not issue shares pursuant to this Note, and the Holder shall

not have the right to receive shares pursuant to the terms and conditions of this Note and any such issuance shall be null and void and treated as if never made, to the extent that after giving effect to such issuance, the Holder together with the other Attribution Parties collectively would beneficially own in the aggregate in excess of 4.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such issuance. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable pursuant to, this Note with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation conversion or exercise analogous to the limitation contained in this **Section 5(D)**. For purposes of this **Section 5(D)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Note, in determining the number of outstanding shares of Common Stock the Holder may acquire in connection with this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent (as defined in the Securities Exchange Agreement) setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a notice from the Holder related to any issuance of shares of Common Stock in connection with this Note at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall promptly notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such issuance of shares of Common Stock would otherwise cause the Holder's beneficial ownership, as determined pursuant to this **Section 5(D)**, to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be issued pursuant to such notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder pursuant to this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares; provided, however that, the aggregate number of shares of Common Stock that would otherwise be required to be issued to the Holder pursuant to the terms of this Note shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be issued such shares (and any such shares declared or made on such initial issuance or on any subsequent issuance held similarly in abeyance) to the same extent as if there had been no such limitation. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective

until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any Other Holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to receive shares pursuant to this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of issuance. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 5(D)** to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this **Section 5(D)** or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note. The Holder hereby acknowledges and agrees that the Company shall be entitled to rely on the representations and other information set forth in any notice from the Holder related to any issuance of shares of Common Stock in connection with this Note and shall not be required to independently verify whether any issuance of Common Stock pursuant to this Note would cause the Holder (together with the other Attribution Parties) to collectively beneficially own in excess of the Maximum Percentage of the number of shares of Common Stock outstanding after giving effect to such issuance or otherwise trigger the provisions of this **Section 5(D)**. The Trustee shall have no obligation to monitor any limitations on beneficial ownership in connection with this **Section 5(D)**.

(E) *Stock Exchange Limitations*. Notwithstanding anything to the contrary in this Note or any Other Note, until the Requisite Stockholder Approval is obtained, in no event will the number of shares of Common Stock issuable pursuant to this Note, all Other Notes and all Subsequently Purchased Notes, together with all other shares, if any theretofore issued pursuant to the Securities Exchange Agreement, this Note, all Other Notes and all Subsequently Purchased Notes, including (for the avoidance of doubt) Event of Default Stock Payments exceed 39,349,491 shares in the aggregate. If any one or more shares of Common Stock are not delivered as a result of the operation of the preceding sentence (such shares, the "**Withheld Shares**"), then (1) on the date such shares of Common Stock are issuable hereunder (without effect to any limitations imposed under **Section 5(D)**), the Company will pay to the Holder, in addition to the shares otherwise due to the Holder hereunder, cash in an amount equal to the product of (x) the number of such Withheld Shares; and (y) the Daily VWAP per share of Common Stock on the date of delivery of the related Event of Default Stock Payment Notice; and (2) to the extent the Holder purchases (in an open market transaction or otherwise) Common Stock to deliver in settlement of a sale by the Holder of such Withheld Shares, the Company will reimburse the Holder for (x) any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection with such purchases and (y) the excess, if any, of (A) the aggregate purchase price of such purchases over (B) the product of (I) the number of such Withheld Shares purchased by the Holder; and (II) the Daily VWAP per share of Common Stock on the date of delivery of the related Event of Default Stock Payment Notice.

Section 6. Required Repurchase of Note upon a Fundamental Change.

(A) *Repurchase Upon Fundamental Change*. Subject to the other terms of this **Section 6**, if a Fundamental Change occurs, then the Holder will have the right to require the Company to repurchase this Note (or any portion of this Note in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Fundamental Change Repurchase Date*. The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Holder's choosing that is no more than twenty (20) Business Days after the later of (x) the date the Company delivers to the Holder the related Fundamental Change Notice pursuant to **Section 6(C)**; and (y) the effective date of such Fundamental Change.

(C) *Fundamental Change Notice*. No later than the fifth (5th) Business Day before the occurrence of any Fundamental Change, the Company will send to the Holder (with a copy to the Trustee) a written notice (the "**Fundamental Change Notice**") thereof (provided, however, in no event shall such notice be required prior to the actual public announcement of such Fundamental Change), stating the expected date such Fundamental Change will occur. No later than the fifth (5^{th}) Business Day after the date of delivery of the Fundamental Change Notice, the Holder shall notify the Company in writing whether it will require the Company to repurchase this Note and specify the Fundamental Change Repurchase Date.

(D) *Effect of Repurchase*. If this Note (or any portion of this Note) is to be repurchased upon a Repurchase Upon Fundamental Change, then, from and after the date the related Fundamental Change Repurchase Price is paid in full, this Note (or such portion) will cease to be outstanding and interest will cease to accrue on this Note (or such portion).

Section 7. Affirmative and Negative Covenants.

(A) *Stay, Extension and Usury Laws*. To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Note; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(B) *Corporate Existence.* Subject to **Section 8**, the Company will cause to preserve and keep in full force and effect:

(i) its corporate existence and the corporate existence of its Subsidiaries in accordance with the organizational documents of the Company or its Subsidiaries, as applicable; and

(ii) the material rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries;

provided, *however*, that the Company need not preserve or keep in full force and effect any such rights (charter and statutory), license or franchise or existence of any of its Subsidiaries if the Board of Directors determines in good faith that (x) the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole; and (y) the loss thereof is not, individually or in the aggregate, materially adverse to the Holder; *provided further*, that any Subsidiary may merge into, amalgamate or consolidate with any other Subsidiary and any Subsidiary may liquidate or dissolve if all of its property passes to the Company or another Subsidiary.

(C) *Ranking*. All payments due under this Note shall rank (i) *pari passu* with all Other Notes and all Subsequently Purchased Notes, (ii) effectively senior to all unsecured obligations of the Company to the extent of the value of the Collateral securing the Notes for so long as the

Collateral so secures the Notes in accordance with the terms hereof and (iii) senior to any Subordinated Indebtedness.

(D) *Indebtedness; Amendments to Indebtedness*. The Company shall not and shall not permit any Subsidiary to: (a) create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness; (b) prepay any Indebtedness except by the conversion of Indebtedness into equity securities (other than Disqualified Stock) and the payment of cash in lieu of fractional shares in connection with such conversion; or (c) amend or modify any documents or notes evidencing any Indebtedness in any manner which shortens the maturity date or any amortization, redemption or interest payment date thereof or otherwise imposes materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such amendment or modification without the prior written consent of Holder. The Company shall not and shall not permit any Subsidiary to incur any Indebtedness that would cause a breach or Default under the Notes or prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including without limitation, the payment of interest and principal thereon.

(E) *Liens*. The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

(F) *Investments*. The Company shall not directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments; *provided* that the Company may not make any Investment (including a Permitted Investment) or permit any of its Subsidiaries to make any Investment (including a Permitted Investment) if (i) any Event of Default has occurred hereunder or (ii) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default with respect to **Section 9(A)(ii)**, **Section 9(A)(iv)**, **Section 9(A)(vi)**, **Section 9(A)(ix)**, **Section 9(A)(x)**, **Section 9(A)(xi)** or **Section 9(A)(xiv)**.

(G) *Distributions.* The Company shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other Equity Interest other than pursuant to employee, director or consultant equity incentive, stock purchase or repurchase plans or awards granted thereunder or other similar agreements provided under plans approved by the Board of Directors; provided, however, in each case the repurchase or redemption price does not exceed the original consideration paid for such stock or Equity Interest, or (b) declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest, except that a Subsidiary of the Company may pay dividends or make distributions to the Company or a parent company that is a direct or indirect Wholly Owned Subsidiary of the Company, or (c) lend money to any employees, officers or directors (except as permitted under clause (F) of the definition of Permitted Investment), or guarantee the payment of any such loans granted by a third party in excess of two hundred fifty thousand dollars ($250,000) in the aggregate or (d) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of two hundred fifty thousand dollars ($250,000) in the aggregate. If there are dividends or distributions made by the Company or any Subsidiary, within one (1) Business Day following the date on which the Company files an Annual Report on Form 10-K or Quarterly Report on Form 10-Q with the Commission, the Company will provide the Holder with a written notice setting forth the aggregate amount of dividends or distributions made by the Company or any Subsidiary pursuant to this **Section 7(G)** for the period covered by such Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable. Notwithstanding anything herein to the contrary, the Company shall not, and shall not allow any Subsidiary to, declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest if (A) any Event of Default has occurred hereunder and has not been waived by the Required Holders or (B) any event or circumstance has occurred and is continuing which, with the giving of notice or

passage of time or both, could constitute an Event of Default with respect to **Section 9(A)(ii)**, **Section 9(A)(iv)**, **Section 9(A)(vi)**, **Section 9(A)(ix)**, **Section 9(A)(x)**, **Section 9(A)(xi)** or **Section 9(A)(xiv)**.

(H) *Transfers*. The Company shall not, and shall not allow any Subsidiary to, voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey any equitable, beneficial or legal interest in any material portion of the assets of the Company and its Subsidiaries (taken as a whole), except for Permitted Transfers and Permitted Investments.

(I) *Taxes*. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(J) *Minimum Liquidity*.

(i) The Company and its Subsidiaries shall have at all times liquidity calculated as unrestricted, unencumbered Cash and Cash Equivalents in one or more deposit accounts located in the United States in a minimum amount equal to thirty five million dollars ($35,000,000) and, subject to **Section 8(Y)**, subject to one or more control agreements entered into in favor of the Collateral Agent (each a "**Controlled Account**").

(ii) On the first (1st) Business Day of each month (or, if requested by the Holder in its sole discretion, within one (1) Business Day of such request or, if earlier, immediately in the event an Event of Default has occurred as a result of a breach of **Section 7(J)(i)**, **Section 7(D)**, **Section 7(E)**, **Section 7(G)**, **Section 7(R)**, **Section 7(W)** or **Section 7(Z)** hereof), the Company shall provide to the Holder and the Trustee a certification, in the form attached hereto as **Exhibit A**, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying whether or not the Company has satisfied the requirements of **Section 7(J)(i)**, **Section 7(D)**, **Section 7(E)**, **Section 7(G)**, **Section 7(R), Section 7(W)** and **Section 7(Z)** during the immediately preceding calendar month (or applicable period). Each such certification delivered pursuant to this **Section 7(J)(ii)** shall be referred to as a "**Compliance Certificate**" If the Company determines in its sole discretion that such information constitutes material non-public information, then the Company will so indicate in the certification provided pursuant to the preceding sentence and the Company will concurrently disclose such material non-public information on a Current Report on Form 8-K or otherwise.

(K) *Change in Nature of Business*. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the Issue Date or any business substantially related or incidental thereto.

(L) *Maintenance of Properties, Etc.* The Company shall maintain and preserve, and the Company shall cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful (as determined by the Company in good faith) to the conduct of its

business in good working order and condition, ordinary wear and tear excepted, and comply at all times in all material respects with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder.

(M) *Maintenance of Intellectual Property*. The Company will take, and the Company shall cause each of its Subsidiaries to take, all actions necessary or advisable to maintain and preserve all of the Intellectual Property Rights (as defined in the Securities Exchange Agreement) of the Company or such Subsidiary that are necessary or material (as determined by the Company in good faith) to the conduct of its business in full force and effect.

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

(O) *Transactions with Affiliates*. Neither the Company, nor any of its Subsidiaries, shall enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate (other than the Company or any of its Wholly Owned Subsidiaries), except transactions for fair consideration and on terms no less favorable to it than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof.

(P) *Restricted Issuances.* The Company shall not, and shall cause its Subsidiaries not to, directly or indirectly, without the prior written consent of the Required Holders, (i) issue any Notes or (ii) issue any other securities or incur any Indebtedness, in each case, that would cause a breach or Default under the Notes or that by its terms would prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including, without limitation, the payment of principal thereon.

(Q) *Share Reserve.* So long as this Note remains outstanding, the Company shall at all times have no less than a number of authorized but unissued shares of Common Stock equal to one hundred million (100,000,000) shares of Common Stock, which shall not be exclusively reserved for issuance pursuant to the Notes (the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this **Section 7(Q)** be reduced other than in connection with any stock combination, reverse stock split or other similar transaction. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain stockholder approval (if required) of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(R) *Minimum Cash Spend Availability*. On the last calendar day of each calendar month beginning with the calendar month ending December 31, 2023 (each a "**Cash Burn Measurement Date**"), the Company's and its Wholly Owned Subsidiaries' Available Cash on the Cash Burn Measurement Date shall be greater than or equal to (A) the Company's and its

Wholly Owned Subsidiaries' Cash and Cash Equivalents on the Quarterly Cash Burn Reference Date, less (B) the Permitted Quarterly Cash Burn.

(S) *Independent Investigation.* At the request of the Required Holders at any time the Required Holders have determined in good faith that (i) an Event of Default has occurred or (ii) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default but the Company has not timely agreed to such determination in writing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Required Holders to investigate as to whether such Event of Default or event or circumstance has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such Event of Default or event or circumstance has occurred, the Independent Investigator shall notify the Company of such Event of Default or occurrence of such event or circumstance and the Company shall promptly deliver written notice to the Holder of such Event of Default if such Event of Default has occurred. In connection with such investigation, the Independent Investigator may, during normal business hours and upon signing a confidentiality agreement in a form reasonably acceptable to the Company, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, any of the Company's officers, directors, key employees and independent public accountants (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

(T) Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York City time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this **Section 7(T)** shall limit any obligations of the Company, or any rights of the Holder, under the Securities Exchange Agreement.

(U) The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company, the Holder will not have any obligations hereunder except those obligations expressly set forth herein (and in the Securities Exchange Agreement) and the Holder is acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the Note and not as a fiduciary or agent of the Company. The Company agrees that it will not

assert any claim against the Holder based on an alleged breach of fiduciary duty by the Holder in connection with the Note. The Company acknowledges that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

(V) The Company shall cause this Note and any shares of Common Stock issuable pursuant to this Note to be eligible to be offered, sold or otherwise transferred by the Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" law, on and after the date that is six (6) months following the Issue Date. If this Note is to be transferred, the Holder shall notify the Company and surrender this Note to the Company (or provide the Company an affidavit in a form reasonably acceptable to the Company that this Note was lost, stolen or destroyed), whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note, registered as the Holder may request.

(W) So long as this Note remains outstanding, the Company shall at all times have access to an ATM Program, the terms of which have been approved by the Required Holders in accordance with the Securities Exchange Agreement with aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least ten million dollars ($10,000,000). On or before December 31, 2023, the Company shall establish a new ATM Program (or increase the Existing ATM Sales Program (as defined in the Securities Exchange Agreement)) such that the Company has an ATM Program with aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least seventy five million dollars ($75,000,000) as of December 31, 2023, and such ATM Program shall not be subsequently canceled, or amended or otherwise modified to reduce such amount, without the written consent of the Required Holders.

(X) The Company shall pay when due any and all fees and expenses owed by it under all deposit accounts located in the United States and subject to a control agreement entered into in favor of the Collateral Agent.

(Y) As of the Issue Date (which period may be extended in the reasonable discretion of the Collateral Agent), the Company or relevant Subsidiary of the Company shall have delivered to the Collateral Agent the Amendments to Security Documents, in form and substance satisfactory to the Collateral Agent, which create a first lien security interest in all assets of the Company including, but not limited to its intellectual property (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion) (the "**Collateral**") and shall perfect a first lien security interest in all such assets of the Company other than the Company's non-U.S. assets. As soon as reasonably practicable, but in any event before forty-five (45) days after the Issue Date of the Notes (which period may be extended in the reasonable discretion of the Collateral Agent), the Company or relevant Subsidiary of the Company shall deliver to the Collateral Agent (a) such additional security documents and/or amendments to existing security documents, in form and substance reasonably acceptable to the Collateral Agent (the "**Ancillary Security Documents**"), which perfect a first lien security interest in all remaining assets of the Company (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion) and (b) with respect to such Ancillary Security Documents, customary legal opinions relating to such

Ancillary Security Documents, in form and substance reasonably acceptable to the Collateral Agent.

(Z) At no time shall any Intellectual Property (regardless of the value of such Intellectual Property) or any other assets with a fair market value in excess of five million dollars ($5,000,000) in the aggregate be held by Subsidiaries of the Company formed in jurisdictions outside of the United States, unless the Holder shall have been previously granted a perfected first lien security interest in such assets pursuant to security documents, in form and substance reasonably acceptable to the Collateral Agent. Notwithstanding the foregoing, no assets shall be held by Subsidiaries of the Company formed in jurisdictions outside of the United States in the event that holding such assets in such Subsidiaries would be in violation of the Security Agreements as amended by the Amendments to Security Documents and the Ancillary Security Documents.

(AA) *Common Stock Issued Pursuant to this Note*.

(i) *Status of Shares Issued; Listing*. Each share of Common Stock delivered pursuant to this Note 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 the Holder or the Person to whom such share 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 share of Common Stock issued pursuant to this Note, when delivered, to be admitted for listing on such exchange or quotation on such system.

(ii) *Transferability of Shares Issued*. Any shares of Common Stock issued pursuant to this Note will be issued in the form of book-entries at the facilities of DTC, identified therein by an "unrestricted" CUSIP number.

Section 8. Successors.

The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person, other than the Holder or any of its Affiliates (a "**Business Combination Event**"), unless:

(A) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a corporation (the "**Successor Corporation**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that expressly assumes (by executing and delivering to the Holder and the Trustee, at or before the effective time of such Business Combination Event, a supplement to this instrument) all of the Company's obligations under this Note; and

(B) immediately after giving effect to such Business Combination Event, no Event of Default will have occurred that has not been waived and no Default will have occurred and be continuing which has not been waived.

At the effective time of any Business Combination Event, the Successor Corporation (if not the Company) will succeed to, and may exercise every right and power of, the Company under this Note with the same effect as if such Successor Corporation had been named as the Company in this Note, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Note.

This **Section 8** will not apply to a sale, assignment, transfer, lease, conveyance or other disposition of property or assets between or among any of the Company and its Wholly Owned Subsidiaries.

Upon the occurrence of any Business Combination Event, the Company shall deliver the supplemental indenture, officers' certificate and opinion of counsel contemplated pursuant to Section 5.1(b) of the Base Indenture.

Section 9. Defaults and Remedies

(A) *Events of Default*. "**Event of Default**" means the occurrence of any of the following (whose occurrence, for the avoidance of doubt, may be waived, but may not be cured):

(i) a default in the payment when due of a Partial Redemption Payment (or applicable portion thereof), the Principal Amount, the Maturity Principal Amount, a Cash Sweep Payment or the Fundamental Change Repurchase Price under this Note;

(ii) a default for two (2) Business Days in the payment when due of the interest on this Note;

(iii) a default in the Company's obligation to issue shares pursuant to this Note;

(iv) a default in the Company's obligation to timely deliver a Fundamental Change Notice pursuant to **Section 6(C)**, Cash Sweep Certification in accordance with the requirements of **Section 4(D)**, Partial Redemption Notice or Compliance Certificate, and such default continues for three (3) Business Days, or the delivery of a materially false or inaccurate Fundamental Change Notice, Cash Sweep Certification, Partial Redemption Notice or Compliance Certificate;

(v) any failure to timely deliver an Event of Default Notice or a materially false or inaccurate certification as to whether any Event of Default has occurred;

(vi) a default in any of the Company's obligations or agreements under this Note or the Transaction Documents (in each case, other than a default set forth in clauses **(i)** – **(v)** or **(vii)** – **(xviii)** of this **Section 9(A)**), or a breach of any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality qualifications, which may not be breached in any respect) of any Transaction Document as of the date when made (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date); *provided*, *however*, that if such default can be cured, then such default shall not be an Event of Default unless the Company has failed to cure such default within ten (10) days after its occurrence;

(vii) any provision of any Transaction Document at any time for any reason (other than pursuant to the express terms thereof) ceases to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof is contested, directly or indirectly, by the Company or any of its Subsidiaries, or a proceeding is commenced by the Company or any of its Subsidiaries or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof;

(viii) the Company fails to comply with any covenant set forth in **Section 7(D)**, **Section 7(E)**, **Section 7(F)**, **Section 7(G)**, **Section 7 (H)**, **Section 7 (J)**, **Section 7(P)**, **Section 7(Q)**, **Section 7(R)**, **Section 7(W)**, **Section 7(Y)** or **Section 7(Z)** of this Note;

(ix) the suspension from trading or failure of the Common Stock to be trading or listed on the Company's primary Eligible Exchange (measured in terms of trading volume for its Common Stock) on which the Common Stock is traded for a period of three (3) consecutive Trading Days;

(x) (i) the failure of the Company or any of its Subsidiaries to pay when due or within any applicable grace period any Indebtedness having an individual principal amount in excess of at least two hundred fifty thousand dollars ($250,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such Indebtedness exists as of the Issue Date or is thereafter created, and whether such default has been waived for any period of time or is subsequently cured; or (ii) the occurrence of any breach or default under any terms or provisions of any other Indebtedness of at least two hundred fifty thousand dollars ($250,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such indebtedness, to cause, Indebtedness having an individual principal amount in excess of two hundred fifty thousand dollars ($250,000) to become or be declared due prior to its stated maturity;

(xi) one or more final judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of at least two hundred fifty thousand dollars ($250,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance pursuant to which the insurer has been notified and has not denied coverage), is rendered against the Company or any of its Subsidiaries and remains unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of ten (10) consecutive Trading Days after entry thereof during which (A) a stay of enforcement thereof is not in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(xii) (A) the Company fails to timely file its quarterly reports on Form 10-Q or its annual reports on Form 10-K with the Commission in the manner and within the time periods required by the Exchange Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the Exchange Act shall be considered timely for this purpose), or (B) the Company withdraws or restates any such quarterly report or annual report previously filed with the Commission or (C) as long as any Notes remain outstanding, the Company at any time ceases to satisfy the eligibility requirements set forth under Section I.A of the General Instructions to Form S-3;

(xiii) In violation of **Section 7(Y)**, any security document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral, in each case, in favor of the Collateral Agent in accordance with the terms thereof, or any material provision of any such security document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xiv) any material damage to, or loss, theft or destruction of, any material portion of the Collateral (provided that any damage, loss, theft or destruction of the Collateral that reduces the value of such Collateral by two hundred and fifty thousand dollars ($250,000) or more shall be deemed to be material), whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of the Company or any Subsidiary, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect (as defined in the Securities Exchange Agreement). For clarity, an Event of Default under this **Section 9(A)(xiv)** will not require any curtailment of revenue;

(xv) at any time the shares of Common Stock issuable pursuant to this Note are not Freely Tradeable.

(xvi) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(3) consents to the appointment of a custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

(xvii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

(1) is for relief against Company or any of its Significant Subsidiaries in an involuntary case or proceeding;

(2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;

(3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(4) grants any similar relief with respect to the Company or any of its Significant Subsidiaries under any foreign Bankruptcy Law,

and, in each case under this **Section 9(A)(xvi)**, such order or decree remains unstayed and in effect for at least thirty (30) days.

(xviii) the Company's stockholders approve any plan for the liquidation or dissolution of the Company

(B) *Acceleration.*

(i) *Automatic Acceleration in Certain Circumstances*. If an Event of Default set forth in **Section 9(A)(xvi)** or **Section 9(A)(xvii)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the then outstanding portion of the Maturity Principal Amount of, and all accrued and unpaid interest on, this Note will immediately become due and payable without any further action or notice by any Person.

(ii) *Optional Acceleration*. If an Event of Default (other than an Event of Default set forth in **Section 9(A)(xvi)** or **Section 9(A)(xvii)** with respect to the Company and not solely with respect to a Subsidiary of the Company) occurs and has not been waived by the Holder, then the Holder, by notice to the Company, may declare this Note (or any portion thereof) to become due and payable on the Business Day immediately following the date of such notice for cash in an amount equal to the Event of Default Acceleration Amount.

(C) *Notice of Events of Default*. Promptly, but in no event later than one (1) Business Day after an Event of Default, the Company will provide written notice of such Event of Default to the Holder and the Trustee (an "**Event of Default Notice**"), which Event of Default Notice shall include (i) a reasonable description of the applicable Event of Default, (ii) the date on which the Event of Default occurred and (iii) the date on which the Default underlying such Event of Default initially occurred, if different than the date on which the Event of Default occurred.

(D) *Default Interest*. If a Default or an Event of Default occurs, then in each case, to the extent lawful, interest ("**Default Interest**") will automatically accrue on the Principal Amount outstanding as of the date of such Default or Event of Default at a rate per annum equal to twelve percent (12.0%), from, and including, the date of such Default or Event of Default, as applicable, to, but excluding, the date such Default is cured and all outstanding Default Interest under this Note has been paid. Default Interest hereunder will be computed on the basis of a 360-day year comprised of twelve 30-day months and will be payable in arrears on the earlier of (i) the first day of each calendar month, (ii) the date such Default is cured, (iii) any Fundamental Change Repurchase Date or any date that an Event of Default Acceleration Amount is paid by the Company to the Holder, and (iv) the Maturity Date.

Section 10. Registrar and Paying Agent.

Notwithstanding Section 2.4 of the Base Indenture, the Company hereby appoints itself as the Paying Agent for this Note. In connection with this Note, all references in the Base Indenture to the Trustee as the Paying Agent (including, without limitation, the obligation of the Paying Agent to hold assets in trust under Section 2.5 of the Base Indenture), shall instead be obligations of the Company in its capacity as Paying Agent.

Section 11. Ranking.

All payments due under this Note shall rank (i) *pari passu* with all Other Notes and all Subsequently Purchased Notes, (ii) effectively senior to all unsecured obligations of the Company to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iii) senior to any Subordinated Indebtedness.

Section 12. Replacement Notes.

If the Holder of this Note claims that this Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver a replacement Note upon surrender to the Company of such mutilated Note, or upon delivery to the Company of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company may require the Holder to provide such security or an indemnity that is reasonably satisfactory to the Company to protect the Company and to the Trustee to protect the Trustee from any loss that it may suffer if this Note is replaced.

Section 13. Notices.

Any notice or communication to the Company will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), electronic transmission (including e-mail) or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

Velo3D, Inc.
511 Division Street
Campbell, CA 95008
Attention: Bernard Chung
Email address: bernard.chung@velo3d.com

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

Fenwick & West LLP
902 Broadway
New York, NY 10010
Attention: Per Chilstrom
Email address: pchilstrom@fenwick.com

Notice to the Trustee shall be delivered as set forth in Section 9.2 of the Base Indenture.

The Company, by notice to the Holder, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to the Holder will be by e-mail to its e-mail address, which initially are as set forth in the Securities Exchange Agreement. The Holder, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

If a notice or communication is mailed in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Section 14. Successors and Assigns.

All agreements of the Company in this Note will bind its successors and will inure to the benefit of the Holder's successors and assigns.

Section 15. Severability.

If any provision of this Note is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Note will not in any way be affected or impaired thereby.

Section 16. Headings, Etc.

The headings of the Sections of this Note have been inserted for convenience of reference only, are not to be considered a part of this Note and will in no way modify or restrict any of the terms or provisions of this Note.

Section 17. Amendments

Except as set forth in Section 7.2(a) of the Base Indenture, this Note may not be amended or modified unless in writing by the Company, the Trustee and the Required Holders, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. Notwithstanding the foregoing, the Company and the Trustee may amend or modify this Note, and may waive any provision hereof, without notice to or consent of the Holder or any Other Holder to provide for the assumption by a Successor Corporation of the obligations of the Company under this Note in accordance with **Section 8**. Section 7.1 of the Base Indenture shall not be applicable in connection with this Note.

Section 18. Governing Law; Waiver of Jury Trial.

All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company and each Holder hereby irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder or to enforce a judgment or other court ruling in favor of such Holder. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

Section 19. Submission to Jurisdiction.

The Company (A) agrees that any suit, action or proceeding against it arising out of or relating to this Note may be instituted in the Court of Chancery of the State of Delaware; (B) waives, to the fullest extent permitted by applicable law, (i) any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding; and (ii) any claim that it may now or hereafter have that any such suit, action or proceeding in such a court has been brought in an inconvenient forum; and (C) submits to the nonexclusive jurisdiction of such court in any such suit, action or proceeding.

Section 20. Enforcement Fees.

The Company agrees to pay all costs and expenses of the Holder incurred as a result of enforcement of this Note and the collection of any amounts owed to the Holder hereunder (whether in cash, Common Stock or otherwise), including, without limitation, reasonable and documented attorneys' fees and expenses.

Section 21. Collateral Agent.

(A) *Appointment; Authorization.* The Holder and the Trustee, together with any successors or assigns thereof, hereby irrevocably appoint, designate and authorize High Trail Investments ON LLC as collateral agent to take such action on their behalf under the provisions of this Note, each Security Agreement and to exercise such powers and perform such duties as are expressly delegated to it by the terms of each Security Agreement, together with such powers as are reasonably incidental thereto. The provisions of this **Section 21** are solely for the benefit of the Collateral Agent, and the Company shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any Security Agreement (or any other similar term) with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Notwithstanding any provision to the contrary contained elsewhere in this Note, any Security Agreement or any other agreement, instrument or document related hereto or thereto, the Collateral Agent shall not have any duty or responsibility except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Note, any Security Agreement or any other agreement, instrument or document related hereto or thereto or otherwise exist against the Collateral Agent. The Collateral Agent shall act hereunder and under the Security Documents in accordance with the provisions of this Note and the Security Documents pursuant to the direction of the Required Holders or the Trustee.

(B) *Delegation of Duties.* The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any Security Agreement by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through its Affiliates, partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives, or the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of any of its Affiliates (collectively, the "**Related Parties**"). The exculpatory provisions of this **Section 21** shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(C) *Exculpatory Provisions.*

(i) The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Security Agreements, and its duties shall be administrative in nature. Without limiting the generality of the foregoing, the Collateral Agent: (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing or an Event of Default has occurred; (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers; and (iii) shall not, except as expressly set forth in the Security Agreements, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity.

(ii) The Collateral Agent shall not be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by the Company.

(iii) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with this Notes, any Security Agreement or any other agreement, instrument or document related hereto or thereto, (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (d) the validity, enforceability, effectiveness or genuineness of this Note, any Security Agreement or any other agreement, instrument or document related hereto or thereto, or (e) any failure of the Company or any other party to this Note, any Security Agreements or any other agreement, instrument or document related hereto or thereto to perform its obligations hereunder or thereunder. The Collateral Agent shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Note, any Security Agreement or any other agreement, instrument or document related to the hereto or thereto, or to inspect the properties, books or records of the Company or any Affiliate of the Company.

(D) *Reliance by Collateral Agent.* The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(E) *Successor Agent.* The Collateral Agent may resign as the Collateral Agent at any time upon ten (10) days' prior notice to the Holder and each Other Holder and the Company. If the Collateral Agent resigns under this Note, the Required Holders shall appoint a successor agent. If no successor agent is appointed prior to the effective date of the resignation of the Collateral Agent, the Collateral Agent may appoint a successor Collateral Agent on behalf of the Holder and each Other Holder after consulting with the Holder and each Other Holder. Upon the

acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the term "the Collateral Agent" shall mean such successor agent, and the retiring Collateral Agent's appointment, powers and duties as the Collateral Agent shall be terminated. After the Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this **Section 21** shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Collateral Agent. If no successor agent has accepted appointment as the Collateral Agent by the date which is thirty (30) days following a retiring Collateral Agent's notice of resignation, a retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Holder, together with each Other Holder, shall perform all of the duties of the Collateral Agent hereunder until such time as the Required Holders shall appoint a successor agent as provided for above.

(F) *Non-Reliance on the Collateral Agent.* The Holder acknowledges that it has, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information it has deemed appropriate, made its own credit analysis and decision to enter into this Note. The Holder also acknowledges that it will, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Note, any Security Agreement or any related agreement or any document furnished hereunder or thereunder.

(G) *Collateral Matters.* The Holder irrevocably authorizes the Collateral Agent to release any Lien granted to or held by the Collateral Agent under any Security Agreement (i) when all Obligations have been paid in full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted under this Note and each other agreement, instrument or document related hereto (it being agreed and understood that the Collateral Agent may conclusively rely without further inquiry on a certificate of an officer of the Company as to the sale or other disposition of property being made in compliance with this Note and each other agreement, instrument or document related hereto); or (iii) if approved, authorized or ratified in writing by the Holder and each Other Holder. The Collateral Agent shall have the right, in accordance with the Security Agreements to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and the Collateral Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and setoff the amount of such price against the Obligations.

(H) *Reimbursement by Holder and Other Holders.* To the extent that the Company for any reason fails to indefeasibly pay any amount required under Sections 4(g) or 9(k) of the Securities Exchange Agreement to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of the Collateral Agent (or any sub-agent thereof), the Holder hereby agrees, jointly and severally with each Other Holder, to pay to the Collateral Agent (or any such sub-agent) or such Related Party of the Collateral Agent (or any sub-agent thereof), as the case may be, such unpaid amount.

(I) *Marshaling; Payments Set Aside.* Neither the Collateral Agent nor the Holder shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of any or all of the Obligations. To the extent that the Company makes a payment or payments to the Collateral Agent, or the Collateral Agent enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Collateral Agent in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (i) to the

extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (ii) the Holder agrees to pay to the Collateral Agent upon demand its share of the total amount so recovered from or repaid by the Collateral Agent to the extent paid to the Holder.

(J) *Payment Priorities.* If the Collateral Agent receives any proceeds of Collateral, the Collateral Agent shall deliver such proceeds to the Trustee for application in accordance with Section 6.10 of the Base Indenture.

Section 22. Calculations.

Except as otherwise expressly provided herein, the Collateral Agent shall be responsible for making all calculations called for under this Note or the Indenture. These calculations include, but are not limited to, determinations of the Cash Sweep Amount, Daily VWAPs, Fundamental Change Repurchase Price, Event of Default Acceleration Amount, Market Stock Payment Price, Partial Redemption Payments, and accrued interest on the Notes. The Collateral Agent shall make all these calculations in good faith and, absent manifest error, the Collateral Agent's calculations shall be final and binding on the Company and the Trustee. The Collateral Agent shall provide a schedule of its calculations to each of the Trustee, the Company and the Paying Agent (if no longer the Company), and the Trustee is entitled to rely conclusively upon the accuracy of the Collateral Agent's calculations without independent verification. The Collateral Agent shall forward its calculations to the Holder upon the request of that Holder at the sole cost and expense of the Company. For the avoidance of doubt, the Trustee shall have no obligation to calculate or verify the calculation of the accrued and unpaid interest on the Notes. The Trustee shall not be responsible for the Company's failure to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the Company's duties, responsibilities or covenants hereunder.

The following provisions of the Base Indenture are not applicable to this Note, unless so required pursuant to applicable law: Section 2.15, Article 3, Section 4.3, Section 4.5, Article 5, Section 6.1 through Section 6.4, Section 8.1 and Section 8.2.

Section 23. Trust Indenture Act.

If any provision of this Note contravenes the mandatory provisions of the Trust Indenture Act, the provisions of the Trust Indenture Act shall govern and control. The provisions of Section 316(a)(1) of the Trust Indenture Act shall be excluded for the purposes of the Note and shall instead be governed by the terms hereof.

Section 24. Electronic Execution.

The words "execution," "signed," "signature," and words of similar import in the Note shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity, and enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S.C. §§ 7001-7006), the Electronic Signatures and Records Act of 1999 (N.Y. State Tech. §§ 301-309), or any other similar state laws based on the Uniform Electronic Transactions Act. All notices, approvals, consents, requests and any communications hereunder must be in writing (provided that any such communication sent to the Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in

writing to the Trustee by the authorized representative)), in English. The Company agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

* * *

Exhibit A

Form of Covenant Compliance Certificate

The undersigned, the duly qualified and elected Chief Financial Officer of Velo3D, Inc., a Delaware corporation (the "**Company**"), does hereby certify in such capacity and on behalf of the Company, pursuant to the Senior Secured Convertible Note due 2026, issued [ ], 20[ ] (the "**Note**"), issued by the Company to [ ], that:

(i) the Company satisfied the requirements of **Section 7(D)** of the Note during the [calendar month ended [ ]][period beginning on [ ] and ending on [ ]].[3]

(ii) the Company satisfied the requirements of **Section 7(E)** of the Note during the [calendar month ended [ ]][period beginning on [ ] and ending on [ ]].

(iii) the Company satisfied the requirements of **Section 7(G)** of the Note during the [calendar month ended [ ]][period beginning on [ ] and ending on [ ]].

(iv) the Company satisfied the requirements of **Section 7(J)(i)** of the Note during the calendar month ended [ ][period beginning on [ ] and ending on [ ]].

(v) the Company satisfied the requirements of **Section 7(W)** of the Note during the calendar month ended [ ][period beginning on [ ] and ending on [ ]].

(vi) the Company satisfied the requirements of **Section 7(R)** of the Note during the calendar month ended [ ][period beginning on [ ] and ending on [ ]].

(vii) the Company satisfied the requirements of **Section 7(Z)** of the Note during the calendar month ended [ ][period beginning on [ ] and ending on [ ]].

Capitalized terms used herein without definition shall have the meanings given to such terms in the Note.

VELO3D, INC.
By:
Name:
Title:

Date: _____

[3] NTD: Include this bracketed language for (i)-(vii) if the period is anything other than a month.

Exhibit 10.1

Certain information in this document indicated with "[*]" has been omitted from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

SECURITIES EXCHANGE AGREEMENT

This **SECURITIES EXCHANGE AGREEMENT** (the "**Agreement**"), dated as of November 27, 2023, is by and among Velo3D, Inc., a Delaware corporation with offices located at 511 Division Street, Campbell, CA 95008 (the "**Company**"), and each of the investors listed on the Schedule of Holders attached hereto (individually, a "**Holder**" and collectively, the "**Holders**").

RECITALS

A. The Company has authorized a new series of Senior Secured Notes in the form attached hereto as **Exhibit A** (the "**Exchange Notes**"), which such Exchange Notes shall under certain circumstances entitle the Holders to receive shares of the Company's common stock, par value $0.00001 per share (together with any capital stock into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock, the "**Common Stock**") (such underlying shares of Common Stock issuable pursuant to the terms of the Exchange Notes, the "**Exchange Note Shares**"). The Exchange Notes will be issued pursuant to that certain Base Indenture (the "**Base Indenture**"), dated as of August 14, 2023, as supplemented by the Second Supplemental Indenture substantially in the form attached hereto as **Exhibit B**, to be dated as of the Closing Date (as defined below) (together with the Base Indenture, the "**Indenture**"), in each case between the Company and U.S. Bank Trust Company, National Association, as trustee (in such capacity, together with its successors and permitted assigns, the "**Trustee**").

B. Each Holder is the beneficial owner of such outstanding principal amount of Senior Secured Convertible Notes due 2026 set forth opposite such Holder's name in column (3) on the Schedule of Holders (each, a "**Prior Note**" and collectively, the "**Prior Notes**") issued by the Company pursuant to that certain Securities Purchase Agreement, dated August 10, 2023 (as amended by First Amendment to Securities Purchase Agreement, dated as of the Closing Date, the "**Prior SPA**"), on August 14, 2023 (the "**Prior Closing Date**").

C. At or before the Closing (as defined below), the parties set forth on the Schedule of Voting Agreement Parties attached hereto shall execute and deliver a Voting Agreement, in the form attached hereto as **Exhibit D** (each, a "**Voting Agreement**") pursuant to which such parties agree to vote their shares of the Company's Common Stock in favor of providing the Requisite Stockholder Approval (as defined in the Exchange Notes).

D. Pursuant to the Prior SPA, each Holder and the Company entered into transaction documents, which included the Prior SPA, the Prior Notes, that certain Security Agreement, dated as of August 14, 2023 (the "**Main Security Agreement**"), by and among the Company, each of the subsidiaries of the Company thereto and High Trail Investments ON LLC, a Delaware limited liability company (the "**Initial Collateral Agent**"), in its capacity as collateral agent for the benefit of the Holders, that certain Intellectual Property Security Agreement, dated as of August 14, 2023, by and among the Company, each of the subsidiaries of the Company thereto and the Initial Collateral Agent (the "**IP Security Agreement**" and together with the Main Security Agreement, the "**Security Agreements**"), the Security Documents (as defined in the Main Security Agreement), the Irrevocable Transfer Agent Instructions (in this instance, as defined in the Prior SPA) and each of the other written agreements and instruments entered into or delivered by any of the parties thereto in connection with the transactions contemplated thereby, as may be amended from time to time (the "**Prior Transaction Documents**").

E. Each Holder and the Company wish to exchange such outstanding principal amount of Prior Notes set forth opposite such Holder's name in column (6) of the Schedule of Holders for (i) the principal amount of Exchange Notes set forth opposite such Holder's name in column (7) on the Schedule of Holders and (ii) the aggregate amount of Exchange Shares (as defined below) set forth such Holder's name in column (8) on the Schedule of Holders, and the Company shall pay to such Holder all accrued and unpaid interest (which such interest rate shall be at the Default Interest (as defined in the Prior Notes) rate and accrue as of October 1, 2023), to, and including, the Closing Date, on such amount of principal being exchanged.

F. Prior to the Closing, both parties agree that, notwithstanding anything to the contrary set forth in the Prior Notes, the Company shall make a payment under the Prior Notes, and the Holders shall have received such payment, at the cash redemption price of one hundred twenty percent (120%), representing a total cash payment in the aggregate cash amount as set forth opposite such Holder's name in column (5), along with all accrued but unpaid interest (which such interest rate shall be at the Default Interest rate and accrue as of October 1, 2023), to, and including the Closing Date, on such amount of principal being repaid (the "**Prior Note Pay Down**"), and such Prior Note Pay Down shall decrease the principal amount of the Prior Note in the amount as set forth opposite such Holder's name in column (4).

G. Furthermore, at the Closing, the parties hereto shall execute and deliver amendments to (i) the Main Security Agreement in the form attached hereto as **Exhibit C-1** and (ii) the IP Security Agreement in the form attached hereto as **Exhibit C-2** (clause (i) and (ii), collectively, the "**Amendments to Security Documents**"), pursuant to which the Company has agreed to grant a first priority security interest to the Collateral Agent (as defined in the Exchange Notes), as collateral agent for the holders of the Exchange Notes in all assets of the Company.

H. The Exchange Notes, the Exchange Shares and the Exchange Note Shares are collectively referred to herein as the "**Securities**."

I. The Company and each Holder is executing and delivering this Agreement with respect to the Exchange Securities in reliance upon the exemptions from securities registration afforded by Section 3(a)(9) of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the "**1933 Act**").

J. The effective time of this Agreement shall be 6:30 p.m. New York time, on the date of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each Holder hereby agree as follows:

1. EXCHANGE OF PRIOR NOTES.

(a) Exchange of Prior Notes for Exchange Securities. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7, as applicable, the Company shall issue to each Holder, in exchange for the aggregate principal amount of Prior Notes as set forth opposite

such holder's name in column (6) on the Schedule of Holders, the following securities (collectively, the "**Exchange Securities**"):

(i) an Exchange Note in the aggregate principal amount of Exchange Notes as set forth opposite such Holder's name in column (7) on the Schedule of Holders; and

(ii) shares of Common Stock as set forth opposite such Holder's name in column (8) on the Schedule of Holders (the "**Exchange Shares**").

(b) Closing. The closing (the "**Closing**") of the exchange of the Exchange Securities by the Company and the Holders shall occur by electronic transmission or other transmission as mutually acceptable to the parties. The date and time of the Closing (the "**Closing Date**") shall be 10:00 a.m., New York time, on November 28, 2023; provided, that the conditions to the Closing set forth in Sections 6 and 7 shall be satisfied or waived (or such other date as is mutually agreed to by the Company and each Holder). As used herein "**Business Day**" means any day other than a Saturday, a Sunday or any day on which commercial banks in the City of New York are authorized or required by law or executive order to close or be closed; *provided*, *however*, for clarification, commercial banks in the City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in the City of New York are open for use by customers on such day.

(c) Exchange of Prior Notes for Exchange Securities. On the Closing Date, (i) each Holder shall have tendered the aggregate principal amount of Prior Notes as set forth opposite such Holder's name in column (6) for exchange, and (ii) the Company shall deliver to each Holder (a) the Exchange Notes in the aggregate principal amount as is set forth opposite such Holder's name in column (7) on the Schedule of Holders, duly executed on behalf of the Company and registered on the books and records of the Company in the name of such Holder or its designee, (b) the Exchange Shares in the aggregate amount as is set forth opposite such Holder's name in column (8) on the Schedule of Holders, duly executed on behalf of the Company and registered on the books and records of the Company in the name of such Holder or its designee and (c) any interest then accrued on the aggregate principal amount of the Prior Notes (which such interest rate shall be at the Default Interest rate and accrue as of October 1, 2023) being exchanged and repaid pursuant to this Agreement.

2. HOLDERS' REPRESENTATIONS AND WARRANTIES.

Each Holder, severally and not jointly, represents and warrants to the Company with respect to only itself that, as of the date hereof and as of the Closing Date:

(a) Organization; Authority. Such Holder is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to conduct its business as currently conducted and enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) Information. Such Holder and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating

to the exchange of the aggregate principal amount of the Prior Notes for the Exchange Notes (the "**Exchange**") that have been requested by such Holder. Such Holder and its advisors, if any, have had (i) the opportunity to review the Transaction Documents and the SEC Documents (as defined below) and has been afforded the opportunity to ask such questions of the Company as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the Exchange and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other due diligence investigations conducted by such Holder or its advisors, if any, or its representatives shall modify, amend or affect such Holder's right to rely on the Company's representations and warranties contained herein. Such Holder understands that its investment in the Securities involves a high degree of risk. Such Holder acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby. Such Holder did not learn of the investment in the Securities as a result of any general solicitation or general advertising. Such Holder has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities. Such Holder is not relying upon, and has not relied upon, any statement, representation or warranty made by any person, except for statements, representations and warranties contained in this Agreement, in making its decision to invest in the Company.

(c) No Governmental Review. Such Holder understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the Exchange.

(d) Validity; Enforcement. This Agreement has been duly and validly authorized, executed and delivered on behalf of such Holder and shall constitute the legal, valid and binding obligations of such Holder enforceable against such Holder in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(e) No Conflicts. The execution, delivery and performance by such Holder of this Agreement and the consummation by such Holder of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Holder, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Holder is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Holder, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Holder to perform its obligations hereunder.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Holders that, as of the date hereof and as of the Closing Date:

(a) Compliance with Registration Requirements. The registration statement on Form S-3 (Commission File No. 333-268346) (as amended, the "**Registration Statement**") has become effective under the 1933 Act. The Company has complied, to the United States Securities and Exchange Commission's (the "**SEC**") satisfaction with all requests of the SEC for additional or supplemental information, if any. As of the Prior Closing Date, no stop order suspending the effectiveness of the Registration Statement was in effect and no proceedings for such purpose had been instituted or, to the knowledge of the Company, were pending or contemplated or threatened by the SEC. At the time each of the Registration Statement and the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (the "**2022 Annual Report**") was filed with the SEC, the Company met the then-applicable requirements for use of Form S-3 under the 1933 Act. The documents incorporated or deemed to be incorporated by reference in the Registration Statement through the Prior Closing Date, at the time they were filed with the SEC, or became effective under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), as the case may be, complied with in all material respects with the requirements of the 1934 Act.

(b) Disclosure. The prospectus supplement and accompanying base prospectus (together, the "**Prospectus Supplement**") that was delivered by the Company to the Holders in connection with the execution and delivery of the Prior SPA, including the documents incorporated by reference therein, when filed with the SEC, complied in all material respects with the 1933 Act. Each of the Registration Statement and any post-effective amendment thereto through the Prior Closing Date, at the time it became effective, complied in all material respects with the 1933 Act and the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (collectively, the "**Trust Indenture Act**"), and did not, and at the Prior Closing Date did not, contain any 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; *provided*, that the Company makes no representation or warranty with respect to that part of the Registration Statement that constitutes the Statement of Eligibility and Qualification (Form T-1) of the Trustee under the Trust Indenture Act. The Base Indenture, when filed with the SEC, complied in all material respects with the requirements of the Trust Indenture Act and was duly qualified as an indenture under the Trust Indenture Act. The Prospectus Supplement (including any prospectus wrapper), as of its date, did not, and at the Prior Closing Date, did not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. There are no contracts or other documents required to be described in the Prospectus Supplement or to be filed as an exhibit to the Registration Statement as of the Prior Closing Date which have not been described or filed as required. Except for the event of default related to the minimum revenue covenant for the quarter ended September 30, 2023 under Section 8(V) of the Prior Notes (the "**EOD**"), no event, liability, development or circumstance has occurred or exists, or is reasonably expected to exist or occur with respect to the Company, any of its Subsidiaries (as defined below) or any of their respective businesses, properties, liabilities, prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-3 filed with the SEC relating to an issuance and sale by the Company of any shares of Common Stock and which has not been publicly announced, (ii) could

have a material adverse effect on any Holder's investment hereunder or (iii) could have a Material Adverse Effect (as defined below).

(c) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing (if a good standing concept exists in such jurisdiction) under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing (if a good standing concept exists in such jurisdiction) in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect. As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or its Subsidiaries, taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments entered into in connection herewith or therewith or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Transaction Documents. Other than the Persons (as defined below) set forth on Schedule 3(c), the Company has no significant Subsidiaries within the meaning of Rule 1-02(w) of Regulation S-X. The Company's Permitted Investments (as defined in the Notes) are also set forth on Schedule 3(c). "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary.**" For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity (as defined below) or any department or agency thereof.

(d) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. Each Subsidiary has the requisite power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party. The execution and delivery of this Agreement and the other Transaction Documents by the Company, and the consummation by the Company and its Subsidiaries of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Exchange Notes and Exchange Shares and the reservation for issuance and the issuance of the Exchange Note Shares issuable pursuant to the Exchange Notes), have been duly authorized by the Company's board of directors (the "**Board of Directors**") or a duly authorized committee thereof, and (other than (i) such filings, consents or authorizations as have been obtained, taken, given or made, (ii) any filings as may be required by any state securities agencies, (iii) a Supplemental Listing Application with NYSE (as defined below) and (iv) filings as may be required in connection with obtaining the Requisite Stockholder Approval (clauses (i) through (iv), collectively, the "**Required Filings**"), no further filing, consent or authorization is required by the Company, its Subsidiaries, their respective boards of directors or their stockholders (other than the Requisite Stockholder Approval) or other governing body in connection therewith. This Agreement has been, and the other Transaction Documents to which it is a party will be duly executed and delivered by the Company prior to the Closing, and each constitutes a legal, valid and binding obligation of the Company,

enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law (the "**Enforceability Exceptions**"). "**Transaction Documents**" means, collectively, this Agreement, the Exchange Notes, the Amendments to Security Documents, the Security Agreements, the Indenture, each Voting Agreement, and the Irrevocable Transfer Agent Instructions (as defined below), the Prior Transaction Documents (to the extent not previously listed herein) and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

(e) Issuance of Securities. The issuance of the Securities is duly authorized and when issued and delivered in accordance with the terms of the Transaction Documents, the Securities shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Liens**") with respect to the issuance thereof. As of the Closing Date, the Company shall have not less than a number of authorized but unissued shares of Common Stock equal to one hundred million (100,000,000) shares of Common Stock, which shall not be exclusively reserved for issuance pursuant to the Exchange Notes. The Exchange Note Shares (upon issuance in accordance with the Exchange Notes) and Exchange Shares, will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights or Liens with respect to the issuance thereof, with the holders being entitled to all rights accorded to a holder of Common Stock.

(f) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Securities, and the reservation of Common Stock for issuance of the Exchange Note Shares) will not (i) result in a violation of the Certificate of Incorporation (as defined below), Bylaws (as defined below), certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Company or any of its Subsidiaries, or any capital stock or other securities of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) assuming the accuracy of the representations and warranties in Section 2, result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations, and the rules and regulations of The New York Stock Exchange ("**NYSE**") and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, assuming, with respect to clauses (ii) and (iii) above, the making of the Required Filings and except in the case of clauses (ii) and (iii) above, for such breaches, violations or conflicts as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(g) Consents. Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the

Required Filings, filings necessary to perfect the Liens granted under the Security Documents, as amended by the Amendments to Security Documents, and such consents, authorizations, filings or registrations the absence of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect), any Governmental Entity or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. Other than the Required Filings, all consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the Closing Date, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents. The Company is not in violation of the requirements of NYSE and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of the Common Stock. "**Governmental Entity**" means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

(h) Acknowledgment Regarding Holder's Acquisition of Securities. The Company acknowledges and agrees that each Holder is acting solely in the capacity of an arm's length acquiror with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Holder is (i) an officer or director of the Company or any of its Subsidiaries, (ii) an "affiliate" (as defined in Rule 144 promulgated under the 1933 Act (or a successor rule thereto), collectively, "**Rule 144**") of the Company or any of its Subsidiaries or (iii) to its knowledge, a "beneficial owner" (as defined for purposes of Rule 13d-3 of the 1934 Act) of more than 4.99% of the shares of any voting class of the Company's Common Stock. The Company further acknowledges that no Holder is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Holder or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Holder's acquisition of the Securities. The Company further represents to each Holder that the Company's and each Subsidiary's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company, each Subsidiary and their respective representatives.

(i) No Placement Agent. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Holder or its investment advisor) relating to or arising out of the transactions contemplated hereby. Neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the Exchange. Neither the Company not any of its Subsidiaries has paid or given, directly or indirectly, any commission or other remuneration for soliciting the Exchange. The Company shall pay, and hold each Holder harmless against, any liability, loss or expense (including, without limitation, attorney's fees and reasonable and

documented out-of-pocket expenses) arising in connection with any claim for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Holder) relating to or arising out of the transactions contemplated hereby.

(j) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on 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 require approval of stockholders of the Company in connection with the offering of the Securities for purposes of the 1933 Act or under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, its Subsidiaries, their affiliates nor any Person acting on their behalf has taken or will take any action or steps that would cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(k) Dilutive Effect. The Company understands and acknowledges that the number of Exchange Note Shares will increase in certain circumstances. The Company further acknowledges that its obligation to issue the Exchange Note Shares pursuant to the terms of the Exchange Notes and the Exchange Shares, each in accordance with the terms thereof and this Agreement, is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(l) Application of Takeover Protections. The Company and its Board of Directors or a duly authorized committee thereof have taken or will take prior to the Closing Date all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination, poison pill, stockholder rights plan or other similar anti-takeover provision under the Certificate of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation which is or could become applicable to any Holder as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Holder's ownership of the Securities.

(m) Financial Statements. During the one (1) year prior to the date hereof and the Closing Date, the Company has timely filed all reports, schedules, forms, proxy statements, statements and other documents required to be filed by it with the SEC (other than Section 16 ownership filings) pursuant to the reporting requirements of the 1934 Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the 1934 Act shall be considered timely for this purpose) (all of the foregoing filed prior to the date hereof and the Closing Date and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The Company has delivered or has made available to the Holders or their respective representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published

rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). No other information provided by or on behalf of the Company to any of the Holders which is not included in the SEC Documents (including, without limitation, information referred to in the disclosure schedules to this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the "**Financial Statements**"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financials Statements to be in material compliance with GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent auditors that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(n) Absence of Certain Changes. Since the date of the Company's audited financial statements contained in the 2022 Annual Report, other than the EOD, there has been no Material Adverse Effect. Since the date of the Company's audited financial statements contained in the 2022 Annual Report, except as set forth on Schedule 3(n), neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business, (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business or (iv) made any revaluation of any of their respective assets, including, without limitation, writing down the value of capitalized inventory or writing off notes or accounts receivable or any sale of assets other than in the ordinary course of business.

(o) Insolvency. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any Subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact (other than the EOD) which would reasonably lead a creditor to do so. Assuming that the Holders do not accelerate the Prior Notes as a result of the EOD, the Company and its Subsidiaries, individually and on a consolidated basis, are not as of the date hereof and the Closing Date, and after giving effect to the transactions contemplated hereby to occur on the Closing Date, will not be Insolvent (as defined below). For purposes of this Section 3(o), "**Insolvent**" means, (i) with respect to the Company and its Subsidiaries, on a consolidated basis, (A) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total Indebtedness (as defined below), (B) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company and its Subsidiaries intend to

incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature; and (ii) with respect to the Company and each Subsidiary, individually, (A) the present fair saleable value of the Company's or such Subsidiary's (as the case may be) assets is less than the amount required to pay its respective total Indebtedness, (B) the Company or such Subsidiary (as the case may be) is unable to pay its respective debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company or such Subsidiary (as the case may be) intends to incur or believes that it will incur debts that would be beyond its respective ability to pay as such debts mature.

(p) Listing and Trading. Regulatory Permits. Since September 30, 2021, (i) the Common Stock has been listed or designated for quotation on NYSE, (ii) trading in the Common Stock has not been suspended by the SEC or NYSE and (iii) the Company has received no communication, written or oral, from the SEC or Nasdaq regarding the suspension or delisting of the Common Stock from NYSE. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not reasonably be likely to have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(q) Foreign Corrupt Practices. Neither the Company, any of the Company's Subsidiaries, nor any director or officer thereof, nor, to the Company's knowledge, any employee or agent or any other person acting for or on behalf of the foregoing (individually and collectively, a "**Company Affiliate**") have violated the U.S. Foreign Corrupt Practices Act or any other applicable anti-bribery or anti-corruption laws (individually and collectively, "**Anti-Corruption Laws**"), nor, to the Company's knowledge, has any Company Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "**Government Official**") or to any person under circumstances where such Company Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or

(ii) assisting the Company or its Subsidiaries in obtaining or retaining business for or with, or directing business to, the Company or its Subsidiaries.

Neither of the Company nor any of its Subsidiaries will use, directly or indirectly, any part of the proceeds of the offering in any manner that would constitute a violation of Anti-Corruption Laws.

(r) Sarbanes-Oxley Act. The Company and each of its Subsidiaries is in material compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, and any and all applicable rules and regulations promulgated by the SEC thereunder.

(s) Transactions With Affiliates. Except as set forth on Schedule 3(s), no current or former employee, partner, director, officer or shareholder (direct or indirect) of the Company or its Subsidiaries, or any associate, or, to the knowledge of the Company, any affiliate of any thereof, or any relative with a relationship no more remote than first cousin of any of the foregoing, is presently or has been (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer or shareholder or such associate or affiliate or relative Subsidiaries (other than for ordinary course services as employees, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less than 5% of the common stock or ordinary shares, as applicable, of a company whose securities are traded on or quoted through an Eligible Market (as defined below)), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. No employee, officer, shareholder or director of the Company or any of its Subsidiaries or member of his or her immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company or its Subsidiaries, as the case may be, and (iii) for other standard employee benefits made generally available to all employees or executives (including share option agreements outstanding under any share option plan approved by the Board of Directors of the Company).

(t) Equity Capitalization.

(i) Authorized and Outstanding Capital Stock. As of the date of this Agreement and as of the Closing, the authorized capital stock of the Company consists of (A) 500,000,000 shares of Common Stock, of which, 203,005,805 are issued and outstanding and 144,079,620 shares are reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Exchange Notes) exercisable or exchangeable for, or convertible into, shares of Common Stock, and (B) 10,000,000 shares of preferred stock, par value $0.00001 per share, of which no shares are issued and outstanding.

(ii) Valid Issuance; Available Shares; Affiliates. All of the Company's outstanding shares are duly authorized and have been validly issued and are fully paid and non-assessable. Schedule 3(t)(ii) sets forth the number of shares of Common Stock that are (A) reserved for issuance pursuant to Convertible Securities as of the date hereof and as of the Closing and (B) as of the date hereof and as of the Closing, owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding shares of Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. To the Company's knowledge, as of the date hereof and the Closing Date, no Person owns 10% or more of the Company's issued and outstanding shares of Common Stock (calculated based on the assumption that all Convertible Securities, whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein without conceding that such

identified Person is a 10% stockholder for purposes of federal securities laws). "**Convertible Securities**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock and any RSUs or any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities (collectively, "**Options**")) or any of its Subsidiaries.

(iii) Existing Securities; Obligations. Except as set forth on Schedule 3(t)(iii): (A) none of the Company's or any Subsidiary's shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) other than (i) pursuant to the Business Combination Agreement (as defined below), (ii) the Company's outstanding warrants (the "**Warrants**"), (iii) stock options, restricted stock units ("**RSUs**"), performance stock units, deferred stock units, rights and other stock-based awards awarded to employees, directors and consultants of the Company under equity incentive and employee stock purchase plans adopted by the Board of Directors of the Company and described in the SEC Documents and (iv) pursuant to the Prior Notes, the Prior SPA, this Agreement and following the Closing, the Exchange Notes, there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) other than pursuant to the Prior SPA, the Amended and Restated Registration Rights Agreement, dated September 29, 2021, by and among the Company and holders party thereto and the Warrants, there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act; (D) other than the Warrants, the Prior Notes and, following the Closing, the Exchange Notes, there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (F) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement.

(u) Organizational Documents. The Company has furnished to the Holders true, correct and complete copies of the Company's Certificate of Incorporation, as amended, and as in effect on the date hereof and the Closing Date (the "**Certificate of Incorporation**") and the Company's Amended and Restated Bylaws, each in effect on the date hereof and the Closing Date (collectively, the "**Bylaws**"), and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto.

(v) Indebtedness and Other Contracts. Except as set forth on Schedule 3(v), neither the Company nor any of its Subsidiaries (i) has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its

Subsidiaries is or may become bound, (ii) has any financing statements securing obligations in any amounts filed against the Company or any of its Subsidiaries or with respect to any of their respective assets; (iii) other than the EOD, is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (iv) assuming that the Holders do not accelerate the Prior Notes as a result of the EOD, is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses consistent with past practices and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication, (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(w) Litigation. There is no material action, suit, arbitration, proceeding, inquiry or investigation before or by NYSE, any court, public board, other Governmental Entity, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries (or pending or threatened by the Company or any of its Subsidiaries), the Common Stock or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, except as set forth in Schedule 3(w). To the knowledge of the Company, no director, officer or employee of the Company or any of its Subsidiaries has willfully violated 18 U.S.C. §1519 or engaged in spoliation in reasonable anticipation of litigation. Without limitation of the foregoing, there has not been, and to the knowledge of the Company, there is not pending,

contemplated or anticipated, any inquiry or investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1933 Act or the 1934 Act. After reasonable inquiry of its officers (as defined in Rule 16a-1(f) promulgated under the 1934 Act) and members of its Board of Directors, the Company is not aware of any fact which might result in or form the basis for any such action, suit, arbitration, investigation, inquiry or other proceeding. Neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity.

(x) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. Neither the Company nor any of its Subsidiaries has been refused any insurance coverage sought or applied for, and neither the Company nor any of its Subsidiaries has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(y) Employee Relations. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of the Company or any of its Subsidiaries has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. To the knowledge of the Company, no executive officer or other key employee of the Company or any of its Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in material compliance with all applicable federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(z) Title. Each of the Company and its Subsidiaries holds good title to, or a valid leasehold interest in, all real property, leases in real property, facilities or other interests in real property owned or held by the Company or any of its Subsidiaries that is material to the business of the Company (the "**Real Property**"). Except as set forth on Schedule 3(z), the Real Property is free and clear of all Liens and is not subject to any rights of way, building use restrictions, exceptions, variances, reservations, or limitations of any nature except for (a) Liens for current taxes not yet due and (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto. Any Real Property held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and, subject to the Enforceability Exceptions, enforceable leases with such exceptions as are not material and do

not interfere in any material respect with the use made and proposed to be made of such property and buildings by the Company or any of its Subsidiaries.

(aa) Fixtures and Equipment. Each of the Company and its Subsidiaries (as applicable) has good title to, or a valid leasehold interest in, the tangible personal property, equipment, improvements, fixtures, and other personal property and appurtenances that are used by the Company and its Subsidiaries to conduct their respective businesses (the "**Fixtures and Equipment**"). The Fixtures and Equipment are structurally sound, are in good operating condition and repair (ordinary wear and tear excepted), are adequate for the uses to which they are being put, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are sufficient for the conduct of the Company's and/or its Subsidiaries' businesses (as applicable) in the manner as conducted prior to the date hereof and the Closing Date. Except as set forth on Schedule 3(aa), each of the Company and its Subsidiaries owns all of its Fixtures and Equipment free and clear of all Liens except for (i) Liens for current taxes not yet due, (ii) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto and (iii) other Permitted Liens (as defined in the Exchange Notes).

(ab) Intellectual Property Rights. The Company and each of its Subsidiaries owns or possesses adequate rights or licenses to use all material trademarks, trade names, service marks, service mark registrations, service names, patents, patent applications, other patent rights, copyrights, original works, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor ("**Intellectual Property Rights**") necessary to conduct their respective businesses as now conducted and as presently proposed to be conducted. Except as set forth on Schedule 3(bb), none of the Company's or its Subsidiaries' Intellectual Property Rights, which are necessary to conduct their respective businesses, have expired, terminated or been abandoned, or are expected to expire, terminate or be abandoned, within three years from the date of this Agreement. To the knowledge of the Company, and except as set forth on Schedule 3(bb), neither the Company nor any of its Subsidiaries has, (i) infringed, misappropriated, diluted or violated the Intellectual Property Rights of others, (ii) violated any material term or provision of any contract concerning Intellectual Property Rights, (iii) violated any material right of any person (including any right to privacy or publicity), or (iv) conducted its business in a manner that would constitute unfair competition or unfair trade practices under the laws of any jurisdiction. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company or any of its Subsidiaries, being threatened, against the Company or any of its Subsidiaries regarding Intellectual Property Rights of others that would reasonably be expected to have a Material Adverse Effect on the Company. The Company is not aware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company and each of its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all trade secrets within the Intellectual Property Rights of the Company that are materially necessary to conduct their respective businesses. To the knowledge of the Company, no third party is infringing, violating or misappropriating any Company owned Intellectual Property Rights, and there is no claim pending or proceeding regarding any such actual or alleged infringement, misappropriation or other violation of any Company owned Intellectual Property Rights. All former and current employees, contractors and consultants of the Company who have contributed to the creation or development of the Company owned Intellectual Property Rights have executed a valid and enforceable agreement containing an irrevocable assignment to the Company of all of their ownership and other rights therein, including to any invention, improvement or discovery. The Company has not

distributed, incorporated or otherwise used any "Open Source Code" (also known as "free software" (as defined by the Free Software Foundation) or "open source software" (as defined by the Open Source Initiative) or has not otherwise distributed publicly software under terms that permit modification and redistribution of such software) in a manner that would require that any of the proprietary software owned by the Company or included in a Company product or service: (i) be made available or distributed in source code form; (ii) be licensed for the purpose of making derivative works; (iii) be licensed under terms that allow reverse engineering, reverse assembly or disassembly of any kind; or (iv) be redistributable at no charge. The Company is in compliance with the terms and conditions of all licenses for free or Open Source Code.

(ac) Environmental Laws. (i) The Company and its Subsidiaries (A) are in compliance with any and all Environmental Laws (as defined below), (B) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (C) are in compliance with all terms and conditions of any such permit, license or approval where, except in each of the foregoing clauses (A), (B) and (C), where the failure to so comply or having such permits, licenses or other approval would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state, local or foreign laws or regulations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous materials, substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of, or exposure to, Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(ad) No Hazardous Materials:

(A) to the Company's knowledge, have been disposed of or otherwise released from any Real Property of the Company or any of its Subsidiaries in violation of any Environmental Laws; or

(B) to the Company's knowledge, are present on, over, beneath, in or upon any Real Property or any portion thereof in quantities that would constitute a violation of any Environmental Laws or in quantities, a manner or location that would reasonably be expected to require remedial action pursuant to any Environmental Laws. No prior use by the Company or any of its Subsidiaries of any Real Property has occurred that violates any Environmental Laws, which violation would have a Material Adverse Effect.

(i) To the Company's knowledge, neither the Company nor any of its Subsidiaries knows of any other Person that has stored, treated, recycled, disposed of or otherwise located on any Real Property any Hazardous Materials, including, without limitation, such substances as asbestos and polychlorinated biphenyls.

(ii) To the knowledge of the Company, none of the Real Property is on any federal or state "Superfund" list or Comprehensive Environmental Response, Compensation and Liability Information System ("**CERCLIS**") list or any state environmental agency list of sites under consideration for CERCLIS, nor subject to any environmental related Liens.

(iii) Neither the Company nor its Subsidiaries is subject to any pending or, to the Company and its Subsidiaries' knowledge, threatened claim or proceeding to any Environmental Laws, except for any claims or proceeding that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(ae) Tax Status. The Company and each of its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject through the date of this Agreement or have requested extensions thereof (except where the failure to file would not, individually or in the aggregate, have a Material Adverse Effect) and (ii) has timely paid all taxes and other governmental assessments and charges, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and for which reserves required by GAAP have been created in the financial statements of the Company or for cases in which the failure to pay would not have a Material Adverse Effect. There is no tax deficiency that has been determined adversely to the Company or any of its Subsidiaries which has had a Material Adverse Effect, nor does the Company or its Subsidiaries have any knowledge or notice of any tax deficiency which could reasonably be expected to be determined adversely to the Company or its Subsidiaries and which could reasonably be expected to have a Material Adverse Effect.

(af) Internal Accounting and Disclosure Controls. Except as set forth on Schedule 3(ff), the Company and each of its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) that is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth on Schedule 3(ff), the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the 1934 Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Except as set forth on Schedule 3(ff), since the filing of the Company's 2022 Annual Report, neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company or any of its Subsidiaries.

(ff) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any of its Subsidiaries and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise could be reasonably likely to have a Material Adverse Effect.

(ag) Investment Company Status. The Company is not an "investment company," or a company controlled by an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(ah) Acknowledgement Regarding Holders' Trading Activity. It is understood and acknowledged by the Company that (i) following the public disclosure of the transactions contemplated by the Transaction Documents in the Signing Announcement (as defined below), none of the Holders have been asked by the Company or any of its Subsidiaries to agree, nor has any Holder agreed with the Company or any of its Subsidiaries, to desist from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long and/or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the Securities for any specified term; (ii) any Holder, and counterparties in "derivative" transactions to which any such Holder is a party, directly or indirectly, presently may have a "short" position in the Common Stock which was established prior to such Holder's knowledge of the transactions contemplated by the Transaction Documents; (iii) each Holder shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) each Holder may rely on the Company's obligation to timely deliver shares of Common Stock as and when required pursuant to the Transaction Documents for purposes of effecting trading in the Common Stock of the Company. The Company further understands and acknowledges that following the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the Signing Announcement, one or more Holders may engage in Hedging Arrangements (as defined below) (including, without limitation, the location and/or reservation of borrowable shares of Common Stock) at various times prior to or during the period that the Securities are outstanding, including, without limitation, during the periods that the value and/or number of the Exchange Note Shares issuable pursuant to the Exchange Notes are being determined, and such Hedging Arrangements (including, without limitation, the location and/or reservation of borrowable shares of Common Stock), if any, can reduce the value of the existing stockholders' equity interest in the Company both at and after the time the Hedging Arrangements are being conducted. The Company acknowledges that such aforementioned Hedging Arrangements do not constitute a breach of this Agreement, the Exchange Notes or any other Transaction Document or any of the documents executed in connection herewith or therewith. "**Hedging Arrangements**" means any forward, futures, swap, collar, put, call, floor, cap, option or other contract or trading activity that are intended to benefit from, or reduce or eliminate the risk of, fluctuations in price, but shall not include the location and/or reservation of borrowable shares.

(ai) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, (iii) other than pursuant to an ATM Sales Agreement (as defined below), paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company or any of its Subsidiaries.

(aj) U.S. Real Property Holding Corporation. Neither the Company nor any of its Subsidiaries is, or has ever been, and so long as any of the Securities are held by any of the Holders, shall become, a U.S. real property holding corporation within the meaning of

Section 897 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the Company and each Subsidiary shall so certify upon any Holder's request.

(ak) Transfer Taxes. All stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, delivery and transfer of the Securities to be acquired by each Holder hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with; *provided*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any Exchange Note Shares pursuant to the Exchange Notes in a name other than that of the Holder of such Exchange Notes, and the Company shall not be required to issue or deliver such Exchange Note Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(al) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). Neither the Company nor any of its Subsidiaries owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(am) Illegal or Unauthorized Payments; Political Contributions. Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any of its Subsidiaries or affiliates, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office to influence official action or secure an improper advantage, except for personal political contributions not involving the direct or indirect use of funds of the Company or any of its Subsidiaries.

(an) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in material compliance with the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations, including, without limitation, the laws, regulations and Executive Orders and sanctions programs administered by the U.S. Office of Foreign Assets Control, including, but not limited, to (i) Executive Order 13224 of September 23, 2001 entitled, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)); and (ii) any regulations contained in 31 CFR, Subtitle B, Chapter V. The operations of the Company and its Subsidiaries are and have been conducted at all times in material compliance with the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations.

(ao) Sanctions. None of the Company, any of its Subsidiaries or any director or officer or, to the knowledge of the Company and its Subsidiaries, employee, agent or other person acting

for or on behalf of the foregoing is the subject or target of any economic or financial sanctions imposed, administered or enforced by the United States (including the U.S. Department of the Treasury Office of Foreign Assets Control and the U.S. Department of State) or other relevant sanctions authority (collectively, "**Sanctions**" and each such Person, a "**Sanctioned Person**"). The operations of the Company and its Subsidiaries are, and have been conducted within the past five (5) years, in compliance with applicable Sanctions.

(pp) Management. During the past five year period, no current or former officer or director of the Company, to the knowledge of the Company, has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such person from, or otherwise limiting, the following activities:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the United States Commodity Futures Trading Commission or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any particular type of business practice; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such person to engage in any activity described in the preceding sub paragraph, or to be associated with persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.

(ap) Stock Option Plans. Each stock option granted by the Company was granted (i) in accordance with the terms of the applicable equity incentive plan of the Company and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. To the Company's knowledge, no stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(aq) Cybersecurity. The information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases used or owned by, or leased or licensed to, the Company or any of its Subsidiaries (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its Subsidiaries as currently conducted free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants. The Company and its Subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses. "**Personal Data**" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by the European Union General Data Protection Regulation ("**GDPR**") (EU 2016/679); (iv) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA"**); and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. There have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its Subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

(ar) Compliance with Data Privacy Laws. The Company and its Subsidiaries are, and at all prior times were, in material compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, and the Company and its Subsidiaries have taken commercially reasonable actions to prepare to comply with, and since

May 25, 2018, have been and currently are in compliance with, the GDPR (EU 2016/679) (collectively, the "**Privacy Laws**"). To ensure compliance with the Privacy Laws, the Company and its Subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the "**Policies**"). The Company and its Subsidiaries have at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. Neither the Company nor any Subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(as) No Other Inducements. Except as set forth in this Agreement, the Company has not directly or indirectly, offered any Holder or any affiliate thereof any inducement to enter into this Agreement or to exchange any Holder's Prior Notes for Exchange Notes.

(at) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Holders or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents. The Company understands and confirms that each of the Holders has relied on and will rely on the foregoing representations in effecting transactions in securities of the Company. The Company acknowledges and agrees that no Holder makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

(au) ATM Sales Program. The Company has access to an ATM Sales Program (as defined below), the terms of which have been approved by the Required Holders, and, as of the date hereof and the Closing Date, the ATM Sales Program has aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least twenty million dollars ($20,000,000).

(av) No Additional Agreements. The Company does not have any agreement or understanding with any Holder with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

4. COVENANTS.

(a) Best Efforts. Each Holder shall use its best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 6 of this Agreement. The Company shall use its best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Blue Sky. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities to be acquired by the Holders at the Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Holders on or prior to the Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the issuance of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable "Blue Sky" laws), and the Company shall comply with all applicable foreign, federal, state and local laws, statutes, rules, regulations and the like relating to the issuance and exchange of the Securities to the Holders. Notwithstanding the foregoing, the Company will not be obligated to qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to so qualify, file any general consent to service of process in any such jurisdiction or subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(c) Reporting Status. Until the earlier of (i) the date upon which the Holders shall have sold all of the Securities issuable pursuant to this Agreement and (ii) the date upon which no Exchange Notes remain outstanding and no further Exchange Notes may be issued pursuant to this Agreement (the "**Reporting Period**"), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the 1934 Act shall be considered timely for this purpose), and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination.

(d) Financial Information. The Company agrees to send the following to each Holder during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any interim reports or any consolidated balance sheets, income statements, stockholders' equity statements and/or cash flow statements for any period other than annual, any Current Reports on Form 8-K and any registration statements (other than on Form S-8 or Form S-4) or amendments filed pursuant to the 1933 Act, (ii) unless the following are either filed with the SEC through EDGAR or are otherwise widely disseminated via a recognized news release service (such as PR Newswire), on the same day as the release thereof, e-mail copies of all press releases issued by the Company or any of its Subsidiaries and (iii) unless the following are filed with the SEC through EDGAR, copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders.

(e) Listing. The Company shall promptly secure the listing or designation for quotation (as the case may be) of all of the Exchange Shares and Exchange Note Shares upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed or designated for quotation (as the case may be) (subject to official notice of issuance) and shall maintain such listing or designation for quotation (as the case may be) of all Exchange Shares and Exchange Note Shares from time to time issuable under the terms of the Transaction Documents on such national securities exchange or automated quotation system. The Company shall maintain the Common Stock's listing or authorization for quotation (as the case may be) on the NYSE, the NYSE American, the Nasdaq Capital Market, the Nasdaq

Global Market or the Nasdaq Global Select Market (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(e).

(f) Fees. The Company shall pay for the reasonable and documented due diligence and legal fees and expenses incurred by the Holders in connection with the structuring, documentation, negotiation, and closing of the transactions contemplated by the Transaction Documents (and the creation and perfection of security interests and enforcement thereof by the Holders), including, without limitation, all reasonable and documented consultant fees, all reasonable and documented legal fees and disbursements of Latham & Watkins LLP, counsel to the Holders, and due diligence and regulatory filings in connection therewith (the "**Transaction Expenses**"). The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, The Depository Trust Company ("**DTC**") fees or broker's commissions (other than for Persons engaged by any Holder) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Holder harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and reasonable and documented out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the exchange of the Exchange Notes with the Holders.

(g) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by a Holder in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Holder effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a Holder.

(h) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction. At or before 9:00 a.m., New York time, on Tuesday, November 28, 2023, the Company shall issue a press release or file a Current Report on Form 8-K (a "**Signing Announcement**") reasonably acceptable to the Holders disclosing all the material terms of the transactions contemplated by the Transaction Documents. No later than 5:30 p.m., New York time, on the fourth (4th) Business Day after the date of this Agreement, the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching all the material Transaction Documents (the "**8-K Filing**"). From and after the issuance or filing of the Signing Announcement, the Company shall have disclosed all material, non-public information (if any) provided to any of the Holders by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents. In addition, effective upon the issuance or filing of the Signing Announcement, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its

Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Holders or any of their affiliates, on the other hand, shall have terminated and none of the Holders have been subject to any such obligation since the issuance or filing of the Signing Announcement.

(ii) Limitations on Disclosure. Other than as required under the Transaction Documents (but subject to any other disclosure obligations of the Company with respect thereto), the Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide any Holder with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof unless prior thereto such Holder shall have consented in writing to the receipt of such information and agreed with the Company to keep such information confidential. If any material, non-public information is required to be provided by the Company or any of its Subsidiaries to any Holder pursuant to the Transaction Documents, the Company shall obtain each Holder's prior written consent prior to providing such information to such Holder, and if any Holder fails to provide such written consent, the Company shall not be deemed to be in breach of any of the Transaction Documents as a result of the failure to provide such information. To the extent that the Company delivers any material, non-public information to a Holder without such Holder's prior written consent in breach of the foregoing sentence, the Company hereby covenants and agrees that such Holder shall not have any duty of confidentiality with respect to, or a duty not to trade on the basis of, such material, non-public information, provided that the Holder shall remain subject to applicable law. Subject to the foregoing, neither the Company, its Subsidiaries nor any Holder shall issue any press releases or any other public statements with respect to the transactions contemplated hereby, except the Press Release and the 8-K filing; *provided*, *however*, the Company shall be entitled, without the prior approval of any Holder, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) above, each Holder shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of the applicable Holder (which may be granted or withheld in such Holder's sole discretion), the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of such Holder in any filing, announcement, release or otherwise, except in the 8-K Filing and as otherwise may be required by applicable law or regulations. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that no Holder shall have (unless expressly agreed to by a particular Holder after the date hereof in a written definitive and binding agreement executed by the Company and such particular Holder (it being understood and agreed that no Holder may bind any other Holder with respect thereto)), any duty of confidentiality with respect to, or a duty not to trade on the basis of, any material, non-public information regarding the Company or any of its Subsidiaries.

(i) Additional Issuance of Securities.

(i) So long as any Exchange Notes remain outstanding, the Company and each Subsidiary shall be prohibited from effecting, or entering into an agreement directly or indirectly to effect a Variable Rate Transaction. "**Variable Rate Transaction**" means a transaction in which the Company or any Subsidiary (i) issues or sells any Convertible

Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such Convertible Securities (other than the Exchange Notes), or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock, other than pursuant to customary adjustments for stock splits, stock dividends, stock combinations, recapitalizations and similar events or (ii) enters into any agreement (including, without limitation, an equity line of credit) whereby the Company or any Subsidiary may sell securities at a future determined price (other than standard and customary "preemptive" or "participation" rights); *provided*, that for avoidance of doubt, neither the entry into (x) an agreement, the terms of which have been approved by the Required Holders, providing for the sale or issuance of securities thereunder pursuant to an "at-the-market" offering within the meaning of Rule 415(a)(4) of the 1933 Act (an "**ATM Sales Agreement**") nor (y) that certain Business Combination Agreement, dated as of March 22, 2021, by and among JAWS Spitfire Acquisition Corporation, Spitfire Merger Sub, Inc. and the Company, as amended by Amendment No. 1 to the Business Combination Agreement, dated as of July 20, 2021, by and among JAWS Spitfire Acquisition Corporation, Spitfire Merger Sub, Inc. and the Company, as in effect as of the date hereof and without giving effect to any amendment, modification, waiver or supplement thereto (the "**Business Combination Agreement**") nor the issuance of shares of Common Stock pursuant thereto shall be considered a "Variable Rate Transaction."

(ii) So long as any Exchange Notes remain outstanding, the Company will not, without the prior written consent of the Required Holders (as defined below), issue any Exchange Notes (other than to the Holders as contemplated hereby) and the Company shall not issue any other securities that would cause a breach or default under the Exchange Notes.

(iii) Each Holder shall be entitled to obtain injunctive relief against the Company and its Subsidiaries to preclude any issuance prohibited by this Section 4(i), which remedy shall be in addition to any right to collect damages.

(j) Compliance with Laws. None of the Company or any of its Subsidiaries shall violate any law, ordinance or regulation of any Governmental Entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(k) Passive Foreign Investment Company. The Company shall conduct its business, and shall cause its Subsidiaries to conduct their respective businesses, in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the Code.

(l) Restriction on Redemption and Cash Dividends. So long as any of the Exchange Notes are outstanding, except as otherwise permitted under the Exchange Notes, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, any securities of the Company without the prior express written consent of the Required Holders (other than as required by the Exchange Notes or as required by the terms thereof as in effect on the date hereof); *provided*, *however*, that such written consent shall not be required for any

repurchases, forfeitures, withholdings or transfers of securities pursuant to a net exercise of a Convertible Security to cover the payment of the exercise prices or the payment of withholding of taxes associated with the exercise, settlement or vesting of equity awards under any equity compensation plan of the Company or repurchases of securities upon an employee's, contractor's or consultant's termination of services.

(m) Corporate Existence. So long as any Exchange Notes remain outstanding, the Company shall not be party to any Fundamental Change (as defined in the Exchange Notes) unless the Company is in compliance with the applicable provisions governing Fundamental Changes set forth in the Exchange Notes.

(n) Stock Payment Procedures. The terms of the Exchange Notes set forth the totality of the procedures required of the Holders in order to receive shares of Common Stock pursuant to the Exchange Notes. No additional legal opinion, other information or instructions shall be required of the Holders to receive shares of Common Stock pursuant to the Exchange Notes. The Company shall honor an election by the Holder to receive shares of Common Stock pursuant to the Exchange Notes and shall deliver the Exchange Note Shares in accordance with the terms, conditions and time periods set forth in the Exchange Notes. Except as explicitly set forth in the Exchange Notes, no legal opinion, information or instructions shall be required of the Holders to receive Exchange Note Shares pursuant to the Exchange Notes. The Company shall deliver the Exchange Note Shares in accordance with the terms, conditions and time periods set forth in the Exchange Notes.

(o) Regulation M. The Company will not take any action prohibited by Regulation M under the 1934 Act, in connection with the distribution of the Securities contemplated hereby.

(p) Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act), or any person acting on behalf of the Company or such affiliate will sell, offer for sale, or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the 1933 Act) which will be integrated with the issuance of the Securities in a manner which would require stockholder approval under the rules and regulations of NYSE and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of NYSE, with the issuance of Securities contemplated hereby.

(q) Stockholder Approval. At the next annual meeting of the stockholders following the Closing or, if earlier, via a special meeting of stockholders within seventy-five (75) days of a written request (of which an email request may be sufficient) from the Holders (the "**Stockholder Meeting**"), the Company agrees to hold a stockholder vote for the purpose of obtaining the Requisite Stockholder Approval. The Company will prepare and file with the SEC a proxy statement to be sent to the Company's stockholders in connection with the Stockholder Meeting (the "**Proxy Statement**"). The Proxy Statement shall include the Board of Directors' recommendation that the holders of shares of the Company's Common Stock vote in favor of the Requisite Stockholder Approval. The Company shall use its best efforts to obtain approval of the Requisite Stockholder Approval. If the Requisite Stockholder Approval is not obtained at or prior to the Stockholder Meeting, the Company will hold a special meeting of the stockholders of the Company for the purposes of obtaining such Requisite Stockholder Approval no less often than every ninety (90) days following the date of the Stockholder Meeting until the Requisite Stockholder Approval is obtained, and the Board of Directors will recommend that the holders of

shares of the Company's Common Stock vote in favor of the Requisite Stockholder Approval at each such meeting.

(r) Press Releases. The Company shall not, and shall not permit any of its Subsidiaries to, issue or disseminate to the public (by advertisement, press release or otherwise), submit for publication or otherwise cause or seek to publish any information naming any of the Holders without the prior written consent of such Holder; *provided*, that nothing in the foregoing shall be construed to prohibit the Company from making any disclosure, submission or filing (i) which it is required to make by applicable law or pursuant to judicial process, (ii) pursuant to Section 4(i) or as otherwise required by federal securities law in connection with the filing of final Transaction Documents with the SEC, or (iii) to the extent such disclosure is required by law or NYSE regulations; *provided*, *further*, that (i) such filing or submission shall contain only such information as is necessary to comply with applicable law or judicial process and (ii) unless specifically prohibited by applicable law or court order, the Company shall promptly notify the Holders of the requirement to make such submission or filing and provide the Holders with a copy thereof.

(s) Share Reserve. So long as any of the Exchange Notes remain outstanding, the Company shall at all times have not less than a number of authorized but unissued shares of Common Stock equal to one hundred million (100,000,000) shares of Common Stock, which shall not be exclusively reserved for issuance pursuant to the Exchange Notes (collectively, the "**Required Reserve Amount**"); *provided*, that at no time shall the number of shares of Common Stock reserved pursuant to this Section 4(s) be reduced other than in connection with any stock combination, reverse stock split or other similar transaction. The amounts set forth in the definition of Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the holders of the Exchange Notes based on the number of shares of Common Stock issuable pursuant to the Exchange Notes held by each holder thereof on the date of issuance of the Exchange Notes (without regards to any limitations on issuance of shares contained therein) (collectively, the "**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer any of such holder's Exchange Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any Common Stock reserved and allocated to any Person which ceases to hold any Exchange Notes shall be allocated to the remaining holders of the Exchange Notes, pro rata based on the number of shares of Common Stock issuable pursuant to the Exchange Notes then held by such holders thereof (without regard to any limitations on exercise). If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain stockholder approval (if required) of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(t) Legends. Certificates and any other instruments evidencing the Securities, shall not bear any restrictive or other legend.

(u) Voting Agreements. The Company may not amend, modify or waive the terms of the Voting Agreements in any respect without the prior written consent of the Required Holders.

(v) Not an Underwriter. Neither the Company nor any Subsidiary or affiliate thereof shall identify any Holder as being an underwriter or potentially being an "underwriter" in any disclosure to, or filing with, the SEC, NYSE or any other Eligible Market. No Holder shall be required to agree or admit that it is, or may be, acting as an "underwriter" in connection with the transactions contemplated hereby or agree to be named as an underwriter or as potentially being an underwriter in any public disclosure or filing with the SEC, the NYSE or any other Eligible Market, nor shall any Holder be required to make any representations to, or undertake any obligations to, the SEC in connection with any registration statement filed by the Company. Any Holder being deemed an underwriter, or potentially to be an underwriter, by the SEC shall not relieve the Company of any obligations it has under this Agreement or any other Transaction Document.

(w) Security Agreements. At the Closing (which period may be extended in the reasonable discretion of the Collateral Agent), the Company or relevant Subsidiary of the Company shall deliver to the Collateral Agent the Amendments to Security Documents, each to be dated the Closing Date, among the grantors named therein and the secured party named therein, each in form and substance satisfactory to the Collateral Agent, which create a first lien security interest in all assets of the Company including, but not limited to, its intellectual property (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion) (the "**Collateral**") and shall perfect a first lien security interest in all such assets of the Company other than the Company's non-U.S. assets. As soon as reasonably practicable, but in any event before forty-five (45) days after the Closing (which period may be extended in the reasonable discretion of the Collateral Agent), the Company or relevant Subsidiary of the Company shall deliver to the Collateral Agent (a) such additional security documents and/or amendments to existing security documents, in form and substance reasonably acceptable to the Collateral Agent, which perfect a first lien security interest in all remaining assets of the Company (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion) (the "**Ancillary Security Documents**") and (b) with respect to such Ancillary Security Documents delivered, customary legal opinions relating to such Ancillary Security Documents, in form and substance reasonably acceptable to the Collateral Agent.

(x) ATM Sales Program. The Company shall at all times have access to an ATM Sales Program, the terms of which have been approved by the Required Holders with aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least ten million dollars ($10,000,000). On or before December 31, 2023, the Company shall establish a new ATM Sales Program (or increase the Existing ATM Sales Program (as defined below)) such that the Company has an ATM Sales Program with aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least seventy five million dollars ($75,000,000) as of December 31, 2023, and such ATM Program shall not be subsequently canceled, or amended or otherwise modified to reduce such amount, without the written consent of the Required Holders. Each of the Holders hereby approves the terms of the Company's ATM Sales Program (the "**Existing ATM Sales Program**") and the related ATM Sales Agreement as in effect at the date of this Agreement, and agrees that its approval of any ATM Sales Program and related ATM Sales Agreement after the date of this Agreement will not be unreasonably withheld, conditioned or delayed.

(y) Lock-Up. Beginning on the Closing Date and ending on the date on which a Lock-up Termination Event (as defined below) occurs (the "**Lock-up Period**"), each Holder will not, without the prior written consent of the Company, (i) sell, offer to sell, contract or agree to

sell, hypothecate, pledge, grant any option to purchase or otherwise dispose of or agree to dispose of, directly or indirectly, or file (or participate in the filing of) a registration statement with the SEC in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the 1934 Act and the rules and regulations of the SEC promulgated thereunder with respect to, any Exchange Shares or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Exchange Shares, whether any such transaction is to be settled by delivery of the Exchange Shares, in cash or otherwise. The foregoing sentence shall not apply to (a) bona fide gifts, (b) dispositions to any trust for the direct or indirect benefit of a Holder, (c) transfers as a distribution to stockholders of a Holder, (d) dispositions to a Holder's controlled affiliates, to any other entity controlled or managed by, directly or indirectly, a Holder, (e) the transfer, sale, assignment or pledge of any short call option positions (or any portion thereof) (within the meaning of a put equivalent position within the meaning of Section 16 of the 1934 Act and the rules and regulations of the SEC promulgated thereunder) existing prior to the Closing Date and the delivery, transfer, or other disposition of shares of Common Stock in connection therewith or (f) for the avoidance of doubt, a transfer, sale, assignment or pledge of the Exchange Shares made pursuant to Section 4(g); provided, however, that, (i) in the case of any transfer or disposition pursuant to the preceding clauses (a) through (d), each transferee, distributee or recipient of the Exchange Shares transferred, distributed or disposed of agrees to be bound by the same restrictions in place for the applicable Holder pursuant to the first sentence of this Section 4(y) for the duration of the Lock-up Period and executes and delivers to the Company a lock-up agreement substantially in the form of this Section 4(y), (ii) in the case of any transfer or disposition pursuant to the preceding clauses (a) through (d), no filing under the 1934 Act or other public announcement shall be required or shall be made voluntarily in connection with such transfer or distribution (other than a required filing on Form 4, Form 5 or Form 13F) and (iii) in the case of any transfer or disposition pursuant to the preceding clauses (a) through (c), any such transfer or distribution shall not involve a disposition for value. The Lock-up Period will automatically terminate upon the earliest of: (i) a Fundamental Change or public announcement of a proposed Fundamental Change, (ii) a Default (as defined in the Exchange Notes) or an Event of Default (as defined in the Exchange Notes) and (iii) ninety (90) days after the Closing Date (each a "**Lock-up Termination Event**").

(z) Prior SPA. The Company acknowledges and agrees that, unless otherwise expressly noted herein, the Prior SPA shall remain in full force and effect.

(aa) Delivery of Prior Notes. On or before the Closing, the Holders shall deliver to the Trustee originals of the Prior Notes.

5. REGISTER; TRANSFER AGENT INSTRUCTIONS.

(a) Register. The Company shall cause the Trustee to maintain at its principal executive offices (or such other office or agency of the Trustee as it may designate pursuant to the Indenture), a register for the registration of the Securities in which the Trustee shall record the name and address of the Person in whose name the Exchange Notes have been issued (including the name and address of each transferee), the aggregate amount of the Exchange Notes held by such Person and the number of Exchange Note Shares issuable pursuant to the Exchange Notes held by such Person. The Company shall cause the Trustee to keep the register open and available at reasonable times upon reasonable prior notice during business hours for inspection of any Holder or its legal representatives. This provision shall be construed such that

the Securities and the Exchange Notes are at all times maintained in "registered form" within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any Treasury Regulations promulgated thereunder.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable) (the "**Transfer Agent**") in a form acceptable to each of the Holders (the "**Irrevocable Transfer Agent Instructions**") to credit shares to each such Holder's (or its designee's) account at DTC through its Deposit/Withdrawal At Custodian ("**DWAC**") System, provided that the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program ("**FAST**") and the shares are then eligible for transfer through the DWAC System, or, if the Transfer Agent is not participating in FAST or if the shares are not then eligible for transfer through the DWAC system, issue and dispatch by overnight courier to the address as specified in the notice that the Company is electing to issue Common Stock pursuant to the terms of the Exchange Notes or that the Holders are electing to receive Common Stock pursuant to the Exchange Notes, a certificate, registered in the name of such Holder or its designee, for the Exchange Note Shares to which the Holder is entitled, for the applicable Exchange Note Shares in such amounts as specified from time to time by the Company or the Holders, as the case may be, pursuant to the terms of the Exchange Notes. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5(b) will be given by the Company to the Transfer Agent with respect to the Securities, and that the Securities shall otherwise be freely transferable on the books and records of the Company, as applicable, to the extent provided in this Agreement and the other Transaction Documents. If a Holder effects a sale, assignment or transfer of the Securities, the Company shall permit the transfer and shall promptly instruct the Transfer Agent to issue one or more certificates or credit shares to the applicable balance accounts at DTC in such name and in such denominations as specified by such Holder to effect such sale, transfer or assignment. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Holder. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that a Holder shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. Any fees (with respect to the Transfer Agent, counsel to the Company or otherwise) associated with the removal of any legends on any of the Securities shall be borne by the Company.

(c) FAST Compliance. While any Exchange Notes remain outstanding, the Company shall maintain a transfer agent that participates in FAST.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO EXCHANGE THE PRIOR NOTES FOR THE EXCHANGE SECURITIES.

(a) The obligation of the Company hereunder to issue the Exchange Securities to each Holder at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Holder with prior written notice thereof:

(i) Such Holder shall have executed each of the other Transaction Documents (other than the Ancillary Security Documents) to which it is a party and delivered the same to the Company.

(ii) Such Holder and each other Holder shall deliver to the Trustee the aggregate principal amount of Prior Notes as set forth opposite such Holder's name in column (6) on the Schedule of Holders in accordance with Section 1 on the Closing Date.

(iii) The representations and warranties of such Holder shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Holder shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Holder at or prior to the Closing Date.

7. CONDITIONS TO EACH HOLDER'S OBLIGATION TO EXCHANGE THE PRIOR NOTES FOR THE EXCHANGE SECURITIES.

The obligation of each Holder hereunder to exchange its Prior Notes for the Exchange Securities at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Holder's sole benefit and may be waived by such Holder at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) The Company and each Subsidiary (as the case may be) shall have duly executed and delivered to such Holder each of the Transaction Documents (other than the Ancillary Security Documents) to which it is a party and the Company and the Trustee shall have duly executed and delivered to such Holder the Exchange Notes set forth across from such Holder's name on the Schedule of Holders at the Closing pursuant to this Agreement.

(b) Such Holder shall have received the opinion of Fenwick & West LLP, the Company's counsel, dated as of the Closing Date, in the form acceptable to such Holder.

(c) The Company shall have delivered to such Holder a copy of the Irrevocable Transfer Agent Instructions, dated as of the Closing Date, in the form acceptable to such Holder, which instructions shall have been delivered to and acknowledged in writing by the Transfer Agent.

(d) The Company shall have delivered to such Holder a certificate evidencing the formation and good standing of the Company and each of its Subsidiaries in each such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Closing Date, along with a bring-down letter certifying the good standing of the Company and each of its Subsidiaries as of the Closing Date, along with a bring-down letter certifying the good standing of the Company and each of its Subsidiaries as of the Closing Date.

(e) The Company shall have delivered to such Holder a certified copy of the Certificate of Incorporation of the Company as certified by the Delaware Secretary of State within ten (10) days of the Closing Date.

(f) The Company shall have delivered to such Holder a certificate, in the form acceptable to such Holder, executed by the Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(d) as adopted by the Company's Board of Directors or a duly authorized committee thereof in a form reasonably acceptable to such Holder, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at the Closing.

(g) Each and every representation and warranty of the Company shall be true and correct in all material respects (except for such representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Holder shall have received a certificate, duly executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Holder in the form acceptable to such Holder.

(h) The Common Stock (A) shall be designated for quotation or listed (as applicable) on NYSE and (B) shall not have been suspended, as of the Closing Date, by the SEC or NYSE from trading on NYSE nor shall suspension by the SEC or NYSE have been threatened, as of the Closing Date, either (1) in writing by the SEC or NYSE or (2) by falling below the minimum maintenance requirements of NYSE.

(i) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the exchange of the Exchange Securities, including without limitation, those required by NYSE, if any.

(j) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(k) Since the date of execution of this Agreement, other than the EOD or any acceleration by the Holders of the Prior Notes as a result thereof, no event or series of events shall have occurred that would have or result in a Material Adverse Effect.

(l) The Company shall have submitted a Supplemental Listing Application with NYSE relating to the issuance of the Exchange Shares as contemplated hereby.

(m) The Company shall have delivered to such Holder the results of a recent lien, bankruptcy and judgment search in each relevant jurisdiction with respect to the Company and its Subsidiaries and such search shall reveal no Liens on any of the Collateral or other assets of the Company and its Subsidiaries except, in the case of assets other than Collateral, for Permitted Liens.

(n) The Company shall have established and in effect an ATM Sales Agreement in place pursuant to which the Company has the ability to issue and sell shares of Common Stock from time to time (an "**ATM Sales Program**"). The ATM Sales Program shall have aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least twenty million dollars ($20,000,000) as of the Closing Date.

(o) All costs, fees, expenses (including, without limitation, legal fees and expenses) contemplated hereby to be payable to the Holders shall have been paid to the extent due and, in the case of expenses of the Holders that are reimbursable in accordance herewith, invoiced at least one day prior to the Closing Date.

(p) Such Holder shall have received Voting Agreements executed by (i) each member of the Company's Board of Directors and (ii) each of the officers (as defined in Rule 16a-1(f) promulgated under the 1934 Act) of the Company (all of (i) through (ii) of which are identified on the Schedule of Voting Agreement Parties attached hereto).

(q) The Company shall have paid to the Holders, and the Holders shall have received, the Prior Note Pay Down along with all accrued but unpaid interest (which such interest rate shall be at the Default Interest rate and accrue as of October 1, 2023), to, and including the Closing Date, on the amount of principal being repaid per Recital (F) of this Agreement.

(r) The Company shall have paid to the Holder all accrued but unpaid interest (which such interest rate shall be at the Default Interest rate and accrue as of October 1, 2023), to, and including the Closing Date, on the amount of principal being exchanged hereunder.

(s) The Company and its Subsidiaries shall have delivered to such Holder such other documents, instruments or certificates relating to the transactions contemplated by the Transaction Documents (other than the Ancillary Security Documents) as such Holder or its counsel may reasonably request.

8. TERMINATION.

In the event that the Closing shall not have occurred with respect to a Holder within five (5) Business Days of the date hereof, then such Holder shall have the right to terminate its obligations under this Agreement with respect to itself at any time on or after the close of business on such date without liability of such Holder to any other party; *provided*, *however*, (i) the right to terminate this Agreement under this Section 8 shall not be available to such Holder if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of such Holder's breach of this Agreement and (ii) the abandonment of the exchange of the Exchange Notes shall be applicable only to such Holder providing such written notice; *provided*, *further*, that no such termination shall affect any obligation of the Company under this Agreement to reimburse such Holder for the expenses described in Section 4(f) above. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents. In the event that this Agreement is terminated prior to the Closing, then neither this Agreement nor any of the other Transaction Documents will have any impact on the Prior SPA or the Transaction Documents (as defined in the Prior SPA).

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company hereby irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder or to enforce a judgment or other court ruling in favor of such Holder. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

(b) Counterparts; Electronic Signatures. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof. A party's electronic signature (complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) of this Agreement shall have the same validity and effect as a signature affixed by the party's hand.

(c) Headings; Gender; Interpretation. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Schedules and Exhibits mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement,

instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

(d) Severability; Maximum Payment Amounts. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company and/or any of its Subsidiaries (as the case may be), or payable to or received by any of the Holders, under the Transaction Documents (including without limitation, any amounts that would be characterized as "interest" under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to any Holder, or collection by any Holder pursuant the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Holder, the Company and its Subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Holder, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Holder under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by such Holder under any of the Transaction Documents or related thereto are held to be within the meaning of "interest" or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(e) Entire Agreement; Amendments. This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein, and the Prior Transaction Documents and the schedules and exhibits attached thereto and the instruments referenced therein supersede all other prior oral or written agreements between the Holders, the Company, its Subsidiaries, their affiliates and Persons acting on their behalf, including, without limitation, any transactions by any Holder with respect to Common Stock or the Securities, and the other matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein, and the Prior Transaction Documents and the schedules and exhibits attached thereto and the instruments referenced therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; *provided*, *however*, nothing contained in this Agreement or any other

Transaction Document or the Prior Transaction Documents shall (or shall be deemed to) (i) have any effect on any agreements any Holder has entered into with, or any instruments any Holder has received from, the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment (other than in connection with the Prior Transaction Documents) made by such Holder in the Company or (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries, or any rights of or benefits to any Holder or any other Person, in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Holder, or any instruments any Holder received from the Company and/or any of its Subsidiaries prior to the date hereof, and all such agreements and instruments (other than the Prior Note Pay Down and the Prior Notes being exchanged at the Closing, which for the avoidance of doubt, the aggregate principal amount of Prior Notes being paid down and exchanged shall automatically terminate in all respects upon the Closing) shall continue in full force and effect. For the avoidance of doubt, except for the matters expressly set forth in the Transaction Documents, all other terms of the Prior Transaction Documents are hereby ratified and shall remain unchanged and in full force and effect. Except as specifically set forth herein or therein, neither the Company nor any Holder makes any representation, warranty, covenant or undertaking. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Required Holders, and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Holders and holders of Securities, as applicable; *provided*, that no such amendment shall be effective to the extent that it (A) applies to less than all of the holders of the Securities then outstanding or (B) imposes any obligation or liability on any Holder without such Holder's prior written consent (which may be granted or withheld in such Holder's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the Required Holders may waive any provision of this Agreement, and any waiver of any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Holders and holders of Securities, as applicable, provided that no such waiver shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on any Holder without such Holder's prior written consent (which may be granted or withheld in such Holder's sole discretion). No consideration (other than reimbursement of legal fees) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents and all holders of the Exchange Notes. From the date hereof and while any Exchange Notes are outstanding, the Company shall not be permitted to receive any consideration from a Holder or a holder of Exchange Notes that is not otherwise contemplated by the Transaction Documents in order to, directly or indirectly, induce the Company or any Subsidiary (i) to treat such Holder or holder of Exchange Notes in a manner that is more favorable than to other similarly situated Holders or holders of Exchange Notes, or (ii) to treat any Holder(s) or holder(s) of Exchange Notes in a manner that is less favorable than the Holder or holder of Exchange Notes that is paying such consideration; *provided*, *however*, that the determination of whether a Holder has been treated more or less favorably than another Holder shall disregard any securities of the Company purchased or sold by any Holder. The Company has not, directly or indirectly, made any agreements with any Holders relating to the terms or conditions of the transactions contemplated by the Transaction Documents or the Prior Transaction Documents except as set forth in the Transaction Documents and the Prior Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Holder has made any commitment or promise or has any other obligation to provide any financing to the Company,

any Subsidiary or otherwise. As a material inducement for each Holder to enter into this Agreement, the Company expressly acknowledges and agrees that (x) no due diligence or other investigation or inquiry conducted by a Holder, any of its advisors or any of its representatives shall affect such Holder's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (y) nothing contained in any of the SEC Documents shall affect such Holder's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document. "**Required Holders**" means (I) prior to the Closing Date, each Holder entitled to exchange its Prior Notes for Exchange Securities at the Closing, and (II) on or after the Closing Date, holders of a majority of the aggregate principal amount of the Exchange Notes, so long as any Exchange Notes remain outstanding, and if no Exchange Notes remain outstanding, holders of a majority of the Exchange Notes in the aggregate as of such time issued and held by the Holders or issuable hereunder on the Closing Date; *provided*, that such majority must include High Trail Investments ON LLC or HB SPV I Master Sub LLC, so long as High Trail Investments ON LLC or HB SPV I Master Sub LLC or any of their affiliates hold any Notes or Exchange Shares.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and e-mail addresses for such communications shall be:

If to the Company:

Velo3D, Inc.
511 Division Street
Campbell, California 95008
Telephone: [*]
Attention: Bernard Chung
E-Mail: [*]

With a copy (for informational purposes only) to:

Fenwick & West LLP
902 Broadway
New York, NY 10010
Attention: Per Chilstrom
E-mail: [*]

If to the Transfer Agent:

Continental Stock Transfer & Trust Company
1 State Street, 30th Floor
New York, NY 10004
Attention: Erika Harris
Email: [*]

If to a Holder, to (i) its e-mail address set forth on the Schedule of Holders, with copies to such Holder's representatives as set forth on the Schedule of Holders and (ii) to Eric Helenek, High Trail Capital, 80 River Street, Suite 4C, Hoboken, NJ 07030 (telephone: [*]).

with a copy (for informational purposes only) to:

Latham & Watkins LLP
12670 High Bluff Drive
San Diego, CA 92130
Telephone: [*]
Attention: Michael E. Sullivan
E-mail: [*]

or to such other address, e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) electronically generated by the sender's e-mail or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Holders, including, without limitation, by way of a Fundamental Change (unless the Company is in compliance with the applicable provisions governing Fundamental Changes set forth in the Exchange Notes). A Holder may assign some or all of its rights hereunder in connection with any transfer of any of its Purchased Securities without the consent of the Company, provided such assignee agrees in writing to be bound by the provisions hereof that apply to Holders in which event such assignee shall be deemed to be a Holder hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive the Closing. Each Holder shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request

in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification.

(i) In consideration of each Holder's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Holder and each holder of any Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnitee that arises out of or results from (A) the execution, delivery, performance or enforcement of any of the Transaction Documents (including, without limitation, any hedging or similar activities in connection therewith), or (B) the status of such Holder or holder of the Securities either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, any hedging or similar activities in connection therewith or as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief); *provided*, *however*, that the Company will not be liable in any such case to a Holder or its related Indemnitees to the extent that any such claim, loss, damage, liability or expense arise primarily out of or is based primarily upon (i) the inaccuracy of any representations and warranties made by such Holder herein or (ii) the fraud, willful misconduct, gross negligence or bad faith of such Holder or its related Indemnitees. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(ii) Promptly after receipt by an Indemnitee under this Section 9(k) of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 9(k), deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnitee; *provided*, *however*, that an Indemnitee shall have

the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Indemnified Liability and to employ counsel reasonably satisfactory to such Indemnitee in any such Indemnified Liability; or (iii) the named parties to any such Indemnified Liability (including, without limitation, any impleaded parties) include both such Indemnitee and the indemnifying party, and such Indemnitee shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnitee and the indemnifying party (in which case, if such Indemnitee notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the indemnifying party), provided further that in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for such Indemnitee. The Indemnitee shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnitee which relates to such Indemnified Liability. The indemnifying party shall keep the Indemnitee reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; *provided*, *however*, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liability, and such settlement shall not include any admission as to fault on the part of the Indemnitee. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnitee under this Section 9(k), except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action. The indemnification required by this Section 9(k) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Liabilities are incurred. The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnitees against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the Common Stock shall be automatically adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions that occur with respect to the Common Stock after the date of this Agreement. Notwithstanding anything in this Agreement to

the contrary, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty against, or a prohibition of, any actions with respect to the borrowing of, arrangement to borrow, identification of the availability of, and/or securing of, securities of the Company in order for such Holder (or its broker or other financial representative) to effect short sales or similar transactions in the future.

(m) Remedies. Each Holder and in the event of assignment by Holder of its rights and obligations hereunder, each holder of Securities, shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it or any Subsidiary fails to perform, observe, or discharge any or all of its or such Subsidiary's (as the case may be) obligations under the Transaction Documents, any remedy at law would be inadequate relief to the Holders. The Company therefore agrees that the Holders shall be entitled to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).

(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Holder exercises a right, election, demand or option under a Transaction Document and the Company or any Subsidiary does not timely perform its related obligations within the periods therein provided or if no period is prescribed, within a reasonable period of time, then such Holder may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company or such Subsidiary (as the case may be), any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside; Currency. To the extent that the Company makes a payment or payments to any Holder hereunder or pursuant to any of the other Transaction Documents or any of the Holders enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be

converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Judgment Currency.

(i) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Agreement or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 9(p) referred to as the "**Judgment Currency**") an amount due in U.S. Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Business Day immediately preceding:

(1) the date actual payment of the amount due, in the case of any proceeding in the Court of Chancery of the State of Delaware or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or

(2) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 9(p)(i)(2) being hereinafter referred to as the "**Judgment Conversion Date**").

(ii) If in the case of any proceeding in the court of any jurisdiction referred to in Section 9(p)(i)(2), there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of U.S. Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(iii) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement or any other Transaction Document.

(q) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder under the Transaction Documents are several and not joint with the obligations of any other Holder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as, and the Company acknowledges that the Holders do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity, and the Company shall not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Holder to exchange the Prior Notes for the Exchange Notes pursuant to the Transaction Documents has been made by such Holder independently of any other Holder. Each Holder acknowledges that no other Holder has acted as

agent for such Holder in connection with such Holder making its investment hereunder and that no other Holder will be acting as agent of such Holder in connection with monitoring such Holder's investment in the Securities or enforcing its rights under the Transaction Documents. The Company and each Holder confirms that each Holder has independently participated with the Company and its Subsidiaries in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Holder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the Exchange contemplated hereby was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and its Subsidiaries and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company, each Subsidiary and a Holder, solely, and not between the Company, its Subsidiaries and the Holders collectively and not between and among the Holders.

(r) Performance Date. If the date by which any obligation under any of the Transaction Documents must be performed occurs on a day other than a Business Day, then the date by which such performance is required shall be the next Business Day following such date.

(s) Enforcement Fees. The Company agrees to pay all costs and expenses of the Holders incurred as a result of enforcement of the Transaction Documents and the collection of any amounts owed to the Holders hereunder (whether in cash, equity or otherwise), including, without limitation, reasonable attorneys' fees and expenses.

(t) Collateral Agent.

(i) *Appointment; Authorization.* The Holders, together with any successors or assigns thereof, hereby irrevocably appoint, designate and authorize High Trail Investments ON LLC as collateral agent to take such action on their behalf under the provisions of the Exchange Notes, each of the Security Documents, as amended by the Amendment to Security Documents, and to exercise such powers and perform such duties as are expressly delegated to it by the terms of each of the Security Documents, as amended by the Amendment to Security Documents, together with such powers as are reasonably incidental thereto. The provisions of this Section 9(t) are solely for the benefit of the Collateral Agent, and the Company shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any Security Document, as amended by the Amendments to Security Documents, (or any other similar term) with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Notwithstanding any provision to the contrary contained elsewhere in the Exchange Notes, any Security Document, as amended by the Amendments to Security Documents, or any other agreement, instrument or document related hereto or thereto, the Collateral Agent shall not have any duty or responsibility except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Exchange Notes, any Security Document, as amended by the Amendments to Security Documents, or any other agreement, instrument or document related hereto or thereto or otherwise exist against the Collateral Agent.

(ii) *Delegation of Duties.* The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any Security Document, as amended by the Amendments to Security Documents, by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through its Affiliates (as defined in the Exchange Notes), partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives, or the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of any of its Affiliates (collectively, the "**Related Parties**"). The exculpatory provisions of this Section 9(t) shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(iii) *Exculpatory Provisions.*

(A) The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Security Documents, as amended by the Amendments to Security Documents, and its duties shall be administrative in nature. Without limiting the generality of the foregoing, the Collateral Agent: (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing or an Event of Default has occurred; (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers; and (iii) shall not, except as expressly set forth in the Security Documents, as amended by the Amendments to Security Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity.

(B) The Collateral Agent shall not be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by the Company.

(C) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with the Exchange Notes, any Security Document, as amended by the Amendments to Security Documents, or any other agreement, instrument or document related hereto or thereto, (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (d) the validity, enforceability, effectiveness or genuineness of the Exchange Notes, any Security Document, as amended by the Amendments to Security Documents, or any other agreement, instrument or document related to the Exchange Notes or Security Document, as amended by the Amendments to Security Documents, or (e) any failure of the Company or any other party to the Exchange Notes, any Security Document, as amended by the Amendments to Security Documents, or any other agreement, instrument or document related to the Exchange Notes or Security Documents, as amended by the Amendments to Security

Documents, to perform its obligations thereunder. The Collateral Agent shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, the Exchange Notes, any Security Document, as amended by the Amendments to Security Documents, or any other agreement, instrument or document related to the Exchange Notes or Security Documents, as amended by the Amendments to Security Documents, or to inspect the properties, books or records of the Company or any Affiliate of the Company.

(iv) *Reliance by Collateral Agent.* The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(v) *Successor Agent.* The Collateral Agent may resign as the Collateral Agent at any time upon ten (10) days' prior notice to the Holders and the Company. If the Collateral Agent resigns under the Exchange Notes, the Required Holders shall appoint a successor agent. If no successor agent is appointed prior to the effective date of the resignation of the Collateral Agent, the Collateral Agent may appoint a successor Collateral Agent on behalf of the Holders after consulting with the Holders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the term "the Collateral Agent" shall mean such successor agent, and the retiring Collateral Agent's appointment, powers and duties as the Collateral Agent shall be terminated. After the Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this Section 9(t) shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Collateral Agent. If no successor agent has accepted appointment as the Collateral Agent by the date which is thirty (30) days following a retiring Collateral Agent's notice of resignation, a retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Holders, shall perform all of the duties of the Collateral Agent hereunder until such time as Required Holders shall appoint a successor agent as provided for above.

(vi) *Non-Reliance on the Collateral Agent.* The Holders acknowledges that they have, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as they have deemed appropriate, made their own credit analysis and decision to enter invest in the Exchange Notes. The Holders also acknowledges that they will, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as they shall from time to time deem appropriate, continue to make their own decisions in taking or not taking action under or based upon the Exchange Notes, any Security Agreement or any related agreement or any document furnished hereunder or thereunder.

(vii) *Collateral Matters.* The Holders irrevocably authorize the Collateral Agent to release any Lien (as defined in the Exchange Notes) granted to or held by the Collateral Agent under any Security Document, as amended by the Amendments to Security Documents, (i) when all Obligations (as defined below) have been paid in full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted under the Exchange Notes and each other agreement, instrument or document related thereto (it being agreed and understood that the Collateral Agent may conclusively rely without further inquiry on a certificate of an officer of the Company as to the sale or other disposition of property being made in compliance with the Exchange Notes and each other agreement, instrument or document related thereto); or (iii) if approved, authorized or ratified in writing by the Holders. The Collateral Agent shall have the right, in accordance with the Security Documents, as amended by the Amendments to Security Documents, to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and the Collateral Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and setoff the amount of such price against the Obligations. "**Obligation**" means all liabilities, indebtedness and obligations (including interest accrued at the rate provided in the applicable Note Document (as defined below) after the commencement of a bankruptcy proceeding, whether or not a claim for such interest is allowed) of the Company, any Security Document, as amended by the Amendments to Security Documents, or any other Note Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. "**Note Documents**" means this Agreement, the Notes, any Security Document, as amended by the Amendments to Security Documents, and the other Transaction Documents.

(viii) *Reimbursement by Holders.* To the extent that the Company for any reason fails to indefeasibly pay any amount required under Sections 4(f) or 9(k) to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of the Collateral Agent (or any sub-agent thereof), the Holders hereby agree, jointly and severally, to pay to the Collateral Agent (or any such sub-agent) or such Related Party of the Collateral Agent (or any sub-agent thereof), as the case may be, such unpaid amount.

(ix) *Marshaling; Payments Set Aside.* Neither the Collateral Agent nor the Holders shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of any or all of the Obligations. To the extent that the Company makes a payment or payments to the Collateral Agent, or the Collateral Agent enforces its Liens (as defined in the Exchange Notes) or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Collateral Agent in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (i) to the extent of such recovery, the obligation under the Exchange Notes intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (ii) the Holders agree to pay to the Collateral Agent upon demand its share of the total amount so recovered from or repaid by the Collateral Agent to the extent paid to the Holders.

[*signature pages follow*]

IN WITNESS WHEREOF, each Holder and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

COMPANY:

VELO3D, INC.

By: /s/ Benyamin Buller
Name: Benyamin Buller
Title: Chief Executive Officer

IN WITNESS WHEREOF, each Holder and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

HOLDER:

HIGH TRAIL INVESTMENTS ON LLC

By: /s/ [*]
Name: [*]
Title: Authorized Signatory

IN WITNESS WHEREOF, each Holder and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

HOLDER:

HB SPV I MASTER SUB LLC

By: /s/ [*]
Name: [*]
Title: Authorized Signatory

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Holder	**Address**	**Aggregate Principal Amount of Prior Notes Currently Held**	**Reduction in Aggregate Principal Amount of Prior Notes Resulting from Prior Note Pay Down**	**Aggregate Payment Amount of Prior Note Pay Down Exclusive of Accrued but Unpaid Interest**	**Aggregate Principal Amount Remaining After Prior Note Pay Down and Being Exchanged for Exchange Notes**	**Aggregate Principal Amount of Exchange Notes**	**Aggregate Amount of Exchange Shares**	**Legal Representative's Address**
High Trail Investments ON LLC	High Trail Capital 80 River Street, Suite 4C Hoboken, NJ 07030 Attn: Eric Helenek E-Mail: [*]	$28,000,000	$5,000,000	$6,000,000	$23,000,000	$23,000,000	4,000,000	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Telephone: [*] Attention: Michael Sullivan
HB SPV I Master Sub LLC	High Trail Capital 80 River Street, Suite 4C Hoboken, NJ 07030 Attn: Eric Helenek E-Mail: [*]	$42,000,000	$7,500,000	$9,000,000	$34,500,000	$34,500,000	6,000,000	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Telephone: [*] Attention: Michael Sullivan
TOTAL		$70,000,000	$12,500,000	$15,000,000	$57,500,000	$57,500,000	10,000,000	

SCHEDULE OF HOLDERS

SCHEDULE OF VOTING AGREEMENT PARTIES

Carl Bass
Benyamin Buller
Bernard Chung
Michael Idelchik
Adrian Keppler
Stefan Krause
Ellen Smith
Gabrielle Toledano
Matthew Walters
Renette Youssef

Exhibit A

Form of Exchange Note

Exhibit B

Form of Second Supplemental Indenture

Exhibit C-1

Form of Amendment to Main Security Agreement

Exhibit C-2

Form of Amendment to Intellectual Property Security Agreement

Exhibit D

Form of Voting Agreement

[See Attached]

VOTING AGREEMENT

This **VOTING AGREEMENT** (this "**Agreement**"), dated as of August 28, 2023, is entered into by and between the undersigned stockholder (the "**Stockholder**") of Velo3D, Inc., a Delaware corporation (the "**Company**"), and the Company. The Company and the Stockholder are each sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties.**" Capitalized terms that are used but not defined herein shall have the meaning ascribed to them in the Exchange Agreement (as defined below).

RECITALS

Concurrently with or following the execution of this Agreement, the Company has entered, or will enter, into a Securities Exchange Agreement (as the same may be amended from time to time, the "**Exchange Agreement**"), providing for, among other things, the exchange of the Prior Notes for Exchange Securities pursuant to the terms and conditions of the Exchange Agreement and the Transaction Documents.

In order to induce the Holders to enter into the Exchange Agreement and the Transaction Documents, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Stockholder hereby makes certain representations, warranties, covenants, and agreements as set forth in this Agreement with respect to the shares of Common Stock Beneficially Owned (as defined below) by the Stockholder and set forth below the Stockholder's signature on the signature page hereto (the "**Original Shares**" and, together with any additional shares of Common Stock pursuant to Section 5 hereof, the "**Shares**").

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS. When used in this Agreement, the following terms in all of their tenses, cases, and correlative forms shall have the meanings assigned to them in this Section 1.

(a) "**Beneficially Own**" or "**Beneficial Ownership**" has the meaning assigned to such term in Rule 13d-3 under the 1934 Act, and a Person's beneficial ownership of securities shall be calculated in accordance with the provisions of such rule (in each case, irrespective of whether or not such rule is actually applicable in such circumstance). For the avoidance of doubt, "Beneficially Own" and "Beneficial Ownership" shall also include record ownership of securities.

(b) "**Beneficial Owner**" shall mean the Person who Beneficially Owns the referenced securities.

2. REPRESENTATIONS OF STOCKHOLDER. The Stockholder represents and warrants to the Company that:

(a) **Ownership of Shares**. The Stockholder: (i) is the Beneficial Owner of all of the Original Shares set forth below the Stockholder's signature on the signature pages hereto free and clear of any proxy, voting restriction, adverse claim, or other Liens, other than those created by this Agreement or under applicable federal or state securities laws; and (ii) has the sole voting power over all such Original Shares. Except pursuant to this Agreement, there are no options, warrants, or other rights, agreements, arrangements, or commitments of any character to which

the Stockholder is a party relating to the pledge, disposition, or voting of any such Original Shares and there are no voting trusts or voting agreements with respect to such Original Shares.

(b) **Disclosure of All Shares Owned**. The Stockholder does not Beneficially Own any shares of Common Stock other than: (i) the Original Shares set forth below the Stockholder's signature on the signature pages hereto; and (ii) any options, warrants, or other rights to acquire any additional shares of Common Stock or any security exercisable for or convertible into shares of Common Stock, set forth below the Stockholder's signature on the signature pages hereto (collectively, "**Options**").

(c) **Power and Authority; Binding Agreement.** If the Stockholder is an individual, the Stockholder has full power and authority and legal capacity to enter into, execute, and deliver this Agreement and to perform fully the Stockholder's obligations hereunder (including the proxy described in Section 3(b) below). If the Stockholder is not an individual, the Stockholder has requisite organizational power and authority to enter into, execute, and deliver this Agreement and to perform fully the Stockholder's obligations hereunder (including the proxy described in Section 3(b) below). This Agreement has been duly and validly executed and delivered by the Stockholder and constitutes the legal, valid, and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights.

(d) **No Conflict.** The execution and delivery of this Agreement by the Stockholder does not, and the consummation of the transactions contemplated hereby and the compliance with the provisions hereof will not, conflict with or violate any law applicable to the Stockholder or result in any breach of or violation of, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration, or cancellation of, or result in the creation of any Lien on any of the Shares attributable to the Stockholder pursuant to, any agreement or other instrument or obligation binding upon the Stockholder or any of the Shares attributable to the Stockholder.

(e) **No Consents.** No consent, approval, order, or authorization of, or registration, declaration, or filing with, any Governmental Entity or any other Person on the part of the Stockholder is required in connection with the valid execution and delivery of this Agreement. If the Stockholder is an individual, no consent of the Stockholder's spouse is necessary under any "community property" or other laws in order for the Stockholder to enter into and perform its obligations under this Agreement.

(f) **No Litigation.** There is no action, suit, investigation, or proceeding (whether judicial, arbitral, administrative, or other) pending against, or, to the knowledge of the Stockholder, threatened against or affecting, the Stockholder that could reasonably be expected to materially impair or materially adversely affect the ability of the Stockholder to perform the Stockholder's obligations hereunder or to consummate the transactions contemplated by this Agreement on a timely basis.

3. AGREEMENT TO VOTE SHARES; IRREVOCABLE PROXY.

(a) **Agreement to Vote and Approve.** The Stockholder irrevocably and unconditionally agrees during the term of this Agreement, at any annual or special meeting of the Company called with respect to the approval contemplated by the Requisite Stockholder Approval (as defined in the Exchange Notes), and at every adjournment or postponement thereof, and on every action or approval by written consent or consents of the Company stockholders

with respect to such matter, to vote or cause the holder of record to vote the Shares in favor of providing the Requisite Stockholder Approval.

(b) **Irrevocable Proxy.** The Stockholder hereby appoints the Company and any designee of the Company, and each of them individually, until the Expiration Time (as defined below) (at which time this proxy shall automatically be revoked), its proxies and attorneys-in-fact, with full power of substitution and resubstitution, to vote or act by written consent during the term of this Agreement with respect to the Shares in accordance with Section 3(a). This proxy and power of attorney is given to secure the performance of the duties of the Stockholder under this Agreement. The Stockholder shall take such further action or execute such other instruments as may be necessary to effectuate the intent of this proxy. This proxy and power of attorney granted by the Stockholder shall be irrevocable during the term of this Agreement, shall be deemed to be coupled with an interest sufficient in law to support an irrevocable proxy, and shall revoke any and all prior proxies granted by the Stockholder with respect to the Shares. The power of attorney granted by the Stockholder herein is a durable power of attorney and shall survive the bankruptcy, death, or incapacity of the Stockholder. The proxy and power of attorney granted hereunder shall terminate upon the termination of this Agreement.

4. NO VOTING TRUSTS OR OTHER ARRANGEMENT. The Stockholder agrees that during the term of this Agreement the Stockholder will not, and will not permit any entity under the Stockholder's control to, deposit any of the Shares in a voting trust, grant any proxies with respect to the Shares, or subject any of the Shares to any arrangement with respect to the voting of the Shares other than agreements entered into with the Company.

5. ADDITIONAL SHARES. The Stockholder agrees that all shares of Common Stock that the Stockholder purchases, acquires the right to vote, or otherwise acquires Beneficial Ownership of, after the execution of this Agreement and prior to the Expiration Time shall be subject to the terms and conditions of this Agreement and shall constitute Shares for all purposes of this Agreement. In the event of any stock split, stock dividend, merger, reorganization, recapitalization, reclassification, combination, exchange of shares, or the like of the capital stock of the Company affecting the Shares, the terms of this Agreement shall apply to the resulting securities and such resulting securities shall be deemed to be "Shares" for all purposes of this Agreement.

6. TERMINATION. This Agreement shall terminate upon the earliest to occur of (the "**Expiration Time**"): (a) the date on which the Exchange Agreement is terminated in accordance with its terms; (b) the termination of this Agreement by mutual written consent of the Parties; and (c) the date on which the Requisite Stockholder Approval is obtained. Nothing in this Section 6 shall relieve or otherwise limit the liability of any Party for any intentional breach of this Agreement prior to such termination.

7. NO AGREEMENT AS DIRECTOR OR OFFICER. The Stockholder makes no agreement or understanding in this Agreement in its capacity as a director or officer of the Company or any of its subsidiaries (if the Stockholder holds such office), and nothing in this Agreement: (a) will limit or affect any actions or omissions taken by the Stockholder in its capacity as such a director or officer, and no such actions or omissions shall be deemed a breach of this Agreement; or (b) will be construed to prohibit, limit, or restrict the Stockholder from exercising its fiduciary duties as an officer or director to the Company or its stockholders.

8. FURTHER ASSURANCES. The Stockholder agrees, from time to time, and without additional consideration, to execute and deliver such additional proxies, documents, and other instruments and to take all such further action as the Company may reasonably request to consummate and make effective the transactions contemplated by this Agreement.

9. STOP TRANSFER INSTRUCTIONS. At all times commencing with the execution and delivery of this Agreement and continuing until the Expiration Time, in furtherance of this Agreement, the Stockholder hereby authorizes the Company or its counsel to notify the Company's transfer agent that there is a stop transfer order with respect to all of the Shares (and that this Agreement places limits on the voting and transfer of the Shares), subject to the provisions hereof and provided that any such stop transfer order and notice will immediately be withdrawn and terminated by the Company following the Expiration Time.

10. SPECIFIC PERFORMANCE. Each Party hereto acknowledges that it will be impossible to measure in money the damage to the other Party if a Party hereto fails to comply with any of the obligations imposed by this Agreement, that every such obligation is material and that, in the event of any such failure, the other Party will not have an adequate remedy at law or damages. Accordingly, each Party hereto agrees that injunctive relief or other equitable remedy, in addition to remedies at law or damages, is the appropriate remedy for any such failure and will not oppose the seeking of such relief on the basis that the other Party has an adequate remedy at law. Each Party hereto agrees that it will not seek, and agrees to waive any requirement for, the securing or posting of a bond in connection with the other Party's seeking or obtaining such equitable relief.

11. AMENDMENT; ASSIGNMENT. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Stockholder. No Party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party hereto, except that the Company may assign, in its sole discretion, all or any of its rights, interests and obligations hereunder to any of its "affiliates" (as defined in Rule 144 promulgated under the 1933 Act (or a successor rule thereto)) or to any party that acquires all of substantially all of the assets of the Company (whether by merger, sale of stock, sale of assets or otherwise). Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective permitted successors and assigns. Any assignment contrary to the provisions of this Section 11 shall be null and void.

12. NOTICES. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and e-mail addresses for such communications shall be:

If to the Company:

Velo3D, Inc.
511 Division St.
Campbell, CA 95008
Telephone: [*]
Attention: Bernard Chung
E-mail: [*]

With a copy (for informational purposes only) to:

Fenwick & West LLP
902 Broadway

New York, NY 10010
Telephone: [*]
Attention: Per Chilstrom
Email: [*]

If to the Stockholder, to the address, email address, or facsimile number set forth for the Stockholder on the signature pages hereof.

13. MISCELLANEOUS. The provisions of Sections 9(a), (b), (c), (d), (e), (g), (h), (l), (n), (o) and (p) of the Exchange Agreement shall apply to this Agreement, *mutatis mutandis*.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the date first written above.

VELO3D, INC.

By: __
Name:
Title:

[STOCKHOLDER]

By: __
Name:
Number of Shares of Common Stock Beneficially Owned as of the date of this Agreement:
Number of Options Beneficially Owned as of the date of this Agreement:
Street Address:
City/State/Zip Code:
Email:

Exhibit 10.2

Certain information in this document indicated with "[*]" has been omitted from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT

This FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT (this "***Amendment***") is made and entered into as of November 27, 2023, by and between Velo3D, Inc., a Delaware corporation (the "***Company***") and High Trail Investments ON LLC and HB SPV I Master Sub LLC (each, a *"**Holder***" and together, the "***Holders***").

RECITALS

Whereas, the Company and each of the investors listed on the Schedule of Buyers attached thereto entered into that certain Securities Purchase Agreement, dated as of August 10, 2023 (the "***Securities Purchase Agreement***") (as the same may be amended from time to time);

Whereas, the Company and the Holders desire to amend certain provisions of the Securities Purchase Agreement;

Whereas, pursuant to Section 9(e) of the Securities Purchase Agreement, the Securities Purchase Agreement may be amended with the written consent of the Company and the Required Holders (as defined therein); and

Whereas, the Holders constitute the Required Holders.

Now, Therefore, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I

AMENDMENT OF SECURITIES PURCHASE AGREEMENT

1.1. Section 1(f) of the Securities Purchase Agreement is hereby amended in its entirety as follows:

"Subsequent Closings. The closing of the purchase of Subsequently Purchased Notes (each, a "**Subsequent Closing**" and together with the Initial Closing, each a "**Closing**") by the Buyers pursuant to an Election Notice shall occur by electronic transmission or other transmission as mutually acceptable to the parties. The date and time of a Subsequent Closing (each, a "**Subsequent Closing Date**" and together with the Initial Closing Date, each a "**Closing Date**") shall be 10:00 a.m., New York time, on the date upon which the conditions to such Subsequent Closing set forth in Sections 6 and 7(b) are satisfied or waived (or such other date as is set forth by the Buyers in the Election Notice); *provided*, that in no event will any Election Notice be delivered after the date that is two (2) years from the Initial Closing Date."

1.2. Exhibit A of the Securities Purchase Agreement . Exhibit A of the Securities Purchase Agreement is hereby amended and restated as set forth on Annex A hereto.

ARTICLE II

MISCELLANEOUS

3.2. Disclosure of Amendment. No later than 9:00 a.m., New York time, on November 28, 2023, the Company shall file a Current Report on Form 8-K (the "***Form 8-K***") disclosing all the material terms of the transactions contemplated by this Amendment and that certain Securities Exchange Agreement, dated as of November 27, 2023 entered into between the parties (the "***Exchange Agreement***"). From and after the issuance of the Form 8-K, the Company shall have disclosed all material, nonpublic information (if any) provided to Holders by the Company or any of its subsidiaries or any of their respective officers, directors, employees or agents and Holders shall not be in possession of any material, non-public information regarding the Company or any of its Subsidiaries. Following the closing of the Exchange (as defined below), the Company will, as promptly as is reasonably practicable, file an amendment or supplement to the Prospectus Supplement (as defined in the Securities Purchase Agreement) to update the description of the offering of the Notes and the description of the Notes to reflect the changes effected pursuant to this Amendment.

3.3. Captions. The headings contained in this Amendment are for reference purposes only and shall not affect in any way the meaning or interpretation of this Amendment. Except as otherwise indicated, all references in this Amendment to "Sections" or "Exhibits" are intended to refer to the Sections of, or Exhibits to, the Securities Purchase Agreement.

3.4. Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Amendment and the Exchange Agreement shall be determined in accordance with the provisions of the Exchange Agreement.

3.5. Effectiveness of Amendment. The amendment to the Securities Purchase Agreement set forth in Article I hereof shall become effective upon the completion of the exchange of the Prior Note (as defined in the Exchange Agreement) for the Exchange Note (as defined in the Exchange Agreement) in accordance with the terms of the Exchange Agreement (the "***Exchange***"); provided, however, that in the event of any breach of the terms and conditions by the Company of the Exchange Agreement, the Holders shall have the right to void this Amendment in whole or in part.

3.6. No Other Amendment. Except for the matters expressly set forth in this Amendment, all other terms of the Securities Purchase Agreement are hereby ratified and shall remain unchanged and in full force and effect.

3.7. Counterparts. This Amendment may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party.

3.8. Electronic and Facsimile Signatures. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof. A party's electronic signature (complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) of this Agreement shall have the same validity and effect as a signature affixed by the party's hand.

[Signature Pages Follow]

The parties hereto have executed this First Amendment to Securities Purchase Agreement as of the date first written above.

COMPANY:

VELO3D, INC.,

By: /s/ Bernard Chung
Name: Bernard Chung
Title: Acting Chief Financial Officer

The parties hereto have executed this First Amendment to Securities Purchase Agreement as of the date first written above.

HOLDERS:

HIGH TRAIL INVESTMENTS ON LLC

By: /s/ [*]
Name: [*]
Title: Authorized Signatory

HB SPV I MASTER SUB LLC

By: /s/ [*]
Name: [*]
Title: Authorized Signatory

ANNEX A

(Amended and Restated Form of Note)

(see attached)

Velo3D, Inc.

Form of Senior Secured Convertible Note due 2026

Velo3D, Inc.

Senior Secured Convertible Note due 2026

Certificate No. A-[ ]

Velo3D, Inc., a Delaware corporation (the "**Company**"), for value received, promises to pay to [ ] (the "**Initial Holder**"), or its registered assigns, one hundred fifteen percent (115%) of the principal sum of [ ] ($[ ]) (such principal sum, the "**Principal Amount**," and one hundred fifteen percent (115%) of such Principal Amount, the "**Maturity Principal Amount**;" *provided* that each of the Principal Amount and the Maturity Principal Amount is subject to reduction as provided herein) on August 1, 2026, and to pay any outstanding interest thereon, as provided in this Note, in each case, as provided in and subject to the other provisions of this Note, including the earlier redemption, repurchase or conversion of this Note.

This Note has been issued pursuant to the Indenture, dated as of August 14, 2023 (the "**Base Indenture**"), by and between the Company and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the " **Trustee**"), as amended and supplemented by the First Supplemental Indenture, dated as of August 14, 2023 (the "**Supplemental Indenture**" and, the Base Indenture as amended and supplemented by the Supplemental Indenture, the "**Indenture**"), by and between the Company and the Trustee. The terms of this Note include those stated in the Indenture.

Unless otherwise indicated, references herein to "dollars" or "$" are to U.S. dollars.

Additional provisions of this Note are set forth on the other side of this Note.

[*The Remainder of This Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, Velo3D, Inc. has caused this instrument to be duly executed as of the date set forth below.

Velo3D, Inc.

Date: [ ] By: __

Name: [ ]
Title: [ ]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Dated as of [ ]

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee, certifies that this is one of the Notes described in the within-named Indenture.

Date: [ ] By: __

Authorized Signatory

Velo3D, Inc.

Senior Secured Convertible Note due 2026

This Note (this "**Note**") is issued by Velo3D, Inc., a Delaware corporation (the "**Company**"), and is one of a series of Notes that may be authenticated and delivered for original issue under the Indenture referred to below and pursuant to the Securities Purchase Agreement referred to below in an aggregate principal amount not to exceed one hundred five million dollars $105,000,000 and designated as the Company's "Senior Secured Convertible Notes due 2026" (collectively, the "**Notes**")

This Note is subject to the terms of the Indenture.

Article 1. Definitions.

Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture to the extent defined therein.

"**Affiliate**" has the meaning set forth in Rule 144 under the Securities Act.

"**ATM Issuance**" means an Equity Issuance made pursuant to an ATM Program, other than an Equity Issuance in which a single identified investor or group of identified investors purchases in excess of three million dollars ($3,000,000) in the aggregate of Common Stock or warrants exercisable for any class of Common Stock in connection with any such Equity Issuance .

"**ATM Program**" means an "at-the-market" offering within the meaning of Rule 415(a)(4) of the Securities Act.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issue Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

"**Authorized Denomination**" means, with respect to the Notes, a principal amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof, or, if such principal amount then-outstanding is less than $1,000, then such outstanding principal amount.

"**Available Cash**" means, as of any date of determination, (A) the sum of (i) the Company's Cash and Cash Equivalents and (ii) any Cash paid by the Company to the Holder or any Other Holder pursuant to (x) Section 1 of the Securities Exchange Agreement or (y) this Note, any Other Note or any Exchange Note during the applicable Quarterly Cash Burn Period less (B) any Cash raised from any financings or series of related financings during the applicable Quarterly Cash Burn Period, including for the avoidance of doubt, from the sale and issuance of the Company's Capital Stock, Convertible Securities, Equity-Linked Securities or Indebtedness (including, for the avoidance of doubt, Cash actually received in connection with the exercise or settlement of any Convertible Securities or Equity-Linked Securities).

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

"**Business Combination Event**" has the meaning set forth in **Section 9**.

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which commercial banks in The City of New York are authorized or required by law or executive order to close or be closed, or, with respect to any payment on this Note, the Place of Payment; *provided*, *however*, for clarification, commercial banks in The City of New York shall not be deemed to be authorized or required by law or executive order to close or be closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are open for use by customers on such day.

"**Capital Lease**" means, with respect to any Person, any leasing or similar arrangement conveying the right to use any property, whether real or personal property, or a combination thereof, by that Person as lessee that, in conformity with GAAP, is required to be accounted for as a capital lease on the balance sheet of such Person.

"**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a Capital Lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"**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.

"**Cash**" means all cash and liquid funds.

"**Cash Burn Measurement Date**" has the meaning set forth in **Section 8(R)**.

"**Cash Equivalents**" means, as of any date of determination, any of the following: (i) securities issued or directly and fully guaranteed or insured by the government of the United States, Canada, Japan, the United Kingdom, Switzerland or any country that is a member of the European Union or any agency or instrumentality thereof, in each case maturing not more than two years from the date of acquisition; (ii) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of $250,000,000 and whose long-term debt is rated "A" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency); (iii) repurchase obligations for underlying securities of the types described in clauses (i) and (ii) above entered into with any financial institution meeting the qualifications specified in clause (ii) above; (iv) commercial paper issued by a Person (other than an Affiliate of the Company) rated at least "A-1" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency), and in each case maturing within one year after the

date of acquisition; (v) readily marketable direct obligations issued by any state or commonwealth of the United States of America or the District of Columbia or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case with maturities not exceeding two years from the date of acquisition; (vi) Indebtedness issued by Persons (other than an Affiliate of the Company) with a rating of "A" or higher from S&P or "A-2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized rating agency), in each case with maturities not exceeding two years from the date of acquisition; and (vii) investment funds investing at least 95% of their assets in Cash and securities of the types described in clauses (i) through (vi) above.

"**Cash Sweep Amount**" means, with respect to any Cash Sweep Financing, fifteen percent (15.0%) of the gross proceeds from such financing; *provided*, *however*, that in no event shall the aggregate amount of the gross proceeds of any Cash Sweep Financing that the Company is required to redeem in respect of this Note and all Other Notes exceed fifteen percent (15.0%) of the gross proceeds of such Cash Sweep Financing.

"**Cash Sweep Certification**" has the meaning set forth in **Section 4(D)(ii)**.

"**Cash Sweep Financing**" means any Equity Issuance other than (i) issuances of solely Common Stock at a price per share above the Conversion Price and (ii) ATM Issuances; provided, however, that the issuance of shares of Common Stock pursuant to the Notes shall not constitute a Cash Sweep Financing.

"**Cash Sweep Notice**" has the meaning set forth in **Section 4(D)(iii)**.

"**Cash Sweep Payment**" has the meaning set forth in **Section 4(D)(i)**.

"**Collateral**" has the meaning set forth in **Section 8(Z)**.

"**Collateral Agent**" means High Trail Investments ON LLC in its capacity as collateral agent for the Trustee, the Holder and each Other Holder, together with any successor thereto in such capacity.

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

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Stock**" means the common stock, par value $0.00001 per share, of the Company, subject to **Section 7(I)**.

"**Common Stock Change Event**" has the meaning set forth in **Section 7(I)(i)(4)**.

"**Compliance Certificate**" has the meaning set forth in **Section 8(J)(ii)**.

"**Contingent Obligation**" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (A) any Indebtedness or other obligations of another Person, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (B) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (C) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity

prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"**Conversion Consideration**" has the meaning set forth in **Section 7(E)(i)**.

"**Conversion Date**" means the first Business Day on which the requirements set forth in **Section 7(C)(i)** or **Section 7(D)(i)** (as applicable) to convert this Note are satisfied.

"**Conversion Price**" means, as of any time, an amount equal to (A) one thousand dollars ($1,000) *divided by* (B) the Conversion Rate in effect at such time.

"**Conversion Rate**" initially means 475.1722 ***[NTD: with respect to any Subsequently Purchased Notes, such amount shall be after giving effect to the adjustment contained in the proviso following immediately after this bracketed language]*** shares of Common Stock per $1,000 Principal Amount of Notes[; *provided*, *however*, that the Conversion Rate shall adjust to an amount (rounded to the nearest fourth decimal place) equal to a fraction (1) whose numerator is $1,000; and (2) whose denominator is one hundred ten percent (110%) of the average of the three Daily VWAPs during the three Trading Day period beginning on August 15, 2023 and ending on and including August 17, 2023 in the event that such amount calculated with respect to such three (3) Trading Day average is higher than the Conversion Rate then in effect; *provided*, *further*, that the Conversion Rate will not be adjusted pursuant to the foregoing proviso to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock][1]; *provided*, [*however/further]*, that the Conversion Rate is subject to adjustment pursuant to **Section 7**; *provided*, *further*, that whenever this Note refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate immediately after the Close of Business on such date.

"**Conversion Settlement Date**" has the meaning set forth in **Section 7(E)(iii)**.

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

"**Copyright License**" means any written agreement granting any right to use any Copyright or Copyright registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

"**Copyrights**" means all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof, or of any other country.

"**Covering Price**" has the meaning set forth in **Section 7(E)(iv)(1)**.

"**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock on The New York Stock Exchange (or the principal, in

[1] **NTD**: include with respect to the Initial Purchased Note.

terms of volume, Eligible Exchange on which the Common Stock is listed for trading) as displayed under the heading "Bloomberg VWAP" on Bloomberg page "VLD <EQUITY> VAP" (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 VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"**Default**" means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

"**Default Interest**" has the meaning set forth in **Section 10(D)**.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock convertible or exchangeable solely at the option of the Company or a Subsidiary of the Company; provided that any such conversion or exchange will be deemed an incurrence of Indebtedness or Disqualified Stock, as applicable); or

is redeemable at the option of the holder thereof, in whole or in part,

in the case of each of clauses (A), (B) and (C), at any point prior to the one hundred eighty-first (181st) day after the Maturity Date.

"**DTC**" means The Depository Trust Company.

"**Eligible Exchange**" means any of The New York Stock Exchange, The NYSE American LLC, The Nasdaq Stock Market, The Nasdaq Capital Market, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

"**Equity Conditions**" will be deemed to be satisfied as of any date if all of the following conditions are satisfied as of such date and on each of the thirty (30) previous Trading Days: (A) the shares issuable pursuant to this Note are Freely Tradable; (B) the Holder is not in possession of any material non-public information provided by or on behalf of the Company; (C) the issuance of such shares will not be limited by **Section 7(J)**; (D) the Company is in compliance with **Section 7(E)(i)** and such shares will satisfy **Section 7(F)(ii)**; (E) no pending, proposed or intended Fundamental Change has occurred that has not been abandoned, terminated or consummated; (F) the daily dollar trading volume (as reported on Bloomberg) of the Common Stock on The New York Stock Exchange (or the principal, in terms of volume, Eligible Exchange on which the Common Stock is listed for trading) is not less than three million five hundred thousand dollars ($3,500,000); and (G) no Default will have occurred and be continuing which has not been waived and no Event of Default will have occurred which has not been waived.

"**Equity Interest**" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including preferred stock or membership interests (however

designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the Securities Act), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

"**Equity Issuance**" shall mean (a) any issuance or sale by the Company or any of its Subsidiaries of any Equity Interests (including any Equity Interests issued upon exercise or conversion of any Equity Rights) or any Equity Rights, or (b) the receipt by the Company or any of its Subsidiaries of any capital contribution (whether or not evidenced by any Equity Interest issued by the recipient of such contribution), in each case for bona fide capital-raising purposes and other than (i) any issuance of Equity Interests upon the exercise of any Equity Rights outstanding as of the date hereof provided, that such issuance is made pursuant to the terms of such Equity Rights in effect on the date hereof and such Equity Rights are not amended to increase the number of such Equity Interests or to decrease the exercise price, exchange price or conversion price of Equity Rights, (ii) Equity Interests issuable upon the exercise of any Equity Rights or upon the lapse of forfeiture restrictions on awards made pursuant to an Approved Stock Plan (as defined in the Securities Purchase Agreement) (including Equity Interests withheld by the Company for the purpose of paying on behalf of the holder thereof the exercise price of stock options or for paying taxes due as a result of such exercise, vesting, settlement or lapse of forfeiture restrictions) or (iii) Common Stock issuable upon the exercise of stock options or upon the lapse of forfeiture restrictions on awards made pursuant to, any stock option exchange program of the Company that is approved by the Board of Directors or the compensation committee thereof or the Company's stockholders, whether now in effect or hereafter implemented.

"**Equity-Linked Securities**" means any rights, obligations, 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.

"**Equity Rights**" shall mean, with respect to any Person, any then-outstanding subscriptions, options, warrants, commitments, preemptive rights, convertible debt, or other equity-linked securities or agreements of any kind for the issuance or sale, of any additional Equity Interests of any class, or partnership or other ownership interests of any type in, such Person.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**Event of Default**" has the meaning set forth in **Section 10(A)**.

"**Event of Default Acceleration Amount**" means, with respect to the delivery of a notice pursuant to **Section 10(B)(ii)** declaring this Note to be due and payable immediately on account of an Event of Default, a cash amount equal to the greater of (A) the sum of (i) one hundred and ten percent (110%) of the Maturity Principal Amount of this Note excluding interest (or such lesser principal amount accelerated pursuant to such notice) and (ii) the accrued and unpaid interest on this Note and (B) the sum of (i) one hundred fifteen percent (115%) of the product of (a) the Conversion Rate in effect as of the Trading Day immediately preceding the date that the Holder delivers such notice pursuant to **Section 10(B)(ii)**; (b) the total then outstanding Principal Amount (expressed in thousands) of this Note; and (c) the greater of (x) the highest Daily VWAP per share of Common Stock occurring during the five (5) consecutive VWAP Trading Days ending on, and including, the VWAP Trading Day immediately before the date the Holder delivers such notice pursuant to **Section 10(B)(ii)** and (y) the highest Daily VWAP per share of Common Stock occurring during the five (5) consecutive VWAP Trading Days ending on, and

including, the VWAP Trading Day immediately before the date the applicable Event of Default occurred and (ii) the accrued and unpaid interest on this Note.

"**Event of Default Notice**" has the meaning set forth in **Section 10(C)**.

"**Event of Default Stock Payment**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Date**" means any date on which the Holder delivers an Event of Default Stock Payment Notice pursuant to **Section 5(C)** hereunder.

"**Event of Default Stock Payment Delivery Date**" has the meaning set forth in **Section 5(C)**.

"**Event of Default Stock Payment Notice**" has the meaning set forth in **Section 5(C)**.

"**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.

"**Excess Shares**" has the meaning set forth in **Section 7(J)(i)**.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended.

"**Exchange Notes**" has the meaning set forth in the Securities Exchange Agreement.

"**Expiration Date**" has the meaning set forth in **Section 7(G)(i)(5)**.

"**Expiration Time**" has the meaning set forth in **Section 7(G)(i)(5)**.

"**Forced Conversion**" has the meaning set forth in **Section 7(D)(i)**.

"**Forced Conversion Trigger**" means (A) the Last Reported Sale Price exceeds one hundred and seventy five percent (175%) of the Conversion Price on at least twenty (20) VWAP Trading Days in any thirty (30) consecutive VWAP Trading Day period beginning on any VWAP Trading Day after the Issue Date and ending on the date upon which the Company Conversion Notice is delivered by the Company to the Holder and (B) the Equity Conditions are satisfied on the date the Company Conversion Notice is delivered by the Company to the Holder.

"**Freely Tradable**" means, with respect to any shares of Common Stock issued or issuable pursuant to this Note, that (A) such shares are (or, when issued, will be) issued by the Company pursuant to an effective registration statement or Section 3(a)(9) under the Securities Act and would not constitute "restricted securities" within the meaning of Rule 144 under the Securities Act and without any requirement for registration under any state securities or "blue sky" laws; (B) such shares are (or, when issued, will be) (i) represented by book-entries at DTC and identified therein by an "unrestricted" CUSIP number; (ii) not represented by any certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (iii) listed and admitted for trading, without suspension or material limitation on trading, on an Eligible Exchange; and (C) no delisting or suspension by such Eligible Exchange has been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or

pending as evidenced by (x) a writing by such Eligible Exchange or (y) the Company falling below the minimum listing maintenance requirements of such Eligible Exchange.

"**Fundamental Change**" means any of the following events:

a "person" or "group" (within the meaning of Section 13(d)(3) of the Exchange Act), other than (x) the Company or its Wholly Owned Subsidiaries, (y) the employee benefit plans of the Company or its Wholly Owned Subsidiaries, or (z) the Holder or any of its Affiliates (including an "group" including the Holder or any of its Affiliates) files any report with the Commission indicating that such person or group has 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;

the consummation of Article 2. 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 (other than solely to one or more of the Company's Wholly Owned Subsidiaries); or Article 3. 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 (other than a subdivision or combination, or solely a change in par value, of the Common Stock); *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 Fundamental Change pursuant to this **clause (B)**; or

the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company.

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.

"**Fundamental Change Notice**" has the meaning set forth in **Section 6(C)**.

"**Fundamental Change Repurchase Date**" means the date as of which this Note must be repurchased for cash in connection with a Fundamental Change, as provided in **Section 6(B)**.

"**Fundamental Change Repurchase Price**" means, with respect to this Note (or any portion of this Note to be repurchased) upon a Repurchase Upon Fundamental Change, a cash amount equal to the greater of (A) one hundred (100%) of the Maturity Principal Amount of this Note excluding interest (or such lesser principal amount accelerated pursuant to such notice), plus accrued and unpaid interest on this Note to be so repurchased and (B) the sum of (i) one hundred ten percent (110%) of the product of (a) the Conversion Rate in effect as of the Trading Day immediately preceding the effective date of such Fundamental Change; (b) the total then outstanding Principal Amount (expressed in thousands) of this Note; and (c) the average of the five (5) Daily VWAPs per share of Common Stock occurring on the later of (i) the five (5)

VWAP Trading Day period immediately before the effective date of such Fundamental Change and (ii) the five (5) VWAP Trading Day period immediately after any public announcement of such Fundamental Change, which includes, but is not limited to, public disclosure on a Form 8-K or otherwise and (ii) the accrued and unpaid interest on this Note.

"**GAAP**" means generally accepted accounting principles in the United States of America, as in effect from time to time; provided the definitions set forth in this Note and any financial calculations required thereby shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

"**Holder**" means the person in whose name this Note is registered on the books of the Registrar, which initially is the Initial Holder.

The term "**including**" means "including without limitation," unless the context provides otherwise.

"**Holder Conversion Notice**" has the meaning set forth in **Section 7(C)(i)**.

"**Indebtedness**" means, indebtedness of any kind, including, without duplication (A) all indebtedness for borrowed money or the deferred purchase price of property or services, including reimbursement and other obligations with respect to surety bonds and letters of credit, (B) all obligations evidenced by notes, bonds, debentures or similar instruments, (C) all Capital Lease Obligations, (D) all Contingent Obligations, and (E) Disqualified Stock.

"**Indenture**" means that certain Indenture, dated as of August 14, 2023, by and between the Company and the Trustee, as amended and supplemented by the First Supplemental Indenture, dated as of August 14, 2023, by and between the Company and the Trustee.

"**Independent Investigator**" has the meaning set forth in **Section 8(S)**.

"**Initial Holder**" has the meaning set forth in the cover page of this Note.

"**Intellectual Property**" means all of the Company's Copyrights; Trademarks; Patents; Licenses; trade secrets and inventions; mask works; the Company's applications therefor and reissues, extensions, or renewals thereof; and the Company's goodwill associated with any of the foregoing, together with the Company's rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith.

"**Interest Payment Date**" means (A) each January 1, April 1, July 1 and October 1 of each calendar year, beginning on [October 1, 2023][2]; and (B) if not otherwise included in clause (A), the Maturity Date.

"**Investment**" means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person or the purchase of any assets of another Person for greater than the fair market value of such assets to solely the extent of the amount in excess of the fair market value.

[2] **NTD**: include with respect to the Initial Purchased Note; Subsequently Purchased Notes to include the next occurring interest payment date after the issue date of such Notes

"**Investment Grade Securities**" means: (1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents); (2) securities that have a rating equal to or higher than "Baa3" (or equivalent) by Moody's or "BBB-" (or equivalent) by S&P, or an equivalent rating by another internationally recognized rating agency, but excluding any debt securities or loans or advances between and among the Company and its Subsidiaries; (3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2), which fund may also hold immaterial amounts of cash pending investment or distribution; and (4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

"**Issue Date**" means [ ], 20[ ].

"**Last Reported Sale Price**" of the shares of Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the shares of Common Stock are then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Company.

"**License**" means any Copyright License, Patent License, Trademark License or other license of rights or interests.

"**Lien**" means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, and any lease in the nature of a security interest; provided, that for the avoidance of doubt, licenses, strain escrows and similar provisions in collaboration agreements or research and development agreements that do not create or purport to create a security interest, encumbrance, levy, lien or charge of any kind shall not be deemed to be Liens for purposes of this Note.

"**Market Disruption Event**" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal, in terms of volume, Eligible Exchange (or, if the Common Stock is not then listed on an Eligible Exchange, on the principal, in terms of volume, U.S. national or regional securities exchange on which the Common Stock is listed for trading) 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.

"Market Stock Payment Price" means, with respect to any Event of Default Stock Payment Date, an amount equal to one hundred percent (100%) of the lowest of the ten (10) Daily VWAPs immediately prior to such Event of Default Stock Payment Date.

"**Maturity Date**" means August 1, 2026.

"**Maturity Principal Amount**" has the meaning set forth in the cover page of this Note; *provided*, *however*, that the Maturity Principal Amount of this Note will be subject to reduction pursuant to **Section 4**, **Section 5**, **Section 6, and Section 7**.

"**Maximum Percentage**" has the meaning set forth in **Section 7(J)(i)**.

"**Moody's**" means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

"**Note Documents**" means the Securities Purchase Agreement, this Note, the Security Agreements and the other Transaction Documents.

"**Obligation**" means all liabilities, indebtedness and obligations (including interest accrued at the rate provided in the applicable Note Document after the commencement of a bankruptcy proceeding, whether or not a claim for such interest is allowed) of the Company, any Security Agreements or any other Note Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

"**Open of Business**" means 9:00 a.m., New York City time.

The term "**or**" is not exclusive, unless the context expressly provides otherwise.

"**Other Holder**" means any person in whose name any Other Note is registered on the books of the Registrar.

"**Other Notes**" means any Notes that are of the same series as this Note and that are represented by one or more certificates other than the certificate representing this Note.

"**Partial Redemption Date**" means, with respect to this Note, (A) each of [January 1, 2024, April 1, 2024, July 1, 2024,][3] October 1, 2024, January 1, 2025, April 1, 2025, July 1, 2025, October 1, 2025, January 1, 2026, April 1, 2026 and July 1, 2026 and (B) if not otherwise included in **clause (A)**, the Maturity Date.

"**Partial Redemption Notice**" has the meaning set forth in **Section 4(A)**.

"**Partial Redemption Payment**" means, for any date that is a Partial Redemption Date, an amount equal to one hundred fifteen percent (115%) of twelve and a half percent (12.5%) of the Principal Amount as of the Issue Date of this Note and all other Notes issued on the Issue Date, as determined by Holder in its sole discretion; *provided*, *however*, that the Company shall not be required to partially redeem more than such amount in aggregate in respect of this Note and all Other Notes issued on the same Issue Date that have been elected to be partially redeemed by the Holder and the Other Holders on any Partial Redemption Date; *provided*, *further*, that the Holder, all of the Other Holders and the Company may agree to increase the size of any Partial Redemption Payment by mutual written consent and notice to the Trustee.

"**Patent License**" means any written agreement granting any right with respect to any invention covered by a Patent that is in existence or a Patent application that is pending, in which agreement the Company now holds or hereafter acquires any interest.

[3] **NTD**: include with respect to the Initial Purchased Note; Subsequently Purchased Notes to include these dates to the extent applicable date occurs after the issue date of such Notes.

"**Patents**" means all letters patent of, or rights corresponding thereto, in the United States or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States or any other country.

"**Permitted Indebtedness**" means (A) Indebtedness evidenced by the Notes and Exchange Notes; (B) Indebtedness actually disclosed pursuant to the Securities Purchase Agreement as of the date of the Securities Purchase Agreement and the Securities Exchange Agreement as of the date of the Securities Exchange Agreement; (C) Indebtedness to trade creditors incurred in the ordinary course of business consistent with past practices; (D) Indebtedness that also constitutes a Permitted Investment; (E) Subordinated Indebtedness of the Company; (F) reimbursement obligations in connection with letters of credit or similar instruments that are secured by Cash or Cash Equivalents and issued on behalf of the Company or a Subsidiary thereof in an aggregate amount not to exceed two hundred fifty thousand dollars ($250,000) at any time outstanding; (G) Indebtedness consisting of capital and operating lease obligations and Indebtedness secured by Liens permitted under clause (M) of the definition of "Permitted Liens" hereunder; provided, however, all of such Indebtedness under this clause (G), plus all Indebtedness secured by Liens permitted under clause (M) of the definition of "Permitted Liens" (without duplication) shall not exceed One Million Four Hundred Thousand Dollars ($1,400,000.00) in the aggregate; and (H) Contingent Obligations that are guarantees of Indebtedness described in clauses (A) through (G).

"**Permitted Intellectual Property Licenses**" means (A) Intellectual Property licenses actually disclosed pursuant to the Securities Purchase Agreement as of the date of the Securities Purchase Agreement, and (B) non-perpetual Intellectual Property licenses granted in the ordinary course of business on arm's length terms consisting of the licensing of technology, the development of technology or the providing of technical support which may include licenses with unlimited renewal options solely to the extent such options require mutual consent for renewal or are subject to financial or other conditions as to the ability of licensee to perform under the license; provided such license was not entered into during an Event of Default or continuance of a Default.

"**Permitted Investment**" means: (A) Investments actually disclosed pursuant to the Securities Purchase Agreement, as in effect as of the Issue Date; (B) Cash and Cash Equivalents; (C) Investments accepted in connection with Permitted Transfers; (D) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of the Company's business; (E) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers in the ordinary course of business and consistent with past practice, provided that this clause (E) shall not apply to Investments of the Company in any Subsidiary thereof; (F) Investments consisting of (i) loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of capital stock of the Company pursuant to employee stock purchase plans or other similar agreements approved by the Company's Board of Directors and (ii) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, provided that the aggregate of all such loans outstanding may not exceed two hundred fifty thousand dollars ($250,000) at any time; (G) Investments in Wholly Owned Subsidiaries; (H) Permitted Intellectual Property Licenses; and (I) additional Investments that do not exceed one million dollars ($1,000,000) in the aggregate in any twelve (12) month period.

"**Permitted Liens**" means any and all of the following: (A) Liens in favor of Holder or the Collateral Agent; (B) Liens actually or deemed to be disclosed pursuant to the Securities Purchase Agreement, as in effect as of the Issue Date, and Liens securing any Exchange Notes; (C) Liens for taxes, fees, assessments or other governmental charges or levies, either not

delinquent or being contested in good faith by appropriate proceedings; provided, that the Company maintains adequate reserves therefor in accordance with GAAP; (D) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of business; provided, that the payment thereof is not yet required; (E) Liens arising from judgments, decrees or attachments in circumstances which do not constitute a Default or an Event of Default hereunder; (F) the following deposits, to the extent made in the ordinary course of business: deposits under workers' compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (G) leasehold interests in leases or subleases and licenses granted in the ordinary course of the Company's business and not interfering in any material respect with the business of the licensor; (H) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (I) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets); (J) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms; (K) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (L) Liens on Cash or Cash Equivalents securing obligations permitted under clauses (C) and (F) of the definition of Permitted Indebtedness; (M) purchase money Liens, or Liens in respect of equipment leases, (i) on equipment acquired or held by the Company incurred for financing the acquisition or lease of the equipment securing no more than One Million Four Hundred Thousand Dollars ($1,400,000.00) in the aggregate amount outstanding; provided, however, all of the Indebtedness securing the Liens permitted under this clause (M), plus all Indebtedness permitted under clause (G) of the definition of "Permitted Indebtedness" (without duplication) shall not exceed One Million Four Hundred Thousand Dollars ($1,400,000.00) in the aggregate, or (ii) existing on equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the equipment; and (N) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (B) through (J) and (N) above (other than any Indebtedness repaid with the proceeds of this Note); provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

"**Permitted Quarterly Cash Burn**" means, for the applicable Quarterly Cash Burn Period set forth in the table below, the applicable corresponding dollar amount set forth in the table below:

Quarterly Cash Burn Period:	Permitted Quarterly Cash Burn
10/1/23 - 12/31/23	$25,000,000
11/1/23 - 1/31/24	$23,000,000
12/1/23 - 2/29/24	$22,000,000
1/1/24 - 3/31/24	$20,000,000
2/1/24 - 4/30/24	$18,000,000
3/1/24 - 5/31/24	$17,000,000
4/1/24 - 6/30/24	$15,000,000
5/1/24 - 7/31/24	$13,000,000
6/1/24 - 8/31/24	$12,000,000
7/1/24 - 9/30/24	$10,000,000
8/1/24 - 10/31/24	$9,000,000
9/1/24 - 11/30/24	$8,000,000
10/1/24 - 12/31/24 and thereafter	$5,000,000

"**Permitted Transfers**" means (A) dispositions of Cash, Cash Equivalents or Investment Grade Securities in the ordinary course of business and consistent with past practice for fair value consideration in the form of Cash, Cash Equivalents or Investment Grade Securities, (B) dispositions of inventory, goods and other assets, leases, assignments or subleases of any real or personal property, and Permitted Intellectual Property Licenses entered into, in each case, in the ordinary course of business and consistent with past practice, (C) dispositions of worn-out, obsolete or surplus property at fair market value in the ordinary course of business; (D) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (E) transfers consisting of Permitted Investments in Wholly Owned Subsidiaries under clause (G) of Permitted Investments; (F) other transfers of assets to any Person other than to a joint venture and which have a fair market value of not more than fifty thousand dollars ($50,000) in the aggregate in any twelve (12) month period; (G) dispositions in connection with Permitted Liens; or (H) the disposition of all or substantially all of the assets of the Company and its Subsidiaries in a manner permitted pursuant to **Section 9** and any disposition that constitutes a Fundamental Change.

"**Person**" or "**person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association,

corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Principal Amount**" has the meaning set forth in the cover page of this Note; *provided*, *however*, that the Principal Amount of this Note will be subject to reduction (A) pursuant to **Section 4**, **Section 5**, **Section 6,** and **Section 7**.

"**Quarterly Cash Burn Period**" means the three-calendar month period ending on and including the applicable Cash Burn Measurement Date.

"**Quarterly Cash Burn Reference Date**" means the last calendar day of the calendar month immediately preceding the first calendar day of the applicable Quarterly Cash Burn Period.

"**Reference Property**" has the meaning set forth in **Section 7(I)(i)(4)**.

"**Reference Property Unit**" has the meaning set forth in **Section 7(I)(i)(4)**.

"**Registrar**" has the meaning set forth in the Indenture.

"**Related Parties**" has the meaning set forth in **Section 22**.

"**Reported Outstanding Share Number**" has the meaning set forth in **Section 7(J)(i)**.

"**Repurchase Upon Fundamental Change**" means the repurchase of any Note by the Company pursuant to **Section 6**.

"**Required Holders**" means holders of a majority of the aggregate principal amount of the Notes, so long as any Notes remain outstanding; *provided*, that such majority must include High Trail Investments ON LLC or HB SPV I Master Sub LLC, so long as High Trail Investments ON LLC or HB SPV I Master Sub LLC or any of their affiliates hold any Notes or are otherwise entitled to receive Underlying Shares.

"**Required Reserve Amount**" has the meaning in **Section 8(Q)**.

"**Requisite Stockholder Approval**" means the stockholder approval contemplated by Section 312.03(b) of the NYSE Listed Company Manual with respect to the issuance of shares of Common Stock upon conversion of the Notes in excess of the limitations imposed by such rule; *provided*, *however*, that the Requisite Stockholder Approval will be deemed to be obtained if, due to any amendment or binding change in the interpretation of the applicable listing standards of The New York Stock Exchange, such stockholder approval is no longer required for the Company to settle all conversions of the Notes by delivering shares of Common Stock without limitation pursuant to **Section 7(B)**.

"**Rule 144**" means Rule 144 promulgated under the Securities Act.

"**S&P**" means Standard & Poor's Ratings Services or any successor to the rating agency business thereof.

"**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day on the principal, in terms of volume, Eligible Exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on an Eligible Exchange, on the principal, in terms of volume, stock exchange or market on which the Common Stock is then listed or traded. If the Common Stock is not so listed or traded, then "Scheduled Trading day" means a Business Day.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Securities Exchange Agreement**" means that certain Securities Exchange Agreement, dated as of November 27, 2023, between the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC providing for the issuance of the Exchange Notes. The Trustee shall not been deemed to have any knowledge of or have any obligation to monitor the terms of the Securities Exchange Agreement.

"**Securities Purchase Agreement**" means that certain Securities Purchase Agreement, dated as of August 10, 2023, between the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC providing for the issuance of the Notes, as amended by First Amendment to Securities Purchase Agreement, dated as of November 27, 2023, between the Company, High Trail Investments ON LLC and HB SPV I Master Sub LLC. The Trustee shall not been deemed to have any knowledge of or have any obligation to monitor the terms of the Securities Purchase Agreement.

"**Share Delivery Date**" any (i) Event of Default Stock Payment Delivery Date or (ii) Conversion Settlement Date.

"**Significant Subsidiary**" means, with respect to any Person, any Subsidiary of such Person that constitutes a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

"**Spin-Off**" has the meaning set forth in **Section 7(G)(i)(3)(b)**.

"**Spin-Off Valuation Period**" has the meaning set forth in **Section 7(G)(i)(3)(b)**.

"**Stated Interest**" has the meaning set forth in **Section 4(B)**.

"**Stated Interest Rate**" means, as of any date, a rate per annum equal to six percent (6.0%).

"**Stock Payment Determination Date**" means (i) with respect to an Event of Default Stock Payment, the date of delivery of the related Event of Default Stock Payment Notice, and (ii) with respect to the delivery of Conversion Consideration, the related Conversion Date.

"**Subordinated Indebtedness**" means Indebtedness subordinated to the Notes pursuant to a written agreement between the Holder and the applicable lender in amounts and on terms and conditions satisfactory to the Holder in its sole discretion.

"**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 (i) 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 (ii) 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 Corporation**" has the meaning set forth in **Section 9(A)**.

"**Successor Person**" has the meaning set forth in **Section 7(I)(i)**.

"**Tender/Exchange Offer Valuation Period**" has the meaning set forth in **Section 7(G)(i)(5)**.

"**Trademark License**" means any written agreement granting any right to use any Trademark or Trademark registration, now owned or hereafter acquired by the Company or in which the Company now holds or hereafter acquires any interest.

"**Trademarks**" means all trademarks (registered, common law or otherwise) and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof.

"**Trading Day**" means any day on which (A) trading in the Common Stock generally occurs on the principal, in terms of volume, Eligible Exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on an Eligible Exchange, on the principal, in terms of volume, U.S. national or regional securities exchange on which the Common Stock is listed for trading; and (B) there is no Market Disruption Event; provided that the Holder, by written notice to the Company, may waive any such Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"**Transaction Documents**" means, collectively, the Securities Purchase Agreement, the Securities Exchange Agreement, the Notes, the Exchange Notes, the Perfection Certificate, the Security Agreements (as defined in the Securities Purchase Agreement), the Amendments to Security Documents (as defined in the Securities Exchange Agreement), the Indenture, each Lock-Up and Voting Agreement (as defined in the Securities Purchase Agreement), each Voting Agreement (as defined in the Securities Exchange Agreement), the Irrevocable Transfer Agent Instructions (as defined in the Securities Purchase Agreement), the Irrevocable Transfer Agent Instructions (as defined in the Securities Exchange Agreement) and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated by the Securities Purchase Agreement and the Securities Exchange Agreement and thereby, as may be amended from time to time.

"**Trust Indenture Act**" means the U.S. Trust Indenture Act of 1939, as amended.

"**Trustee**" means U.S. Bank Trust Company National Association in its capacity as trustee under the Indenture.

"**UCC**" means the Uniform Commercial Code as the same is, from time to time, in effect in the State of New York.

"**Undelivered Shares**" has the meaning set forth in **Section 7(E)(iv)**.

"**VWAP Market Disruption Event** " means, with respect to any date, (A) the failure by 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, the principal, in terms of volume, Eligible Exchange on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the

occurrence or existence, for more than one half hour period in the aggregate, of any 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, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"**VWAP Trading Day** " means a day on which (A) there is no VWAP Market Disruption Event; provided that the Holder, by written notice to the Company, may waive any such VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal, in terms of volume, Eligible Exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on an Eligible Exchange, on the principal, in terms of volume, U.S. national or regional securities exchange on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"**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.

"**Withheld Shares**" has the meaning set forth in **Section 7(J)(ii)**.

Article 2. Persons Deemed Owners.

The Holder of this Note will be treated as the owner of this Note for all purposes.

Article 3. Registered Form.

This Note, and any Other Note issued in exchange therefor or in substitution thereof, will be in registered form, without coupons.

Article 4. Partial Redemption Payments; Interest; Maturity Date Payment; Prepayment.

(i) *Partial Redemption Payments.* If the Holder wishes to elect to require the Company to redeem all or a portion of this Note (in an Authorized Denomination) for a Partial Redemption Payment, the Holder shall deliver to the Company (with a copy to the Trustee) a written notice of any such election, including the applicable amount of the Partial Redemption Payment (a "**Partial Redemption Notice**"), at least ten (10) Trading Days prior to the applicable Partial Redemption Date in order to make an effective election. Such notice may be canceled by the Holder at any time prior to the receipt of the applicable Partial Redemption Payment from the Company and the Holder shall also have the right to convert such Partial Redemption Payment (or any applicable portion thereof) into Common Stock pursuant to **Section 7** hereof at any time prior to the receipt of the applicable Partial Redemption Payment from the Company. If the Holder or any Other Holder elects to redeem all or a portion of any Other Notes for a Partial Redemption Payment on the same Partial Redemption Date, the Trustee shall the select the redemption portions of the principal of this Note and such Other Notes (in Authorized Denominations) on a pro rata basis to the extent practicable or such other method the Trustee deems fair and appropriate. The Company shall pay the Holder the Partial Redemption Payment (or applicable portion thereof) by wire transfer of immediately available funds on the applicable Partial Redemption Date. Any Partial Redemption Payment (or applicable portion thereof) paid pursuant to this **Section 4(A)** shall reduce the Principal Amount by such paid amount divided by one and fifteen hundredths (1.15). If this Note (or any portion of this Note) is to be redeemed pursuant to this **Section 4(A)**, then, from and after the date the related Partial Redemption

Payment (or applicable portion thereof) is paid in full, this Note (or such portion) will cease to be outstanding and interest will cease to accrue on this Note (or such portion).

(ii) *Interest*. Except as provided in **Section 10(D)**, this Note will accrue interest (the "**Stated Interest**") at a rate per annum equal to the Stated Interest Rate. Stated Interest on this Note will (i) accrue on the Principal Amount of this Note; (ii) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the Issue Date) to, but excluding, the date of payment of such Stated Interest; (iii) be paid to Holder in cash on each Interest Payment Date in accordance with **Section 5(A)**; (iv) with respect to the amount of interest then accrued on the portion of the Principal Amount being redeemed in connection with a Cash Sweep Payment, be paid to the Holder in arrears as of the date of such Cash Sweep Payment in accordance with this **Section 4**, as applicable; (v) with respect to the amount of interest then accrued on the portion of the Principal Amount being redeemed on a Partial Redemption Date, be paid to the Holder in arrears as of each such date in accordance with this **Section 4**, as applicable; (vi) with respect to the amount of interest then accrued on the portion of the Principal Amount being repurchased on a Fundamental Change Repurchase Date, be paid to the Holder in arrears as of each such date in accordance with **Section 6**, as applicable; and (vi) be computed on the basis of a 360-day year comprised of twelve 30-day months.

(iii) *Maturity Date Payment*. On the Maturity Date, the Company will pay the Holder an amount in cash equal to the Maturity Principal Amount for the then-outstanding Principal Amount of this Note plus any accrued and unpaid interest on this Note.

(iv) *Cash Sweep Payments*.

(i) For purposes of this Note, any payment made to the Holder pursuant to **Section 4(D)** shall be referred to as a **"Cash Sweep Payment"**. All Cash Sweep Payments shall be accompanied by accrued and unpaid interest on the amount repaid.

(ii) Concurrently with the completion of any Cash Sweep Financing, the Company shall certify to Holder in writing (i) the amount of the applicable Cash Sweep Financing and (ii) the calculation of the potential Cash Sweep Amount with respect to such Cash Sweep Financing (including a certification that such Cash Sweep Amount was calculated in accordance with the terms hereof) (such certification a "**Cash Sweep Certification**"); provided, however, that, unless consented to by the Holder in writing, in the event that the extent of such Cash Sweep Financing and Cash Sweep Amount is such that the information required in such certification would constitute material non-public information regarding the Company, then the Company shall also concurrently publicly disclose such material non-public information on a Current Report on Form 8-K or otherwise.

(iii) The Holder shall have the right to require the Company, exercisable by delivery of written notice to the Company (with a copy to the Trustee) of exercise of such right (a "**Cash Sweep Notice**"), to redeem all or a portion of this Note in cash within three (3) Business Days following the delivery of such Cash Sweep Notice (regardless of whether the Company actually delivers a Cash Sweep Certification) for all or a portion of the Cash Sweep Amount with respect to such Cash Sweep Financing. If the Holder or any Other Holder elects to redeem all or a portion of any Other Notes for all or a portion of the Cash Sweep Amount with respect to the same Cash Sweep Financing, the Trustee shall then select the redemption portions of the principal of this Note and such Other Notes on a pro rata basis to the extent practicable or such other method the Trustee deems fair and appropriate. The Company shall pay the Holder the Cash Sweep Payment

by wire transfer of immediately available funds. Any Cash Sweep Payment paid pursuant to this **Section 4(D)** shall reduce the Principal Amount by such paid amount divided by one and fifteen hundredths (1.15). If this Note (or any portion of this Note) is to be redeemed pursuant to this **Section 4(D)**, then, from and after the date the related Cash Sweep Payment is paid in full, this Note (or such portion) will cease to be outstanding and interest will cease to accrue on this Note (or such portion).

(E) *Prepayment*. The Company may not prepay this Note without the written consent of the Required Holders.

Article 5. Method of Payment; When Payment Date is Not a Business Day.

(C) *Method of Payment*. The Company will pay all cash amounts due under this Note by wire transfer of immediately available funds to the account of the Holder as set forth in a written notice of an account of such Holder delivered by the Holder to the Company at least one (1) Business Day before the date such amount is due.

(i) *Delay of Payment when Payment Date is Not a Business Day*. If the due date for a payment on this Note as provided in this Note is not a Business Day, then, notwithstanding anything to the contrary in this Note, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay.

(ii) *Event of Default Stock Payments*. If an Event of Default occurs and the Company fails to pay the Event of Default Acceleration Amount when due in accordance with this Note, then the Holder may elect to receive such unpaid portion of the Event of Default Acceleration Amount, entirely or partially, in shares of Common Stock (an "**Event of Default Stock Payment**"), and shall deliver to the Company (with a copy to the Trustee) a written notice of such election stating which portion thereof the Holder has elected to receive in shares of Common Stock (an "**Event of Default Stock Payment Notice**"). On or before the second (2nd) Business Day following the date of delivery of any Event of Default Stock Payment Notice hereunder (the "**Event of Default Stock Payment Delivery Date**"), the Company shall issue and deliver to the Holder, a number of validly issued, fully paid and Freely Tradable shares of Common Stock equal to the quotient (rounded up to the closest whole number) obtained by dividing the Event of Default Acceleration Amount (or applicable portion thereof) by the Market Stock Payment Price as of the date of delivery of the Event of Default Stock Payment Notice; *provided*, that, if the Company fails to timely issue and deliver to the Holder such shares of Common Stock, then the Holder may revoke its election to receive shares of Common Stock and elect to receive such Event of Default Acceleration Amount (or any portion thereof) in cash at any time prior to delivery of such shares of Common Stock. Any portion of the Event of Default Acceleration Amount not paid in shares of Common Stock because the Holder did not elect, or effectively revoked its election, to receive shares of Common Stock for such Event of Default Acceleration Amount (or applicable portion thereof) will be paid in cash; provided, that the Holder may deliver multiple Event of Default Stock Payment Notices in accordance with this **Section 5(C)** to the extent that any portion of the Event of Default Acceleration Amount remains unpaid when due in accordance with this Note.

Article 6. Required Repurchase of Note upon a Fundamental Change.

(C) *Repurchase Upon Fundamental Change*. Subject to the other terms of this **Section 6**, if a Fundamental Change occurs, then the Holder will have the right to require the Company to repurchase this Note (or any portion of this Note in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(D) *Fundamental Change Repurchase Date*. The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Holder's choosing that is no more than twenty (20) Business Days after the later of (x) the date the Company delivers to the Holder the related Fundamental Change Notice pursuant to **Section 6(C)**; and (y) the effective date of such Fundamental Change.

(E) *Fundamental Change Notice*. No later than the fifth (5th) Business Day before the occurrence of any Fundamental Change, the Company will send to the Holder (with a copy to the Trustee) a written notice (the "**Fundamental Change Notice**") thereof (provided, however, in no event shall such notice be required prior to the actual public announcement of such Fundamental Change), stating the expected date such Fundamental Change will occur. No later than the fifth (5^{th}) Business Day after the date of delivery of the Fundamental Change Notice, the Holder shall notify the Company in writing whether it will require the Company to repurchase this Note and specify the Fundamental Change Repurchase Date.

(F) *Effect of Repurchase*. If this Note (or any portion of this Note) is to be repurchased upon a Repurchase Upon Fundamental Change, then, from and after the date the related Fundamental Change Repurchase Price is paid in full, this Note (or such portion) will cease to be outstanding and interest will cease to accrue on this Note (or such portion).

Article 7. Conversion.

(A) *Right to Convert*.

(i) *Generally.* Subject to the provisions of this **Section 7**, the Holder may, at its option, convert this Note, including any portion constituting a Partial Redemption Payment, into Conversion Consideration.

(ii) *Conversions in Part.* Subject to the terms of this **Section 7**, this Note may be converted in part, but only in an Authorized Denomination. Provisions of this **Section 7** applying to the conversion of this Note in whole will equally apply to conversions of any permitted portion of this Note.

(B) *When this Note May Be Converted.*

(i) *Generally*. The Holder may convert this Note immediately at any time until the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date. For the avoidance of doubt, the ability of the Holder to convert this Note shall not be delayed to give effect to any time required by the Trustee in which to reflect the issuance of this Note.

(ii) *Limitations and Closed Periods*. Notwithstanding anything to the contrary in this **Section 7**, if this Note (or any portion of this Note) is to be repurchased upon a Repurchase Upon Fundamental Change, then in no event may this Note (or such portion) be converted after the Close of Business on the Scheduled Trading Day immediately before the related Fundamental Change Repurchase Date; provided, that the limitations contained in this **Section 7(B)(ii)** shall no longer apply to this Note (or such applicable portion) if the applicable Fundamental Change Repurchase Price is not delivered on the Fundamental Change Repurchase Date in accordance with **Section 6**.

(C) *Conversion Procedures*.

(i) *Generally*. To convert this Note, the Holder must (1) complete, sign and deliver to the Company (with a copy to the Trustee) the conversion notice attached to this

Note on **Exhibit A** or portable document format (.pdf) version of such conversion notice (at which time such conversion will become irrevocable) (a "**Holder Conversion Notice**"); and (2) pay an amounts due pursuant to **Section 7(C)(iii)**. For the avoidance of doubt, the Holder Conversion Notice may be delivered by e-mail in accordance with **Section 14**. If the Company fails to deliver, by the related Conversion Settlement Date, any shares of Common Stock forming part of the Conversion Consideration of the conversion of this Note, the Holder, by notice to the Company, may rescind all or any portion of the corresponding Holder Conversion Notice at any time until such Undelivered Shares are delivered.

(ii) *Holder of Record of Conversion Shares*. The person in whose name any shares of Common Stock is issuable upon conversion of this Note will be deemed to become the holder of record of such shares as of the Close of Business on the Conversion Date for such conversion, conferring, as of such time, upon such person, without limitation, all voting and other rights appurtenant to such shares.

(iii) *Taxes and Duties.* If the Holder converts this Note, 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 such conversion; *provided*, *however*, that if any tax or duty is due because such Holder requested such shares to be issued in a name other than that of such Holder, then such Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of such Holder.

(D) *Right of Company to Convert the Note.*

(i) *Generally*. If the Forced Conversion Trigger occurs, then, subject to **Section 7(J)**, the Company may provide written notice to the Holder (with a copy to the Trustee) in substantially the form attached hereto as **Exhibit B** (a "**Company Conversion Notice**") electing to convert all (but, for the avoidance of doubt, not less than all) of the Principal Amount into Conversion Consideration (a "**Forced Conversion**") and certifying that the Equity Conditions are satisfied on the date the Company Conversion Notice was delivered to the Holder; *provided* that (x) no Forced Conversion will be effected unless (i) the Equity Conditions are satisfied on each VWAP Trading Day from the date of the Company Conversion Notice until the corresponding Conversion Consideration is delivered and (ii) the Last Reported Sale Price exceeded one hundred and seventy five percent (175%) of the Conversion Price, on twenty (20) of the thirty (30) consecutive VWAP Trading Days during the thirty (30) VWAP Trading Day period ending on and including the date the Company Conversion Notice was delivered to the Holder and during the thirty (30) VWAP Trading Day period ending on and including the date the Company delivers the Conversion Consideration pursuant to such Forced Conversion, and (y) if the Company receives a Holder Conversion Notice prior to the date the Company delivers the Company Conversion Notice and any Conversion Shares due thereunder remain undelivered by the Company, the Forced Conversion may not occur until after such Conversion Shares are delivered to the Holder.

(ii) *Effect of Forced Conversion*. A Forced Conversion will have the same effect as a conversion of the applicable outstanding Principal Amount of this Note effected at a Holder's election pursuant to **Section 7(A)** with a Conversion Date occurring on the Business Day upon which the Company Conversion Notice is delivered to the Holder (*provided*, for the avoidance of doubt, that the conditions set forth in **Section 7(D)(i)** are satisfied on such date) and a Conversion Settlement Date occurring on the Business Day referred to in **Section 7(E)(iii)**.

(E) *Settlement upon Conversion*.

(i) *Generally*. The consideration (the "**Conversion Consideration**") due in respect of each one thousand dollars ($1,000) Principal Amount of this Note, including any portion constituting a Partial Redemption Payment required to be paid by the Company on the next Partial Redemption Date, to be converted will consist of the following:

(1) subject to **Section 7(E)(ii)**, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion; and

(2) cash in an amount equal to the aggregate accrued and unpaid interest on this Note to, but excluding, the Conversion Settlement Date for such conversion.

(ii) *Fractional Shares*. The total number of shares of Common Stock due in respect of any conversion of this Note pursuant to this **Section 7**, including any portion constituting a Partial Redemption Payment required to be paid by the Company on the next Partial Redemption Date, will be determined on the basis of the total Principal Amount of this Note to be converted with the same Conversion Date; *provided*, *however*, that if such number of shares of Common Stock is not a whole number, then such number will be rounded up to the nearest whole number.

(iii) *Delivery of the Conversion Consideration*. The Company will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of this Note, including any portion constituting a Partial Redemption Payment required to be paid by the Company on the next Partial Redemption Date, to the Holder on or before the second (2nd) Business Day (or, if earlier, the standard settlement period for the primary Eligible Exchange (measured in terms of trading volume for its Common Stock) on which the Common Stock is traded) immediately after the Conversion Date for such conversion (the "**Conversion Settlement Date**").

(iv) *Company Failure to Timely Deliver Stock Payments*. If (x) the Company shall fail for any reason or for no reason on or prior to the applicable Share Delivery Date to deliver shares of Common Stock in accordance with **Section 5(C)**, **Section 7(C)** or **Section 7(D)** (such shares to which Holder is entitled referred to as the "**Undelivered Shares**"); and (y) the Holder (whether directly or indirectly, including by any broker acting on the Holder's behalf or acting with respect to such Undelivered Shares) purchases any shares of Common Stock (whether in the open market or otherwise) to cover any such Undelivered Shares (whether to satisfy any settlement obligations with respect thereto of the Holder or otherwise), then, without limiting the Holder's right to pursue any other remedy available to it (whether hereunder, under applicable law or otherwise), the Holder will have the right, exercisable by notice to the Company, to cause the Company to either:

(1) pay, on or before the second (2nd) Business Day after the date such notice is delivered, cash to the Holder in an amount equal to the aggregate purchase price (including any brokerage commissions and other out-of-pocket costs) incurred to purchase such shares (such aggregate purchase price, the "**Covering Price**"); or

(2) promptly deliver, to the Holder, such Undelivered Shares in accordance with this Note, together with cash in an amount equal to the excess, if any, of the Covering Price over the product of (x) the number of such Undelivered Shares; and

(y) the Daily VWAP per share of Common Stock on the applicable Stock Payment Determination Date relating to such conversion.

To exercise such right, the Holder must deliver notice of such exercise to the Company, specifying whether the Holder has elected clause (1) or (2) above to apply. If the Holder has elected clause (1) to apply, then the Company's obligation to deliver the Undelivered Shares in accordance with this Note will be deemed to have been satisfied and discharged to the extent the Company has paid the Covering Price in accordance with clause (1). Nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock as required pursuant to the terms hereof. In addition to the foregoing, if the Company fails for any reason to deliver Common Stock to the Holder by the applicable Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each one thousand dollars ($1,000) of Undelivered Shares (based on the Daily VWAP on the applicable Share Delivery Date), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the Conversion Settlement Date until the cash amount set forth in **Section 7(E)(iv)(1)** is paid to the Holder or the shares of Common Stock are delivered to the Holder pursuant to **Section 7(E)(iv)(2)**.

(v) *Effect of Conversion*. If this Note is converted in full, then, from and after the date the Conversion Consideration therefor is issued or delivered in settlement of such conversion, this Note will cease to be outstanding and all interest will cease to accrue on this Note.

(F) *Common Stock Issued upon Conversion*.

(i) *Status of Conversion Shares; Listing*. Each share of Common Stock delivered pursuant to this Note 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 the Holder or the Person to whom such share 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 share of Common Stock issued pursuant to this Note, when delivered, to be admitted for listing on such exchange or quotation on such system.

(ii) *Transferability of Conversion Shares*. Any shares of Common Stock issued pursuant to this Note will be issued in the form of book-entries at the facilities of DTC, identified therein by an "unrestricted" CUSIP number.

(G) *Adjustments to the Conversion Rate*.

(i) *Events Requiring an Adjustment to the Conversion Rate*. The Conversion Rate 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 7(I)** will apply), then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately before the Open of Business on the effective date of such stock split or stock combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or the Open of Business on such effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

OS_1 = 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 7(G)(i)(1)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(2) *Rights, Options and Warrants*. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which the provisions set forth in **Section 7(G)(v)** will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants. To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the Ex-Dividend Date for the distribution of such rights, options or warrants not occurred.

For purposes of this **Section 7(G)(i)(2)**, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors in good faith.

(3) *Spin-Offs and Other Distributed Property*.

(a) *Distributions Other than Spin-Offs*. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company, or rights, options or warrants to acquire Capital Stock of the Company or other securities, to all or substantially all holders of the Common Stock, excluding:

(v) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required pursuant to **Section 7(G)(i)(1)** or **Section 7(G)(i)(2)**;

(w) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required pursuant to **Section 7(G)(i)(4)**;

(x) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in **Section 7(G)(v)**;

(y) Spin-Offs for which an adjustment to the Conversion Rate is required pursuant to **Section 7(G)(i)(3)(b)**; and

(z) a distribution solely pursuant to a Common Stock Change Event, as to which **Section 7(I)** will apply,

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and

FMV = the fair market value (as determined by the Board of Directors in good faith), as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

provided, *however*, that if FMV is equal to or greater than SP, then, in lieu of the foregoing adjustment to the Conversion Rate, the Holder will receive, for each $1,000 Principal Amount of this Note held by this Holder on the record date for such distribution, at the same time and on the same terms as holders of Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Holder would have received if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such distribution is not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(b) *Spin-Offs*. If the Company distributes or dividends shares of Capital Stock of any class or series, or similar equity interest, of or

relating to an Affiliate, a Subsidiary or other business unit of the Company to all or substantially all holders of the Common Stock (other than solely pursuant to a Common Stock Change Event, as to which **Section 7(I)** will apply), and such Capital Stock or equity interest is listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a "**Spin-Off**"), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + SP}{SP}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such Spin-Off;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

FMV = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the "**Spin-Off Valuation Period**") beginning on, and including, such Ex-Dividend Date (such average to be determined as if references to Common Stock in the definitions of Last Reported Sale Price, Trading Day and Market Disruption Event were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off; and

SP = the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Spin-Off Valuation Period.

The adjustment to the Conversion Rate pursuant to this **Section 7(G)(i)(3)(b)** will be calculated as of the Close of Business on the last Trading Day of the Spin-Off Valuation Period but will be given effect immediately after the Open of Business on the Ex-Dividend Date for the Spin-Off, with retroactive effect. If this Note is converted and the Conversion Date occurs during the Spin-Off Valuation Period, then, notwithstanding anything to the contrary in this Note, the Company will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last day of the Spin-Off Valuation Period.

To the extent any dividend or distribution of the type set forth in this **Section 7(G)(i)(3)(b)** is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(4) *Cash Dividends or Distributions*. If any cash dividend or distribution is made to all or substantially all holders of Common Stock, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - D}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before such Ex-Dividend Date; and

D = the cash amount distributed per share of Common Stock in such dividend or distribution;

provided, *however*, that if D is equal to or greater than SP, then, in lieu of the foregoing adjustment to the Conversion Rate, the Holder will receive, for each $1,000 Principal Amount of this Note held by the Holder on the record date for such dividend or distribution, at the same time and on the same terms as holders of Common Stock, the amount of cash that such Holder would have received if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(5) *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 in good faith) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP \times OS_1)}{SP \times OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the time (the "**Expiration Time**") such tender or exchange offer expires;

CR_1 = the Conversion Rate in effect immediately after the Expiration Time;

AC = the aggregate value (determined as of the Expiration Time by the Board of Directors in good faith) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer;

OS_0 = 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);

OS_1 = 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); and

SP = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the "**Tender/Exchange Offer Valuation Period**") beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, *however*, that the Conversion Rate will in no event be adjusted down pursuant to this **Section 7(G)(i)(5)**, except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Rate pursuant to this **Section 7(G)(i)(5)** 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 this Note is converted and the Conversion Date occurs on the Expiration Date or during the Tender/Exchange Offer Valuation Period, then, notwithstanding anything to the contrary in this Note, the Company will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last 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 the Company 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 Rate will be readjusted to the Conversion Rate 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.

(ii) *No Adjustments in Certain Cases*.

(1) *Where the Holder Participates in the Transaction or Event Without Conversion* . Notwithstanding anything to the contrary in **Section 7(G)(i)**, the Company will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to **Section 7(G)(i)** (other than a stock split or combination of the type set forth in **Section 7(G)(i)(1)** or a tender or exchange

offer of the type set forth in **Section 7(G)(i)(5)**) if the Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being the Holder of this Note, in such transaction or event without having to convert this Note and as if the Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate Principal Amount (expressed in thousands) of this Note held by this Holder on such date.

(2) *Certain Events*. The Company will not be required to adjust the Conversion Rate except as provided in **Section 7(G)** and **Section 7(I)**. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

(a) except as otherwise provided in **Section 7(G)**, 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) 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) the issuance of any shares of Common Stock, restricted 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) 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 Issue Date (other than an adjustment pursuant to **Section 7(G)(i)(3)(a)** in connection with the separation of rights under the Company's stockholder rights plan existing, if any, as of the Issue Date);

(e) repurchases of shares of Common Stock, including structured or derivative transactions, that are not pursuant to a tender offer as contemplated by **Section 7(G)(i)(5)**;

(f) solely a change in the par value of the Common Stock; or

(g) accrued and unpaid interest on this Note.

(iii) *Adjustments Not Yet Effective.* Notwithstanding anything to the contrary in this Note, if:

(1) this Note is to be converted;

(2) the record date, effective date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 7(G)(i)** has occurred on or before the Conversion Date for such conversion, but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date;

(3) the Conversion Consideration due upon such conversion includes any whole shares of Common Stock; and

(4) such shares are not entitled to participate in such event (because they were not held on the related record date or otherwise),

then, solely for purposes of such conversion, the Company will, without duplication, give effect to such adjustment on such Conversion Date. In such case, if the date on which the Company is otherwise required to deliver the consideration due upon such conversion is before the first date on which the amount of such adjustment can be determined, then the Company will delay the settlement of such conversion until the second (2nd) Business Day after such first date.

(iv) *Conversion Rate Adjustments where the Converting Holder Participates in the Relevant Transaction or Event.* Notwithstanding anything to the contrary in this Note, if:

(1) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 7(G)(i)**;

(2) this Note is to be converted;

(3) the Conversion Date for such conversion occurs on or after such Ex-Dividend Date and on or before the related record date;

(4) the Conversion Consideration due upon such conversion includes any whole shares of Common Stock based on a Conversion Rate that is adjusted for such dividend or distribution; and

(5) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 7(C)(ii)**),

then (x) such Conversion Rate adjustment will not be given effect for such conversion; (y) the shares of Common Stock issuable upon such conversion based on such unadjusted Conversion Rate will not be entitled to participate in such dividend or distribution; and (z) there will be added, to the Conversion Consideration otherwise due upon such conversion, the same kind and amount of consideration that would have been delivered in such dividend or distribution with respect to such shares of Common Stock had such shares been entitled to participate in such dividend or distribution.

(v) *Stockholder Rights Plans.* If any shares of Common Stock are to be issued upon conversion of this Note and, at the time of such conversion, the Company has in effect any stockholder rights plan, then the Holder of this Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under this Note upon such conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to **Section 7(G)(i)(3)(a)** on account of such separation as if, at the time of such separation, the Company had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to readjustment in accordance with such Section if such rights expire, terminate or are redeemed.

(vi) *Limitation on Effecting Transactions Resulting in Certain Adjustments*. The Company will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to **Section 7(G)(i)** or **Section 7(I)** to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock.

(vii) *Equitable Adjustments to Prices*. Whenever any provision of this Note requires the Company to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate an adjustment to the Conversion Rate), the Company will make proportionate adjustments, if any, to such calculations to account for any adjustment to the Conversion Rate pursuant to **Section 7(G)(i)** that becomes effective, or any event requiring such an adjustment to the Conversion Rate where the Ex-Dividend Date or effective date, as applicable, of such event occurs, at any time during such period.

(viii) *Calculation of Number of Outstanding Shares of Common Stock*. For purposes of this **Section 7(G)**, the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) 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).

(ix) *Calculations*. All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward).

(x) *Notice of Conversion Rate Adjustments*. Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 7(G)(i)**, the Company will promptly send notice to the Holder containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

(H) *Voluntary Adjustments*.

(i) *Generally*. To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) increase the Conversion Rate on any portion of this Note for any period of time by any amount if (i) the Board of Directors determines in good faith that such increase is either (x) in the best interest of the Company; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event and (ii) such increase is irrevocable for the period of time specified by the Board of Directors. The Company and the Holder agree that any such voluntary adjustment to the Conversion Rate and any conversion of any portion of this Note based upon any such voluntary adjustment shall not constitute material non-public information with respect to the Company.

(ii) *Notice of Voluntary Increases*. If the Board of Directors determines to increase the Conversion Rate pursuant to **Section 7(H)(i)**, then, no later than the first Business Day following such determination, the Company will send notice to the Holder of such increase, the amount thereof and the period during which such increase will be in effect.

(I) *Effect of Certain Recapitalizations, Reclassifications, Consolidations, Mergers and Sales.*

(i) *Generally*. If there occurs:

(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 and (z) stock splits and stock combinations that do not involve the issuance of any other series or class 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, in each case, as a result of such occurrence, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities or other property (including cash or any combination of the foregoing) (such an event, a "**Common Stock Change Event**," and such other securities or other 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 fractional shares of securities or other property), a "**Reference Property Unit**"), then, notwithstanding anything to the contrary in this Note, at the effective time of such Common Stock Change Event, (x) the Conversion Consideration due upon conversion of this Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Section 7** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (y) for purposes of **Section 7(A)**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (z) for purposes of the definition of "Fundamental Change," the term " Common Stock" and "common equity" will be deemed to mean the common equity, if any, forming part of such Reference Property. 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, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of 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 Holder of such weighted average as soon as practicable after such determination is made.

At or before the effective date of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the "**Successor Person**") will execute and deliver such instruments or agreements that (x) provides for subsequent conversions of this Note in the manner set forth in this **Section 7(I)**; (y) provides for subsequent adjustments to the Conversion Rate pursuant to **Section 7(G)** and **Section 7(H)** in a manner consistent with this **Section 7(I)**; and (z) contains such other provisions as the Company reasonably determines are

appropriate to preserve the economic interests of the Holder and to give effect to the provisions of this **Section 7(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 instruments or agreements and such instruments or agreements will contain such additional provisions the Company reasonably determines are appropriate to preserve the economic interests of the Holder.

(ii) *Notice of Common Stock Change Events*. As soon as practicable after learning the anticipated or actual effective date of any Common Stock Change Event, the Company will provide written notice to the Holder of such Common Stock Change Event, including a brief description of such Common Stock Change Event, its anticipated effective date and a brief description of the anticipated change in the conversion right of this Note.

(iii) *Compliance Covenant.* The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 7(I)**.

(J) *Limitations on Conversions.*

(i) *Beneficial Ownership Limitation*. Notwithstanding anything to the contrary contained herein, the Company shall not effect the conversion of any portion of this Note, or otherwise issue shares pursuant to this Note, and the Holder shall not have the right to convert any portion of this Note, pursuant to the terms and conditions of this Note and any such conversion or issuance shall be null and void and treated as if never made, to the extent that after giving effect to such conversion or issuance, the Holder together with the other Attribution Parties collectively would beneficially own in the aggregate in excess of 4.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such conversion or issuance. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of, or otherwise pursuant to, this Note with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, unconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this **Section 7(J)(i)**. For purposes of this **Section 7(J)(i)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Note, in determining the number of outstanding shares of Common Stock the Holder may acquire in connection with this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent (as defined in the Securities Purchase Agreement) setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a notice from the Holder related to the conversion of this Note or any issuance of shares of Common Stock in connection with this Note at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall promptly notify the Holder in writing of the number of shares of

Common Stock then outstanding and, to the extent that such conversion or issuance of shares of Common Stock would otherwise cause the Holder's beneficial ownership, as determined pursuant to this **Section 7(J)(i)**, to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be issued pursuant to such notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of, or otherwise pursuant to, this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled *ab initio*, and the Holder shall not have the power to vote or to transfer the Excess Shares; provided, however that, the aggregate number of shares of Common Stock that would otherwise be required to be issued to the Holder pursuant to the terms of this Note shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be issued such shares (and any such shares declared or made on such initial issuance or on any subsequent issuance held similarly in abeyance) to the same extent as if there had been no such limitation. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; *provided that* (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any Other Holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert this Note or receive shares pursuant to this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 7(J)(i)** to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this **Section 7(J)(i)** or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note. The Holder hereby acknowledges and agrees that the Company shall be entitled to rely on the representations and other information set forth in any notice from the Holder related to the conversion of this Note or any issuance of shares of Common Stock in connection with this Note and shall not be required to independently verify whether any issuance of Common Stock pursuant to this Note would cause the Holder (together with the other Attribution Parties) to collectively beneficially own in excess of the Maximum Percentage of the number of shares of Common Stock outstanding after giving effect to such conversion or otherwise trigger the provisions of this **Section 7(J)(i)**. The Trustee shall have no obligation to monitor any limitations on beneficial ownership in connection with this **Section 7(J)(i)**.

(1) *Stock Exchange Limitations*. Notwithstanding anything to the contrary in this Note or any Other Note, until the Requisite Stockholder Approval is obtained, in no event will the number of shares of Common Stock issuable upon conversion or otherwise pursuant to this Note, all Other Notes and all Exchange Notes, together with all other shares, if any theretofore issued upon conversion or otherwise pursuant to the Securities Exchange Agreement, this Note, all Other Notes and all Exchange Notes, including (for the avoidance of doubt) Event of Default Stock Payments exceed ***[insert # representing one share less share than 20% of the outstanding shares]*** shares in the aggregate. If any one or more shares of Common Stock are not delivered as a result of the operation of the preceding sentence (such shares, the "**Withheld Shares**"), then (1) on the date such shares of Common Stock are issuable hereunder (without effect to any limitations imposed under **Section 7(J)(i)**), the Company will pay to the Holder, in addition to the Conversion Consideration otherwise due upon such conversion or shares otherwise due to the Holder hereunder, cash in an amount equal to the product of (x) the number of such Withheld Shares; and (y) the Daily VWAP per share of Common Stock on the applicable Stock Payment Determination Date; and (2) to the extent the Holder purchases (in an open market transaction or otherwise) Common Stock to deliver in settlement of a sale by the Holder of such Withheld Shares, the Company will reimburse the Holder for (x) any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection with such purchases and (y) the excess, if any, of (A) the aggregate purchase price of such purchases over (B) the product of (I) the number of such Withheld Shares purchased by the Holder; and (II) the Daily VWAP per share of Common Stock on the applicable Stock Payment Determination Date.

Section 1. Affirmative and Negative Covenants.

(A) *Stay, Extension and Usury Laws*. To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Note; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(B) *Corporate Existence.* Subject to **Section 9**, the Company will cause to preserve and keep in full force and effect:

(i) its corporate existence and the corporate existence of its Subsidiaries in accordance with the organizational documents of the Company or its Subsidiaries, as applicable; and

(ii) the material rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries;

provided, *however*, that the Company need not preserve or keep in full force and effect any such rights (charter and statutory), license or franchise or existence of any of its Subsidiaries if the Board of Directors determines in good faith that (x) the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole; and (y) the loss thereof is not, individually or in the aggregate, materially adverse to the Holder; *provided further*, that any Subsidiary may merge into, amalgamate or consolidate with any other Subsidiary and any Subsidiary may liquidate or dissolve if all of its property passes to the Company or another Subsidiary.

(C) *Ranking*. All payments due under this Note shall rank (i) *pari passu* with all Other Notes and all Exchange Notes, (ii) effectively senior to all unsecured obligations of the Company to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iii) senior to any Subordinated Indebtedness.

(D) *Indebtedness; Amendments to Indebtedness*. The Company shall not and shall not permit any Subsidiary to: (a) create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness; (b) prepay any Indebtedness except by the conversion of Indebtedness into equity securities (other than Disqualified Stock) and the payment of cash in lieu of fractional shares in connection with such conversion; or (c) amend or modify any documents or notes evidencing any Indebtedness in any manner which shortens the maturity date or any amortization, redemption or interest payment date thereof or otherwise imposes materially more burdensome terms upon the Company or its Subsidiaries than exist in such Indebtedness prior to such amendment or modification without the prior written consent of Holder. The Company shall not and shall not permit any Subsidiary to incur any Indebtedness that would cause a breach or Default under the Notes or prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including without limitation, the payment of interest and principal thereon.

(E) *Liens*. The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

(F) *Investments*. The Company shall not directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments; *provided* that the Company may not make any Investment (including a Permitted Investment) or permit any of its Subsidiaries to make any Investment (including a Permitted Investment) if (i) any Event of Default has occurred hereunder or (ii) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default with respect to **Section 10(A)(ii)**, **Section 10(A)(iv)**, **Section 10(A)(vi)**, **Section 10(A)(ix)**, **Section 10(A)(x)**, **Section 10(A)(xi)** or **Section 10(A)(xiv)**.

(G) *Distributions.* The Company shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other Equity Interest other than pursuant to employee, director or consultant equity incentive, stock purchase or repurchase plans or awards granted thereunder or other similar agreements provided under plans approved by the Board of Directors; provided, however, in each case the repurchase or redemption price does not exceed the original consideration paid for such stock or Equity Interest, or (b) declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest, except that a Subsidiary of the Company may pay dividends or make distributions to the Company or a parent company that is a direct or indirect Wholly Owned Subsidiary of the Company, or (c) lend money to any employees, officers or directors (except as permitted under clause (F) of the definition of Permitted Investment), or guarantee the payment of any such loans granted by a third party in excess of two hundred fifty thousand dollars ($250,000) in the aggregate or (d) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of two hundred fifty thousand dollars ($250,000) in the aggregate. If there are dividends or distributions made by the Company or any Subsidiary, within one (1) Business Day following the date on which the Company files an Annual Report on Form 10-K or Quarterly Report on Form 10-Q with the Commission, the Company will provide the Holder with a written notice setting forth the aggregate amount of dividends or distributions made by the Company or any Subsidiary pursuant to this **Section 8(G)** for the period covered by such Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable. Notwithstanding anything herein to the

contrary, the Company shall not, and shall not allow any Subsidiary to, declare or pay any cash dividend or make a cash distribution on any class of stock or other Equity Interest if (A) any Event of Default has occurred hereunder and has not been waived by the Required Holders or (B) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default with respect to **Section 10(A)(ii)**, **Section 10(A)(iv)**, **Section 10(A)(vi)**, **Section 10(A)(ix)**, **Section 10(A)(x)**, **Section 10(A)(xi)** or **Section 10(A)(xiv)**.

(H) *Transfers*. The Company shall not, and shall not allow any Subsidiary to, voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey any equitable, beneficial or legal interest in any material portion of the assets of the Company and its Subsidiaries (taken as a whole), except for Permitted Transfers and Permitted Investments.

(I) *Taxes*. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(i) *Minimum Liquidity*.

(1) The Company and its Subsidiaries shall have at all times liquidity calculated as unrestricted, unencumbered Cash and Cash Equivalents in one or more deposit accounts located in the United States in a minimum amount equal to thirty million dollars ($30,000,000) and, subject to **Section 8(Z)**, subject to one or more control agreements entered into in favor of the Collateral Agent (each a "**Controlled Account**").

(2) On the first (1st) Business Day of each month (or, if earlier, immediately in the event an Event of Default has occurred as a result of a breach of **Section 8(J)(i)**, **Section 8(G)**, **Section 8(R)**, **Section 8(X)** or **Section 8(AA)** hereof), the Company shall provide to the Holder and the Trustee a certification, in the form attached hereto as **Exhibit C**, executed on behalf of the Company by the Chief Financial Officer of the Company, certifying whether or not the Company has satisfied the requirements of **Section 8(J)(i)**, **Section 8(G)**, **Section 8(R)**, **Section 8(X)** and **Section 8(AA)** during the immediately preceding calendar month (a "**Compliance Certificate**"). If the Company determines in its sole discretion that such information constitutes material non-public information, then the Company will so indicate in the certification provided pursuant to the preceding sentence and the Company will concurrently disclose such material non-public information on a Current Report on Form 8-K or otherwise.

(ii) *Change in Nature of Business*. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the Issue Date or any business substantially related or incidental thereto.

(iii) *Maintenance of Properties, Etc.* The Company shall maintain and preserve, and the Company shall cause each of its Subsidiaries to maintain and preserve, all of its properties

which are necessary or useful (as determined by the Company in good faith) to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply at all times in all material respects with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder.

(iv) *Maintenance of Intellectual Property*. The Company will take, and the Company shall cause each of its Subsidiaries to take, all actions necessary or advisable to maintain and preserve all of the Intellectual Property Rights (as defined in the Securities Purchase Agreement) of the Company or such Subsidiary that are necessary or material (as determined by the Company in good faith) to the conduct of its business in full force and effect.

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

(vi) *Transactions with Affiliates*. Neither the Company, nor any of its Subsidiaries, shall enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate (other than the Company or any of its Wholly Owned Subsidiaries), except transactions for fair consideration and on terms no less favorable to it than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof.

(vii) *Restricted Issuances.* The Company shall not, and shall cause its Subsidiaries not to, directly or indirectly, without the prior written consent of the Required Holders, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities or incur any Indebtedness, in each case, that would cause a breach or Default under the Notes or that by its terms would prohibit or restrict the performance of any of the Company's or its Subsidiaries' obligations under the Notes, including, without limitation, the payment of principal thereon.

(viii) *Share Reserve.* So long as this Note remains outstanding, the Company shall at all times have no less than a number of authorized but unissued shares of Common Stock equal to the sum of (i) fifty million (50,000,000) shares of Common Stock which shall not be exclusively reserved for issuance pursuant to the Notes and (ii) one hundred percent (100%) of a fraction, the numerator of which shall be the then outstanding principal amount of all Notes, and the denominator of which shall be the Conversion Price which shall be reserved for issuance pursuant to the terms of the Notes (the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this **Section 8(Q)** be reduced other than in connection with any stock combination, reverse stock split or other similar transaction. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain stockholder approval (if required) of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(ix) *Minimum Cash Spend Availability*. On the last calendar day of each calendar month beginning with the calendar month ending December 31, 2023 (each a "**Cash Burn Measurement Date**"), the Company's and its Wholly Owned Subsidiaries' Available Cash on the Cash Burn Measurement Date shall be greater than or equal to (A) the Company's and its Wholly Owned Subsidiaries' Cash and Cash Equivalents on the Quarterly Cash Burn Reference Date, less (B) the Permitted Quarterly Cash Burn.

(x) *Independent Investigation*. At the request of the Required Holders at any time the Required Holders have determined in good faith that (i) an Event of Default has occurred or (ii) any event or circumstance has occurred and is continuing which, with the giving of notice or passage of time or both, could constitute an Event of Default but the Company has not timely agreed to such determination in writing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Required Holders to investigate as to whether such Event of Default or event or circumstance has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such Event of Default or event or circumstance has occurred, the Independent Investigator shall notify the Company of such Event of Default or occurrence of such event or circumstance and the Company shall promptly deliver written notice to the Holder of such Event of Default if such Event of Default has occurred. In connection with such investigation, the Independent Investigator may, during normal business hours and upon signing a confidentiality agreement in a form reasonably acceptable to the Company, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, any of the Company's officers, directors, key employees and independent public accountants (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

(xi) Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York City time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this **Section 8(T)** shall limit any obligations of the Company, or any rights of the Holder, under the Securities Purchase Agreement.

(xii) The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company, the Holder will not have any obligations hereunder except those obligations expressly set forth herein (and in the Securities Purchase Agreement) and the Holder is acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the Note and not as a fiduciary or agent of the Company. The Company agrees that it will not assert any claim against the Holder based on an alleged breach of fiduciary duty by the Holder in connection with the Note. The Company acknowledges that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

(xiii) The Company shall cause this Note and any shares of Common Stock issuable pursuant to this Note to be eligible to be offered, sold or otherwise transferred by the Holder pursuant to Rule 144, without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice under the Securities Act and without any requirement for registration under any state securities or "blue sky" law, on and after the date that is six (6) months following the Issue Date. If this Note is to be transferred, the Holder shall notify the Company and surrender this Note to the Company (or provide the Company an affidavit in a form reasonably acceptable to the Company that this Note was lost, stolen or destroyed), whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note, registered as the Holder may request.

(xiv) [Reserved].

(xv) So long as this Note remains outstanding, the Company shall at all times have access to an ATM Program, the terms of which have been approved by the Required Holders in accordance with the Securities Purchase Agreement with aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least ten million dollars ($10,000,000). On or before December 31, 2023, the Company shall establish a new ATM program with aggregate available, accessible and unused capacity to generate gross proceeds to the Company of at least seventy five million dollars ($75,000,000) as of December 31, 2023, and such ATM Program shall not be subsequently canceled, or amended or otherwise modified to reduce such amount, without the written consent of the Required Holders.

(xvi) The Company shall pay when due any and all fees and expenses owed by it under all deposit accounts located in the United States and subject to a control agreement entered into in favor of the Collateral Agent.

(xvii) As of the Issue Date (which period may be extended in the reasonable discretion of the Collateral Agent), the Company or relevant Subsidiary of the Company shall have delivered to the Collateral Agent (i) a perfection certificate, in the form attached to the Securities Purchase Agreement as Exhibit C, which described in detail reasonably acceptable to the Collateral Agent the Collateral (as defined below) to be delivered (a "**Perfection Certificate**"), (ii) a U.S. Security Agreement, dated as of the Issue Date, among the grantors named therein and the secured party named therein (the "**Main Security Agreement**"), (iii) a U.S. Intellectual Property Security Agreement, dated as of the Issue Date, among the grantor(s) named therein and the security party named therein (the "**IP Security Agreement**") and (iv) UCC financing statements ("**UCC Financing Statements**"), each of (i) through (iv), in form and substance satisfactory to the Collateral Agent, which created a first lien security interest in all assets of the

Company including, but not limited to, its intellectual property (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion) (the "**Collateral**") and perfected a first lien security interest in all such assets of the Company other than the Company's non-U.S. assets and its bank accounts. As soon as reasonably practicable, but in any event before thirty (30) days after the Issue Date of the Initial Purchased Notes (as defined in the Securities Purchase Agreement) (which period may be extended in the reasonable discretion of the Collateral Agent), the Company or relevant Subsidiary of the Company shall deliver to the Collateral Agent (a) such additional security documents, including deposit account control agreements, in form and substance reasonably acceptable to the Collateral Agent (the "**Ancillary Security Documents**"), which perfect a first lien security interest in all remaining assets of the Company (subject to prior Liens and other customary exclusions, in each case acceptable to the Collateral Agent in its sole discretion) and (b) with respect to such Ancillary Security Documents, customary legal opinions relating to such Ancillary Security Documents, in form and substance reasonably acceptable to the Collateral Agent.

(xviii) At no time shall any Intellectual Property (regardless of the value of such Intellectual Property) or any other assets with a fair market value in excess of five million dollars ($5,000,000) in the aggregate be held by Subsidiaries of the Company formed in jurisdictions outside of the United States, unless the Holder shall have been previously granted a perfected first lien security interest in such assets pursuant to security documents, in form and substance reasonably acceptable to the Collateral Agent. Notwithstanding the foregoing, no assets shall be held by Subsidiaries of the Company formed in jurisdictions outside of the United States in the event that holding such assets in such Subsidiaries would be in violation of the Main Security Agreement, the IP Security Agreement or the Ancillary Security Documents.

Section 2. Successors.

The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person, other than the Holder or any of its Affiliates (a "**Business Combination Event**"), unless:

(A) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a corporation (the "**Successor Corporation**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that expressly assumes (by executing and delivering to the Holder and the Trustee, at or before the effective time of such Business Combination Event, a supplement to this instrument) all of the Company's obligations under this Note; and

(B) immediately after giving effect to such Business Combination Event, no Event of Default will have occurred that has not been waived and no Default will have occurred and be continuing which has not been waived.

At the effective time of any Business Combination Event, the Successor Corporation (if not the Company) will succeed to, and may exercise every right and power of, the Company under this Note with the same effect as if such Successor Corporation had been named as the Company in this Note, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Note.

This **Section 9** will not apply to a sale, assignment, transfer, lease, conveyance or other disposition of property or assets between or among any of the Company and its Wholly Owned Subsidiaries.

Upon the occurrence of any Business Combination Event, the Company shall deliver the supplemental indenture, officers' certificate and opinion of counsel contemplated pursuant to Section 5.1(b) of the Base Indenture.

Section 3. Defaults and Remedies

(A) *Events of Default*. "**Event of Default**" means the occurrence of any of the following (whose occurrence, for the avoidance of doubt, may be waived, but may not be cured):

(i) a default in the payment when due of a Partial Redemption Payment (or applicable portion thereof), the Principal Amount, the Maturity Principal Amount, a Cash Sweep Payment or the Fundamental Change Repurchase Price under this Note;

(1) a default for two (2) Business Days in the payment when due of the interest on this Note;

(2) a default in the Company's obligation to issue shares pursuant to this Note;

(3) a default in the Company's obligation to timely deliver a Fundamental Change Notice pursuant to **Section 6(C)**, Cash Sweep Certification in accordance with the requirements of **Section 4(D)** or Compliance Certificate, and such default continues for three (3) Business Days, or the delivery of a materially false or inaccurate Fundamental Change Notice, Cash Sweep Certification, Company Conversion Notice or Compliance Certificate;

(4) any failure to timely deliver an Event of Default Notice or a materially false or inaccurate certification as to whether any Event of Default has occurred or as to whether the Equity Conditions have been satisfied;

(5) a default in any of the Company's obligations or agreements under this Note or the Transaction Documents (in each case, other than a default set forth in clauses **(i)** – **(v)** or **(vii)** – **(xviii)** of this **Section 10(A)**), or a breach of any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality qualifications, which may not be breached in any respect) of any Transaction Document as of the date when made (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date); *provided*, *however*, that if such default can be cured, then such default shall not be an Event of Default unless the Company has failed to cure such default within ten (10) days after its occurrence;

(6) any provision of any Transaction Document at any time for any reason (other than pursuant to the express terms thereof) ceases to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof is contested, directly or indirectly, by the Company or any of its Subsidiaries, or a proceeding is commenced by the Company or any of its Subsidiaries or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof;

(7) the Company fails to comply with any covenant set forth in **Section 8(D)**, **Section 8(E)**, **Section 8(F)**, **Section 8 (G)**, **Section 8 (H)**, **Section 8 (J)**, **Section 8(P)**, **Section 8(Q)**, **Section 8(R)**, **Section 8(X)** or **Section 8(Z)** or **Section 8(AA)** of this Note;

(8) the suspension from trading or failure of the Common Stock to be trading or listed on the Company's primary Eligible Exchange (measured in terms of trading volume for its Common Stock) on which the Common Stock is traded for a period of three (3) consecutive Trading Days;

(9) (i) the failure of the Company or any of its Subsidiaries to pay when due or within any applicable grace period any Indebtedness having an individual principal amount in excess of at least two hundred fifty thousand dollars ($250,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such Indebtedness exists as of the Issue Date or is thereafter created, and whether such default has been waived for any period of time or is subsequently cured; or (ii) the occurrence of any breach or default under any terms or provisions of any other Indebtedness of at least two hundred fifty thousand dollars ($250,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such indebtedness, to cause, Indebtedness having an individual principal amount in excess of two hundred fifty thousand dollars ($250,000) to become or be declared due prior to its stated maturity;

(10) one or more final judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of at least two hundred fifty thousand dollars ($250,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance pursuant to which the insurer has been notified and has not denied coverage), is rendered against the Company or any of its Subsidiaries and remains unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of ten (10) consecutive Trading Days after entry thereof during which (A) a stay of enforcement thereof is not in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(11) (A) the Company fails to timely file its quarterly reports on Form 10-Q or its annual reports on Form 10-K with the Commission in the manner and within the time periods required by the Exchange Act (reports filed in compliance with the time period specified in Rule 12b-25 promulgated under the Exchange Act shall be considered timely for this purpose), or (B) the Company withdraws or restates any such quarterly report or annual report previously filed with the Commission or (C) the Company at any time prior to the earlier to occur of (i) the issuance of all Notes pursuant to the Securities Purchase Agreement and (ii) [_____], 2024[4] ceases to satisfy the eligibility requirements set forth under Section I.A of the General Instructions to Form S-3;

(12) In violation of **Section 8(Z)**, any security document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral, in each case, in favor of the Collateral Agent in accordance with the terms thereof, or any material provision of any such security document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(13) any material damage to, or loss, theft or destruction of, any material portion of the Collateral (provided that any damage, loss, theft or destruction of

[4] **NTD**: insert one year anniversary of closing of Initial Purchased Notes.

the Collateral that reduces the value of such Collateral by two hundred and fifty thousand dollars ($250,000) or more shall be deemed to be material), whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of the Company or any Subsidiary, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect (as defined in the Securities Purchase Agreement). For clarity, an Event of Default under this **Section 10(A)(xiii)** will not require any curtailment of revenue;

(14) at any time the shares of Common Stock issuable pursuant to this Note are not Freely Tradeable.

(15) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(3) consents to the appointment of a custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

(16) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

(7) is for relief against Company or any of its Significant Subsidiaries in an involuntary case or proceeding;

(8) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;

(9) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(10) grants any similar relief with respect to the Company or any of its Significant Subsidiaries under any foreign Bankruptcy Law,

and, in each case under this **Section 10(A)(xvi)**, such order or decree remains unstayed and in effect for at least thirty (30) days.

(17) the Company's stockholders approve any plan for the liquidation or dissolution of the Company

(B) *Acceleration.*

(i) *Automatic Acceleration in Certain Circumstances*. If an Event of Default set forth in **Section 10(A)(xvi)** or **Section 10(A)(xvii)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the then outstanding portion of the Maturity Principal Amount of, and all accrued and unpaid interest on, this Note will immediately become due and payable without any further action or notice by any Person.

(ii) *Optional Acceleration*. If an Event of Default (other than an Event of Default set forth in **Section 10(A)(xvi)** or **Section 10(A)(xvii)** with respect to the Company and not solely with respect to a Subsidiary of the Company) occurs and has not been waived by the Holder, then the Holder, by notice to the Company, may declare this Note (or any portion thereof) to become due and payable on the Business Day immediately following the date of such notice for cash in an amount equal to the Event of Default Acceleration Amount.

(C) *Notice of Events of Default*. Promptly, but in no event later than one (1) Business Day after an Event of Default, the Company will provide written notice of such Event of Default to the Holder (an "**Event of Default Notice**"), which Event of Default Notice shall include (i) a reasonable description of the applicable Event of Default, (ii) the date on which the Event of Default occurred and (iii) the date on which the Default underlying such Event of Default initially occurred, if different than the date on which the Event of Default occurred.

(D) *Default Interest*. If a Default or an Event of Default occurs, then in each case, to the extent lawful, interest ("**Default Interest**") will automatically accrue on the Principal Amount outstanding as of the date of such Default or Event of Default at a rate per annum equal to twelve percent (12.0%), from, and including, the date of such Default or Event of Default, as applicable, to, but excluding, the date such Default is cured and all outstanding Default Interest under this Note has been paid. Default Interest hereunder will be computed on the basis of a 360-day year comprised of twelve 30-day months and will be payable in arrears on the earlier of (i) the first day of each calendar month, (ii) the date such Default is cured, (iii) any Fundamental Change Repurchase Date, Conversion Settlement Date or any date that an Event of Default Acceleration Amount is paid by the Company to the Holder, and (iv) the Maturity Date.

Article 8. Registrar and Paying Agent.

Notwithstanding Section 2.4 of the Base Indenture, the Company hereby appoints itself as the Paying Agent for this Note. In connection with this Note, all references in the Base Indenture to the Trustee as the Paying Agent (including, without limitation, the obligation of the Paying Agent to hold assets in trust under Section 2.5 of the Base Indenture), shall instead be obligations of the Company in its capacity as Paying Agent

Section 4. Ranking.

All payments due under this Note shall rank (i)*pari passu* with all Other Notes and all Exchange Notes, (ii) effectively senior to all unsecured obligations of the Company to the extent of the value of the Collateral securing the Notes for so long as the Collateral so secures the Notes in accordance with the terms hereof and (iii) senior to any Subordinated Indebtedness.

Section 5. Replacement Notes.

If the Holder of this Note claims that this Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver a replacement Note upon surrender to the Company of such mutilated Note, or upon delivery to the Company of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Company. In the case

of a lost, destroyed or wrongfully taken Note, the Company may require the Holder to provide such security or an indemnity that is reasonably satisfactory to the Company to protect the Company from any loss that it may suffer if this Note is replaced.

Section 6. Notices.

Any notice or communication to the Company will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), electronic transmission (including e-mail) or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

Velo3D, Inc.
511 Division Street
Campbell, CA 95008
Attention: William McCombe
Email address:

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

Fenwick & West LLP
902 Broadway
New York, NY 10010
Attention: Per Chilstrom
Email address:

Notice to the Trustee shall be delivered as set forth in Section 10.2 of the Base Indenture.

The Company, by notice to the Holder, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to the Holder will be by e-mail to its e-mail address, which initially are as set forth in the Securities Purchase Agreement. The Holder, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

If a notice or communication is mailed in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Section 7. Successors and Assigns.

All agreements of the Company in this Note will bind its successors and will inure to the benefit of the Holder's successors and assigns.

Section 8. Severability.

If any provision of this Note is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Note will not in any way be affected or impaired thereby.

Section 9. Headings, Etc.

The headings of the Sections of this Note have been inserted for convenience of reference only, are not to be considered a part of this Note and will in no way modify or restrict any of the terms or provisions of this Note.

Section 10. Amendments

Except as set forth in Section 8.2(a) of the Base Indenture, this Note may not be amended or modified unless in writing by the Company, the Trustee and the Required Holders, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. Notwithstanding the foregoing, the Company and the Trustee may amend or modify this Note, and may waive any provision hereof, without notice to or consent of the Holder or any Other Holder: (i) to provide for the conversion of this Note into Reference Property under **Section 7(I)**; or (ii) to provide for the assumption by a Successor Corporation of the obligations of the Company under this Note in accordance with **Section 9**. Section 8.1 of the Base Indenture shall not be applicable in connection with this Note.

Section 11. Governing Law; Waiver of Jury Trial.

All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company and each Holder hereby irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder or to enforce a judgment or other court ruling in favor of such Holder. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

Section 12. Submission to Jurisdiction.

The Company (A) agrees that any suit, action or proceeding against it arising out of or relating to this Note may be instituted in the Court of Chancery of the State of Delaware; (B) waives, to the fullest extent permitted by applicable law, (i) any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding; and (ii) any claim that it may now or hereafter have that any such suit, action or proceeding in such a court has

been brought in an inconvenient forum; and (C) submits to the nonexclusive jurisdiction of such court in any such suit, action or proceeding.

Section 13. Enforcement Fees.

The Company agrees to pay all costs and expenses of the Holder incurred as a result of enforcement of this Note and the collection of any amounts owed to the Holder hereunder (whether in cash, Common Stock or otherwise), including, without limitation, reasonable and documented attorneys' fees and expenses.

Section 14. Collateral Agent.

(C) *Appointment; Authorization.* The Holder and the Trustee, together with any successors or assigns thereof, hereby irrevocably appoint, designate and authorize High Trail Investments ON LLC as collateral agent to take such action on their behalf under the provisions of this Note, each Security Agreement and to exercise such powers and perform such duties as are expressly delegated to it by the terms of each Security Agreement, together with such powers as are reasonably incidental thereto. The provisions of this **Section 22** are solely for the benefit of the Collateral Agent, and the Company shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any Security Agreement (or any other similar term) with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Notwithstanding any provision to the contrary contained elsewhere in this Note, any Security Agreement or any other agreement, instrument or document related hereto or thereto, the Collateral Agent shall not have any duty or responsibility except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Note, any Security Agreement or any other agreement, instrument or document related hereto or thereto or otherwise exist against the Collateral Agent. The Collateral Agent shall act hereunder and under the Security Documents in accordance with the provisions of this Note and the Security Documents pursuant to the direction of the Required Holders or the Trustee.

(D) *Delegation of Duties.* The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any Security Agreement by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through its Affiliates, partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives, or the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of any of its Affiliates (collectively, the "**Related Parties**"). The exculpatory provisions of this **Section 22** shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(E) *Exculpatory Provisions.*

(i) The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Security Agreements, and its duties shall be administrative in nature. Without limiting the generality of the foregoing, the Collateral Agent: (i) shall not be subject to any fiduciary or other implied duties, regardless of

whether a Default has occurred and is continuing or an Event of Default has occurred; (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers; and (iii) shall not, except as expressly set forth in the Security Agreements, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity.

(ii) The Collateral Agent shall not be liable for any action taken or not taken by it in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by the Company.

(iii) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with this Notes, any Security Agreement or any other agreement, instrument or document related hereto or thereto, (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (d) the validity, enforceability, effectiveness or genuineness of this Note, any Security Agreement or any other agreement, instrument or document related hereto or thereto, or (e) any failure of the Company or any other party to this Note, any Security Agreements or any other agreement, instrument or document related hereto or thereto to perform its obligations hereunder or thereunder. The Collateral Agent shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Note, any Security Agreement or any other agreement, instrument or document related to the hereto or thereto, or to inspect the properties, books or records of the Company or any Affiliate of the Company.

(F) *Reliance by Collateral Agent.* The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(G) *Successor Agent.* The Collateral Agent may resign as the Collateral Agent at any time upon ten (10) days' prior notice to the Holder and each Other Holder and the Company. If the Collateral Agent resigns under this Note, the Required Holders shall appoint a successor agent. If no successor agent is appointed prior to the effective date of the resignation of the Collateral Agent, the Collateral Agent may appoint a successor Collateral Agent on behalf of the Holder and each Other Holder after consulting with the Holder and each Other Holder. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the term "the Collateral Agent" shall mean such successor agent, and the retiring Collateral Agent's appointment, powers and duties as the Collateral Agent shall be terminated. After the Collateral Agent's resignation hereunder as the Collateral Agent, the provisions of this **Section 22** shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was the Collateral Agent. If no

successor agent has accepted appointment as the Collateral Agent by the date which is thirty (30) days following a retiring Collateral Agent's notice of resignation, a retiring Collateral Agent's resignation shall nevertheless thereupon become effective and the Holder, together with each Other Holder, shall perform all of the duties of the Collateral Agent hereunder until such time as the Required Holders shall appoint a successor agent as provided for above.

(H) *Non-Reliance on the Collateral Agent.* The Holder acknowledges that it has, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information it has deemed appropriate, made its own credit analysis and decision to enter into this Note. The Holder also acknowledges that it will, independently and without reliance upon the Collateral Agent or any of its Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Note, any Security Agreement or any related agreement or any document furnished hereunder or thereunder.

(I) *Collateral Matters.* The Holder irrevocably authorizes the Collateral Agent to release any Lien granted to or held by the Collateral Agent under any Security Agreement (i) when all Obligations have been paid in full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted under this Note and each other agreement, instrument or document related hereto (it being agreed and understood that the Collateral Agent may conclusively rely without further inquiry on a certificate of an officer of the Company as to the sale or other disposition of property being made in compliance with this Note and each other agreement, instrument or document related hereto); or (iii) if approved, authorized or ratified in writing by the Holder and each Other Holder. The Collateral Agent shall have the right, in accordance with the Security Agreements to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and the Collateral Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and setoff the amount of such price against the Obligations.

(J) *Reimbursement by Holder and Other Holders.* To the extent that the Company for any reason fails to indefeasibly pay any amount required under Sections 4(g) or 9(k) of the Securities Purchase Agreement to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of the Collateral Agent (or any sub-agent thereof), the Holder hereby agrees, jointly and severally with each Other Holder, to pay to the Collateral Agent (or any such sub-agent) or such Related Party of the Collateral Agent (or any sub-agent thereof), as the case may be, such unpaid amount.

(K) *Marshaling; Payments Set Aside.* Neither the Collateral Agent nor the Holder shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of any or all of the Obligations. To the extent that the Company makes a payment or payments to the Collateral Agent, or the Collateral Agent enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Collateral Agent in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (i) to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (ii) the Holder agrees to pay to the Collateral Agent upon demand its share of the total amount so recovered from or repaid by the Collateral Agent to the extent paid to the Holder.

(L) *Payment Priorities.* If the Collateral Agent receives any proceeds of Collateral, the Collateral Agent shall deliver such proceeds to the Trustee for application in accordance with Section 6.10 of the Base Indenture.

Section 15. Calculations.

Except as otherwise expressly provided herein, the Collateral Agent shall be responsible for making all calculations called for under this Note or the Indenture. These calculations include, but are not limited to, determinations of the Cash Sweep Amount, Conversion Price, Conversion Rate, Daily VWAPs, Last Reported Sale Price, Fundamental Change Repurchase Price, Event of Default Acceleration Amount, Market Stock Payment Price, Partial Redemption Payments, and accrued interest on the Notes. The Collateral Agent shall make all these calculations in good faith and, absent manifest error, the Collateral Agent's calculations shall be final and binding on the Company and the Trustee. The Collateral Agent shall provide a schedule of its calculations to each of the Trustee, the Company and the Paying Agent (if no longer the Company), and the Trustee is entitled to rely conclusively upon the accuracy of the Collateral Agent's calculations without independent verification. The Collateral Agent shall forward its calculations to the Holder upon the request of that Holder at the sole cost and expense of the Company. For the avoidance of doubt, the Trustee shall have no obligation to calculate or verify the calculation of the accrued and unpaid interest on the Notes. The Trustee shall have no responsibility for calculations or determinations, or verifying the Collateral Agent's calculations or determination, of amounts, determining, or verifying the Collateral Agent's determination of, whether events requiring or permitting conversions of Notes have occurred, determining, or verifying the Collateral Agent's determination of, whether any adjustment is required with respect to conversion rights and, if so, how much, or for the delivery of the shares of Common Stock. The Trustee shall not be responsible for the Company's failure to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the Company's duties, responsibilities or covenants hereunder.

The following provisions of the Base Indenture are not applicable to this Note, unless so required pursuant to applicable law: Section 2.15, Article 3, Section 4.3, Section 4.5, Article 5, Section 6.1 through Section 6.4, Section 8.1 and Section 8.2.

Section 16. Trust Indenture Act.

If any provision of this Note contravenes the mandatory provisions of the Trust Indenture Act, the provisions of the Trust Indenture Act shall govern and control. The provisions of Section 316(a)(1) of the Trust Indenture Act shall be excluded for the purposes of the Note and shall instead be governed by the terms hereof.

Section 17. Electronic Execution.

The words "execution," "signed," "signature," and words of similar import in the Note shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity, and enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S.C. §§ 7001-7006), the Electronic Signatures and Records Act of 1999 (N.Y. State Tech. §§ 301-309), or any other similar state laws based on the Uniform Electronic Transactions Act. All notices, approvals, consents, requests and any communications hereunder must be in writing (provided that any such communication sent to the Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in

writing to the Trustee by the authorized representative)), in English. The Company agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

* * *

Exhibit A

Form of Conversion Notice

Velo3D, Inc.

Senior Secured Convertible Note due 2026

Subject to the terms of this Note, by executing and delivering this Conversion Notice, the undersigned Holder of this Note directs the Company to convert the following Principal Amount of this Note: $_____,000 in accordance with the following details.
Shares of Common Stock to be delivered:

____

Accrued interest amount:

____

DTC Participant Number:

____

DTC Participant Name:

____

Date: __ __
(Legal Name of Holder)

By: __
Name:
Title:

Exhibit B

Form of Company Conversion Notice

Velo3D, Inc.

Senior Secured Convertible Notes due 2026

By executing and delivering this Company Conversion Notice, the Company hereby notifies the Holder of the Note of the Company's election to convert the entire principal amount of the Note identified by Certificate No. _____.

By delivering this Company Conversion Notice, the Company hereby represents and warrants that the Equity Conditions have been satisfied as of the date hereof.

Velo3D, Inc.

Date: ____ By: __

Name:
Title:

Exhibit C

Form of Covenant Compliance Certificate

The undersigned, the duly qualified and elected Chief Financial Officer of Velo3D, Inc., a Delaware corporation (the "**Company**"), does hereby certify in such capacity and on behalf of the Company, pursuant to the Senior Secured Convertible Note due 2026, issued [ ], 20[ ] (the "**Note**"), issued by the Company to [ ], that:

[(i) the Company satisfied the requirements of **Section 8(G)** of the Note during the calendar month ended [ ]; and

(ii) the Company satisfied the requirements of **Section 8(J)(i)** of the Note during the calendar month ended [ ].

(iii) the Company satisfied the requirements of **Section 8(X)** of the Note during the calendar month ended [ ].

(iv) the Company satisfied the requirements of **Section 8(R)** of the Note during the calendar month ended [ ].

(v) the Company satisfied the requirements of **Section 8(AA)** of the Note during the calendar month ended [ ].][5]

Capitalized terms used herein without definition shall have the meanings given to such terms in the Note.

VELO3D, INC.
By:
Name:
Title:

Date: _____

[5] Clauses (i-iv) shall only be included in Compliance Certificates delivered in connection with month ends.

FORM OF AMENDMENT TO SECURITY AGREEMENT

This AMENDMENT TO SECURITY AGREEMENT (this "***Amendment***") is made and entered into as of November [•], 2023, by and among Velo3D, Inc., a Delaware corporation (the "***Pledgor***"), each of the Subsidiaries of the Pledgor from time to time party hereto (collectively with the Pledgor, the "***Grantors***") and High Trail Investments ON LLC, a Delaware limited liability company, in its capacity as collateral agent for the benefit of the Holders (together with its successors and assigns in such capacity, the "***Secured Party***").

RECITALS

Whereas, the Pledgor has issued that certain Senior Secured Convertible Note due 2026 (the "***Original Notes***") to the Secured Party pursuant to that certain Securities Purchase Agreement, dated as of August 14, 2023, by and among the Pledgor, the Secured Party and each other party thereto (the "***Original Securities Purchase Agreement***") (as the same may be amended from time to time);

Whereas, the Pledgor, the Grantors and the Secured Party entered into that certain Security Agreement (the "***Original Security Agreement***" and, the Original Security Agreement as amended by this Amendment, the "***Security Agreement***"), dated as of August 14, 2023;

Whereas, the Pledgor has issued that certain Senior Secured Note due 2026 (the "***New Notes***") for which Secured Party is the secured party pursuant to that certain Securities Exchange Agreement, dated as of November 27, 2023, by and among the Pledgor and the investors on the Schedule of Buyers attached thereto (the "***Securities Exchange Agreement***") (as the same may be amended from time to time);

Whereas, the Pledgor, Grantors and Secured Party desire to amend the Original Security Agreement to also secure the obligations under the New Notes.

Now, Therefore, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I

AMENDMENT TO ORIGINAL SECURITY AGREEMENT

1.1. Definitions.

1.1.1. The first recital of the Original Security Agreement is hereby amended and restated as follows:

WHEREAS, the Pledgor entered into (i) that certain Securities Purchase Agreement, dated as of August 14, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the "**Original Securities Purchase Agreement**"), with High Trail Investments ON LLC and HB SPV I Master Sub LLC (collectively, the "**Initial Holder**") and each other party thereto, and (ii) that certain Securities Exchange Agreement, dated as of November 27, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the "**Securities Exchange Agreement**", and together with the Original Securities Purchase Agreement, the "**Securities Purchase Agreement**"), pursuant to which, among other things, the Pledgor will issue, and the Initial Holder will purchase, subject to the terms set forth therein, the Notes (as defined below);

1.1.2. The definition of "Notes" in Section 1 of the Original Security Agreement is hereby amended and restated as follows:

"**Notes**" means the Notes (as defined in the Original Securities Purchase Agreement) and the Exchange Notes (as defined in the Securities Exchange Agreement).

1.1.3. Each reference to "this Agreement" in the Original Security Agreement, or words of like import, shall mean and refer to the Security Agreement as affected hereby.

1.2. Reaffirmation. Each of the Grantors each hereby agrees that: (a) all terms and conditions contained in the Security Agreement, including the granting of the security interests contained therein, shall continue in full force and effect, (b) the Security Agreement continues to be the valid and binding obligation of the Grantors, enforceable in accordance with its terms, and (c) that notwithstanding the execution and delivery of this Amendment, the obligations of such Grantor under the Security Agreement are not impaired or affected.

ARTICLE II

MISCELLANEOUS

2.1. Captions. The headings contained in this Amendment are for reference purposes only and shall not affect in any way the meaning or interpretation of this Amendment. Except as otherwise indicated, all references in this Amendment to "Sections" are intended to refer to the Sections or Articles of the Note, as applicable.

2.2. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

2.3. No Other Amendment. Except for the matters expressly set forth in this Amendment, all other terms of the Original Security Agreement are hereby ratified and shall remain unchanged and in full force and effect.

2.4. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

2.5. Electronic and Facsimile Signatures. Any signature page delivered electronically or by facsimile (including without limitation transmission by .pdf) shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto. Any party who delivers such a signature page agrees to later deliver an original counterpart to the other party if so requested.

[Signature Pages Follow]

The parties hereto have executed this Amendment to Security Agreement as of the date first written above.

PLEDGOR:

VELO3D, INC:

By:____
Name:
Title:

Notice Address:

[ ]
Attn: [_____]
[ ]

GRANTORS:

VELO3D US, INC.

By:____

Name:
Title:

Notice Address:

[ ]
Attn: [ ]
[_____]

[Signature Page to Amendment to Security Agreement]

SECURED PARTY:

HIGH TRAIL INVESTMENTS ON LLC

By: ____
Name:
Title: Authorized Signatory

Notice Address:

[Signature Page to Amendment to Security Agreement]