

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

POST-EFFECTIVE AMENDMENT NO. 1
to
FORM S-1

REGISTRATION STATEMENT
UNDER THE
SECURITIES ACT OF 1933

WiSA Technologies, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

3674

(Primary Standard Industrial
Classification Code Number)

30-1135279

(I.R.S. Employer
Identification Number)

WiSA Technologies, Inc.
15268 NW Greenbrier Pkwy
Beaverton, OR 97006
(408) 627-4716

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Brett Moyer
Chief Executive Officer
WiSA Technologies, Inc.
15268 NW Greenbrier Pkwy
Beaverton, OR 97006
(408) 627-4716

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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 7(a)(2)(B) of the Securities Act.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission acting pursuant to said Section 8(a), may determine.

Up to 109,090 Units
(Each Unit Consisting of (i) One Share of Series B Convertible Preferred Stock and
(ii) Two Preferred Warrants, with Each Preferred Warrant Exercisable for One Share of Series B Convertible Preferred Stock)
92,955,635 Shares of Common Stock Underlying the Series B Convertible Preferred Stock
119,010 Shares of Series B Convertible Preferred Stock Issuable as PIK Dividends
218,180 Shares of Series B Convertible Preferred Stock Underlying the Preferred Warrants



WiSA Technologies, Inc.

We are offering up to 109,090 units (each, a “Unit” and collectively, the “Units”) on a best efforts basis, with each Unit consisting of one share of our Series B Convertible Preferred Stock, par value \$0.0001 per share, with a liquidation preference of \$100.00 per share (the “Series B Preferred Stock”), and two preferred warrants (each, a “Preferred Warrant” and collectively, the “Preferred Warrants”), each exercisable for one share of our Series B Preferred Stock in this offering pursuant to this prospectus. Accordingly, the 109,090 Units consist of 109,090 shares of Series B Preferred Stock and 218,180 Preferred Warrants with an exercise price of \$55.00 to purchase 218,180 shares of Series B Preferred Stock. The assumed public offering price for each Unit is \$55.00. The Units have no stand-alone rights and will not be certificated or issued as stand-alone securities. The Series B Preferred Stock and Preferred Warrants are immediately separable and will be issued separately in this offering. The Preferred Warrants offered hereby will be immediately exercisable on the date of issuance and will expire two (2) years from the closing date of this offering (the “Closing Date”).

The assumed public offering price of \$55.00 per Unit reflects the issuance of the Series B Preferred Stock with an original issue discount (“OID”) of 45%. The Series B Preferred Stock will not have voting rights, except as required by Delaware law and other limited circumstances.

Dividends on the Series B Preferred Stock shall be paid in-kind (“PIK dividends”) in additional shares of Series B Preferred Stock based on the stated value of \$100.00 per share at an assumed dividend rate of 20% (the “Dividend Rate”). The PIK dividends will be a one-time payment payable to holders of the Series B Preferred Stock of record at the close of business on the one-year anniversary of the Closing Date (the “Dividend Record Date”). PIK dividends on each share of Series B Preferred Stock shall be paid three business days after the Dividend Record Date in additional fully paid and nonassessable, registered shares of Series B Preferred Stock in a number equal to the quotient obtained by dividing (A) the product obtained by multiplying (i) the Dividend Rate and (ii) the stated value of \$100.00 per share, by (B) the public offering price per Unit (equal to \$55.00, based on the assumed public offering price per Unit).

The Series B Preferred Stock has a term of two (2) years and is convertible at the option of the holder at any time into shares of our common stock, par value \$0.0001 per share (the “Common Stock”) at a conversion price equal to the closing price of our Common Stock on the Nasdaq Capital Market on the date on which the offering is priced. The assumed fixed conversion price of \$0.4801 is based on the closing price of our Common Stock on October 5, 2023, and is subject to adjustment. The Series B Preferred Stock is redeemable under the circumstances described under “Description of Securities That We Are Offering—Description of the Series B Convertible Preferred Stock— Mandatory Redemption”.

This offering also includes the Series B Preferred Stock issuable from time to time upon exercise of the Preferred Warrants and shares of Common Stock issuable from time to time upon conversion of the Series B Preferred Stock.

We refer to the shares of our Series B Preferred Stock, the shares of our Common Stock issuable upon conversion of the Series B Preferred Stock, the Preferred Warrants and the shares of our Series B Preferred Stock issued or issuable upon exercise of the Preferred Warrants, collectively, as the securities.

Because this is a best efforts offering, the placement agent does not have an obligation to purchase any securities, and, as a result, there is a possibility that we may not be able to sell the securities. We intend to complete one closing of this offering but may undertake one or more additional closings for the sale of the additional Units to the investors in the initial closing. We expect to hold an initial closing on , 2023, but the offering will be terminated by , 2023, provided that the closing(s) of the offering for all of the Units have not occurred by such date, and may be extended by written agreement of the Company and the placement agent. Any extensions or material changes to the terms of the offering will be contained in an amendment to this prospectus. The offering will settle delivery versus payment (“DVP”)/receipt versus payment (“RVP”). Accordingly, we and the placement agent have not made any arrangements to place investor funds in an escrow account or trust account since the placement agent will not receive investor funds in connection with the sale of the securities offered hereunder.

Our Common Stock trades on the Nasdaq Capital Market under the ticker symbol “WISA”. On October 5, 2023, the last reported sale price for our Common Stock on the Nasdaq Capital Market was \$0.4801 per share. There is no established trading market for, and we do not expect a market to develop for, the Series B Preferred Stock or the Preferred Warrants. In addition, we do not intend to list the Series B Preferred Stock or the Preferred Warrants on The Nasdaq Capital Market or any other national securities exchange or any other nationally recognized trading system.

We have engaged Maxim Group LLC as the sole placement agent (the “Placement Agent”) to use its reasonable best efforts to arrange for the sale of the securities offered by this prospectus. The placement agent is not purchasing or selling any of the securities we are offering and the placement agent is not required to arrange the purchase or sale of any specific number or dollar amount of securities. We have agreed to pay to the placement agent the placement agent fees set forth in the table below, which assumes that we sell all of the securities offered by this prospectus. There is no arrangement for funds to be received in escrow, trust or similar arrangement. See “Plan of Distribution” in this prospectus for more information.

	Per Unit	Total
Public offering price	\$	\$
Placement agent fees ⁽¹⁾	\$	\$
Proceeds, before expenses, to us ⁽²⁾	\$	\$

(1) Represents a cash fee equal to: (i) 8.0% of the aggregate purchase price paid by investors in this offering, and (ii) 5.0% of the aggregate purchase price paid by certain investors having a prior existing relationship with us. We have also agreed to reimburse the placement agent for certain of its offering-related expenses. See “Plan of Distribution” beginning on page 58 of this prospectus for a description of the compensation to be received by the placement agent.

(2) The amount of offering proceeds to us presented in this table does not give effect to any exercise of the Preferred Warrants.

Investing in our securities involves a high degree of risk. See “Risk Factors” beginning on page 9 of this prospectus and in the documents which are incorporated by reference herein to read about factors you should consider before investing in our securities.

We anticipate that delivery of the securities against payment therefor will be made on or before _____, 2023.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Sole Placement Agent

Maxim Group LLC

The date of this prospectus is _____, 2023

TABLE OF CONTENTS

About this Prospectus	1
Prospectus Summary	2
The Offering	5
Risk Factors	9
Special Note Regarding Forward-Looking Statements	31
Industry and Market Data	31
Use of Proceeds	32
Dividend Policy	33
Capitalization	34
Security Ownership of Certain Beneficial Owners and Management	35
Description of Securities That We Are Offering	39
Material U.S. Federal Income Tax Consequences	52
Plan of Distribution	59
Disclosure of Commission Position on Indemnification for Securities Act Liability	66
Legal Matters	66
Experts	66
Where You Can Find More Information	66
Incorporation by Reference	67

ABOUT THIS PROSPECTUS

The registration statement on Form S-1 of which this prospectus forms a part and that we have filed with the U.S. Securities and Exchange Commission (“SEC”), includes exhibits that provide more detail of the matters discussed in this prospectus. You should read this prospectus and the related exhibits filed with the SEC, together with the additional information described under the heading “Where You Can Find More Information.”

You should rely only on the information contained in this prospectus and the related exhibits, any prospectus supplement or amendment thereto and the documents incorporated by reference, or to which we have referred you, before making your investment decision. Neither we, nor any placement agent or financial advisor engaged by us in connection with this offering, have authorized anyone to provide you with additional information or information different from that contained in this prospectus. Neither the delivery of this prospectus nor the sale of our securities means that the information contained in this prospectus is correct after the date of this prospectus.

You should not assume that the information contained in this prospectus, any prospectus supplement or amendments thereto, as well as information we have previously filed with the SEC, is accurate as of any date other than the date on the front cover of the applicable document. Our business, financial condition, results of operations and prospects may have changed since those dates. This prospectus, any prospectus supplement or amendments thereto do not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this prospectus, any prospectus supplement or amendments thereto in any jurisdiction to or from any person to whom or from whom it is unlawful to make such offer or solicitation of an offer in such jurisdiction.

For investors outside the United States: Neither we, the placement agent nor any financial advisor engaged by us in connection with this offering, have taken any action that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the securities covered hereby and the distribution of this prospectus outside of the United States.

No person is authorized in connection with this prospectus to give any information or to make any representations about us, the securities offered hereby, or any matter discussed in this prospectus, other than the information and representations contained in this prospectus. If any other information or representation is given or made, such information or representation may not be relied upon as having been authorized by us. To the extent there is a conflict between the information contained in this prospectus and any prospectus supplement, you should rely on the information in such prospectus supplement, provided that if any statement in one of these documents is inconsistent with a statement in another document having a later date - for example, a document incorporated by reference in this prospectus or any prospectus supplement - the statement in the document having the later date modifies or supersedes the earlier statement.

Neither we nor any placement agent has done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than the United States. You are required to inform yourself about, and to observe any restrictions relating to, this offering and the distribution of this prospectus.

When used herein, unless the context requires otherwise, references to the “WiSA,” “Company,” “we,” “our” and “us” refer to WiSA Technologies, Inc., a Delaware corporation.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus or incorporated by reference into this prospectus. This summary does not contain all of the information that you should consider before investing in our securities. You should carefully read this entire prospectus, and our other filings with the SEC, including the following sections, which are either included herein and/or incorporated by reference herein, “Risk Factors,” “Special Note Regarding Forward-Looking Statements,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the consolidated financial statements incorporated by reference herein, before making a decision about whether to invest in our securities.

Company Overview

We are an emerging technology company and our primary business focus is to enable mainstream consumers and audio enthusiasts to experience high quality wireless audio. We intend to continue selling our proprietary wireless modules to consumer electronics companies while also expanding our focus to implement a lower cost solution by porting our IP software onto commercially available internet of things (or IoT), modules with integrated Wi-Fi technology.

Our technology addresses some of the main issues that we perceive are hindering the growth of the home theater: complexity of installation and cost. We believe that consumers want to experience theater quality surround sound from the comfort of their homes. However, wired home theater systems often require expensive audio-visual (or AV), receivers to decode the audio stream, leaving the consumer with the burden of concealing the wires. Hiring a professional to hide the wires into the walls or floor is invasive, complicated, costly and time consuming. Further, people who rent as opposed to own may not be able to install these systems as the installation construction needed may not be permitted under a lease agreement. Our first-generation wireless technology addresses these problems by transmitting wireless audio to each speaker at Blu-ray quality (uncompressed 24-bit audio up to 96 kHz sample rates) and emphasizing ease of setup. To our knowledge, our custom chips and modules technology is one of the few technologies available today that can stream up to eight (8) separate wireless audio channels with low latency, removing lip-sync issues between the audio and video sources. In addition, every speaker within a system that utilizes our technology can be synchronized to less than one microsecond, thus eliminating phase distortion between speakers. Our first-generation technology shows that wireless home theater systems are viable home audio solutions for the average consumer and audio enthusiast alike.

Current research and development investments focus on developing Wi-Fi compatible IP software for transmitting multichannel wireless audio for which patent applications have been submitted. A software solution enables smart devices that have Wi-Fi and video media to deliver surround sound audio and allows us to port our wireless audio technology to popular Wi-Fi based modules and systems on a chip (or SOC), that is currently in production. The Company’s “Discovery” module first announced in January 2021 is the first IoT module solution with our embedded wireless audio software that specifically targets the high growth Dolby ATMOS soundbar market with a low-cost transceiver. The Discovery module is capable of supporting ATMOS configurations up to 5.1.4, requiring five separate wireless audio channels. Our goal is to continue to commercialize and improve performance of a software based-solution, which other brands can integrate into their devices, that will (i) reduce integration costs for mass market use, (ii) utilize Wi-Fi for wireless connectivity, making it easy to integrate into today’s high volume, low cost SOC and modules, (iii) provide a low power consumption option to allow for use in battery powered devices, and (iv) provide compatibility with popular consumer electronic operating systems.

Recent Developments

Strategic Advisor

On October 31, 2022, we announced that we are moving forward in our exploration of strategic alternatives to consider a wide range of options. To explore strategic opportunities specifically involved in our IP and licensable software used in WiSA E and WiSA DS technologies, our board of directors approved the engagement of AQ Technology Partners during the third quarter of 2022. To date, five companies have executed non-disclosure agreements in consideration of a potential transaction. We, with our advisors, are evaluating a broad range of strategic transactions. Potential strategic transactions that may be explored or evaluated as part of this process include the potential for capital raising transactions, an acquisition, sale of assets, including substantially all of our assets, merger, business combination, partnership, joint venture, licensing and/or another strategic alternative. Despite devoting efforts to identify and evaluate potential strategic transactions, the process may not result in any definitive offer to consummate a strategic transaction, or, if we receive such a definitive offer, the terms may not be as favorable as anticipated or may not result in the execution or approval of a definitive agreement. Even if we enter into a definitive agreement, we may not be successful in completing a transaction or, if we complete such a transaction, it may not enhance stockholder value or deliver expected benefits.

Comhear, Inc. Non-Binding Letter of Intent

On May 15, 2023, we announced that we have signed a non-binding letter of intent to acquire Comhear, Inc. (“Comhear”), a developer of AI-enabled adaptive audio technology. Under the proposed acquisition, we would acquire all shares of Comhear common stock in exchange for newly issued shares of our Common Stock (the “Strategic Transaction”). The letter of intent for the proposed transaction is non-binding, and the parties intend to enter into one or more definitive agreements with respect thereto. Completion of the transaction is subject to, among other matters, the completion of due diligence, the negotiation of definitive agreements providing for the proposed transaction, and satisfaction of various conditions to be negotiated therein and customary for transactions of the type contemplated, including, but not limited to, receipt of regulatory approvals, the provision of an audit of Comhear’s financial statements, and board of director and WiSA shareholder approvals. However, there can be no assurance that the parties will successfully negotiate and enter into definitive agreements regarding the proposed transaction, or that the proposed transaction will be completed as currently contemplated, or at all.

July 2023 Warrant Inducement

On July 26, 2023, we entered into warrant exercise inducement offer letters (the “July Inducement Letters”) with holders of certain common stock purchase warrants with an exercise price of \$1.33 per share of Common Stock (the “Existing Warrants”). Pursuant to the July Inducement Letters, we agreed to issue new inducement warrants (the “July Inducement Warrants”) to purchase a number of shares of Common Stock equal to 100% of the number of shares of Common Stock received upon exercise of the Existing Warrants during the inducement period provided for in the July Inducement Letters, with such July Inducement Warrants to be issued on substantially the same terms as the Existing Warrants, except with respect to the exercise price (such inducement transaction, “the July 2023 Warrant Inducement Transaction”). The holders exercised 510,000 of the Existing Warrants pursuant to certain of the July Inducement Letters, and we received aggregate net proceeds of approximately \$594,000 from such exercises. In exchange for the exercises of the Existing Warrants, we issued July Inducement Warrants exercisable for an aggregate of up to 510,000 shares of common stock at an exercise price of \$1.29 per share. The inducement offering period closed at 5:00 p.m. EDT on August 8, 2023.

Each July Inducement Warrant is immediately exercisable upon issuance and will expire on the fifth anniversary of its issuance. The exercise price of the July Inducement Warrants is subject to appropriate adjustment in the event of recapitalization events, stock dividends, stock splits, stock combinations, reclassifications, reorganizations or similar events affecting our common stock. The July Inducement Warrants are callable by us at a redemption price of \$0.50 per July Inducement Warrant, provided that the resale of the shares of Common Stock underlying the July Inducement Warrants are then registered or may be resold under Rule 144 under the Securities Act.

July 2023 Equity Grants

On July 12, 2023, we issued an aggregate of 769,041 restricted shares of common stock to our directors, executive officers and certain employees (or the July 2023 Equity

Grants) pursuant to our 2018 Long-Term Stock Incentive Plan (or the LTIP).

Loan and Security Agreement

On September 8, 2023 (the “Effective Date”), we entered into that certain Loan and Security Agreement (the “Loan and Security Agreement”), with Meriwether Group Capital Hero Fund LP (“Meriwether”). Pursuant to the Loan and Security Agreement, Meriwether provided us with bridge financing (the “Bridge Financing”) in the form of a term loan in the original principal amount of \$650,000, which term loan is senior in priority to our present and future indebtedness. Pursuant to the terms of the Loan and Security Agreement, the original maturity date of the term loan was extended to December 7, 2023 (the “Maturity Date”) and, in consideration therefor, an extension fee of \$20,000 was added to the principal amount of the loan. In addition, we have the right to request additional funding under the Loan and Security Agreement.

Borrowings under the Bridge Financing bear interest at a rate per annum equal to 18%. On the Maturity Date, subject to any extension, we are obligated to make a payment equal to all unpaid principal and accrued interest. Pursuant to the Loan and Security Agreement, we paid to Meriwether a fully earned, non-refundable, origination fee in the amount of \$50,000. We will also pay to Meriwether a fully earned, non-refundable, exit fee in the amount of \$50,000 on the Maturity Date.

The Loan and Security Agreement also provides that all present and future indebtedness and the obligations of us to Meriwether shall be secured by a first priority security interest in all real and personal property collateral of the Company.

The Loan and Security Agreement contains customary representations, warranties and affirmative and negative covenants. In addition, the Loan and Security Agreement contains customary events of default that entitle Meriwether to cause our indebtedness under the Loan and Security Agreement to become immediately due and payable, and to exercise remedies against us and the collateral securing the term loan. Under the Loan and Security Agreement, an event of default will occur if, among other things, we fail to make payments under the Loan and Security Agreement, we breach any of the covenants under the Loan and Security Agreement, a material adverse change occurs, or we, or our assets, become subject to certain legal proceedings, such as bankruptcy proceedings. Upon the occurrence and for the duration of an event of default, a default interest rate equal to 24.0% per annum will apply to all obligations owed under the Loan and Security Agreement.

As of the date of this prospectus, we are in the process of negotiating an additional extension of the Maturity Date beyond December 7, 2023 and an increase of the principal amount of the Bridge Financing. We have not secured either an additional extension of the Maturity Date or an increase of the principal amount of the Bridge Financing as of the date hereof and there is no guarantee that we may be successful in doing so or will come to terms that are commercially acceptable to us.

Cost-Cutting Initiatives

On October 3, 2023, we provided a business update announcing that we have initiated expense reductions in SG&A that we expect will lower our cash expenses, albeit while retaining ongoing investments in R&D. We expect the impact of this initiative will begin in the fourth quarter of 2023 and will be more fully realized in fiscal year 2024. We expect to achieve cash savings of approximately \$0.9 million in the first quarter of 2024 and approximately \$4 million in fiscal year 2024 as compared to fiscal year 2023.

Summary of Risk Factors

An investment in our securities involves a high degree of risk. The occurrence of one or more of the events or circumstances described in the section titled “Risk Factors,” alone or in combination with other events or circumstances, may materially adversely affect our business, financial condition and operating results. In that event, the trading price of our securities could decline, and you could lose all or part of your investment. Such risks include, but are not limited to:

- We need financing in the near term to support our ongoing operations as our cash position is insufficient to fund operations in the near term;
- Management will have broad discretion over the use of the net proceeds from this offering, you may not agree with how we use the proceeds and the proceeds may not be invested successfully;

- There is no public market for the Series B Preferred Stock or Preferred Warrants offered in this offering, which are speculative in nature, and the holders of the Preferred Warrants will not have the rights of holders of Series B Preferred Stock until such Preferred Warrants are exercised;
- The terms of our Series B Preferred Stock could prohibit us from issuing additional equity because of the significant dilutive effects on our Common Stock;
- Mandatory redemption obligations of the Series B Preferred Stock may make it more difficult for a party to acquire us or discourage a party from acquiring us;
- There can be no assurance that our review of strategic transactions and our financing strategy will result in a transaction satisfactory to holders of our securities or any change at all;
- The pursuit of strategic transactions or financing transactions may consume a substantial portion of the time and attention of our management and require additional capital resources and may be disruptive to our business, which could have a material adverse effect on our business, financial condition and results of operations;
- We have incurred losses since inception;
- Our independent registered public accounting firm’s report contains an explanatory paragraph that expresses substantial doubt about our ability to continue as a going concern;
- We depend upon the timely delivery of products from our vendors and purchases from our partners and customers;
- Failure to protect our intellectual property rights could adversely affect our business;
- We may be subject to IP rights claims by third parties, which are extremely costly to defend, could require us to pay significant damages and could limit our ability to use certain technologies; and
- Economic uncertainties or downturns, or political changes, in the United States and globally, could limit the availability of funds available to our customers and potential customers, which could materially adversely affect our business.

Corporate Information

We were formed as a Delaware limited liability company on July 23, 2010 and converted into a Delaware corporation, effective December 31, 2017. Effective as of March 11, 2022, we changed our name to WiSA Technologies, Inc. We run our operations through WiSA Technologies, Inc., as well as through our wholly-owned subsidiary, WiSA, LLC, a Delaware limited liability company.

Our principal executive office is located at 15268 NW Greenbrier Pkwy, Beaverton, Oregon 97006 and our telephone number is (408) 627-4716. Our website address is www.wisatechnologies.com. The website for our associated brands, manufacturers and influencers within the consumer electronics industry, the WiSA Association, is http://www.wisaassociation.org. The information contained on, or that can be accessed through, our websites is not incorporated by reference into this prospectus and is intended for informational purposes only.

THE OFFERING

Units offered by us	Up to 109,090 Units on a best-efforts basis. Each Unit consists of: (i) one share of Series B Preferred Stock, and (ii) two Preferred Warrants, with each Preferred Warrant exercisable for one share of Series B Preferred Stock. The Units have no stand-alone rights and will not be certificated or issued as stand-alone securities. The Series B Preferred Stock and Preferred Warrants included in the Units are immediately separable and will be issued separately in this offering.
Series B Preferred Stock – Original Issue Discount	The public offering price of \$55.00 per Unit reflects the issuance of the Series B Preferred Stock with an OID of 45% of the \$100.00 liquidation preference of the Series B Preferred Stock.
Series B Preferred Stock – Maturity Date	The Series B Preferred Stock has a maturity date of two (2) years from the Closing Date.
Series B Preferred Stock – Conversion Rights	Each share of Series B Preferred Stock is convertible at the option of the holder at any time into shares of our common stock at a fixed assumed conversion price of \$0.4801 (the “Conversion Price”) (based on the closing price of our common stock on the Nasdaq Capital Market on October 5, 2023, which Conversion Price is subject to adjustment). The Conversion Price will equal the closing price of our common stock on the Nasdaq Capital market on the date on which the offering is priced. The Conversion Price is subject to adjustment for: (i) the payment of stock dividends or other distributions payable in common stock on the outstanding shares of our common stock, excluding the shares of common stock issuable upon the conversion of the Series B Preferred Stock; and (ii) subdivisions and combinations (including by way of a reverse stock split). See “ <i>Description of Securities That We Are Offering—Description of the Series B Convertible Preferred Stock—Conversion</i> ” This offering also relates to the shares of Common Stock issuable upon conversion of the Series B Preferred Stock.

Series B Preferred Stock – Mandatory Redemption	If any shares of our Series B Preferred Stock are outstanding at the end of the two-year term, then we shall promptly redeem all of such outstanding shares of Series B Preferred Stock on a <i>pro rata</i> basis among all of the holders of Series B Preferred Stock commencing on the second-year anniversary of the Closing Date (the “Mandatory Redemption Date”) in cash, to the extent legally permissible under Delaware law, or, if redemption for cash is not legally permissible in duly authorized, validly issued, fully paid and non-assessable shares of the Company’s common stock equal in number to the quotient obtained by dividing such unpaid amount by the closing price of the Company’s common stock on the Nasdaq on the Mandatory Redemption Date. See “ <i>Description of Securities That We Are Offering—Description of the Series B Convertible Preferred Stock—Mandatory Redemption.</i> ”
Series B Preferred Stock–Dividends	The Certificate of Designation provides that dividends on the Series B Preferred Stock shall be paid in-kind (“PIK dividends”) in additional shares of Series B Preferred Stock based on the stated value of \$100.00 per share at an assumed dividend rate of 20% (the “Dividend Rate”). The PIK dividends will be a one-time payment payable to holders of the Series B Preferred Stock of record at the close of business on the one-year anniversary of the Closing Date (the “Dividend Record Date”). PIK dividends on each share of Series B Preferred Stock shall be paid three business days after the Dividend Record Date in additional fully paid and nonassessable, registered shares of Series B Preferred Stock in a number equal to the quotient obtained by dividing (A) the product obtained by multiplying (i) the Dividend Rate and (ii) the stated value of \$100.00 per share, by (B) the public offering price per Unit (equal to \$55.00, based on the assumed public offering price per Unit). This offering also relates to the shares of Series B Preferred Stock issuable as PIK dividends and the shares of common stock issuable upon conversion of the Series B Preferred Stock. See “ <i>Description of the Securities We Are Offering—Description of the Series B Preferred Stock—Dividends.</i> ”
Series B Preferred Stock – Limited Voting Rights	Holders of the Series B Preferred Stock will not have any voting rights, except as described below or as otherwise required by law. In any matter in which the Series B Preferred Stock may vote (as expressly provided herein or as may be required by law), each share of Series B Preferred Stock will be entitled to one vote per share. So long as any shares of Series B Preferred Stock remain outstanding, we will not, without the consent or the affirmative vote of a majority of the outstanding shares of Series B Preferred Stock, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose: (i) alter or change adversely the powers, preferences or rights given to the Series B Preferred Stock or alter or amend adversely the Certificate of Designations; (ii) increase the number of authorized shares of Series B Preferred Stock; or (iii) enter into any agreement with respect to any of the foregoing. See “ <i>Description of Securities That We Are Offering—Description of the Series B Convertible Preferred Stock—Limited Voting Rights.</i> ”

Series B Preferred Stock – Liquidation Rights	<p>In the event of the voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of shares of Series B Preferred Stock will be entitled to be paid out of our assets legally available for distribution to our stockholders (i.e., after satisfaction of all our liabilities to creditors, if any) and, subject to the rights of holders of any shares of each other class or series of capital stock ranking, as to rights to the distribution of assets upon our voluntary or involuntary liquidation, dissolution or winding-up, senior to the Series B Preferred Stock, a liquidation preference of \$100.00 per share, before any distribution or payment may be made to holders of shares of common stock or any other class or series of our capital stock ranking, as to rights to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up, junior to the Series B Preferred Stock.</p> <p>See “<i>Description of Securities That We Are Offering—Description of the Series B Convertible Preferred Stock—Liquidation Preference.</i>”</p>
Series B Preferred Stock – Fundamental Transactions	<p>In the event of a Fundamental Transaction (as defined in the Certificate of Designations of the Series B Preferred Stock), and generally including any reorganization, recapitalization or reclassification of our common stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, or the acquisition of more than 50% of our outstanding common stock, the holders of the Series B Preferred Stock will be entitled to receive upon conversion of the Series B Preferred Stock the kind and amount of securities, cash or other property that the holders would have received had they converted the Series B Preferred Stock immediately prior to such Fundamental Transaction (without regard to the Beneficial Ownership Limitation).</p> <p>See “<i>Description of Securities That We Are Offering—Description of the Series B Convertible Preferred Stock—Liquidation Preference.</i>”</p>

Preferred Warrants	<p>Each Unit contains two Preferred Warrants, with each Preferred Warrant exercisable for one share of Series B Preferred Stock. The Preferred Warrants will be immediately exercisable on the date of issuance, will expire two (2) years from the Closing Date, and will have an exercise price equal to the price per Unit sold in this offering. No fractional shares will be issued in connection with the exercise of a Warrant. In lieu of fractional shares, we will pay the holder an amount in cash equal to the fractional amount multiplied by the stated value per share of the Series B Preferred Stock.</p> <p>The exercise price of the Preferred Warrants is subject to proportional adjustment in certain customary circumstances. In the addition, the Preferred Warrants afford holders certain rights in the event of a Fundamental Transaction (as defined in the Preferred Warrants). The terms of the Preferred Warrants will be governed by a Warrant Agency Agreement, dated as of the Closing Date, between us and VStock Transfer, LLC, and any successor warrant agent under thereunder (collectively, the “Warrant Agent”).</p> <p>This offering also related to the shares of Series B Preferred Stock issuable upon exercise of the Preferred Warrants.</p> <p>For more information regarding the Preferred Warrants, see “<i>Description of Securities That We Are Offering—Preferred Warrants.</i>”</p>
Lock-Up	<p>We and our directors and officers have agreed with the placement agent not to offer for sale, issue, sell, contract to sell, pledge or otherwise dispose of any shares of our Common Stock or securities convertible into Common Stock for a period of 45 days for the Company and 90 days in the case of our officers and directors from the date of this prospectus without the prior written consent of the placement agent. See “<i>Plan of Distribution.</i>”</p> <p>We and each of our officers and directors have agreed, subject to certain exceptions, not to offer, issue, sell, contract to sell, encumber, grant any option for the sale of or otherwise dispose of any shares of our Common Stock or other securities convertible into or exercisable or exchangeable for our Common Stock for a period of 45 days for the Company and 90 days in the case of our officers and directors after this offering is completed without the prior written consent of Maxim. In addition, we have also agreed not to enter into a variable rate transaction for 45 days after the completion of this offering.</p>
Investor Waiver	<p>On September 1, 2023, we entered into a waiver (the “Waiver”) with certain investors party to those certain securities purchase agreements dated March 27, 2023 and April 7, 2023. Pursuant to the Waiver, the investors have agreed to waive certain prohibitions under the purchase agreements with respect to this offering in exchange for the granting by us, of participation rights to the investors, collectively, to participate in any subsequent offering of securities of the Company up to an amount equal to 90% of the aggregate dollar value raised in such subsequent offering.</p>
Reasonable Best Efforts	<p>We have agreed to offer and sell the securities offered hereby to the purchasers through the placement agent. The placement agent is not required to buy or sell any specific number or dollar amount of the securities offered hereby, but it will use its reasonable best efforts to solicit offers to purchase the securities offered by this prospectus.</p> <p>We intend to complete one closing of this offering, but may undertake one or more additional closings for the sale of the additional Units. We expect to hold an initial closing of the offering on , 2023, but the offering will be terminated by , 2023, provided that closing of the offering for all of the Units have not occurred by such date, and may be extended by written agreement of the company and the placement agent. See “<i>Plan of Distribution</i>” on page 55 of this prospectus.</p>
Common Stock Outstanding Prior to the Offering(1)	<p>6,579,957 shares of Common Stock.</p>
Common Stock Outstanding After the Offering	<p>Approximately 99,535,592 shares based on an assumed conversion price of the Series B Preferred Stock of \$0.4801 (assuming conversion of all of the shares of Series B Preferred Stock issued in this offering, including conversion of the PIK dividend shares and the shares of Series B Preferred Stock issued upon exercise of the Preferred Warrants).</p>

Use of Proceeds	<p>We estimate that the net proceeds to us from the offering will be approximately \$5.1 million (calculated based on an assumed price of \$55.00 per Unit), after deducting the placement agent fees and estimated offering expenses payable by us, and assuming the sale of all Units offered hereby and no exercise of Preferred Warrants. However, this is a best efforts offering with no minimum number of securities or amount of proceeds as a condition to closing, and we may not sell all or any of these securities offered pursuant to this prospectus; as a result, we may receive significantly less in net proceeds.</p> <p>We intend to use up to \$3.0 million of the net proceeds from this offering to repurchase outstanding common stock purchase warrants. We intend to use the remaining proceeds of this offering for working capital and general corporate purposes. See “<i>Use of Proceeds</i>” for a more complete description of the intended use of proceeds from this offering.</p>
Listing	Our Common Stock is listed on Nasdaq under the symbol “WISA”. There is no established trading market for the Series B Preferred Stock or the Preferred Warrants, and we do not expect a market for such securities to develop. In addition, we do not intend to list the Series B Preferred Stock or the Preferred Warrants on Nasdaq or any other national securities exchange or any other nationally recognized trading system.
Transfer Agent and Warrant Agent	The Transfer Agent for the Series B Preferred Stock, and the Warrant Agent for the Preferred Warrants, will be VStock Transfer, LLC, whose address is 18 Lafayette Place, Woodmere, NY 11598 and telephone number is (212) 828-8436.
(1) Shares of our Common Stock that will be outstanding after this offering is based on 6,579,957 shares of Common Stock outstanding as of October 6, 2023, but excludes the following as of such date: (a) up to an aggregate of 5,635,290 shares of Common Stock issuable upon exercise of our outstanding warrants, (b) 17,456 shares of Common Stock reserved for future issuance under the Company’s LTIP, the 2020 Stock Incentive Plan (the “2020 Plan”) and the Technical Team Retention Plan of 2022 (“2022 Plan”), and (c) an aggregate of 5,466 shares of Common Stock issuable upon vesting of restricted stock units that were issued pursuant to the 2020 Plan and 2022 Plan.	
Except as otherwise noted, all information in this prospectus assumes:	
	<ul style="list-style-type: none"> · no conversion of Series B Preferred Stock included in the Units sold in this offering; · no exercise of the Preferred Warrants included in the Units sold in this offering.

RISK FACTORS

An investment in the securities offered under this prospectus involves a high degree of risk. You should carefully consider and evaluate all of the information contained in this prospectus and in the documents that we incorporate by reference herein before you decide to invest in our securities. In particular, you should carefully consider and evaluate the risks and uncertainties described under the heading “Risk Factors” in this prospectus and in the documents incorporated by reference herein. Investors are further advised that the risks described below may not be the only risks we face. Additional risks that we do not yet know of, or that we currently think are immaterial, may also negatively impact our business operations or financial results. Any of the risks and uncertainties set forth in this prospectus and in the documents incorporated by reference herein, as updated by annual, quarterly and other reports and documents that we file with the SEC and incorporate by reference into this prospectus, could materially and adversely affect our business, results of operations and financial condition, which in turn could materially and adversely affect the value of our securities.

Risks Related to Our Financial Condition

We need financing in the near term to support our ongoing operations as our cash position is insufficient to fund operations in the next few weeks and if we do not raise sufficient capital we may be forced to cease operations, liquidate our assets and possibly seek bankruptcy protection or engage in a similar process.

Although we are currently exploring various strategic transactions, these strategic transactions may not be successful in the next several weeks prior to our cash position getting to the point that we will need to pursue the winding down and dissolution of our Company. If we do not raise capital or successfully engage in a strategic transaction in the next several weeks, we will be forced to cease operations, liquidate our assets and possibly seek bankruptcy protection or engage in a similar process.

We are currently operating at a loss and our cash position is insufficient to fund operations in the near term. As such, we need additional financing to implement our business plan and to service our ongoing operations. We believe that current cash on hand, prior to the receipt of any proceeds from this offering, is not sufficient to fund operations beyond October 2023. If we were to receive net proceeds of approximately \$5.1 million from this offering, we believe that the net proceeds from this offering, together with our existing cash and cash equivalents, will meet our capital needs for next three months and, thereafter, we will need to raise additional funds. There can be no assurance that we will be able to secure any needed funding, or that if such funding is available, the terms or conditions would be acceptable to us. If we are unable to obtain additional financing in the short term, we will be required to divest all or a portion of our business or otherwise liquidate, wind-up, restructure or curtail our operations and product development timeline. We may seek additional capital through a combination of equity offerings, such as this offering, debt financings and/or strategic collaborations. Debt financing, if obtained, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, and could increase our expenses and require that our assets secure such debt. Equity financing, if obtained, could result in dilution to our then-existing stockholders and/or require such stockholders to waive certain rights and preferences. If such financing is not available on satisfactory terms, or is not available at all, our ability to accelerate product development will be hindered, our business and financial condition may be materially and adversely affected, and you may lose all or part of your investment.

We have incurred losses since inception.

We have incurred net losses since inception and had an accumulated deficit of approximately \$234.6 million as of June 30, 2023. If we are unsuccessful in implementing any initiatives to improve our revenues to achieve profitability, it will have a material adverse impact on our business, prospects, operating results and financial condition. There can be no assurance that the revenue that we generate will be able to support our operations or meet our working capital needs.

Our independent registered public accounting firm’s report contains an explanatory paragraph that expresses substantial doubt about our ability to continue as a going concern.

Our independent registered public accounting firm has included in its report for the year ended December 31, 2022 an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern. Our consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the discharge of liabilities in the normal course of business. Our ability to continue as a going concern is contingent upon, other factors, our ability to raise additional capital

through sales of our securities, including this offering, and incurrence of debt. Additionally, future capital requirements will depend on many factors, including the rate of revenue growth, the selling price of our products, the expansion of sales and marketing activities, the timing and extent of spending on research and development efforts and the continuing market acceptance of our products. These factors raise substantial doubt about our ability to continue as a going concern. There is no assurance that additional financing will be available at terms acceptable to us or at all. If we cannot continue as a viable entity, this could materially adversely affect the value of the shares of Common Stock.

Risks Related to Strategic Transactions

There can be no assurance that our review of strategic transactions and our financing strategy will result in a transaction satisfactory to holders of our securities or any change at all.

On October 31, 2022, we announced that we are moving forward in our exploration of strategic alternatives to consider a wide range of options. To explore strategic opportunities specifically involved in our IP and licensable software used in WiSA E and WiSA DS technologies, our board of directors approved the engagement of AQ Technology Partners during the third quarter of 2022. To date, five companies have executed non-disclosure agreements in consideration of a potential transaction. We, with our advisors, are evaluating a broad range of strategic transactions. Potential strategic transactions that may be explored or evaluated as part of this process include the potential for capital raising transactions, an acquisition, sale of assets, including substantially all of our assets, merger, business combination, partnership, joint venture, licensing and/or another strategic alternative. Despite devoting efforts to identify and evaluate potential strategic transactions, the process may not result in any definitive offer to consummate a strategic transaction, or, if we receive such a definitive offer, the terms may not be as favorable as anticipated or may not result in the execution or approval of a definitive agreement. Even if we enter into a definitive agreement, we may not be successful in completing a transaction or, if we complete such a transaction, it may not enhance stockholder value or deliver expected benefits.

On May 15, 2023, we announced that we have signed a non-binding letter of intent to acquire Comhear, a developer of AI-enabled adaptive audio technology. Under the proposed acquisition, we would acquire all shares of Comhear common stock in exchange for newly issued shares of our Common Stock. The letter of intent for the proposed transaction is non-binding, and the parties intend to enter into one or more definitive agreements with respect thereto. Completion of the transaction is subject to, among other matters, the completion of due diligence, the negotiation of definitive agreements providing for the proposed transaction, and satisfaction of various conditions to be negotiated therein and customary for transactions of the type contemplated, including, but not limited to, receipt of regulatory approvals, the provision of an audit of Comhear's financial statements, and board of director and WiSA shareholder approvals. However, there can be no assurance that the parties will successfully negotiate and enter into definitive agreements regarding the proposed transaction, or that the proposed transaction will be completed as currently contemplated, or at all.

The pursuit of strategic transactions or financing transactions may consume a substantial portion of the time and attention of our management and require additional capital resources and may be disruptive to our business, which could have a material adverse effect on our business, financial condition and results of operations.

We are not able to predict with certainty the amount of time and resources necessary to successfully identify, pursue and execute any strategic transaction or obtain additional financing, if we are able to do so at all. The diversion of management's attention may materially adversely affect the conduct of our business and, as a result, our financial condition and results of operations. The additional expense we incur in connection with our review of strategic alternatives and pursuit of strategic or financing transactions may materially adversely impact our financial condition and partially offset the value of any strategic transaction we execute or additional financing we obtain.

Risks Related to Our Business and Industry

We depend upon the timely delivery of products from our vendors and purchases from our partners and customers.

We depend on manufacturers and component customers to deliver and purchase hardware and consumer electronics in quantities sufficient to meet customer demand. In addition, we depend on these manufacturers and customers to introduce new and innovative products and components to drive industry sales. During the fourth quarter of 2022 and first quarter of 2023, we experienced sales declines indirectly through disruption in the supply chain for several of our industry partners or customers whose own supply chains have been disrupted based on a variety of macroeconomic events that may or may not be related to the COVID-19 pandemic, which have resulted in delays throughout the consumer electronics industry. Any material delay in the introduction or delivery, or limited allocations of products or offerings could result in reduced sales by us, which could have a material adverse impact on our financial results. Any reduction in allocation of components or new hardware platforms or other technological advances by vendors or our customers (in which our technology is part of their hardware offering) to third parties such as big box retailers, could also have a material adverse impact on our financial results.

A small number of customers represent a significant percentage of our revenue, so any loss of key customers could have a material adverse effect on our business.

A small number of our customers represent a significant percentage of our revenue. Although we may have agreements with these customers, these agreements typically do not require any minimum purchases and do not prohibit customers from using competing technologies or customers from purchasing products and services from competitors. Because many of our markets are rapidly evolving, customer demand for our technologies and products can shift quickly.

As of June 30, 2023, we had three customers accounting for 31%, 29%, and 17% of accounts receivable. As of December 31, 2022, we had two customers accounting for 62% and 12% of accounts receivable. We had four customers accounting for 35%, 13%, 12% and 11% of our net revenue for the three months ended June 30, 2023. We had two customers accounting for 29% and 17% of our net revenue for the six months ended June 30, 2023.

A loss of any of our key customers could have a material adverse effect on our business and results of operations.

We are reliant on module manufacturers to produce the modules which we then sell to our customers and any change in their management or business could have a negative effect on our operations.

Our revenue from the sale of modules to consumer electronics and speaker companies depends in large part upon the availability of our modules that implement our technologies. Our manufacturers incorporate our technologies into these modules, which are then incorporated in consumer entertainment products. We do not manufacture these modules, but rather depend on manufacturers to produce the modules which we then sell to our customers. We do not control the manufacturers. While we have a longstanding relationship with our manufacturers, there can be no assurance that our manufacturers will continue to timely produce our modules. Change in management of our manufacturers or a change in their operations could negatively affect our production and cause us to seek other manufacturers which we may not be able to obtain on the same or similar terms as our current manufacturers. This could have a negative effect on our operations.

We currently rely on semiconductor manufacturers to manufacture our semiconductors, and our failure to manage our relationship with our semiconductor manufacturers

successfully could negatively impact our business.

We rely on a single contractor in Japan for the production of our transmit semiconductor chip and a single contractor in China for the production of our receive semiconductor chip. Our reliance on these semiconductor manufacturers reduces our control over the manufacturing process, exposing us to risks, including increase production costs and reduced product supply. If we fail to manage our relationships with these manufacturers effectively, or if a contract manufacturer experiences delays, disruptions, or decides to end-of-life components that it manufactures for us, our ability to ship products to our end-user customers could be impaired and our competitive position and reputation could be harmed. In addition, any adverse change in our manufacturers' financial or business condition could disrupt our ability to supply quality products to our end-user customers. If we are required to change manufacturers, we may lose revenue, incur increased costs and damage our customer relationships. In addition, qualifying a new semiconductor manufacturer and commencing production can be an expensive and lengthy process. As a result of any of these aforementioned disruptions, we would experience a delay in our order fulfillment, and our business, operating results and financial condition would be adversely affected.

Declines in or problems with the WiSA Association membership could negatively affect our reputation.

Our wholly owned subsidiary, WiSA, LLC, operates the "WiSA Association," which is an association comprised of brands, manufacturers, and influencers within the consumer electronics industry, with the purpose of promoting a standardized method of interoperability between wireless audio components using our technology. We rely significantly on the WiSA Association to uphold the standards and criteria of interoperable audio products. If we lose members or new technology is developed that is easier to incorporate than ours, the WiSA Association may fail to maintain its active status and the sales of our modules could diminish as well. In addition, failure of our members to adhere to our policies designed to provide interoperability between audio systems could undermine the integrity of our brand.

Failure to stay on top of technology innovation could harm our business model.

Our revenue growth will depend upon our success in new and existing markets for our technologies. The markets for our technologies and products are defined by:

- rapid technological change;
- new and improved technology and frequent product introductions;
- consumer demands; evolving industry standards; and
- technology and product obsolescence.

Our future success depends on our ability to enhance our technologies and products and to develop new technologies and products that address the market needs in a timely manner. Technology development is a complex, uncertain process requiring high levels of innovation, highly skilled engineering and development personnel, and the accurate anticipation of technological and market trends. We may not be able to identify, develop, acquire, market, or support new or enhanced technologies or products on a timely basis, if at all.

Failure to effectively develop and expand our sales and marketing capabilities could harm our ability to increase our customer base and achieve broader market acceptance of our modules.

To increase total customers and customer recognition of the WiSA Association products and to achieve broader market acceptance of our technology, we will need to expand our sales and marketing organization and increase our business development resources, including the vertical and geographic distribution of our sales force and our teams of account executives focused on new accounts and responsible for renewal and growth of existing accounts.

Our business requires that our sales personnel have particular expertise and experience in interoperability of audio systems, and the latest wireless audio technology. We may not achieve revenue growth from expanding our sales force if we are unable to hire, develop and retain talented sales personnel with appropriate experience, if our new sales personnel are unable to achieve desired productivity levels in a reasonable period of time or if our sales and marketing programs are not effective.

Interruptions or performance problems associated with technology and wireless technology outside of our control may adversely affect our business and results of operations.

We may in the future experience performance issues due to a variety of factors, including wireless technology disruptions, human or software errors. If a wireless connection is compromised, our products will not work as designed and our business could be negatively affected. In some instances, we may not be able to identify the cause or causes of these performance problems within an acceptable period or a connection problem may be out of our control and could deter customers from purchasing wireless audio components.

We expect to continue to make significant investments to maintain and improve the performance of our modules. To the extent that we do not effectively address capacity constraints, upgrade our systems as needed and continually develop our technology to accommodate actual and anticipated changes in technology, our business, operating results and financial condition may be adversely affected.

Real or perceived errors, failures or bugs in our modules could adversely affect our operating results and growth prospects.

Because our modules are complex, undetected errors, failures or bugs may occur. Our module is installed and used in numerous audio systems of different brands with different operating systems, system management software, and equipment and networking configurations, which may cause errors or failures of our technology. Despite our testing, errors, failures or bugs may not be found in our modules until it is released to our customers. Moreover, our customers could incorrectly implement or inadvertently misuse our modules, which could result in customer dissatisfaction and adversely impact the perceived quality or utility of our products as well as our brand.

Any of these real or perceived errors, compatibility issues, failures or bugs in our modules could result in negative publicity, reputational harm, loss of competitive position or claims by customers for losses sustained by them. In such an event, we may be required, or may choose, for customer relations or other reasons, to expend additional resources to correct the problem. Alleviating any of these problems could require significant expenditures of our capital and other resources and could cause interruptions or delays in the use of our solutions, which could cause us to lose existing or potential customers and could adversely affect our operating results and growth prospects.

We rely on the cooperation of our customers to install our modules in their audio products.

Our modules are sold to our customers who are consumer electronics companies. Our customers install the modules into their products. Our customers' audio products are sold to the public who must then install the audio system into their homes or businesses. We do not oversee installation of our products and therefore have no control over the result. If a module is not installed correctly in a customer product or an end consumer does not install their audio system correctly, our technology may not work properly, which could result in customer dissatisfaction or have a material adverse impact on our reputation, our business and our financial results.

If we do not or cannot maintain cutting edge technology and compatibility of our modules with products that our customers use, our business could suffer.

Our customers integrate our modules into their products. The functionality and popularity of our technology depends, in part, on our ability to produce modules that integrate into our customers' products. Our customers may change the features of their technologies and audio systems may advance technologically. Such changes or advancements could functionally limit or terminate the utility of our product, which could negatively impact our customer service and harm our business. If we fail to maintain cutting edge technology and compatibility with the products our customers produce, we may not be able to offer the functionality that our customers need, and our customers may not purchase our modules, which would negatively impact our ability to generate revenue and have a material adverse impact on our business.

Our future quarterly results of operations may fluctuate significantly due to a wide range of factors, which makes our future results difficult to predict.

Our revenues and results of operations could vary significantly from quarter to quarter because of various factors, many of which are outside of our control, including:

- the expansion of our customer base;
- the renewal of agreements with, and expansion of coverage by, existing customers;
- the size, timing and terms of our sales to both existing and new customers;
- the introduction of products or services that may compete with us for the limited funds available to our customers, and changes in the cost of such products or services;
- changes in our customers' and potential customers' budgets;
- our ability to control costs, including our operating expenses;
- our ability to hire, train and maintain our direct sales force, engineers, and marketing employees;
- the timing of satisfying revenue recognition criteria in connection with initial deployment and renewals;
- general economic and political conditions, both domestically and internationally; and
- the effects of outbreaks, epidemics or pandemics of contagious diseases, including the length and severity of the COVID-19 pandemic.

Any one of these or other factors discussed elsewhere in this prospectus, or the documents incorporated by reference herein, may result in fluctuations in our revenues and operating results, meaning that quarter-to-quarter comparisons of our revenues, results of operations and cash flows may not necessarily be indicative of our future performance.

Because of the fluctuations described above, our ability to forecast revenues is limited and we may not be able to accurately predict our future revenues or results of operations. In addition, we base our current and future expense levels on our operating plans and sales forecasts, and our operating expenses are expected to be relatively fixed in the short term. Accordingly, we may not be able to reduce our costs sufficiently to compensate for an unexpected shortfall in revenues, and even a small shortfall in revenues could disproportionately and adversely affect our financial results for that quarter. The variability and unpredictability of these and other factors could result in our failing to meet or exceed financial expectations for a given period.

Our sales are subject to fluctuation as a result of seasonality, which is outside of our control.

Our sales are subject to the seasonality of when consumers buy electronic products, generally in the third quarter leading up to the year-end holiday season. Our customers' plans to complete and ship new products to meet this seasonal peak can critically impact our financial results should they miss the holiday season. As a result of these factors, our financial results for any single quarter or for periods of less than a year are not necessarily indicative of the results that may be achieved for a full fiscal year.

Our sales are subject to fluctuation as a result of our customers' new product introduction timelines and end-user adoption of our customers' retail products, both of which are outside of our control.

We, in conjunction with our customers, are launching a new technology to the retail and consumer market. The consumer adoption rate at retail is a critical component of our financial success and is currently an unknown component of our financial plans. The variability and unpredictability of these and other factors could result in our failing to meet or exceed financial expectations for a given period. As a result of these factors, our financial results for any single quarter or for periods of less than a year are not necessarily indicative of the results that may be achieved for a full fiscal year.

We conduct international operations, which exposes us to significant risks.

Our headquarters are located in Oregon, but we also have employees in Taiwan and Korea and representatives in China and Japan. Operating in international markets requires significant resources and management attention and subjects us to regulatory, economic and political risks in addition to those we already face in the United States. In addition, we invest time and resources in understanding the regulatory framework and political environments of our customers overseas in order to focus our sales efforts. Because such regulatory and political considerations are likely to vary across jurisdictions, this effort requires additional time and attention from our sales team and could lead to a sales cycle that is longer than our typical process for sales in the United States. We also may need to hire additional employees and otherwise invest in our international operations in order to reach new customers. Because of our limited experience with international operations as well as developing and managing sales in international markets, our international efforts may not be successful.

In addition, we will face risks in doing business internationally that could adversely affect our business, including:

- the potential impact of currency exchange fluctuations;
- the difficulty of staffing and managing international operations and the increased operations, travel, shipping and compliance costs associated with having customers in numerous international locations;
- potentially greater difficulty collecting accounts receivable and longer payment cycles;

- the need to offer customer support in various languages;
- challenges in understanding and complying with local laws, regulations and customs in foreign jurisdictions;

- export controls and economic sanctions administered by the Department of Commerce Bureau of Industry and Security and the Treasury Department's Office of Foreign Assets Control;
- compliance with various anti-bribery and anti-corruption laws such as the Foreign Corrupt Practices Act and United Kingdom Bribery Act of 2010;
- tariffs and other non-tariff barriers, such as quotas and local content rules;
- more limited protection for our intellectual property in some countries;
- adverse or uncertain tax consequences as a result of international operations;
- currency control regulations, which might restrict or prohibit our conversion of other currencies into U.S. dollars;
- restrictions on the transfer of funds;
- deterioration of political relations between the United States and other countries; and
- political or social unrest or economic instability in a specific country or region in which we operate, which could have an adverse impact on our operations in that location.

Also, we expect that due to costs related to our international efforts and the increased cost of doing business internationally, we will incur higher costs to secure sales to international customers than the comparable costs for domestic customers. As a result, our financial results may fluctuate as we expand our operations and customer base worldwide.

Our failure to manage any of these risks successfully could harm our international operations and adversely affect our business, operating results and financial condition.

We are dependent on the continued services and performance of our senior management and other key personnel, the loss of any of whom could adversely affect our business.

Our future success depends in large part on the continued contributions of our senior management and other key personnel. In particular, the leadership of key management personnel is critical to the successful management of our Company, the development of our products, and our strategic direction. We also depend on the contributions of key technical personnel.

We do not maintain "key person" insurance for any member of our senior management team or any of our other key employees. Our senior management and key personnel are all employed on an at-will basis, which means that they could terminate their employment with us at any time, for any reason and without notice. The loss of any of our key management personnel could significantly delay or prevent the achievement of our development and strategic objectives and adversely affect our business.

Cyber-security incidents, including data security breaches or computer viruses, could harm our business by disrupting our delivery of products or services, damaging our reputation or exposing us to liability.

We receive, process, store and transmit, often electronically, the data of our customers and others, much of which is confidential. Unauthorized access to our computer systems or stored data could result in the theft, including cyber-theft, or improper disclosure of confidential information, and the deletion or modification of records could cause interruptions in our operations. These cyber-security risks increase when we transmit information from one location to another, including over the Internet or other electronic networks. Despite the security measures we have implemented, our facilities, systems and procedures, and those of our third-party service providers, may be vulnerable to security breaches, acts of vandalism, software viruses, misplaced or lost data, programming or human errors or other similar events which may disrupt our delivery of services or expose the confidential information of our customers and others. Any security breach involving the misappropriation, loss or other unauthorized disclosure or use of confidential information of our customers or others, whether by us or a third party, could subject us to civil and criminal penalties, have a negative impact on our reputation, or expose us to liability to our customers, third parties or government authorities. We are not aware of such breaches to date. There can be no assurance that we will be able to effectively handle a failure of our information systems, or that we will be able to restore our operational capacity in a timely manner to avoid disruption to our business. Any of these developments could have a material adverse effect on our business, financial condition and results of operations.

Changes in financial accounting standards may cause adverse and unexpected revenue fluctuations and impact our reported results of operations.

A change in accounting standards or practices could harm our operating results and may even affect our reporting of transactions completed before the change is effective. New accounting pronouncements and varying interpretations of accounting pronouncements have occurred and may occur in the future. Changes to existing rules or the questioning of current practices may harm our operating results or the way we conduct our business.

Climate change may have a long-term impact on our business.

Climate change may have an increasingly adverse impact on our business and those of our customers and suppliers. Water and energy availability and reliability in the communities where we conduct business is critical. Climate change, its impact on our supply chain and critical infrastructure worldwide, and its potential to increase political instability in regions where we, our customers and suppliers do business, may disrupt our business and may cause us to experience higher attrition, losses and costs to maintain or resume operations. Although we maintain a program of insurance coverage for a variety of property, casualty, and other risks, the types and amounts of insurance we obtain vary depending on availability and cost. Some of our policies have large deductibles and broad exclusions, and our insurance providers may be unable or unwilling to pay a claim. Losses not covered by insurance may be large, which could harm our results of operations and financial condition.

Our operations, products and services, as well as those of our suppliers and customers, may also be subject to climate-related laws, regulations and lawsuits. Regulations such as carbon taxes, fuel or energy taxes, and pollution limits could result in greater direct costs, including costs associated with changes to manufacturing processes or the procurement of raw materials used in manufacturing processes, increased levels of capital expenditures to improve facilities and equipment, and higher compliance and energy costs to

reduce emissions, as well as greater indirect costs resulting from our customers, suppliers or both incurring additional compliance costs that are passed on to us. These costs and restrictions could harm our business and results of operations by increasing our expenses or requiring us to alter our operations and product design activities. Stockholder groups may find us insufficiently responsive to the implications of climate change, and therefore we may face legal action or reputational harm. We may also experience contractual disputes due to supply chain delays arising from climate change-related disruptions, which could result in increased litigation and costs.

We also face risks related to business trends that may be influenced by climate change concerns. Stockholder advocacy groups, certain institutional investors, investment funds, other market participants, stockholders and customers have focused increasingly on the environmental, social and corporate governance (“ESG”) and sustainability practices of companies, including those associated with climate change and human rights. These parties have placed increased importance on the implications of the social cost of their investments. If our ESG practices do not meet stockholder or other industry expectations and standards, which continue to evolve, our brand, reputation and business activities may be negatively impacted. Any sustainability disclosures we make may include our policies and practices on a variety of social and ethical matters, including corporate governance, environmental compliance, employee health and safety practices, human capital management, product quality, supply chain management, and talent diversity and inclusion practices. It is possible that our stockholders may not be satisfied with our ESG practices or the speed of their adoption. We could also incur additional costs and require additional resources to monitor, report, and comply with various ESG practices, or choose not to conduct business with potential customers, or discontinue or not expand business with existing customers, due to our policies. Also, our failure, or perceived failure, to meet the standards included in any sustainability disclosure could have a material negative impact on our reputation and business activities.

Consumer spending weakness could impact our revenue.

Weakness in general economic conditions may suppress consumer demand in our markets. Many of the products in which our technologies are incorporated are discretionary goods, such as home-theater systems. Weakness in general economic conditions may also lead to customers becoming delinquent on their obligations to us or being unable to pay, resulting in a higher level of write-offs. Economic conditions may impact the amount businesses spend on their speaker systems. Weakness in economic conditions could lessen demand for our products and negatively affect our revenue.

We face intense competition in our industry, and we may not be able to compete successfully in our target markets.

The digital audio, consumer electronics and entertainment markets are characterized by intense competition, subject to rapid change, and are significantly affected by new product introductions and other market activities of industry participants. Our competitors include many large domestic and international companies that have substantially greater financial, technical, marketing, distribution and other resources, greater name recognition, a longer operating history, broader product lines, lower cost structures and longer-standing relationships with customers and suppliers than we do. As a result, our competitors may be able to respond better to new or emerging technologies or standards and to changes in customer requirements.

Further, some of our competitors are in a better financial and marketing position from which to influence industry acceptance of a particular product standard or a competing technology than we are. Our competitors may also be able to devote greater resources to the development, promotion and sale of products, and may be in a position to deliver competitive products at a lower price than we can, along with the potential to conduct strategic acquisitions, joint ventures, subsidies and lobbying industry and government standards, hire more experienced technicians, engineers and research and development teams than we can. As a result, we may not be able to compete effectively against any of these organizations.

Our ability to compete in our current target markets and future markets will depend in large part on our ability to successfully develop, introduce and sell new and enhanced products or technologies on a timely and cost-effective basis and to respond to changing market requirements. We expect our competitors to continue to improve the performance of their current products and potentially reduce their prices. In addition, our competitors may develop future generations and enhancements of competitive products or new or enhanced technologies that may offer greater performance and improved pricing or render our technologies obsolete. If we are unable to match or exceed the improvements made by our competitors, our market position and prospects could deteriorate and our net product sales could decline.

Risks Related to Our Intellectual Property

Failure to protect our intellectual property rights could adversely affect our business.

Our success depends, in part, on our ability to protect proprietary methods and technologies that we develop or license under patent and other intellectual property (“IP”) laws of the United States, so that we can prevent others from using our inventions and proprietary information. If we fail to protect our IP rights adequately, our competitors might gain access to our technology, and our business might be adversely affected. However, defending our IP rights might entail significant expenses. Any of our patent rights, copyrights, trademarks or other IP rights may be challenged by others, weakened or invalidated through administrative process or litigation.

As of October 6, 2023, we had 13 issued and 10 pending U.S. patents covering our technology. We also license issued U.S. patents from others. The patents that we own or license from others (including those that may be issued in the future) may not provide us with any competitive advantages or may be challenged by third parties, and our patent applications may never be granted.

Additionally, the process of obtaining patent protection is expensive and time-consuming, and we may not be able to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Even if issued, there can be no assurance that these patents will adequately protect our IP, as the legal standards relating to the validity, enforceability and scope of protection of patent and other IP rights are uncertain.

Any patents that are issued may subsequently be invalidated or otherwise limited, allowing other companies to develop offerings that compete with ours, which could adversely affect our competitive business position, business prospects and financial condition. In addition, issuance of a patent does not guarantee that we have a right to practice the patented invention. Patent applications in the United States are typically not published until 18 months after filing or, in some cases, not at all, and publications of discoveries in industry-related literature lag behind actual discoveries. We cannot be certain that third parties do not have blocking patents that could be used to prevent us from marketing or practicing our patented software or technology.

Effective patent, trademark, copyright and trade secret protection may not be available to us in every country in which our software is available. The laws of some foreign countries may not be as protective of IP rights as those in the United States (in particular, some foreign jurisdictions do not permit patent protection for software), and mechanisms for enforcement of IP rights may be inadequate. Additional uncertainty may result from changes to IP legislation enacted in the United States, including the recent America Invents Act, and other national governments and from interpretations of the IP laws of the United States and other countries by applicable courts and agencies. Accordingly, despite our efforts, we may be unable to prevent third parties from infringing upon or misappropriating our IP.

We rely in part on trade secrets, proprietary know-how and other confidential information to maintain our competitive position. Although we endeavor to enter into non-

disclosure agreements with our employees, licensees and others who may have access to this information, we cannot assure you that these agreements or other steps we have taken will prevent unauthorized use, disclosure or reverse engineering of our technology. Moreover, third parties may independently develop technologies or products that compete with ours, and we may be unable to prevent this competition.

We might be required to spend significant resources to monitor and protect our IP rights. We may initiate claims or litigation against third parties for infringement of our proprietary rights or to establish the validity of our proprietary rights. Litigation also puts our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing. Additionally, we may provoke third parties to assert counterclaims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially viable. Any litigation, whether or not resolved in our favor, could result in significant expense to us and divert the efforts of our technical and management personnel, which may adversely affect our business, operating results, financial condition and cash flows.

We may be subject to IP rights claims by third parties, which are extremely costly to defend, could require us to pay significant damages and could limit our ability to use certain technologies.

Companies in the software and technology industries, including some of our current and potential competitors, own large numbers of patents, copyrights, trademarks and trade secrets and frequently enter into litigation based on allegations of infringement or other violations of IP rights. In addition, many of these companies have the capability to dedicate substantially greater resources to enforce their IP rights and to defend claims that may be brought against them. The litigation may involve patent holding companies or other adverse patent owners that have no relevant product revenues and against which our patents may therefore provide little or no deterrence. We have received, and may in the future receive, notices that claim we have misappropriated, misused, or infringed other parties' IP rights, and, to the extent we gain greater market visibility, we face a higher risk of being the subject of IP infringement claims.

There may be third-party IP rights, including issued or pending patents that cover significant aspects of our technologies or business methods. Any IP claims, with or without merit, could be very time-consuming, could be expensive to settle or litigate and could divert our management's attention and other resources. These claims could also subject us to significant liability for damages, potentially including treble damages if we are found to have willfully infringed patents or copyrights. These claims could also result in our having to stop using technology found to be in violation of a third party's rights. We might be required to seek a license for the IP, which may not be available on reasonable terms or at all. Even if a license were available, we could be required to pay significant royalties, which would increase our operating expenses. As a result, we may be required to develop alternative non-infringing technology, which could require significant effort and expense. If we cannot license or develop technology for any infringing aspect of our business, we would be forced to limit or stop sales of our software and may be unable to compete effectively. Any of these results would adversely affect our business, operating results, financial condition and cash flows.

Risks Related to this Offering and Ownership of Our Securities

Our management will have broad discretion over the use of the net proceeds from this offering, you may not agree with how we use the proceeds and the proceeds may not be invested successfully.

Our management will have broad discretion as to the use of the net proceeds from this offering and could use them for purposes other than those contemplated at the time of commencement of this offering. Accordingly, you will be relying on the judgment of our management regarding the use of these net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. It is possible that, pending their use, we may invest the net proceeds in a way that does not yield a favorable, or any, return for us. The failure of our management to use such funds effectively could have a material adverse effect on our business, financial condition, operating results and cash flows.

This is a best efforts offering, no minimum amount of securities is required to be sold, and we may not raise the amount of capital we believe is required for our business plans.

The placement agent has agreed to use their reasonable best efforts to solicit offers to purchase the securities in this offering. The placement agent has no obligation to buy any of the securities from us or to arrange for the purchase or sale of any specific number or dollar amount of the securities. There is no required minimum number of securities that must be sold as a condition to completion of this offering. Because there is no minimum offering amount required as a condition to the closing of this offering, the actual offering amount, placement agent fees and proceeds to us are not presently determinable and may be substantially less than the maximum amounts set forth herein. We may sell fewer than all of the securities offered hereby, which may significantly reduce the amount of proceeds received by us, and investors in this offering will not receive a refund in the event that we do not sell an amount of securities sufficient to support our continued operations. Thus, we may not raise the amount of capital we believe is required for our operations and may need to raise additional funds. Such additional fundraises may not be available or available on terms acceptable to us.

There is no public market for the Units, Series B Preferred Stock or Preferred Warrants.

There is no established public trading market for the Units, Series B Preferred Stock or Preferred Warrants offered hereby, and we do not expect a market to develop. In addition, we do not intend to apply to list such securities on any national securities exchange or other nationally recognized trading system, including Nasdaq. Without an active market, the liquidity of those securities will be limited.

The Series B Preferred Stock and Preferred Warrants in this offering are speculative in nature.

Following this offering, the market value of the Series B Preferred Stock and Preferred Warrants, if any, is uncertain and there can be no assurance that the market value of such securities will equal or exceed their imputed public offering price.

Holders of the Preferred Warrants will not have rights of holders of our shares of Series B Preferred Stock until such Preferred Warrants are exercised.

The Preferred Warrants in this offering do not confer any rights of share ownership on their holders, but rather merely represent the right to acquire shares of our Series B Preferred Stock at a fixed price. Until holders of Preferred Warrants acquire shares of our Series B Preferred upon exercise of the Preferred Warrants, holders of Preferred Warrants will have no rights with respect to our shares of Series B Preferred Stock underlying such Preferred Warrants.

The conversion of the Series B Preferred Stock into shares of common stock would dilute the current holders of our common stock. In addition, the exercise or conversion of currently outstanding securities would further dilute holders of our common stock.

The issuance of the approximate additional 92,955,635 shares of our Common Stock upon conversion of all of the shares of Series B Preferred Stock issued in this Offering, including conversion of the PIK dividends shares and the shares of Series B Preferred Stock issued upon exercise of the Preferred Warrants, would dilute our stockholders'

ownership interest, which among other things would have the effect of reducing their influence on matters on which our stockholders vote.

Because we do not intend to pay cash dividends, our stockholders will benefit from an investment in our securities only if they appreciate in value.

We intend to retain our future earnings, if any, to finance the expansion of our business and do not expect to pay any cash dividends in the foreseeable future. As a result, the success of an investment in our securities will depend entirely upon any future appreciation. There is no guarantee that our securities will appreciate in value or even maintain the price at which our stockholders purchased their shares.

Purchasers in this offering may experience dilution of their investment in the future.

Subject to lock-up provisions described under “Plan of Distribution,” we are generally not restricted from issuing additional securities, including shares of common stock, securities that are convertible into or exchangeable for, or that represent the right to receive, common stock or substantially similar securities. The issuance of securities may cause dilution to our stockholders, including investors in this offering. In order to raise additional capital, such securities may be at prices that are not the same as the price per share in this offering. We cannot assure you that we will be able to sell shares or other securities in any other offering at a price per share that is equal to or greater than the price per share paid by investors in this offering, and investors purchasing shares or other securities in the future could have rights superior to existing stockholders, including investors who purchase securities in this offering. The price per share at which we sell additional shares of our common stock or securities convertible into common stock in future transactions may be higher or lower than the price per share in this offering. The exercise of outstanding stock options or warrants and the vesting of outstanding restricted stock units may also result in dilution of your investment.

The terms of our Series B Preferred Stock could prohibit us from issuing additional equity because of the significant dilutive effects on our common stock.

The Certificate of Designations shall provide that dividends on the Series B Preferred Stock shall be paid in-kind in additional shares of Series B Preferred Stock based on the stated value of \$100.00 per share at an assumed annual dividend rate of 20%. The PIK dividends will be a one-time payment payable to holders of the Series B Preferred Stock of record at the close of business on the one-year anniversary of the Closing Date (the “Dividend Record Date”). PIK dividends on each share of Series B Preferred Stock shall be paid three business days after the Dividend Record Date in additional fully paid and nonassessable, registered shares of Series B Preferred Stock in a number equal to the quotient obtained by dividing (A) the product obtained by multiplying (i) the Dividend Rate and (ii) the stated value of \$100.00 per share, by (B) the public offering price per Unit (equal to \$55.00, based on the assumed public offering price per Unit), as a result such subsequent issued PIK dividends will be convertible into Common Stock and could have dilutive effects on our Common Stock.

The voting rights of holders of the Series B Preferred Stock are limited and holders of Series B Preferred Stock will not have the voting rights of holders of our shares of our Common Stock until such shares of Series B Preferred Stock are converted into shares of our Common Stock.

Holders of the Series B Preferred Stock have no voting rights with respect to matters that generally require the approval of voting stockholders and will not have the voting rights that the holders of shares of our Common Stock have until the shares of Series B Preferred Stock are converted into shares of Common Stock. The limited voting rights of holders of the Series B Preferred Stock include the right to vote as a single class on certain matters that may affect the preference or special rights of the Series B Preferred Stock.

Mandatory redemption obligations may make it more difficult for a party to acquire us or discourage a party from acquiring us.

The mandatory redemption feature of the Series B Preferred Stock may have the effect of discouraging a third party from making an acquisition proposal for us or of delaying, deferring or preventing certain of our change of control transactions under circumstances that otherwise could provide the holders of our Common Stock and Series B Preferred Stock with the opportunity to realize a premium over the then-current market price of such stock or that shareholders may otherwise believe is in their best interests.

The terms of the Series B Preferred Stock and Preferred Warrants could impede our ability to enter into certain transactions or obtain additional financing.

The terms of the Series B Preferred Stock and Preferred Warrants require us, upon the consummation of any “fundamental transaction” (as defined in the securities), to, among other obligations, cause any successor entity resulting from the fundamental transaction to assume all of our obligations under the Series B Preferred Stock and Preferred Warrants and the associated transaction documents. The terms of the Series B Preferred Stock and Preferred Warrants could also impede our ability to enter into certain transactions or obtain additional financing in the future.

We may incur additional indebtedness and obligations to pay dividends on preferred stock, some of which may be senior to the rights of the Series B Preferred Stock.

We and our subsidiaries may incur additional indebtedness and obligations to pay dividends on preferred stock, some of which, as applicable, may be senior to the rights of the Series B Preferred Stock. The terms of the Series B Preferred Stock do not prohibit us or our subsidiaries from incurring additional indebtedness or issuing additional series of preferred stock. Any such indebtedness will in all cases be senior to the rights of holders of Series B Preferred Stock. We may also issue additional series of preferred stock that contain dividend rights and liquidation preferences that are senior to the rights of holders of Series B Preferred Stock. Our subsidiaries may also incur indebtedness that is structurally senior to the Series B Preferred Stock, and we and our subsidiaries could incur indebtedness secured by a lien on our assets, entitling the holders of such indebtedness to be paid first from the proceeds of such assets. If we issue any additional preferred stock that ranks senior or pari passu with the Series B Preferred Stock, the holders of those shares will be entitled to a senior or ratable share with the holders of the Series B Preferred Stock in any proceeds distributed in connection with our insolvency, liquidation, reorganization or dissolution. This may have the effect of reducing the amount of proceeds paid to the holders of Series B Preferred Stock.

Market interest rates may adversely affect the value of the Series B Preferred Stock.

One of the factors that continues to influence the price of the Series B Preferred Stock will be the dividend yield on the Series B Preferred Stock (as a percentage of the price of the Series B Preferred Stock) relative to market interest rates. An increase in market interest rates may lead prospective purchasers of the Series B Preferred Stock to expect a higher dividend yield, and higher interest rates would likely increase our borrowing costs and potentially decrease funds available for dividends. Accordingly, higher market interest rates could cause the market price of the Series B Preferred Stock to decrease.

The amount of the liquidation preference on the Series B Preferred Stock is fixed and investors in this offering that receive shares of Series B Preferred Stock will have no right to receive any greater payment.

The payment due upon liquidation on the Series B Preferred Stock is fixed at the liquidation preference of \$100.00 per share. If, in the case of our liquidation, there are remaining assets to be distributed after payment of this amount, you will have no right to receive or to participate in these amounts. In addition, if the market price of a holder's

Series B Preferred Stock is greater than the liquidation preference, such holder will have no right to receive the market price from us upon our liquidation.

Upon conversion of the Series B Preferred Stock, holders may receive less valuable consideration than expected because the value of our Common Stock may decline after such holders exercise their conversion right but before we settle our conversion obligation.

Under the Series B Preferred Stock, a converting holder will be exposed to fluctuations in the value of our Common Stock during the period from the date such holder surrenders shares of Series B Preferred Stock for conversion until the date we settle our conversion obligation. Upon conversion, we will be required to deliver the shares of our Common Stock, together with a cash payment for any fractional share (if so elected by the Company), on the second business day following the relevant conversion date. Accordingly, if the price of our Common Stock decreases during this period, the value of the shares of Common Stock that you receive will be adversely affected and would be less than the conversion value of the Series B Preferred Stock on the conversion date.

The Series B Preferred Stock has not been rated.

We have not sought to obtain a rating for the Series B Preferred Stock. However, one or more rating agencies may independently determine to issue such a rating or such a rating, if issued, may adversely affect the market price of the Series B Preferred Stock. In addition, we may elect in the future to obtain a rating for the Series B Preferred Stock, which could adversely affect the market price of the Series B Preferred Stock. Ratings only reflect the views of the rating agency or agencies issuing the ratings and such ratings could be revised downward, placed on a watch list or withdrawn entirely at the discretion of the issuing rating agency if in its judgment circumstances so warrant. Any such downward revision, placing on a watch list or withdrawal of a rating could have an adverse effect on the market price of the Series B Preferred Stock.

There may be future sales of Series B Preferred Stock or similar securities, which may adversely affect the market price of the Series B Preferred Stock.

Subject to the terms of the Certificate of Designations, our certificate of incorporation, as amended, and the DGCL, we are not restricted from issuing additional Series B Preferred Stock or securities similar to the Series B Preferred Stock, including any securities that are convertible into or exchangeable for, or that represent the right to receive, Series B Preferred Stock. Holders of the Series B Preferred Stock have no preemptive rights that entitle holders to purchase their pro rata share of any offering of shares of any class or series. The market price of the A Preferred Stock could decline as a result of sales of Series B Preferred Stock or of other securities made after this offering or the perception that such sales could occur. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of any future offerings. Thus, holders of the Series B Preferred Stock bear the risk of our future offerings reducing the market price of the Series B Preferred Stock and diluting their holdings in the Series B Preferred Stock.

Raising additional funds through debt or equity financing could be dilutive and may cause the market price of the Series B Preferred Stock to decline. We still may need to raise additional funding which may not be available on acceptable terms, or at all. Failure to obtain additional capital may force us to delay, limit, or terminate our product development efforts or other operations.

To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest may be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a stockholder. Furthermore, any additional fundraising efforts may divert our management from their day-to-day activities, which may adversely affect our ability to develop and commercialize our products and services. We may continue to seek funds through equity or debt financings, collaborative or other arrangements with corporate sources, or through other sources of financing. Additional funding may not be available to us on acceptable terms, or at all. Any failure to raise capital as and when needed, as a result of insufficient authorized shares or otherwise, could have a negative impact on our financial condition and on our ability to pursue our business plans and strategies.

Holders may have to pay taxes if we adjust the conversion rate of the Series B Preferred Stock or make adjustments to the Preferred Warrant exercise price or other terms in certain circumstances, even though holders would not receive any cash.

Upon certain adjustments to (or certain failures to make adjustments to) the conversion price of the Series B Preferred Stock or adjustments to the Preferred Warrant exercise price or other terms, holders may be deemed to have received a distribution from us, resulting in taxable income to them for U.S. federal income tax purposes, even though holders would not receive any cash in connection with such adjustment to (or failure to adjust) the conversion price. If you are a non-U.S. holder (as defined in "Material U.S. Federal Income Tax Consequences") of the Series B Preferred Stock, any deemed dividend may be subject to U.S. federal withholding tax at a 30% rate, or such lower rate as may be specified by an applicable treaty.

Dividends or other distributions (including deemed distributions) with respect to the Series B Preferred Stock, or the Preferred Warrants, may be subject to withholding taxes in circumstances where we are not obliged to make gross up payments, and this could result in holders receiving less than expected in such circumstances.

On account of certain tax laws that require tax to be withheld from dividends or other distributions (including deemed distributions) on the Series B Preferred Stock or with respect to the Preferred Warrants, we are not required to make gross up payments in respect of such taxes. This would result in holders of Series B Preferred Stock and the Preferred Warrants receiving less than expected and could materially adversely affect the return on your investment.

Substantial future sales of shares of our Common Stock could cause the market price of our Common Stock to decline.

We expect that significant additional capital will be needed in the near future to continue our planned operations. Sales of a substantial number of shares of our Common Stock in the public market following the completion of this offering, or the perception that these sales might occur, could depress the market price of our Common Stock and could impair our ability to raise capital through the sale of additional equity securities. We are unable to predict the effect that such sales may have on the prevailing market price of our Common Stock.

We have financed our operations, and we expect to continue to finance our operations, acquisitions, if any, and the development of strategic relationships by issuing equity, warrants and/or convertible securities, which could significantly reduce the percentage ownership of our existing stockholders. Further, any additional financing that we secure may require the granting of rights, preferences or privileges senior to, or *pari passu* with, those of Common Stock. Additionally, we may acquire other technologies or finance strategic alliances by issuing our equity or equity-linked securities, which may result in additional dilution. Any issuances by us of equity securities may be at or below the prevailing market price of our Common Stock and in any event may have a dilutive impact on your ownership interest, which could cause the market price of our Common Stock to decline. We may also raise additional funds through the incurrence of debt or the issuance or sale of other securities or instruments senior to our shares of Common Stock. The holders of any securities or instruments we may issue may have rights superior to the rights of our holders of our Common Stock. If we experience dilution from issuance of additional securities and we grant superior rights to new securities over common stockholders, it may negatively impact the trading price of our shares of Common Stock.

We are issuing "blank check" preferred stock in this offering without stockholder approval with the effect of diluting current stockholder interests and impairing their voting rights; and provisions in our charter documents could discourage a takeover that stockholders may consider favorable.

Our Certificate of Incorporation authorizes the issuance of "blank check" preferred stock with designations, rights and preferences as may be determined from time to time by our board of directors. Our board of directors is empowered, without stockholder approval, to issue a series of preferred stock with dividend, liquidation, conversion, voting or other rights which could dilute the interest of, or impair the voting power of, our Common Stockholders. The issuance of a series of preferred stock could be used as a method of

discouraging, delaying or preventing a change in control. For example, it would be possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of our Company.

We are issuing the Series B Preferred Stock in this offering without seeking stockholder approval and the offering may have the effect of diluting current stockholders' interests and impairing their voting rights.

If securities or industry analysts do not publish research or reports about our business, or publish negative reports about our business, our Common Stock price and trading volume could decline.

The trading market for our Common Stock may depend in part on the research and reports that securities or industry analysts may publish about us or our business, our market and our competitors. We do not have any control over such analysts. If one or more such analysts downgrade or publish a negative opinion of our Common Stock, the Common Stock price would likely decline. If analysts do not cover us or our Company do not regularly publish reports on us, we may not be able to attain visibility in the financial markets, which could have a negative impact on our Common Stock price or trading volume.

We do not intend to pay dividends on shares of our Common Stock for the foreseeable future.

We have never declared or paid any cash dividends on shares of our Common Stock and do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors. Accordingly, investors must rely on sales of their Common Stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

The market price for our Common Stock is particularly volatile given our status as a relatively unknown company with a small and thinly traded public float, and lack of profits, which could lead to wide fluctuations in our share price. You may be unable to sell your shares of Common Stock at or above the public offering price of the shares of Common Stock, which may result in substantial losses to you.

The market for our Common Stock is characterized by significant price volatility when compared to the shares of larger, more established companies that have large public floats, and we expect that our share price will continue to be more volatile than the shares of such larger, more established companies for the indefinite future, although such fluctuations may not reflect a material change to our financial condition or operations during any such period. Such volatility can be attributable to a number of factors. For example, from January 1, 2022 through December 31, 2022 the reported sale price of our Common Stock has fluctuated between \$9.02 and \$148.00 per share. From January 1, 2023 through October 5, 2023, the reported closing price of our Common Stock has fluctuated between \$0.4801 and \$16.50 per share. First, as noted above, our Common Stock is, compared to the shares of such larger, more established companies, sporadically and thinly traded. The price for our Common Stock could, for example, decline precipitously in the event that a large number of our shares are sold on the market without commensurate demand. Secondly, we are a speculative or "risky" investment due to our lack of profits to date. As a consequence of this enhanced risk, more risk-adverse investors may, under the fear of losing all or most of their investment in the event of negative news or lack of progress, be more inclined to sell their shares on the market more quickly and at greater discounts than would be the case with the stock of a larger, more established company that has a large public float. Many of these factors are beyond our control and may decrease the market price of our Common Stock regardless of our operating performance.

In addition to being highly volatile, our Common Stock could be subject to wide fluctuations in response to a number of factors that are beyond our control, including, but not limited to:

- variations in our revenues and operating expenses;
- actual or anticipated changes in the estimates of our operating results or changes in stock market analyst recommendations regarding our Common Stock, other comparable companies or our industry generally;
- market conditions in our industry, the industries of our customers and the economy as a whole;
- actual or expected changes in our growth rates or our competitors' growth rates;
- developments in the financial markets and worldwide or regional economies;
- announcements of innovations or new products or services by us or our competitors;
- announcements by the government relating to regulations that govern our industry;
- sales of our Common Stock or other securities by us or in the open market;

- changes in the market valuations of other comparable companies; and
- other events or factors, many of which are beyond our control, including those resulting from such events, or the prospect of such events, including war, terrorism and other international conflicts, public health issues including health epidemics or pandemics, such as the COVID-19 pandemic, and natural disasters such as fire, hurricanes, earthquakes, tornados or other adverse weather and climate conditions, whether occurring in the United States or elsewhere, could disrupt our operations, disrupt the operations of our suppliers or result in political or economic instability.

In addition, if the market for technology stocks or the stock market in general experiences loss of investor confidence, the trading price of our Common Stock could decline for reasons unrelated to our business, financial condition or operating results. The trading price of our Common Stock could also decline in reaction to events that affect other companies in our industry, even if these events do not directly affect us. Each of these factors, among others, could harm the value of your Shares. In the past, following periods of volatility in the market, securities class-action litigation has often been instituted against companies. Such litigation, if instituted against us, could result in substantial costs and diversion of management's attention and resources, which could materially and adversely affect our business, operating results and financial condition.

We have been notified by The Nasdaq Stock Market LLC of our failure to comply with certain continued listing requirements and, if we are unable to regain compliance with all applicable continued listing requirements and standards of Nasdaq, our Common Stock could be delisted from Nasdaq.

Our Common Stock is currently listed on Nasdaq. In order to maintain that listing, we must satisfy minimum financial and other continued listing requirements and standards, including those regarding director independence and independent committee requirements, minimum stockholders' equity, minimum share price, and certain corporate governance requirements. On October 5, 2023, we received a written notification from the Listing Qualifications Department of the Nasdaq Stock Market LLC notifying us that we were not in compliance with the minimum bid price requirement for continued listing on Nasdaq, as set forth under Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Price Requirement"), because the closing bid price of our Common Stock was below \$1.00 per share for the previous thirty (30) consecutive business days. We were granted 180 calendar days, or until April 2, 2024, to regain compliance with the Minimum Bid Price Requirement. In the event we do not regain compliance with the Minimum Bid Price Requirement by April 2, 2024, we may be eligible for an additional 180-calendar day grace period. To qualify, we will be required to meet the continued listing requirement for market value of publicly held shares and all other listing standards for Nasdaq, with the exception of the Minimum Bid Price Requirement, and will need to provide written notice to The Nasdaq Stock Market LLC of our intent to regain compliance with such requirement during such second compliance period. If we do not regain compliance within the allotted compliance period(s), including any extensions that may be granted, The Nasdaq Stock Market LLC will provide notice that our common stock will be subject to delisting from Nasdaq. At that time, we may appeal The Nasdaq Stock Market LLC's determination to a hearings panel.

There can be no assurances that we will be able to regain compliance with the Minimum Bid Price Requirement or if we do later regain compliance with the Minimum Bid Price Requirement, that we will be able to continue to comply with all applicable Nasdaq listing requirements now or in the future. If we are unable to maintain compliance with these Nasdaq requirements, our Common Stock will be delisted from Nasdaq.

In the event that our Common Stock is delisted from Nasdaq, as a result of our failure to comply with the Minimum Bid Price Requirement, or due to our failure to continue to comply with any other requirement for continued listing on Nasdaq, and is not eligible for listing on another exchange, trading in the shares of our Common Stock could be conducted in the over-the-counter market or on an electronic bulletin board established for unlisted securities such as the Pink Sheets or the OTC Bulletin Board. In such event, it could become more difficult to dispose of, or obtain accurate price quotations for, our Common Stock, and it would likely be more difficult to obtain coverage by securities analysts and the news media, which could cause the price of our Common Stock to decline further. Also, it may be difficult for us to raise additional capital if we are not listed on a national exchange.

In the event that our Common Stock is delisted from Nasdaq, U.S. broker-dealers may be discouraged from effecting transactions in shares of our Common Stock because they may be considered penny stocks and thus be subject to the penny stock rules.

The SEC has adopted a number of rules to regulate "penny stock" that restricts transactions involving stock which is deemed to be penny stock. Such rules include Rules 3a51-1, 15g-1, 15g-2, 15g-3, 15g-4, 15g-5, 15g-6, 15g-7, and 15g-9 under the Exchange Act. These rules may have the effect of reducing the liquidity of penny stocks. "Penny stocks" generally are equity securities with a price of less than \$5.00 per share (other than securities registered on certain national securities exchanges or quoted on Nasdaq if current price and volume information with respect to transactions in such securities is provided by the exchange or system). Our shares of Common Stock have in the past constituted, and may again in the future constitute, "penny stock" within the meaning of the rules. The additional sales practice and disclosure requirements imposed upon U.S. broker-dealers for sales of penny stocks may discourage such broker-dealers from effecting transactions in shares of our Common Stock, which could severely limit the market liquidity of such shares of Common Stock and impede their sale in the secondary market.

A U.S. broker-dealer selling penny stock to anyone other than an established customer or "accredited investor" (generally, an individual with a net worth in excess of \$1,000,000 or an annual income exceeding \$200,000, or \$300,000 together with his or her spouse) must make a special suitability determination for the purchaser and must receive the purchaser's written consent to the transaction prior to sale, unless the broker-dealer or the transaction is otherwise exempt. In addition, the "penny stock" regulations require the U.S. broker-dealer to deliver, prior to any transaction involving a "penny stock", a disclosure schedule prepared in accordance with SEC standards relating to the "penny stock" market, unless the broker-dealer or the transaction is otherwise exempt. A U.S. broker-dealer is also required to disclose commissions payable to the U.S. broker-dealer and the registered representative and current quotations for the securities. Finally, a U.S. broker-dealer is required to submit monthly statements disclosing recent price information with respect to the "penny stock" held in a customer's account and information with respect to the limited market in "penny stocks".

Stockholders should be aware that, according to the SEC, the market for "penny stocks" has suffered in recent years from patterns of fraud and abuse. Such patterns include (i) control of the market for the security by one or a few broker-dealers that are often related to the promoter or issuer; (ii) manipulation of prices through prearranged matching of purchases and sales and false and misleading press releases; (iii) "boiler room" practices involving high-pressure sales tactics and unrealistic price projections by inexperienced sales persons; (iv) excessive and undisclosed bid-ask differentials and markups by selling broker-dealers; and (v) the wholesale dumping of the same securities by promoters and broker-dealers after prices have been manipulated to a desired level, resulting in investor losses. Our management is aware of the abuses that have occurred historically in the penny stock market. Although we do not expect to be in a position to dictate the behavior of the market or of broker-dealers who participate in the market, management will strive within the confines of practical limitations to prevent the described patterns from being established with respect to our securities.

Purchasers who purchase our securities in this offering pursuant to a securities purchase agreement may have rights not available to purchasers that purchase without the benefit of a securities purchase agreement.

In addition to rights and remedies available to all purchasers in this offering under federal securities and state law, the purchasers that enter into a securities purchase agreement will also be able to bring claims of breach of contract against us. The ability to pursue a claim for breach of contract provides those investors with the means to enforce the covenants uniquely available to them under the securities purchase agreement.

General Risk Factors

We face risks related to health pandemics, epidemics and other outbreaks, including the continuing COVID-19 pandemic any of which could significantly disrupt our operations and could materially and adversely affect our business.

An outbreak of the respiratory illness caused by COVID-19 has resulted in millions of infections and deaths worldwide, as of the date of filing of this prospectus, and continues to spread across the globe, including in the United States and Europe, the major markets in which we operate. The COVID-19 pandemic continues to create uncertainty surrounding our business and this continued uncertainty could materially and adversely affect our business, financial condition and results of operations. Our business activities originating from geographic regions that are or may become affected, may negatively impact sales, manufacturing and supply chain related activities, among others. Disruptive activities could include the temporary closure of manufacturing facilities used in our supply chain processes, restrictions on the export or shipment of our products, significant cutback of ocean container delivery from China, business closures in impacted areas, and restrictions on our employees' and consultants' ability to travel and to meet with customers. The extent to which COVID-19 impacts our results will depend on future developments, which are highly uncertain and cannot be predicted, including the duration of the COVID-19 pandemic, adverse impacts of the recently-discovered Omicron variant or potential resurgences or the emergence of new variants, new information which may emerge concerning COVID-19's severity, and actions to contain COVID-19 or treat its impact.

our operations could be subject to disruption. Further, if our manufacturers become unable to obtain necessary raw materials or components, we may incur higher supply costs or our manufacturers may be required to reduce production levels, either of which may negatively affect our financial condition or results of operations. The extent to which COVID-19 affects our results will depend on future developments that are highly uncertain and cannot be predicted, including actions to contain COVID-19 or treat its effect, among others.

Economic uncertainties or downturns, or political changes, in the United States and globally, could limit the availability of funds available to our customers and potential customers, which could materially adversely affect our business.

Our results of operations could be adversely affected by general conditions in the economy and financial markets, both in the U.S. and globally, including conditions that are outside of our control, such as the continuing uncertainty regarding the duration and scope of the COVID-19 pandemic, global supply chain disruptions, the recent inflation in the United States and the foreign and domestic government sanctions imposed on Russia as a result of its recent invasion of Ukraine. There continues to be volatility and disruptions in the capital and credit markets, and a severe or prolonged economic downturn, including, but not limited to as a result of such events, could result in a variety of risks to our business, including weakened demand for our products and our ability to raise additional capital when needed on acceptable terms, if at all. A weak or declining economy could strain our suppliers, possibly resulting in supply disruption, or cause delays in payments for our services. In turn, we may be required to increase our allowance for doubtful accounts, which would adversely affect our financial results. Any of the foregoing could harm our business and we cannot anticipate all the ways in which the current economic climate and financial market conditions could adversely impact our business.

Changes in government trade policies, including the imposition of tariffs and export restrictions, could have an adverse impact on our business operations and sales.

The United States or foreign governments may enact changes in government trade policies that could adversely impact our ability to sell products in certain countries, particularly in China. For example, the U.S. government has imposed tariffs on certain Chinese imports and, in return, the Chinese government has imposed or proposed tariffs on certain U.S. products. Additionally, export restrictions imposed by the U.S. government, including the addition of licensing requirements by the United States Department of Commerce's Bureau of Industry and Security ("BIS") through the addition of companies to the BIS Entity List, may require us to suspend our business with certain international customers if we conclude or are notified by the U.S. government that such business presents a risk of noncompliance with U.S. regulations. We cannot predict what actions may ultimately be taken with respect to tariffs or trade relations between certain countries, what products may be subject to such actions, or what actions may be taken by other countries in response. It also may not be possible to anticipate the timing or duration of such tariffs, export restrictions, or other regulatory actions. These government trade policies may materially adversely affect our sales and operations with current customers as well as impede our ability to develop relationships with new customers.

There is a risk of further escalation and retaliatory actions between the U.S. and other foreign governments. If significant tariffs or other restrictions are placed on goods exported from China or any related counter-measures are taken, our revenue and results of operations may be materially harmed. These tariffs may also make our customers' products more expensive for consumers, which may reduce consumer demand.

There is also a risk that the U.S. government may seek to implement more protective trade measures, not just with respect to China but with respect to other countries as well, such as those imposed on Russia in connection with its recent invasion of Ukraine. This could include new or higher tariffs and even more restrictive trade barriers, such as prohibiting certain types of, or all sales of certain products or products sold by certain parties into the U.S. Any increased trade barriers or restrictions on global trade could have a materially adverse impact on our business and financial results.

A decline in discretionary consumer spending may adversely affect our industry, our operations and ultimately our profitability.

Luxury products, such as speaker systems, TVs, game consoles and PCs, are discretionary purchases for consumers. Any reduction in consumer discretionary spending or disposable income may affect our industry significantly. Many economic factors outside of our control could affect consumer discretionary spending, including the financial markets, consumer credit availability, prevailing interest rates, energy costs, employment levels, salary levels, and tax rates. Any reduction in discretionary consumer spending could materially adversely affect our business and financial condition.

Consumer spending weakness could impact our revenue.

Weakness in general economic conditions may suppress consumer demand in our markets. Many of the products in which our technologies are incorporated are discretionary goods, such as home-theater systems. Weakness in general economic conditions may also lead to customers becoming delinquent on their obligations to us or being unable to pay, resulting in a higher level of write-offs. Economic conditions may impact the amount businesses spend on their speaker systems. Weakness in economic conditions could lessen demand for our products and negatively affect our revenue.

We face intense competition in our industry, and we may not be able to compete successfully in our target markets.

The digital audio, consumer electronics and entertainment markets are characterized by intense competition, subject to rapid change, and are significantly affected by new product introductions and other market activities of industry participants. Our competitors include many large domestic and international companies that have substantially greater financial, technical, marketing, distribution and other resources, greater name recognition, a longer operating history, broader product lines, lower cost structures and longer-standing relationships with customers and suppliers than we do. As a result, our competitors may be able to respond better to new or emerging technologies or standards and to changes in customer requirements.

Further, some of our competitors are in a better financial and marketing position from which to influence industry acceptance of a particular product standard or a competing technology than we are. Our competitors may also be able to devote greater resources to the development, promotion and sale of products, and may be in a position to deliver competitive products at a lower price than we can, along with the potential to conduct strategic acquisitions, joint ventures, subsidies and lobbying industry and government standards, hire more experienced technicians, engineers and research and development teams than we can. As a result, we may not be able to compete effectively against any of these organizations.

Our ability to compete in our current target markets and future markets will depend in large part on our ability to successfully develop, introduce and sell new and enhanced products or technologies on a timely and cost-effective basis and to respond to changing market requirements. We expect our competitors to continue to improve the performance of their current products and potentially reduce their prices. In addition, our competitors may develop future generations and enhancements of competitive products or new or enhanced technologies that may offer greater performance and improved pricing or render our technologies obsolete. If we are unable to match or exceed the improvements made by our competitors, our market position and prospects could deteriorate and our net product sales could decline.

If we are unable to attract, integrate and retain additional qualified personnel, including top technical talent, our business could be adversely affected.

Our future success depends in part on our ability to identify, attract, integrate and retain highly skilled technical, managerial, sales and other personnel. We face intense competition for qualified individuals from numerous other companies, including other software and technology companies, many of whom have greater financial and other resources than we do. Some of these characteristics may be more appealing to high-quality candidates than those we have to offer. In addition, new hires often require significant training and, in many cases, take significant time before they achieve full productivity. We may incur significant costs to attract and retain qualified personnel, including significant expenditures related to salaries and benefits and compensation expenses related to equity awards, and we may lose new employees to our competitors or other companies before we realize the benefit of our investment in recruiting and training them. Moreover, new employees may not be or become as productive as we expect, as we may face challenges in adequately or appropriately integrating them into our workforce and culture. If we are unable to attract, integrate and retain suitably qualified individuals who are capable of meeting our growing technical, operational and managerial requirements, on a timely basis or at all, our business will be adversely affected.

Volatility or lack of positive performance in our share price may also affect our ability to attract and retain our key employees. Many of our senior management personnel and other key employees have become, or will soon become, vested in a substantial amount of shares of Common Stock, restricted stock units or warrants to purchase Common Stock. Employees may be more likely to leave us if the shares they own or the shares underlying their vested units or warrants have significantly appreciated in value relative to the original grant prices of the shares or units or the exercise prices of the warrants, or, conversely, if the exercise prices of the warrants that they hold are significantly above the market price of our Common Stock. If we are unable to appropriately incentivize and retain our employees through equity compensation, or if we need to increase our compensation expenses in order to appropriately incentivize and retain our employees, our business, operating results and financial condition would be adversely affected.

We may be subject to litigation for a variety of claims, which could adversely affect our results of operations, harm our reputation or otherwise negatively impact our business.

We may be subject to litigation for a variety of claims arising from our normal business activities. These may include claims, suits, and proceedings involving labor and employment, wage and hour, commercial and other matters. The outcome of any litigation, regardless of its merits, is inherently uncertain. Any claims and lawsuits, and the disposition of such claims and lawsuits, could be time-consuming and expensive to resolve, divert management attention and resources, and lead to attempts on the part of other parties to pursue similar claims. Any adverse determination related to litigation could adversely affect our results of operations, harm our reputation or otherwise negatively impact our business. In addition, depending on the nature and timing of any such dispute, a resolution of a legal matter could materially affect our future operating results, our cash flows or both.

The requirements of being a U.S. public company may strain our resources and divert management's attention.

As a U.S. public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Act, the listing requirements of Nasdaq, and other applicable securities rules and regulations.

Compliance with these rules and regulations increases our legal and financial compliance costs, makes some activities more difficult, time-consuming, or costly, and increases demand on our systems and resources. The Exchange Act requires, among other things, that we file annual and current reports with respect to our business and operating results.

As a result of disclosure of information in this prospectus and the registration statement of which this prospectus forms a part, as well as in filings required of a public company, our business and financial condition is more visible, which we believe may result in threatened or actual litigation, including by competitors and other third parties. If such claims are successful, our business and operating results could be harmed, and even if the claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert resources of our management and harm our business and operating results.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the information incorporated by reference herein contain various forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), which represent our expectations or beliefs concerning future events. Forward-looking statements include statements that are predictive in nature, which depend upon or refer to future events or conditions, and/or which include words such as "believes," "plans," "intends," "anticipates," "estimates," "expects," "may," "will" or similar expressions. In addition, any statements concerning future financial performance, ongoing strategies or prospects, and possible future actions, including any potential strategic transaction involving us, which may be provided by our management, are also forward-looking statements. Forward-looking statements are based on current expectations and projections about future events and are subject to risks, uncertainties, and assumptions about our company, economic and market factors, and the industry in which we do business, among other things. These statements are not guarantees of future performance, and we undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events, or otherwise, except as required by law. Actual events and results may differ materially from those expressed or forecasted in forward-looking statements due to a number of factors. Factors that could cause our actual performance, future results and actions to differ materially from any forward-looking statements include, but are not limited to, those discussed under the heading "Risk Factors" in this prospectus and in any of our filings with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act. The forward-looking statements in this prospectus and the information incorporated by reference herein represent our views as of the date such statements are made. These forward-looking statements should not be relied upon as representing our views as of any date subsequent to the date such statements are made.

INDUSTRY AND MARKET DATA

Unless otherwise indicated, information contained in this prospectus concerning our industry and the market in which we operate, including our market position, market opportunity and market size, is based on information from various sources, on assumptions that we have made based on such data and other similar sources and on our knowledge of the markets for our products. These data sources involve a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates.

We have not independently verified any third-party information. While we believe the market position, market opportunity and market size information included in this prospectus is generally reliable, such information is inherently imprecise. In addition, projections, assumptions and estimates of our future performance and the future performance of the industry in which we operate is necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in the section titled "Risk Factors" and elsewhere in this prospectus and in any documents that we incorporate by reference into the registration statement of which this prospectus forms a part. These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

USE OF PROCEEDS

We estimate that our net proceeds from the sale of all 109,090 Units offered in this offering will be approximately \$5.1 million, after deducting placement agent fees and estimated offering expenses payable by us. These estimates exclude the proceeds, if any, from the exercise of the Preferred Warrants issued or issuable in connection with this offering.

Assuming the exercise of all 218,180 Preferred Warrants included in the Units offered hereby for cash, we would receive additional net proceeds of approximately \$12 million. We cannot predict when or if such Preferred Warrants will be exercised. It is possible that such Preferred Warrants may expire and may never be exercised.

A \$5.00 increase or decrease in the assumed public offering price of \$55.00 per Unit would increase or decrease the proceeds from this offering by approximately \$502,000, assuming that the number of Units offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated placement agent fees and estimated offering expenses payable by us. Similarly, each increase or decrease of 500 Units offered would increase or decrease our proceeds by approximately \$25,000, assuming the assumed public offering price remains the same, and after deducting estimated placement agent fees and estimated offering expenses payable by us and excluding the proceeds, if any, from the conversion of the Series B Preferred Stock and the exercise of the Preferred Warrants issued pursuant to this offering.

Because this is a best-efforts offering and there is no minimum offering amount required as a condition to the closing of this offering, the actual offering amount, the placement agent fees and net proceeds to us are not presently determinable and may be substantially less than the maximum amounts set forth on the cover page of this prospectus.

We intend to use up to \$3.0 million of the \$5.1 million in net proceeds we receive from this offering to repurchase outstanding common stock purchase warrants. We intend to use the remaining proceeds of this offering for working capital and general corporate purposes.

The precise amount and timing of the application of such net proceeds will depend upon our funding requirements and the availability and cost of other funds. Our board of directors and management will have considerable discretion in the application of the net proceeds from this offering, and it is possible that we may allocate the proceeds differently than investors in the offering may desire or that we may fail to maximize the return on these proceeds. You will be relying on the judgment of our management with regard to the use of proceeds from this offering, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately.

32

DIVIDEND POLICY

We have never declared or paid any cash dividends on shares of our Common Stock and do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors. Accordingly, investors must rely on sales of their Common Stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

Dividends on the Series B Preferred Stock will be paid in-kind in additional shares of Series B Preferred Stock based on the stated value of \$00.00 per share at an assumed dividend rate of 20%. The PIK dividends will be a one-time payment payable to holders of the Series B Preferred Stock of record at the close of business on the one-year anniversary of the Closing Date.

33

CAPITALIZATION

The following table sets forth our actual cash and cash equivalents and our capitalization as of June 30, 2023:

- on an actual basis;
- on a pro forma basis, after giving effect to (i) the July 2023 Warrant Inducement Transaction, pursuant to which we received \$594,000 in net proceeds from the exercise of 510,000 Existing Warrants, (ii) the July 2023 Equity Grants, and (iii) the Bridge Financing, pursuant to which we received approximately \$600,000 in net proceeds; and
- on a pro forma as adjusted basis, after giving effect to (i) the transactions set forth above, (ii) the sale by us of all 109,090 Units in this offering, after deducting the estimated placement agent fees and estimated offering expenses, and assuming no conversion of any Series B Preferred Stock and no exercise of any Preferred Warrants, and (iii) the application of \$3.0 million in net proceeds from this offering to repurchase existing common stock purchase warrants.

You should read this information in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our condensed consolidated financial statements and related notes appearing in our [Quarterly Report on Form 10-Q for the quarter ended June 30, 2023](#) and our [Annual Report on Form 10-K for the fiscal year ended December 31, 2022](#), which are incorporated by reference in this prospectus.

	As of June 30, 2023 (unaudited)		
	Actual	Pro Forma	Pro Forma As Adjusted⁽¹⁾
<i>(in thousands, except share data)</i>			
Cash and cash equivalents	\$ 2,007	\$ 3,201	\$ 5,351
Short term-debt	-	600	600
Series B Preferred Stock, par value \$0.0001 per share: zero shares authorized, zero shares outstanding, actual, zero shares authorized, zero shares outstanding, pro forma, and 450,000 shares authorized, 109,090 shares outstanding, pro forma as adjusted	-	-	5,150
Stockholders’ Equity:			
Common Stock, par value \$0.0001 per share: 200,000,000 shares authorized, 5,300,916 shares outstanding, actual; 6,579,957 shares outstanding, pro forma; and 6,579,957 shares outstanding, pro forma as adjusted	7	7	7
Additional paid-in capital	240,422	241,016	238,016
Accumulated deficit	(234,568)	(234,568)	(234,568)
Total stockholders’ equity	5,861	6,455	3,455
Total capitalization	\$ 5,861	\$ 7,055	\$ 9,205

- (1) “Pro forma as adjusted” balances do not contemplate the accounting classification or valuation of the warrants or any embedded derivatives in the Series B Convertible Redeemable Preferred Stock which may require bifurcation as separate instruments to be accounted for.

The total number of shares of our Common Stock reflected in the discussion and table above is based on 5,300,916 shares of our Common Stock outstanding as of June 30, 2023, but excludes the following as of such date: (a) up to an aggregate of 5,635,731 shares of Common Stock issuable upon exercise of our outstanding warrants with an weighted average exercise price of \$5.88, (b) up to an aggregate of 136 shares of Common Stock issuable upon exercise of our outstanding pre-funded warrants, (c) 786,497 shares of Common Stock reserved for future issuance under the LTIP, the 2020 Plan and the 2022 Plan, and (d) an aggregate of 5,466 shares of Common Stock issuable upon vesting of restricted stock units that were issued pursuant to the 2020 Plan and 2022 Plan, none of which have vested as of June 30, 2023.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth, as of October 6, 2023, information regarding beneficial ownership of our Common Stock by:

- each person, or group of affiliated persons, who is known by us to beneficially own more than 5% of our Common Stock;
- each of our named executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

The percentage ownership information shown in the table prior to and after this offering is based upon 6,579,957 shares of Common Stock outstanding as of October 6, 2023, assuming no conversion of Series B Preferred Stock and no exercise of any Preferred Warrants issued in connection with this offering.

Beneficial ownership is determined according to the rules of the Securities and Exchange Commission (the “SEC”) and generally means that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power of that security, including securities that are exercisable for shares of Common Stock within sixty (60) days of October 6, 2023. Except as indicated by the footnotes below, we believe, based on the information furnished to us, that the persons named in the table below have sole voting and investment power with respect to all shares of Common Stock shown that they beneficially own, subject to community property laws where applicable.

For purposes of computing the percentage of outstanding shares of our Common Stock held by each person or group of persons named above, any shares of Common Stock that such person or persons has the right to acquire within sixty (60) days of October 6, 2023 is deemed to be outstanding, but is not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. The inclusion herein of any shares of Common Stock listed as beneficially owned does not constitute an admission of beneficial ownership.

Except as otherwise noted below, the address for persons listed in the table is c/o WiSA Technologies, Inc., 15268 NW Greenbrier Pkwy, Beaverton, Oregon 97006.

Name of Beneficial Owner ⁽¹⁾⁽¹³⁾	Common Stock Beneficially Owned Prior to this Offering		Common Stock Beneficially Owned After this Offering	
	Shares	%	Shares	%
Brett Moyer ⁽²⁾	80,748	1.2%	80,748	1.2%
George Oliva ⁽³⁾	32,618	*	32,618	*
Gary Williams ⁽⁴⁾	52,887	*	52,887	*
Lisa Cummins ⁽⁵⁾	11,364	*	11,364	*
Dr. Jeffrey M. Gilbert ⁽⁶⁾	11,376	*	11,376	*
David Howitt ⁽⁷⁾	11,129	*	11,129	*
Helge Kristensen ⁽⁸⁾	11,449	*	11,449	*
Sriram Peruvemba ⁽⁹⁾	11,336	*	11,336	*
Robert Tobias ⁽¹⁰⁾	11,364	*	11,364	*
Wendy Wilson ⁽¹¹⁾	11,222	*	11,222	*
All directors and exec. officers as a group (10 persons) ⁽¹²⁾	245,493	3.7%	245,493	3.7%

* Less than 1.0%

- (1) Percentage of total voting power represents voting power with respect to all shares of our Common Stock. Holders of Common Stock are entitled to one (1) vote per share for each share of Common Stock held by them.
- (2) The number of shares of Common Stock beneficially owned before the offering includes (i) 50 restricted shares of Common Stock (“RSAs”) granted under the LTIP, which are scheduled to vest within sixty (60) days of October 6, 2023; (ii) 833 RSAs granted under the LTIP, which vest on the third anniversary of March 15, 2021, so long as Mr. Moyer remains in the service of the Company on each such anniversary; (iii) 1,499 RSAs granted under the LTIP, which are scheduled to vest quarterly in equal installments for the period from September 15, 2023 to September 15, 2025, on each September 15th, December 15th, March 15th and June 15th, so long as Mr. Moyer remains in the service of the Company on each such date; (iv) 500 RSAs granted under the Company’s LTIP, which are scheduled to vest in equal installments on the first, second and third anniversaries of September 19, 2022, as long as Mr. Moyer remains in service of the Company on each such anniversary; (v) 75,000 RSAs granted under the 2018 LTIP, scheduled to vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026, so long as Mr. Moyer remains in the service of the Company on each such date; and (vi) 484 restricted stock units (“RSUs”) granted under the Company’s 2020 Stock Incentive Plan (the “2020 Plan”), which are scheduled to vest within sixty (60) days of October 6, 2023.

- (3) The number of shares of Common Stock beneficially owned before the offering includes (i) 42 RSAs granted under the LTIP; (ii) 100 RSAs granted under the LTIP; (iii) 900 RSAs granted under the LTIP; (iv) 250 RSAs granted under the LTIP; (v) 30,000 RSAs granted under the 2018 LTIP, all (i) to (v) of which will fully vest on December 20, 2023 (the “Separation Date”), or earlier pursuant to the terms of a separation agreement entered into by the Company and Mr. Oliva on July 11, 2023; and (vi) 207 RSUs granted under the 2020 Plan, scheduled to vest within sixty (60) days of October 6, 2023.
- (4) The number of shares of Common Stock beneficially owned before the offering includes (i) 17 RSAs granted under the LTIP, which are scheduled to vest within sixty (60) days of October 6, 2023; (ii) 66 RSAs granted under the LTIP, which vest on the third anniversary of March 15, 2021, so long as Mr. Williams remains in the service of the Company on each such anniversary; (iii) 298 RSAs granted under the LTIP, which are scheduled to vest quarterly in equal installments for the period from September 15, 2023 to September 15, 2025, on each September 15th, December 15th, March 15th and June 15th, so long as Mr. Williams remains in the service of the Company on each such date; (iv) 52,000 RSAs granted under the 2018 LTIP, scheduled to vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026, so long as Mr. Williams remains in the service of the Company on each such date; and (v) 104 RSUs granted under the 2020 Plan, scheduled to vest within sixty (60) days of October 6, 2023.

36

- (5) The number of shares of Common Stock beneficially owned before the offering includes (i) 10 RSAs granted under the LTIP, which are scheduled to vest within sixty (60) days of October 6, 2023; (ii) 33 RSAs granted under the LTIP, which vest on the third anniversary of March 15, 2021, so long as Ms. Cummins remains in the service of the Company on each such anniversary; (iii) 72 RSAs granted under the LTIP, which are scheduled to vest quarterly in equal installments for the period from September 15, 2023 to September 15, 2025, on each September 15th, December 15th, March 15th and June 15th, so long as Ms. Cummins remains in the service of the Company on each such date; (iv) 11,000 RSAs granted under the 2018 LTIP, scheduled to vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026, so long as Ms. Cummins remains in the service of the Company on each such date; and (v) 34 RSUs granted under the 2020 Plan, scheduled to vest within sixty (60) days of October 6, 2023.
- (6) The number of shares of Common Stock beneficially owned before the offering includes (i) 10 RSAs granted under the LTIP, which are scheduled to vest within sixty (60) days of October 6, 2023; (ii) 33 RSAs granted under the LTIP, which vest on third anniversary of March 15, 2021, so long as Dr. Gilbert remains in the service of the Company on each such anniversary; (iii) 72 RSAs granted under the LTIP, which are scheduled to vest quarterly in equal installments for the period from September 15, 2023 to September 15, 2025, on each September 15th, December 15th, March 15th and June 15th, so long as Dr. Gilbert remains in the service of the Company on each such date; (iv) 11,000 RSAs granted under the 2018 LTIP, scheduled to vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026, so long as Dr. Gilbert remains in the service of the Company on each such date; and (v) 34 RSUs granted under the 2020 Plan, scheduled to vest within sixty (60) days of October 6, 2023.
- (7) The number of shares of Common Stock beneficially owned before the offering includes (i) 72 RSAs granted under the LTIP, which are scheduled to vest in equal installments for the period from September 15, 2023 to September 15, 2025, on each September 15th, December 15th, March 15th and June 15th, so long as Mr. Howitt remains in the service of the Company on each such date; and (ii) 11,000 RSAs granted under the 2018 LTIP, scheduled to vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026, so long as Mr. Howitt remains in the service of the Company on each such date. The number of shares of Common Stock beneficially owned before the offering excludes 19 shares of Common Stock owned by the Dennis Howitt Trust for which Mr. Howitt is the beneficiary and of which Mr. Howitt disclaims beneficial ownership except to the extent of his pecuniary interest therein.
- (8) The number of shares of Common Stock beneficially owned before the offering includes (i) 10 RSAs granted under the LTIP, which are scheduled to vest within sixty (60) days of October 6, 2023; (ii) 33 RSAs granted under the LTIP, which vest on the third anniversary of March 15, 2021, so long as Mr. Kristensen remains in the service of the Company on each such anniversary; (iii) 72 RSAs granted under the LTIP, which are scheduled to vest quarterly in equal installments for the period from September 15, 2023 to September 15, 2025, on each September 15th, December 15th, March 15th and June 15th, so long as Mr. Kristensen remains in the service of the Company on each such date; (iv) 11,000 RSAs granted under the 2018 LTIP, scheduled to vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026, so long as Mr. Kristensen remains in the service of the Company on each such date; and (v) 34 RSUs granted under the 2020 Plan, scheduled to vest within sixty (60) days of October 6, 2023.

37

- (9) The number of shares of Common Stock beneficially owned before the offering includes (i) 14 RSAs granted under the LTIP, which are scheduled to vest within sixty (60) days of October 6, 2023; (ii) 33 RSAs granted under the LTIP, which vest on the third anniversaries of March 15, 2021, so long as Mr. Peruvemba remains in the service of the Company on each such anniversary; (iii) 72 RSAs granted under the LTIP, which are scheduled to vest quarterly in equal installments for the period from September 15, 2023 to September 15, 2025, on each September 15th, December 15th, March 15th and June 15th, so long as Mr. Peruvemba remains in the service of the Company on each such date; (iv) 11,000 RSAs granted under the 2018 LTIP, scheduled to vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026, so long as Mr. Peruvemba remains in the service of the Company on each such date; and (v) 25 RSUs granted under the 2020 Plan, scheduled to vest within sixty (60) days of October 6, 2023.
- (10) The number of shares of Common Stock beneficially owned before the offering includes (i) 7 RSAs granted under the LTIP, which are scheduled to vest within sixty (60) days of October 6, 2023; (ii) 33 RSAs granted under the LTIP, which vest on the third anniversary of March 15, 2021, so long as Mr. Tobias remains in the service of the Company on each such date; (iii) 72 RSAs granted under the LTIP, which are scheduled to vest quarterly in equal installments for the period from September 15, 2023 to September 15, 2025, on each September 15th, December 15th, March 15th and June 15th, so long as Mr. Tobias remains in the service of the Company on each such date; (iv) 11,000 RSAs granted under the 2018 LTIP, scheduled to vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026, so long as Mr. Tobias remains in the service of the Company on each such date; and (v) 34 RSUs granted under the 2020 Plan, scheduled to vest within sixty (60) days of October 6, 2023.
- (11) The number of shares of Common Stock beneficially owned before the offering consists of (i) 33 RSAs granted under the LTIP, which vest on the third anniversaries of May 15, 2021, so long as Ms. Wilson remains in the service of the Company on each such date; (ii) 72 RSAs granted under the LTIP, which are scheduled to vest in equal installments for the period from September 15, 2023 to September 15, 2025, on each September 15th, December 15th, March 15th and June 15th, so long as Ms. Wilson remains in the service of the Company on each such date; and (iii) 11,000 RSAs granted under the 2018 LTIP and being registered hereby, scheduled to vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026, so long as Ms. Wilson remains in the service of the Company on each such date.
- (12) See the information included in footnotes 2 through 11 above.

- (13) With respect to each director and executive officer, to the extent applicable: (i) RSAs that were originally scheduled to vest on September 15, 2023 and/or September 19, 2023 have not yet vested; and (ii) RSUs that were originally scheduled to vest on August 15, 2023 have not yet vested, but are expected to vest within 60 days of October 6, 2023.

DESCRIPTION OF SECURITIES THAT WE ARE OFFERING

We are offering on a best-efforts basis up to 109,090 Units in this offering at the assumed public offering price of \$55.00 per Unit. Each Unit includes one share of our Series B Preferred Stock and two Preferred Warrants, each to purchase one share of our Series B Preferred Stock at an exercise price equal to \$55.00 per share of Series B Preferred Stock, which is 100% of the public offering price of the Units. Our Units will not be certificated and the shares of our Series B Preferred Stock and Preferred Warrants consisting of such Units are immediately separable and will be issued separately in this offering. We are also registering the shares of Series B Preferred Stock issuable as PIK dividends, the shares of Series B Preferred Stock issuable upon exercise of the Preferred Warrants and the shares of common stock issuable upon conversion of the Series B Preferred Stock. These securities are being issued pursuant to a securities purchase agreement between us and the purchasers, or pursuant to the registration statement of which this prospectus forms a part. You should review the securities purchase agreement, the form of Certificate of Designations establishing the Series B Preferred Stock, the form of Preferred Warrant, the Warrant Agency Agreement, and the placement agency agreement between us and the placement agent, each of which are filed, or will be filed, as exhibits to the registration statement of which this prospectus is a part, for a complete description of the terms and conditions applicable to the Units, the Series B Preferred Stock and the Preferred Warrants.

Authorized Capital Stock

We are authorized to issue 220,000,000 shares of our capital stock consisting of (a) 200,000,000 shares of Common Stock, par value \$0.0001 per share, and (b) 20,000,000 shares of “blank check” preferred stock, par value \$0.0001 per share. As of October 6, 2023, 6,579,957 shares of our Common Stock were issued and outstanding and no shares of our preferred stock were issued and outstanding.

Common Stock

The description of our Common Stock is incorporated by reference to [Exhibit 4.14](#) to our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on March 17, 2023. Our Common Stock is traded on Nasdaq under the symbol “WISA”. The transfer agent and registrar for our Common Stock is VStock Transfer, LLC. The transfer agent’s address is 18 Lafayette Place, Woodmere, NY 11598 and its telephone number is (212) 828-8436.

Series B Preferred Stock

The following describes the material terms of the Series B Preferred Stock. This is not a complete description and is subject to, and entirely qualified by reference to applicable provisions of our Certificate of Incorporation, Bylaws and the Certificate of Designation establishing the Series B Preferred Stock, which are filed with the SEC as exhibits to the registration statement of which this prospectus is a part, as well as the relevant portions of Delaware law.

Pursuant to our Certificate of Incorporation, we are authorized to issue 20,000,000 shares of our “blank-check” preferred stock, par value \$0.0001 per share. As of the date of this prospectus, there are no shares designated as preferred stock and no shares issued and outstanding. In connection with this offering, our board of directors will designate approximately 450,000 of these shares of preferred stock as the “Series B Convertible Preferred Stock”, pursuant to a Certificate of Designation of Preferences, Rights and Limitations (the “Certificate of Designations”) that sets forth the terms of such Series B Preferred Stock, with a liquidation preference of \$100.00 per share, which final number of designated shares will be based on the actual number of Series B Preferred Stock issued in connection with this offering.

In addition, subject to the limitations described herein, we may issue additional preferred stock from time to time in one or more series, each with such designation, powers, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions applicable to any of those rights, including dividend rights, voting rights, conversion or exchange rights, terms of redemption and liquidation preferences, as the Board (or a duly authorized committee of the Board) may determine prior to the time of such issuance.

Listing

There is no established trading market for the Series B Preferred Stock and we do not expect a market to develop. In addition, we do not intend to list the Series B Preferred Stock on Nasdaq or any other national securities exchange or any other nationally recognized trading system.

Transfer Agent and Register

The transfer agent and register for the Series B Preferred Stock will be VStock Transfer, LLC, whose address is 18 Lafayette Place, Woodmere, NY 11598 and telephone number is (212) 828-8436.

Maturity

The Series B Preferred Stock matures two (2) years from the Closing Date.

Ranking and Liquidation Preference

Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, prior and in preference to the common stock, holders of the Series B Preferred Stock shall be entitled to receive out of the assets available for distribution to stockholders an amount equal in cash to 100% of the aggregate stated value of \$100.00 per share of all shares of Series B Preferred Stock held by such holder, and any other fees then due and owing thereon under the Certificate of Designation, and no more, and if the assets of the Company shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the holders shall be ratably distributed among the holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full.

Dividends

The Certificate of Designation provides that dividends on the Series B Preferred Stock shall be paid in-kind (“PIK dividends”) in additional shares of Series B Preferred Stock based on the stated value of \$100.00 per share at the annual dividend rate of 20% (the “Dividend Rate”). The PIK dividends will be a one-time payment payable to holders of the Series B Preferred of record at the close of business on the one-year anniversary of the Closing Date (the “Dividend Record Date”). PIK dividends on each share of Series B

Preferred Stock shall be paid three business days after the Dividend Record Date in additional fully paid and nonassessable, registered shares of Series B Preferred Stock in a number equal to the quotient obtained by dividing (A) the product obtained by multiplying (i) the Dividend Rate and (ii) the stated value of \$100.00 per share, by (B) the public offering price per Unit (equal to \$55.00).

Conversion

The Series B Preferred Stock is convertible at any time at the option of the holder. Except as provided below, the Series B Preferred Stock is not convertible into or exchangeable for any other securities or property.

Conversion at Option of Holder

Each share of Series B Preferred Stock is convertible at the option of the holder at any time into shares of our common stock at the Conversion Price (\$0.4801 based on the closing price of our common stock on the Nasdaq Capital Market on October 5, 2023) which Conversion Price is subject to adjustment. The Conversion Price will equal the closing price of our common stock on the Nasdaq Capital Market on the date on which the offering is priced. The Conversion Price is subject to adjustment for: (i) the payment of stock dividends or other distributions payable in common stock on the outstanding shares of our common stock, excluding the shares of common stock issuable upon the conversion of the Series B Preferred Stock; and (ii) subdivisions and combinations (including by way of a reverse stock split).

Holders shall effect conversions of the Series B Preferred Stock by providing us a conversion notice (a "Notice of Conversion"), duly completed and executed. The Notice of Conversion must specify the number of shares of Series B Preferred Stock then held by the holder and the number of such shares which the holder is converting. To effect conversions of shares of Series B Preferred Stock, a holder shall not be required to surrender the certificate(s), if any, representing the shares of Series B Preferred Stock to us unless all of the shares of Series B Preferred Stock represented thereby are so converted, in which case such holder shall deliver the certificate representing such shares of Series B Preferred Stock promptly following the conversion date at issue. Shares of Series B Preferred Stock converted into our shares of common stock shall be canceled and shall not be reissued.

If, at any time while the Series B Preferred Stock is outstanding: we (A) pay a stock dividend or otherwise make a distribution or distributions payable in shares of our common stock or any other Common Stock Equivalents (as defined in the Certificate of Designation) (which, for avoidance of doubt, shall not include any shares of common stock issued by us upon conversion of the Series B Preferred Stock, or payment of a dividend on the Series B Preferred Stock) with respect to the then outstanding shares of common stock; (B) subdivide outstanding shares of common stock into a larger number of shares; (C) combine (including by way of a reverse stock split) outstanding shares of common stock into a smaller number of shares or (D) issue, in the event of a reclassification of shares of the common stock, any shares of our capital stock, which we refer to collectively as the "Anti-Dilution Provisions", then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of common stock (excluding any treasury shares) outstanding immediately before such event and of which the denominator shall be the number of shares of common stock outstanding immediately after such event (excluding any treasury shares). Any adjustment made as a result of the Anti-Dilution Provisions shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision or combination. All calculations will be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of the Anti-Dilution Provisions, the number of shares of common stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of common stock (excluding any treasury shares) issued and outstanding. Whenever the Conversion Price is adjusted pursuant to any Anti-Dilution Provision, we will promptly deliver to each holder of Series B Preferred Stock a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Notwithstanding the foregoing in no event may the Conversion Price be less than the par value per share of Series B Preferred Stock.

Obligations Absolute

Subject to holder's right to rescind a notice of conversion, our obligation to issue and deliver the shares of common stock upon conversion of Series B Preferred Stock in accordance with its terms are absolute and unconditional, irrespective of any action or inaction by a holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such holder or any other Person of any obligation to us or any violation or alleged violation of law by such holder or any other Person, and irrespective of any other circumstance which might otherwise limit our obligation to such holder in connection with the issuance of such shares of common stock. If we fail to deliver to a holder shares of common stock upon conversion by the Share Delivery Date (as defined in the Certificate of Designation) applicable to such conversion, we shall pay to such holder, in cash, as liquidated damages and not as a penalty, for each \$250 of stated value of Series B Preferred Stock being converted, \$2.50 per Trading Day (increasing to \$5 per Trading Day on the third Trading Day after the Share Delivery Date and increasing to \$10 per Trading Day on the sixth Trading Day after the Share Delivery Date) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion.

Buy-In on Failure to Timely Deliver Certificates Upon Conversion

If we fail to deliver to a holder the applicable certificate or certificates or to effect a delivery via DWAC, as applicable, by the Share Delivery Date (other than a failure caused by incorrect or incomplete information provided by the holder to us), and if after such Share Delivery Date the holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the holder's brokerage firm otherwise purchases, shares of common stock to deliver in satisfaction of a sale by such holder of the Conversion Shares which the holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then we are obligated to (A) pay in cash to the holder (in addition to any other remedies available to or elected by the holder) the amount by which (x) the holder's total purchase price (including any brokerage commissions) for the shares of common stock so purchased exceeds (y) the product of (1) the aggregate number of shares of common stock that such holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the holder, either reissue (if surrendered) the shares of Series B Preferred Stock equal to the number of shares of Series B Preferred Stock submitted for conversion or deliver to the holder the number of shares of common stock that would have been issued if we had timely complied with our delivery requirements. For example, if a holder purchases shares of common stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series B Preferred Stock with respect to which the actual sale price (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, we would be required to pay such holder \$1,000. The holder shall provide us written notice, within three Trading Days after the occurrence of a Buy-In, indicating the amounts payable to such holder in respect of such Buy-In together with applicable confirmations and other evidence reasonably requested by us. Nothing herein shall limit a holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to our failure to timely deliver certificates representing shares of common stock upon conversion of the shares of Series B Preferred Stock as required pursuant to the terms hereof; *provided, however*, that the holder shall not be entitled to both (i) require the reissuance of the shares of Series B Preferred Stock submitted for conversion for which such conversion was not timely honored and (ii) receive the number of shares of common stock that would have been issued if we had timely complied with its delivery requirements under the section entitled "Delivery of Certificate or Electronic Issuance Upon Conversion."

Reservation of Shares Issuable Upon Conversion

We have agreed that we will at all times reserve and keep available out of our authorized and unissued shares of common stock for the sole purpose of issuance upon conversion of the Series B Preferred Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the holders of the Series B Preferred Stock, not less than such aggregate number of shares of the common stock as shall be issuable upon the conversion of all outstanding shares of Series B Preferred Stock. We have further agreed that all shares of common stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid, nonassessable and free and clear of all liens and other encumbrances.

Beneficial Ownership Limitation

Notwithstanding anything herein to the contrary, we shall not effect any conversion of the Series B Preferred Stock, and a Holder shall not have the right to convert any portion of the Series B Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of common stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of common stock issuable upon conversion of the Series B Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of common stock which are issuable upon (i) conversion of the remaining, unconverted Series B Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other of our securities subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series B Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this section, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this section applies, the determination of whether the Series B Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series B Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Series B Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Series B Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to us each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this section and we shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this section, in determining the number of outstanding shares of common stock, a Holder may rely on the number of outstanding shares of common stock as stated in the most recent of the following: (i) our most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by us or (iii) a more recent written notice by us or the Transfer Agent setting forth the number of shares of common stock outstanding. Upon the written or oral request (which may be via email) of a Holder, we within one (1) Trading Day confirm orally and in writing to such Holder the number of shares of common stock then outstanding. In any case, the number of outstanding shares of common stock shall be determined after giving effect to the conversion or exercise of our securities, including the Series B Preferred Stock, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of common stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% (or, upon election by a Holder prior to the issuance of any shares of Series B Preferred Stock, 9.99%) of the number of shares of the common stock outstanding immediately after giving effect to the issuance of shares of common stock issuable upon conversion of Series B Preferred Stock held by the applicable Holder. A Holder, upon notice to us, may increase or decrease the Beneficial Ownership Limitation provisions of this section applicable to its Series B Preferred Stock; provided, that the Beneficial Ownership Limitation shall not in any event exceed 9.99% of the number of shares of the common stock outstanding immediately after giving effect to the issuance of shares of common stock upon conversion of this Series B Preferred Stock held by the Holder and the provisions of this section shall continue to apply. Any such increase will not be effective until the 61st day after such notice is delivered to us and shall only apply to such Holder and no other Holder. The Beneficial Ownership Limitation shall not be waived by us or the Holder and upon issuance of the Series B Preferred Stock by us, and the purchase thereof by the Holder, each of us and the Holder shall be deemed to acknowledge such limitation and to agree not to waive it. The provisions of this section shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this section to correct this section (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this subsection shall apply to a successor holder of Series B Preferred Stock.

Subsequent Rights Offerings

In addition to any Anti-Dilution Adjustments described above, if at any time we grant, issue or sell any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property *pro rata* to the record holders of common stock or any class thereof (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of common stock acquirable upon complete conversion of such Holder's Series B Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of common stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of common stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

Pro Rata Distributions

During such time as the Series B Preferred Stock is outstanding, if we declare or make any dividend or other distribution of our assets (or rights to acquire its assets) to holders of common stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Series B Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of our common stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

Fundamental Transactions

In the event of a Fundamental Transaction (as defined in the Certificate of Designations of the Series B Preferred Stock), and generally including any reorganization, recapitalization or reclassification of our common stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, or the acquisition of more than 50% of our outstanding common stock, the holders of the Series B Preferred Stock will be entitled to receive upon conversion of the Series B Preferred Stock the kind and amount of securities, cash or other property that the holders would have received had they converted the Series B Convertible Stock immediately prior to such Fundamental Transaction (without regard to the beneficial ownership limitation referred to above).

Mandatory Redemption

If any shares of Series B Preferred Stock are outstanding at the end of the two (2) year term, then we shall promptly redeem all of such outstanding shares of Series B Preferred Stock on a pro rata basis among all of the Holders of Series B Preferred Stock commencing on the two-year anniversary of the Closing Date in cash at a price per Series B Preferred Share equal to the sum of (x) 100% of the stated value per share of the Series B Preferred Stock plus (y) all other amounts due in respect of the Series B Preferred Stock (if any). If on the Mandatory Redemption Date, Delaware law governing distributions to stockholders prevents the Company from redeeming all shares of Series B Preferred Stock to be redeemed, then the Corporation shall, provided there is no prohibition under Delaware law, redeem the Series B Preferred Stock by paying to the Holder the unpaid cash redemption payment in duly authorized, validly issued, fully paid and non-assessable shares of Common Stock equal in number to the quotient obtained by dividing such unpaid amount by the closing price of the Common Stock on the Trading Market on the Mandatory Redemption Date.

Limited Voting Rights

Holders of the Series B Preferred Stock will not have any voting rights, except as described below or as otherwise required by law.

In any matter in which the Series B Preferred Stock may vote (as expressly provided herein or as may be required by law), each share of Series B Preferred Stock will be entitled to one vote per share. So long as any shares of Series B Preferred Stock remain outstanding, the Company will not, without the consent or the affirmative vote of a majority of the outstanding shares of Series B Preferred Stock, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose: (i) alter or change adversely the powers, preferences or rights given to the Series B Preferred Stock or alter or amend adversely the Certificate of Designations; (ii) increase the number of authorized shares of Series B Preferred Stock; or (iii) enter into any agreement with respect to any of the foregoing.

The rules and procedures for calling and conducting any meeting of the holders of the Series B Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Director (or a duly authorized committee of the Board of Directors), in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation, Bylaws, applicable law and any national securities exchange or other trading facility on which the Series B Preferred Stock may be listed or traded at the time.

Holders of the Series B Preferred Stock will not have any voting rights with respect to, and the consent of the holders of the Series B Preferred Stock is not required for, the taking of any corporate action, including any merger or consolidation involving the Company or a sale of all or substantially all of the Company's assets, regardless of the effect that such merger, consolidation or sale may have upon the powers, preferences, voting power or other rights or privileges of the Series B Preferred Stock, except as described above.

No Preemptive Rights

No holders of the Series B Preferred Stock will, as holders of Series B Preferred Stock, have any preemptive rights to purchase or subscribe for Common Stock or any other security.

Exclusion of Other Rights

The shares of the Series B Preferred Stock do not have any voting powers, preferences or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth in the Certificate of Designation or in our Certificate of Incorporation.

Registration; Transfer

Pursuant to the terms of the Certificate of Designations, the Company is obligated to maintain an effective registration statement covering: (a) the issuance of shares of common stock issuable upon conversion of the Series B Preferred Stock and (b) the issuance of additional shares of Series B Preferred Stock pursuant to our obligation to pay PIK dividends, in each case, until such time as no Series B Preferred Stock (and no Warrants exercisable for shares of Series B Preferred Stock) remain outstanding, unless there is available an exemption from, or a transaction not subject to, the registration requirements of the Securities Act that covers the issuance of the Series B Preferred Stock and the shares of common stock issuable upon conversion of such shares of Series B Preferred Stock.

Book-Entry Procedures

DTC will act as securities depository for the Series B Preferred Stock offered hereunder. With respect to the Series B Preferred Stock offered hereunder, we will issue one or more fully registered global securities certificates in the name of DTC or DTC's nominee. These certificates will represent the total aggregate number of shares of Series B Preferred Stock. We will deposit these certificates with DTC or a custodian appointed by DTC. We will not issue certificates to you for the shares of Series B Preferred Stock that you purchase, unless DTC's services are discontinued as described below.

Title to book-entry interests in the Series B Preferred Stock will pass by book-entry registration of the transfer within the records of DTC in accordance with its procedures. Book-entry interests in the securities may be transferred within DTC in accordance with procedures established for these purposes by DTC. Each person owning a beneficial interest in shares of the Series B Preferred Stock must rely on the procedures of DTC and the participant through which such person owns its interest to exercise its rights as a holder of the Series B Preferred Stock. DTC has advised us that it is a limited-purpose trust company organized under the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered under the provisions of Section 17A of the Exchange Act. DTC holds securities that its participants ("Direct Participants") deposit with DTC. DTC also facilitates the settlement among Direct Participants of securities transactions, such as transfers and pledges in deposited securities through electronic computerized book-entry changes in Direct Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. Access to the DTC system is also available to others such as securities brokers and dealers, including the Placement Agent, banks and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The rules applicable to DTC and its Direct and Indirect Participants are on file with the SEC.

When you purchase shares of Series B Preferred Stock within the DTC system, the purchase must be by or through a Direct Participant. The Direct Participant will receive a credit for the Series B Preferred Stock on DTC's records. You will be considered to be the "beneficial owner" of the Series B Preferred Stock. Your beneficial ownership interest will be recorded on the Direct Participants and Indirect Participants' records, but DTC will have no knowledge of your individual ownership. DTC's records reflect only the identity of the Direct Participants to whose accounts shares of Series B Preferred Stock are credited.

You will not receive written confirmation from DTC of your purchase. The Direct Participants or Indirect Participants through whom you purchased the Series B Preferred Stock should send you written confirmations providing details of your transactions, as well as periodic statements of your holdings. The Direct Participants and Indirect Participants are responsible for keeping an accurate account of the holdings of their customers like you.

Transfers of ownership interests held through Direct Participants and Indirect Participants will be accomplished by entries on the books of Direct Participants and Indirect Participants acting on behalf of the beneficial owners.

The laws of some states may require that specified purchasers of securities take physical delivery of shares of Series B Preferred Stock in definitive form. These laws may impair the ability to transfer beneficial interests in the global certificates representing the Series B Preferred Stock.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

We understand that, under DTC's existing practices, in the event that we request any action of the holders, or an owner of a beneficial interest in a global security, such as you, desires to take any action that a holder is entitled to take under our Certificate of Incorporation (including the Certificate of Designations designating the Series B Preferred Stock), DTC would authorize the Direct Participants holding the relevant shares to take such action, and those Direct Participants and any Indirect Participants would authorize beneficial owners owning through those Direct Participants and Indirect Participants to take such action or would otherwise act upon the instructions of beneficial owners owning through them.

Any redemption notices with respect to the Series B Preferred Stock will be sent to DTC or its nominee. If less than all of the outstanding shares of Series B Preferred Stock are being redeemed, DTC will reduce each Direct Participant's holdings of shares of Series B Preferred Stock in accordance with its procedures.

In those instances where a vote is required, neither DTC nor its nominee will consent or vote with respect to the shares of Series B Preferred Stock. Under its usual procedures, DTC would mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns DTC's or its nominee's consenting or voting rights to those Direct Participants whose accounts the shares of Series B Preferred Stock are credited to on the record date, which are identified in a listing attached to the omnibus proxy.

Dividends on the Series B Preferred Stock are made directly to DTC (or its successor, if applicable). DTC's practice is to credit participants' accounts on the relevant payment date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on that payment date.

Payments by Direct Participants and Indirect Participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name." These payments will be the responsibility of the participant and not of DTC, us or any agent of ours. DTC may discontinue providing its services as securities depository with respect to the Series B Preferred Stock at any time by giving reasonable notice to us. Additionally, we may decide to discontinue the book-entry only system of transfers with respect to the Series B Preferred Stock. In that event, we will print and deliver certificates in fully registered form for the Series B Preferred Stock. If DTC notifies us that it is unwilling to continue as securities depository, or it is unable to continue or ceases to be a clearing agency registered under the Exchange Act and a successor depository is not appointed by us within 90 days after receiving such notice or becoming aware that DTC is no longer so registered, we will issue the Series B Preferred Stock in definitive form, at our expense, upon registration of transfer of, or in exchange for, such global security.

According to DTC, the foregoing information with respect to DTC has been provided to the financial community for informational purposes only and is not intended to serve as a representation, warranty or contract modification of any kind.

Global Clearance and Settlement Procedures

Initial settlement for the Series B Preferred Stock will be made in immediately available funds. Secondary market trading among DTC's participants occurs in the ordinary way in accordance with DTC's rules and will be settled in immediately available funds using DTC's Same-Day Funds Settlement System.

Direct Registration System

The Series B Preferred Stock will be registered in book-entry form through the Direct Registration System (the "DRS"). The DRS is a system administered by DTC pursuant to which the depository may register the ownership of uncertificated shares, which ownership shall be evidenced by periodic statements issued by the depository to the holders of shares of Series B Preferred Stock entitled thereto. This direct registration form of ownership allows investors to have securities registered in their names without requiring the issuance of a physical stock certificate, eliminates the need for you to safeguard and store certificates and permits the electronic transfer of securities to effect transactions without transferring physical certificates.

Preferred Warrants

The following summary of certain terms and provisions of the Preferred Warrants offered hereby is not complete and is subject to, and qualified in its entirety by, the provisions of the form of Warrant Agency Agreement between us and the Warrant Agent, and the form of Preferred Warrant, both of which are filed as exhibits to the registration statement of which this prospectus forms a part. Prospective investors should carefully review the terms and provisions set forth in form of Warrant Agency Agreement, including the annexes thereto, and the form of Preferred Warrant.

Exercisability

The Preferred Warrants are exercisable at any time after their original issuance and at any time up to the date that is two years after the Closing Date. The Preferred Warrants will be exercisable, at the option of each holder, in whole or in part by delivering to us a duly executed exercise notice and, by payment in full in immediately available funds for the number of shares of Series B Preferred Stock purchased upon such exercise. The Preferred Warrants will not include a cashless exercise feature. No fractional shares will be issued in connection with the exercise of a Warrant. In lieu of fractional shares, we will pay the holder an amount in cash equal to the fractional amount multiplied by the Stated Value of the Series B Preferred Stock. Accordingly, a holder of the Preferred Warrants is entitled to exercise a number of Preferred Warrants that would solely result in the holder receiving one or more whole shares of Series B Preferred Stock. If we fail to deliver to a holder the applicable certificate or certificates or to effect a delivery via DWAC, as applicable, (other than certain specified failures) and the holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the holder's brokerage firm otherwise purchases, shares of common stock to deliver in satisfaction of a sale by such holder of the Series B Preferred Stock which the holder anticipated receiving upon such exercise, then we shall (A) pay in cash to the holder the amount, if any, by which (x) the holder's total purchase price (including brokerage commissions, if any) for the shares of Series B Preferred Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of shares of Series B Preferred Stock that we were required to deliver to the holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B)

at the option of the holder, either reinstate the portion of the Preferred Warrant and equivalent number of shares of Series B Preferred Stock for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the holder the number of shares of Series B Preferred Stock that would have been issued had we timely complied with its exercise and delivery obligations hereunder.

Exercise Limitation

A holder will not have the right to exercise any portion of the Preferred Warrant if the holder (together with its affiliates) would beneficially own in excess of 4.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Preferred Warrants. However, any holder may increase or decrease such percentage to any other percentage not in excess of 9.99%, provided that any increase in such percentage shall not be effective until 61 days following notice from the holder to us.

Exercise Price

The exercise price per Preferred Warrant is \$55.00 to purchase one shares of our Series B Preferred Stock, which is 100% of the public offering price per Unit. The exercise price is subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our common stock and also upon any distributions of assets, including cash, stock or other property to our stockholders.

Adjustment

If, at any time while the Preferred Warrants are outstanding: we (A) pay a stock dividend or otherwise make a distribution or distributions payable in shares of our Series B Preferred Stock (which, for avoidance of doubt, shall not include any shares of Series B Preferred Stock issued by us upon exercise of the Preferred Warrants and shall not include any of the PIK dividends to be paid to holders of shares of Series B Preferred Stock); (B) subdivide outstanding shares of Series B Preferred Stock into a larger number of shares; (C) combine (including by way of a reverse stock split) outstanding shares of Series B Preferred Stock into a smaller number of shares or (D) issue, in the event of a reclassification of shares of the Series B Preferred Stock, any shares of our capital stock, which we refer to collectively as the “Anti-Dilution Provisions”, then the number of shares issuable upon exercise of the Preferred Warrants shall be proportionately adjusted such that the aggregate Exercise Price of the Preferred Warrants shall remain unchanged.

Subsequent Rights Offerings

In addition to any adjustments pursuant to the paragraph above, if at any time that a Warrant is outstanding we grant, issue or sell any Preferred Stock Equivalents or rights to purchase shares, warrants, securities or other property pro rata to all of the record holders of the Series B Preferred Stock (the “Purchase Rights”), then the Holder or the Warrant will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Series B Preferred Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Series B Preferred Stock are to be determined for the grant, issue or sale of such Purchase Rights.

Pro Rata Distributions

During such time as a Warrant is outstanding, if we shall declare or make any dividend or other distribution of our assets (or rights to acquire our assets) to holders of shares of Series B Preferred Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, share or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (except to the extent an adjustment was already made pursuant to the second preceding paragraph) (a “Distribution”), at any time after the issuance of the Preferred Warrants, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Series B Preferred Stock acquirable upon complete exercise of the Warrant immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Series B Preferred Stock are to be determined for the participation in such Distribution. Any Distribution or Distributions to be paid to any holder of shares of Series B Preferred Stock arising as a result of our obligation to issue PIK dividends on the Series B Preferred Stock pursuant to the Certificate of Designations, shall be held in trust for the benefit of such holder of shares of Series B Preferred Stock holding the Warrant at the time of exercise of the Warrant, and paid to such holder only upon such exercise.

Transferability

Subject to applicable laws, the Preferred Warrants may be offered for sale, sold, transferred or assigned without our consent.

No Listing

There is no established public trading market for, and we do not expect a market to develop for, the Preferred Warrants. In addition, we do not intend to apply for listing of the Preferred Warrants on any securities exchange or trading system, including Nasdaq. Without an active market, the liquidity of the Preferred Warrants will be limited.

Warrant Agent; Global Certificate

The Preferred Warrants will be issued in registered form under a Warrant Agency Agreement between us and the Warrant Agent, Equiniti Trust Company, LLC. The Preferred Warrants shall initially be represented only by one or more global warrants deposited with the Warrant Agent, as custodian on behalf of The Depository Trust Company (DTC) and registered in the name of Cede & Co., a nominee of DTC, or as otherwise directed by DTC.

Fundamental Transactions

In the event of a “fundamental transaction,” as defined in the Preferred Warrants and generally including any reorganization, recapitalization or reclassification of our Common Stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the acquisition of more than 50% of our outstanding Common Stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding Common Stock, the holders of the Preferred Warrants will be entitled to receive upon exercise of the Preferred Warrants the kind and amount of securities, cash or other property that the holders would have received had they exercised the Preferred Warrants immediately prior to such fundamental transaction.

Registration; Transfer

Pursuant to the terms of the Preferred Warrants, we are obligated to maintain an effective registration statement covering the issuance of the shares of Series B Preferred Stock upon exercise of the Preferred Warrants and the shares of Common Stock issuable upon conversion of such shares of Series B Preferred Stock until such time as no Warrants remain outstanding, unless there is available an exemption from, or a transaction not subject to, the registration requirements of the Securities Act that covers the issuance of the Series B Preferred Stock and the shares of Common Stock issuable upon conversion of such shares of Series B Preferred Stock.

Rights as a Stockholder

Except as otherwise provided in the Preferred Warrants or by virtue of such holder's ownership of our Common Stock, the holder of a Warrant does not have the rights or privileges of a holder of our Common Stock, including any voting rights, until the holder exercises the Warrant and converts the shares of Series B Preferred Stock received upon such exercise into shares of Common Stock.

Governing Law

The Preferred Warrants and the Warrant Agency Agreement are governed by New York law.

Anti-Takeover Effects of Provisions of the DGCL and our Certificate of Incorporation and Bylaws

Anti-Takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law, which generally prohibits a publicly held Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, those shares owned (1) by persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, those shares owned (1) by persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines a "business combination" to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;

- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an "interested stockholder" as an entity or person who, together with the person's affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

Anti-Takeover Effects of Certain Provisions of our Bylaws

Our bylaws provide that directors may be removed by the stockholders with or without cause upon the vote of a majority of the holders of Common Stock then entitled to vote. Furthermore, the authorized number of directors may be changed only by resolution of the board of directors or of the stockholders, and vacancies may only be filled by a majority vote of the directors, including those who may have resigned. Except as otherwise provided in the bylaws and the certificate of incorporation, as amended, any vacancies or newly created directorships on the board of directors resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

Our bylaws also provide that only our chairman of the board, chief executive officer, president or one or more stockholders holding shares in the aggregate entitled to cast not less than ten percent of the votes at that meeting may call a special meeting of stockholders.

The combination of these provisions makes it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and its policies and to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to reduce our vulnerability to hostile takeovers and to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and may have the effect of delaying changes in our control or management. As a consequence, these provisions may also inhibit fluctuations in the market price of our Common Stock that could result from actual or rumored takeover attempts. We believe that the benefits of these provisions, including increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure our company, outweigh the disadvantages of discouraging takeover proposals, because negotiation of takeover proposals could result in an improvement of their terms.

Limitation on Directors' Liability; Indemnification

Our bylaws contain provisions that limit the liability of our current and former directors for monetary damages to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the director's duty of loyalty to the corporation or its stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or
- any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to liabilities arising under federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our bylaws provide that we are required to indemnify our directors to the fullest extent permitted by Delaware law. Our bylaws also provide that, upon satisfaction of certain conditions, we are required to advance expenses incurred by a director in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity regardless of whether we would otherwise be permitted to indemnify him or her under the provisions of Delaware law. Our bylaws also provide our board of directors with discretion to indemnify our officers and employees when determined appropriate by our board of directors. We have entered into agreements to indemnify our directors, executive officers and other employees as determined by the board of directors. With certain exceptions, these agreements provide for indemnification for related expenses including, among other things, attorneys' fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain customary directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our bylaws may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions. At present, there is no pending litigation or proceeding involving any of our directors, officers or employees for which indemnification is sought and we are not aware of any threatened litigation that may result in claims for indemnification.

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES

The following is a discussion of material U.S. federal income tax considerations relevant to the purchase, ownership, disposition and conversion of the Series B Preferred Stock and the acquisition, ownership and disposition of our Common Stock received upon conversion of the Series B Preferred Stock, as well as the purchase, ownership, disposition and exercise of the Preferred Warrants. The following discussion is based upon the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations and judicial and administrative authority, all of which are subject to change, possibly with retroactive effect, or to different interpretations. We cannot assure you that a change in the law will not significantly alter the tax consequences that we describe in this discussion. We have not sought any ruling from the Internal Revenue Service (the "IRS") or opinion of counsel with respect to the statements made and conclusions reached in this discussion, and there can be no assurance that the IRS or a court will agree with the statements and conclusions in this discussion.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to an investor's decision to purchase the Units, nor any tax consequences arising under U.S. federal estate or gift tax laws or under the laws of any state, locality or foreign jurisdiction. This discussion also does not address the Medicare tax on certain investment income or the tax consequences that may be applicable to special classes of investors including, but not limited to, tax-exempt organizations, qualified foreign pension funds, insurance companies, banks or other financial institutions, partnerships or other pass-through entities or holders of interests therein, dealers in securities or currency, persons liable for the alternative minimum tax, U.S. expatriates and former long-term U.S. residents, traders in securities that elect to use a mark-to-market method of accounting for their securities holdings, regulated investment companies, real estate investment trusts, "controlled foreign corporations," "passive foreign investment companies," common trust funds, certain trusts, hybrid entities, U.S. holders whose "functional currency" is not the U.S. dollar, foreign governments or international organizations and persons that will hold our Series B Preferred Stock, our Common Stock received upon conversion of the Series B Preferred Stock or the Preferred Warrants as a position in a "straddle," "conversion transaction" or other risk reduction transaction. This discussion is limited to taxpayers who will hold our Series B Preferred Stock, our Common Stock received upon conversion of our Series B Preferred Stock and the Preferred Warrants as "capital assets" (generally, property held for investment).

If a partnership (including an entity or arrangement treated as a partnership for U.S. federal income tax purposes) holds our Series B Preferred Stock, our Common Stock received upon conversion of our Series B Preferred Stock or the Preferred Warrants, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and upon the activities of the partnership. Accordingly, we urge partnerships (including entities and arrangements treated as partnerships for U.S. federal income tax purposes) that hold our Series B Preferred Stock, our Common Stock received upon conversion of our Series B Preferred Stock or the Preferred Warrants and partners in such partnerships to consult their tax advisors.

This discussion is addressed to a holder of our Series B Preferred Stock, our Common Stock received upon conversion of the Series B Preferred Stock or the Preferred Warrants that is a U.S. holder or non-U.S. holder for U.S. federal income tax purposes. You are a "U.S. holder" if you are a beneficial owner of Series B Preferred Stock, our Common Stock received upon conversion of the Series B Preferred Stock or the Preferred Warrants and you are, for U.S. federal income tax purposes:

- An individual citizen or resident of the United States;
- a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, that was created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate whose income is subject to U.S. federal income tax regardless of its source; or
- a trust (i) whose administration is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust or (ii) which has made a valid election to be treated as a U.S. person.

A "non-U.S. Holder" is a beneficial holder of our Series B Preferred Stock, our Common Stock received upon conversion of the Series B Preferred Stock or the Preferred

We urge each prospective investor to consult with its own tax adviser as to the U.S. federal, state, local, foreign and any other tax consequences of the purchase, ownership, conversion and disposition of our Series B Preferred Stock and of the acquisition, ownership and disposition of our Common Stock received upon conversion of the Series B Preferred Stock, as well as the purchase, ownership, disposition, and exercise of the Preferred Warrants.

General Treatment of Units

There is no authority directly addressing the treatment, for U.S. federal income tax purposes, of instruments with terms substantially the same as the Units and, therefore, their treatment is not entirely clear. The purchase of a Unit should be treated for U.S. federal income tax purposes as the purchase of one share of our Series B Preferred Stock and one Warrant to acquire one-half of one share of our Series B Preferred Stock. We intend to treat the purchase of a Unit in this manner and, by purchasing a Unit, you agree to adopt such treatment for tax purposes. Each holder of a Unit must allocate the purchase price paid by such holder for such Unit between the share of our Series B Preferred Stock and one Warrant to acquire one-half of one share of our Series B Preferred Stock based on their respective relative fair market values. A holder's initial tax basis in the one share of our Series B Preferred Stock and one Warrant to acquire one-half of one share of our Series B Preferred Stock included in each Unit should equal the portion of the purchase price of the Unit allocated thereto. The separation of the Series B Preferred Stock and Warrant constituting a Unit should not be a taxable event for U.S. federal income tax purposes.

The foregoing treatment of the Units and a holder's purchase price allocation are not binding on the IRS or the courts. Because there is no authority that directly addresses instruments that are similar to the Units, no assurance can be given that the IRS or the courts will agree with the characterization described above or the discussion below. The following discussion is based on the assumption that the characterization of the Series B Preferred Stock and the Warrant and the allocation described above are respected for U.S. federal income tax purposes.

Each prospective investor is urged to consult its tax advisors regarding the U.S. federal, state, local and any foreign tax consequences of an investment in a Unit (including possible alternative characterizations of a Unit and its components).

U.S. Holders

Distributions on Series B Preferred Stock or Common Stock

Distributions in General.

Distributions paid on our Series B Preferred Stock and our Common Stock (other than certain stock distributions with respect to our Series B Preferred Stock and Common Stock) will be treated as dividends to the extent of our current or accumulated earnings and profits, as determined under the Code. To the extent that the amount of distributions with respect to our Series B Preferred Stock or Common Stock exceeds our current and accumulated earnings and profits, such excess will be treated first as a tax-free return of capital to the extent of (and in reduction of) the U.S. holder's adjusted tax basis in such Series B Preferred Stock or Common Stock, as the case may be, on a share-by-share basis, and thereafter as capital gain. Such gain will be long-term capital gain provided that the U.S. holder has held such Series B Preferred Stock or Common Stock, as the case may be, for more than one year as of the time of the distribution. Subject to applicable limitations and restrictions, dividends paid to non-corporate U.S. holders will be subject to a reduced U.S. federal income tax rate if such dividends are treated as "qualified dividend income" for U.S. federal income tax purposes. Subject to applicable limitations and restrictions, dividends paid to U.S. holders that are U.S. corporations are subject to tax at ordinary corporate income tax rates, but will qualify for the dividends received deduction. However, any distribution (or the portion of any distribution) that exceeds our current and accumulated earnings and profits will not be eligible for the dividends received deduction. **A U.S. holder should consult its own tax adviser regarding the availability of the reduced U.S. federal income tax rate applicable to "qualified dividend income" or the dividends received deduction, as applicable, in the light of its particular circumstances.**

Redemption Premium with respect to the Series B Preferred Stock.

Because the Series B Preferred Stock is being offered at a discount (*i.e.*, the OID) to the Series B Preferred Stock stated value, which is the price at which the Series B Preferred Stock will be redeemed on the third anniversary of the date of original issuance of the Series B Preferred Stock (if not previously converted), we intend to take the position that the Series B Preferred Stock issued in this offering will be issued with a "redemption premium" under Section 305(c) of the Code that exceeds the statutory *de minimis* amount. U.S. holders of Series B Preferred should be treated as receiving constructive distributions as the redemption premium accrues under a constant yield method. Such distributions should have the consequences described in "Distributions in General" above.

PIK Dividends Distributions on Series B Preferred Stock.

Our payment of a distribution on the Series B Preferred Stock in the form Series B Preferred Stock (*i.e.*, a PIK dividend) will generally be taxable for U.S. federal income tax purposes in the same manner as distributions described in "Distributions in General" above. The amount of such distribution will equal the fair market value on the distribution date of the Series B Preferred Stock distributed to a U.S. holder on that date. A U.S. holder's tax basis in such distributed Series B Preferred Stock will equal the fair market value of such Series B Preferred Stock on the distribution date, and such U.S. holder's holding period for such Series B Preferred Stock will begin on the day following the distribution date.

Extraordinary Dividends.

If a dividend received by a non-corporate U.S. holder that qualifies for the rate reduction for "qualified dividend income" is an "extraordinary dividend" within the meaning of Section 1059 of the Code, such non-corporate U.S. holder would be required to treat any losses on the sale of Series B Preferred Stock or Common Stock as long-term capital loss to the extent of such "extraordinary dividend," irrespective of such holder's holding period for the stock.

Investors that are U.S. corporations that receive an "extraordinary dividend" within the meaning of Section 1059 of the Code in respect of our Series B Preferred Stock or Common Stock generally would be required to reduce their tax basis in our Series B Preferred Stock or Common Stock (but not below zero) by the portion of the dividend that is not taxed because of the dividends received deduction. To the extent the non-taxed portion of such dividend exceeds the corporate investor's stock basis, such investor must treat such excess as gain from the sale or exchange of our Series B Preferred Stock or Common Stock for the taxable year in which such dividend is received.

Adjustment to the Conversion Price of Series B Preferred Stock.

The conversion price of the Series B Preferred Stock is subject to adjustment under certain circumstances pursuant to the Anti-Dilution Provisions. Treasury Regulations

promulgated under Section 305 of the Code would treat a U.S. holder of our Series B Preferred Stock as having received a constructive distribution includable in such U.S. holder's income in the manner described in "Distributions in General" above, if and to the extent that certain adjustments (or failures to make adjustments) in the conversion price increase the proportionate interest of the U.S. holder in our assets or earnings and profits. For example, a decrease in the conversion price to reflect a taxable dividend to holders of Common Stock will generally give rise to a deemed taxable dividend to the holders of Series B Preferred Stock to the extent of an allocable portion of our current and accumulated earnings and profits. Thus, under certain circumstances, U.S. holders may recognize income in the event of a constructive distribution even though they may not receive any cash or property. Adjustments to the conversion price made pursuant to a bona fide reasonable adjustment formula that has the effect of preventing dilution in the interest of the U.S. holders of the Series B Preferred Stock (other than an adjustment in respect of a taxable dividend on the Common Stock), however, generally will not be considered to result in a constructive distribution.

Sale, Exchange or Other Taxable Disposition of Series B Stock, Common Stock and Preferred Warrants

Sale, Exchange or Other Taxable Disposition - General.

A U.S. holder will generally recognize capital gain or loss on a sale, exchange or other taxable disposition of our Series B Preferred Stock (other than pursuant to a conversion into Common Stock), our Common Stock, or the Preferred Warrants equal to the difference between the amount realized upon the sale, exchange or other taxable disposition (not including any proceeds attributable to any dividends in arrears, which generally will be taxable as described under "Distributions in General" above to U.S. holders who have not previously included such dividends in income) and the U.S. holder's adjusted tax basis in the shares sold, exchanged or disposed in another taxable transaction. Such capital gain or loss will be long-term capital gain or loss if the U.S. holder's holding period for the shares sold, exchange or disposed is more than one year. Long-term capital gains of non-corporate taxpayers generally are subject to a reduced rate of taxation. The deductibility of capital losses is subject to limitations.

Redemption of Series B Preferred Stock.

If we redeem our Series B Preferred Stock solely in exchange for Common Stock, the tax consequences to a U.S. holder would be as described in "Conversion of Series B Preferred Stock into Common Stock" below (except that any Common Stock received in respect of dividends in arrears generally will be taxable as described in "Distributions in General" above).

If we redeem our Series B Preferred Stock solely in exchange for cash, the redemption would be treated as a sale or exchange if the redemption (i) results in a meaningful reduction in the U.S. holder's interest in us or (ii) results in a complete termination of the U.S. holder's entire equity interest in us (in either case, within the meaning of Section 302(b) of the Code). If the redemption qualifies as a sale or exchange under one of these rules, the tax consequences to a U.S. holder would be as described in "Sale, Exchange or Other Taxable Disposition-General" above. If the redemption does not qualify as a sale or exchange for tax purposes under the rules described above, the amount of cash received by a U.S. holder would be treated as described in "Distributions in General" above.

If we redeem our Series B Preferred Stock in exchange for a combination of cash and Common Stock, a U.S. holder could not recognize a loss but would recognize gain equal to the lesser of (i) the excess of the sum of the fair market value of the Common Stock and the amount of cash received (not including any proceeds attributable to any dividends in arrears, which generally will be taxable as described in "Distributions in General" above) over the U.S. holder's adjusted tax basis in the Series B Preferred Stock redeemed, and (ii) the amount of cash received by the U.S. holder (not including any proceeds attributable to any dividends in arrears, which generally will be taxable as described under "Distributions in General" above). The character of such gain is uncertain. If the redemption results in a meaningful reduction in the U.S. holder's interest in us (within the meaning of Section 302(b) of the Code), then the gain would be capital gain that is taxed as described in "Sale, Exchange or Other Taxable Disposition-General" above. If the redemption does not qualify as a sale or exchange for tax purposes under one of these rules, the gain recognized by you would be treated as described in "Distributions in General" above. The initial adjusted tax basis of Common Stock received by a U.S. holder upon redemption will be equal to the U.S. holder's aggregate adjusted tax basis in the Series B Preferred Stock redeemed, reduced by the amount of any cash received (other than cash attributable to accrued but unpaid dividends), and increased by the amount of gain, if any, recognized. The holding period for the shares of Common Stock received by the U.S. holder upon redemption of the Series B Preferred Stock generally will include the U.S. holder's holding period in the Series B Preferred Stock redeemed, except that the holding period of any Common Stock received with respect to dividends in arrears will commence on the day after the date of receipt.

Conversion of Series B Preferred Stock into Common Stock.

A U.S. holder generally will not recognize any gain or loss in respect of the receipt of Common Stock upon the conversion of our Series B Preferred Stock into Common Stock. Cash received in lieu of a fractional share of Common Stock will generally be treated as a payment in a taxable exchange for such fractional share, and gain or loss will be recognized on the receipt of cash in an amount equal to the difference between the amount of cash received and the amount of adjusted tax basis in the stock that is allocable to the fractional share.

The adjusted tax basis of Common Stock received on conversion will equal the adjusted tax basis of the Series B Preferred Stock converted (reduced by the portion of adjusted tax basis allocated to any fractional shares of Common Stock exchanged for cash, as described above), and the holding period of such Common Stock received on conversion will generally include the period during which the Series B Preferred Stock was held by the U.S. holder prior to conversion. A U.S. holder's tax basis in a fractional share will be determined by allocating such U.S. holder's tax basis in the Series B Preferred Stock between the Common Stock such U.S. holder receives upon conversion and the fractional share in accordance with their respective fair market values.

If a U.S. holder exercises its right to convert the Series B Preferred Stock into shares of Common Stock after a regular record date but before the Dividend Record Date, then upon conversion, the U.S. holder generally will be required to pay to us in cash an amount equal to the portion of such dividend attributable to the current monthly dividend period. In this case, the U.S. holder will be entitled to receive the dividend payment on the corresponding Dividend Record Date. A U.S. holder should consult its own tax adviser with respect to the treatment of such cash payment and the subsequent receipt of such dividend payment.

Exercise or Lapse of Preferred Warrants

A U.S. holder will not recognize gain or loss on the exercise of a Warrant. A U.S. holder's tax basis in the one-half of one share of Series B Preferred Stock received upon the exercise of a Warrant will equal the sum of (i) the initial tax basis of the Warrant exercised (as determined pursuant to the rules discussed in "General Treatment of Units" above) and (ii) the exercise price of the Warrant. The U.S. holder's holding period for the one-half of one share of Series B Preferred Stock received upon exercise of a Warrant will begin on the day after such exercise (or possibly on the date of exercise) and will not include the period during which the U.S. holder held the Warrant. If a Warrant is allowed to lapse unexercised, a U.S. holder generally will recognize a capital loss equal to such holder's tax basis in the Warrant. Such loss will be a long-term capital loss if the Warrant has been held for more than one year as of the date the Warrant lapsed. The deductibility of capital losses is subject to limitations.

Constructive Distributions on the Preferred Warrants

Under Section 305 of the Code, an adjustment to the number of shares of Series B Preferred Stock that will be issued upon the exercise of our Preferred Warrants, or an adjustment to the exercise price of such Preferred Warrants, may be treated as a constructive distribution to a U.S. holder of the Preferred Warrants if, and to the extent that, such adjustment has the effect of increasing such U.S. holder's proportionate interest in our "earnings and profits" or assets, depending on the circumstances of such adjustment (for example, if such adjustment is to compensate for a distribution of cash or other property to holders of our Common Stock). Adjustments to the exercise price of a Warrant made pursuant to a bona fide reasonable adjustment formula that has the effect of preventing dilution of the interest of the holder of the Warrant should generally not result in a

Information Reporting and Backup Withholding

In general, information reporting requirements may apply to distributions (whether actual or constructive) paid to a U.S. holder on our Series B Preferred Stock, our Common Stock received upon conversion of the Series B Preferred Stock or the Preferred Warrants, and to the proceeds of the sale, exchange or other disposition of our Series B Preferred Stock or Common Stock received upon conversion of the Series B Preferred Stock or the Preferred Warrants, unless the U.S. holder is an exempt recipient. Backup withholding will apply to such payments if the U.S. holder fails to provide a taxpayer identification number or a certification of exempt status or has been notified by the IRS that it is subject to backup withholding (and such notification has not been withdrawn). Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a U.S. holder's U.S. federal income tax liability provided the required information is timely furnished to the IRS.

U.S. holders are urged to consult their own tax advisers regarding the application of backup withholding in their particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding under current Treasury Regulations.

Non-U.S. Holders

Distributions on Series B Preferred Stock or Common Stock

Distributions in General.

Generally, distributions (including any constructive distributions taxable as dividends as described below and any cash paid upon a conversion that is treated as a dividend) treated as dividend income and paid to a non-U.S. holder with respect to our Series B Preferred Stock or our Common Stock will be subject to a 30% U.S. withholding tax, or such lower rate as may be specified by an applicable tax treaty. Any required withholding tax might be satisfied by the withholding agent through a sale of a portion of the shares you receive as a dividend or might be withheld from cash dividends or sales proceeds subsequently paid or credited to you. To receive the benefit of a reduced treaty rate, a non-U.S. holder must provide the applicable withholding agent with an IRS Form W-8BEN, IRS Form W-8BEN-E, or other appropriate version of IRS Form W-8 certifying qualification for the reduced rate. A non-U.S. holder of our Series B Preferred Stock or our Common Stock may obtain a refund of any excess amounts withheld under these rules if the non-U.S. holder is eligible for a reduced rate of United States withholding tax and an appropriate claim for refund is timely filed with the IRS.

Dividends that are effectively connected with a trade or business carried on by a non-U.S. holder within the United States, and, to the extent an applicable tax treaty provides, attributable to a permanent establishment or fixed base maintained by the non-U.S. holder in the United States, will generally be subject to U.S. federal income tax on a net basis at the individual or corporate income tax rates generally applicable to U.S. holders, but will not be subject to U.S. withholding tax if certain certification requirements are satisfied. A non-U.S. holder can generally meet the certification requirements by providing a properly executed IRS Form W-8ECI or appropriate substitute form to the applicable withholding agent. A non-U.S. holder that is a corporation may also be subject to a “branch profits tax” at a 30% rate (or such lower rate as may be specified by an applicable tax treaty) on its “effectively connected earnings and profits,” subject to certain adjustments, which will include effectively connected dividends.

Redemption Premium with respect to the Series B Preferred Stock.

As described in “U.S. Holders-Redemption Premium with respect to the Series B Preferred Stock” above, we intend to take the position that, on account of the OID, the Series B Preferred Stock issued in this offering will be issued with a “redemption premium” under Section 305(c) of the Code that exceeds the statutory *de minimis* amount. U.S. holders of Series B Preferred should be treated as receiving constructive distributions as the redemption premium accrues under a constant yield method. Such distributions should have the consequences described in “non-U.S. Holders-Distributions on Series B Preferred Stock or Common Stock- Distributions in General” above.

PIK Dividends Distributions on Series B Preferred Stock.

Any dividends paid on our Series B Preferred Stock in shares of Series B Preferred Stock and taxed as dividend income as described in “U.S. Holders-Distributions on Series B Preferred Stock or Common Stock- PIK Dividends Distributions on Series B Preferred Stock” above will be subject to withholding tax in the same manner as described in non-U.S. Holders-Distributions on Series B Preferred Stock or Common Stock- Distributions in General” above.

Adjustment to the Conversion Price of Series B Preferred Stock.

As described above under “Consequences to U.S. Holders with respect to Series B Preferred Stock or Common Stock-Adjustment of Conversion Price,” adjustments in the conversion price (or failures to adjust the conversion price) that result in an increase in the proportionate interest of a non-U.S. holder in our assets or earnings and profits could result in deemed distributions to the non-U.S. holder that are taxed as described in “Distributions in General” above. It is possible that any withholding tax on such a deemed distribution might be satisfied by the withholding agent through a sale of a portion of the shares you receive as a dividend or might be withheld from cash dividends, shares of our Common Stock or sale proceeds subsequently paid or credited to you.

Sale, Exchange or Other Taxable Disposition of Series B Stock, Common Stock and Preferred Warrants

Sale, Exchange or Other Taxable Disposition - General.

Subject to the discussion under “Information Reporting and Backup Withholding” “and “FATCA” below, a non-U.S. holder generally will not be subject to U.S. federal income or withholding tax on any gain realized on the sale, exchange or other taxable disposition (other than a redemption) of our Series B Preferred Stock, our Common Stock or the Preferred Warrants unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a U.S. trade or business and, if an applicable income tax treaty so provides, is attributable to a “permanent establishment” or a “fixed base” maintained by such non-U.S. holder in the United States, in which case the non-U.S. holder generally will be taxed on such gain at the graduated U.S. federal income tax rates applicable to U.S. holders (as described in “U.S. Holders-Sale, Exchange or Other Taxable Disposition of Series B Stock, Common Stock and Preferred Warrants-Sale, Exchange or Other Taxable Disposition - General” above and, if the non-U.S. holder is a foreign corporation, the branch profits tax described in “Distributions in General” above also may apply to such gain;

the non-U.S. holder is a nonresident alien individual who is present in the United States for 183 days or more in the taxable year of the taxable disposition and certain other conditions are met, in which case the non-U.S. holder will be subject to a 30% tax (or such lower rate as may be specified by an applicable income tax treaty between the United States and such holder's country of residence) on the net gain derived from the taxable disposition, which may be offset by certain U.S. source capital losses of the non-U.S. holder, if any; or

we are, or have been, at any time during the five-year period preceding such taxable disposition (or the non-U.S. holder's holding period, if shorter) a "U.S. real property holding corporation" ("USRPHC"). We believe that we are not, and we do not expect to be for the foreseeable future, a USRPHC (and this discussion assumes we are not and will not be a USRPHC).

Redemption of Series B Preferred Stock.

If we redeem our Series B Preferred Stock solely in exchange for Common Stock, the tax consequences to a non-U.S. holder would be as described above under "U.S. Holders-Conversion of Series B Preferred Stock into Common Stock" (except that any Common Stock received in respect of dividends in arrears generally will be taxable as described in "Sale, Exchange, or Other Taxable Disposition - General" above).

If we redeem our Series B Preferred Stock solely in exchange for cash, the redemption would be treated as a sale or exchange if the redemption results in a meaningful reduction in the non-U.S. holder's interest in us, or results in a complete termination of the non-U.S. holder's entire equity interest in us (in each case, within the meaning of Section 302(b) of the Code). If the redemption qualifies as a sale or exchange under one of these rules, the tax consequences to a non-U.S. holder would be as described in "Sale, Exchange or Other Taxable Disposition - General" above. If the redemption does not qualify as a sale or exchange for tax purposes under the rules described above, the amount of cash received by a non-U.S. holder would be treated as described in "Distributions in General" above.

If we redeem our Series B Preferred Stock in exchange for a combination of cash and Common Stock, a non-U.S. holder would recognize gain (but not loss) equal to the lesser of (i) the excess of the sum of the fair market value of the Common Stock and the amount of cash received (not including any proceeds attributable to any dividends in arrears, which generally will be taxable as described under "Distributions in General" above) over the non-U.S. holder's adjusted tax basis in the Series B Preferred Stock redeemed, and (ii) the amount of cash received by the non-U.S. holder (not including any proceeds attributable to any dividends in arrears, which generally will be taxable as described under "Distributions in General" above).

The tax treatment of any such gain to non-U.S. holders is uncertain. If the redemption results in a meaningful reduction in the non-U.S. holder's interest in us (in either case, within the meaning of Section 302(b) of the Code), then the gain generally would be taxed only as described under "Sale, Exchange or Other Taxable Disposition - General" above. If the redemption does not qualify as a sale or exchange for tax purposes under one of these rules, the gain generally would be treated as described under "Distributions in General" above. Because the characterization of a taxable redemption of the Series B Preferred Stock is uncertain and is determined on a holder-by-holder basis, it is possible that a withholding agent would withhold on the cash proceeds received.

Conversion of Series B Preferred Stock into Common Stock.

You generally will not recognize any gain or loss by reason of receiving Common Stock upon conversion of the Series B Preferred Stock, except gain or loss will be recognized with respect to any cash received in lieu of fractional shares, which may be subject to U.S. federal income tax, as discussed in "Sale, Exchange or Other Taxable Disposition - General" above.

Exercise or Lapse of Preferred Warrants

In general, a non-U.S. holder will not be required to recognize gain or loss upon the exercise of a Warrant by payment of the exercise price. The lapse of a Warrant will be treated as if the non-U.S. holder sold or exchanged the Warrant and recognized a capital loss equal to the non-U.S. holder's basis in the Warrant. A non-U.S. holder will not be able to utilize a loss recognized upon expiration of a Warrant against the non-U.S. holder's U.S. federal income tax liability, however, unless the loss (i) is effectively connected with the non-U.S. holder's conduct of a trade or business within the United States (and, if an income tax treaty applies, is attributable to a "permanent establishment" or "fixed base" in the United States) or (ii) is treated as a U.S. source loss and the non-U.S. holder is present in the United States 183 days or more in the taxable year of disposition and certain other conditions are met.

Constructive Distributions on the Preferred Warrants

As described in "U.S. Holders-Constructive Distributions on the Preferred Warrants" above, an adjustment to the Preferred Warrants could result in a constructive distribution to a non-U.S. holder, which would be treated as described in "Distributions in General" above. Any resulting withholding tax attributable to deemed dividends would be collected from other amounts payable or distributable to the non-U.S. holder.

Non-U.S. holders should consult their tax advisors regarding the tax treatment of any adjustments to the Preferred Warrants.

Information Reporting and Backup Withholding.

Payment of dividends (including constructive dividends), and the tax withheld with respect thereto, is subject to information reporting requirements. These information reporting requirements apply regardless of whether withholding was reduced or eliminated by an applicable tax treaty or withholding was not required because the dividends were effectively connected with a trade or business in the United States conducted by the non-U.S. holder. Copies of the information returns reporting such dividends and withholding may also be made available under the provisions of an applicable tax treaty or agreement with the tax authorities in the country in which the non-U.S. holder resides. U.S. backup withholding will generally apply to the payment of dividends to non-U.S. holders unless such non-U.S. holders furnish to the payor a Form W-8BEN or Form W-8BEN-E (or other applicable form) or otherwise establish an exemption.

Payment by a U.S. office of a broker of the proceeds of a sale of our Series B Preferred Stock, our Common Stock or the Preferred Warrants is subject to both backup withholding and information reporting unless the non-U.S. holder, or beneficial owner thereof, as applicable, certifies that it is a non-U.S. holder on Form W-8BEN or Form W-8BEN-E (or other suitable substitute or successor form), or otherwise establishes an exemption. Subject to certain exceptions, backup withholding and information reporting generally will not apply to a payment of proceeds from the sale of our Series B Preferred Stock, our Common Stock or the Preferred Warrants if such sale is effected through a foreign office of a broker, provided that the broker does not have certain U.S. connections.

Amounts withheld under the backup withholding rules from a payment to a non-U.S. holder are not additional taxes and may be refunded or credited against such holder's U.S. federal income tax liability (if any), which may entitle the holder to a refund if in excess of such liability, provided that the holder timely provides the required information to the IRS. Non-U.S. holders are urged to consult their own tax advisors regarding the application of backup withholding in their particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding under current Treasury Regulations.

FATCA.

Sections 1471 to 1474 of the Code (such sections, and the Treasury Regulations and administrative guidance issued thereunder, commonly referred to as “FATCA”) impose a 30% U.S. withholding tax on certain “withholdable payments” made to a “foreign financial institution” or a “non-financial foreign entity.” “Withholdable payments” include payments of dividends. In general, if a holder is a “foreign financial institution” (which includes investment entities such as hedge funds and private equity funds), the 30% withholding tax will apply to withholdable payments made to such holder, unless such holder enters into an agreement with the U.S. Department of Treasury to collect and provide substantial information regarding its U.S. account holders, including certain account holders that are foreign entities with U.S. owners. If such holder is a “non-financial foreign entity,” FATCA also generally will impose a withholding tax of 30% on withholdable payments made to such holder unless the holder provides the withholding agent with a certification that it does not have any “substantial United States owners” or a certification identifying its direct and indirect substantial United States owners. Intergovernmental agreements between the United States and a holder’s resident country may modify some of the foregoing requirements. The Treasury Secretary has issued proposed regulations providing that the withholding provisions under FATCA do not apply with respect to the gross proceeds from a sale or other disposition of Class J Common Stock, which may be relied upon by taxpayers until final regulations are issued.

Non-U.S. holders should consult their own tax advisers with respect to the U.S. federal income tax consequences of FATCA on their ownership and disposition of our Series B Preferred Stock, our Common Stock and the Preferred Warrants.

Excise Tax

We may be subject to the Excise Tax (as defined below) included in the Inflation Reduction Act (“IRA”) enacted in August 2022 in connection with redemptions of our Series B Preferred Stock or our Common Stock. In particular, an excise tax is imposed on “covered corporations” (generally, publicly-traded domestic corporations) equal to 1% of the fair market value of certain stock repurchased after December 31, 2022 (the “Excise Tax”). The Excise Tax base is reduced by the fair market value of any issuances of the covered corporation’s stock during its taxable year. The fair market value of any of shares our Series B Preferred Stock or Common Stock that are redeemed may exceed the fair market value of any of our stock issued during the same taxable year. Consequently, the Excise Tax may reduce the amount of cash we have available to shareholders.

The preceding discussion of material U.S. federal income tax consequences is for informational purposes only. It is not tax advice. Prospective investors should consult their own tax advisors regarding the particular U.S. federal, state, local and non-U.S. tax consequences of purchasing, holding and disposing of our Units, Series B Preferred Stock, our Common Stock or the Preferred Warrants, including the consequences of any proposed changes in applicable laws.

PLAN OF DISTRIBUTION

Pursuant to a placement agency agreement, we have engaged Maxim Group LLC (“Maxim”) to act as our exclusive placement agent (the “placement agent”) to solicit offers to purchase the securities offered by this prospectus. The placement agent is not purchasing or selling any securities, nor is it required to arrange for the purchase and sale of any specific number or dollar amount of securities, other than to use its “reasonable best efforts” to arrange for the sale of the securities by us. Therefore, we may not sell the entire amount of securities being offered. There is no minimum amount of proceeds that is a condition to closing of this offering. We will enter into a securities purchase agreement directly with the investors, at the investor’s option, who purchase our securities in this offering. Investors who do not enter into a securities purchase agreement shall rely solely on this prospectus in connection with the purchase of our securities in this offering. The placement agent may engage one or more subagents or selected dealers in connection with this offering.

The placement agency agreement provides that the placement agent’s obligations are subject to conditions contained in the placement agency agreement.

We will deliver the securities being issued to the investors upon receipt of investor funds for the purchase of the securities offered pursuant to this prospectus. We intend to complete one closing of this offering, but may undertake one or more additional closings for the sale of the additional Units to the investors in the initial closing. We expect to hold an initial closing on , 2023, but the offering will be terminated by , 2023, provided that the closing(s) of the offering for all of the Units have not occurred by such date, and may be extended by written agreement of the Company and the placement agent. Any extensions or material changes to the terms of the offering will be contained in an amendment to this prospectus. We expect to deliver the securities being offered pursuant to this prospectus on or about , 2023.

Placement Agent Fees, Commissions and Expenses

Upon the closing of this offering, we will pay the placement agent a cash transaction fee equal to: (i) 8.0% of the aggregate gross cash proceeds to us from the sale of the securities in the offering, and (ii) 5.0% of the aggregate gross cash proceeds to us from the sale of the securities in the offering to those certain investors having a prior existing relationship with us. Pursuant to the placement agency agreement, we will agree to reimburse the placement agent for certain out-of-pocket expenses of the placement agent payable by us, in an aggregate amount not to exceed \$100,000. The placement agency agreement, however, will provide that in the event this offering is terminated, the placement agent will only be entitled to the reimbursement of out-of-pocket accountable expenses actually incurred in accordance with Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 5110(f)(2)(C).

The following table shows the public offering price, placement agent fees and proceeds, before expenses, to us.

	Per Unit	Total
Public offering price	\$	\$
Placement agent fees	\$	\$
Proceeds, before expenses, to us	\$	\$

We estimate that the total expenses of the offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding the placement agent commission, will be approximately \$370,000, all of which are payable by us. This figure includes, among other things, the placement agent’s fees and expenses (including the legal fees, costs and expenses for the placement agent’s legal counsel) up to \$100,000.

Right of First Refusal and Certain Post-Offering Investments

Subject to the closing of this offering and certain conditions set forth in the placement agency agreement, for a period of twelve (12) months following the closing of this offering, Maxim shall have a right of first refusal to act as sole managing underwriter and sole book runner, sole placement agent, or sole sales agent, for any and all of our future public or private equity, equity-linked or debt (excluding commercial bank debt and loans against tax credits) offerings for which we retain the service of an underwriter, agent, advisor, finder or other person or entity in connection with such offering during such twelve (12) month period. In addition, we have also agreed that in the event any investor previously directly introduced to us by Maxim subsequently provides capital to us in any transaction during the period of twelve (12) months following the closing of the offering, including, but not limited to, any proceeds received by us upon the cash exercise of the Preferred Warrants, we will pay Maxim a cash fee of 8.0% of the gross proceeds on any such investments or proceeds received by us.

Lock-Up Agreements

We and each of our officers and directors have agreed, subject to certain exceptions, not to offer, issue, sell, contract to sell, encumber, grant any option for the sale of or otherwise dispose of any shares of our Common Stock or other securities convertible into or exercisable or exchangeable for our Common Stock for a period of 45 days for the Company and 90 days in the case of our officers and directors after this offering is completed without the prior written consent of Maxim. In addition, we have also agreed not

to enter into a variable rate transaction for 45 days after the completion of this offering.

Maxim may in its sole discretion and at any time without notice release some or all of the shares subject to lock-up agreements prior to the expiration of the lock-up period. When determining whether or not to release shares from the lock-up agreements, Maxim will consider, among other factors, the security holder's reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time.

Indemnification

We have agreed to indemnify the placement agent against certain liabilities, including liabilities under the Securities Act, and to contribute to payments that the placement agent may be required to make for these liabilities.

Regulation M

The placement agent may be deemed to be an underwriter within the meaning of Section 2(a)(11) of the Securities Act, and any commissions received by it and any profit realized on the resale of the securities sold by it while acting as principal may be deemed to be underwriting discounts or commissions under the Securities Act. As an underwriter, the placement agent would be required to comply with the requirements of the Securities Act and the Exchange Act, including, without limitation, Rule 10b-5 and Regulation M under the Exchange Act. These rules and regulations may limit the timing of purchases and sales of our securities by the placement agent acting as principal. Under these rules and regulations, the placement agent (i) may not engage in any stabilization activity in connection with our securities and (ii) may not bid for or purchase any of our securities or attempt to induce any person to purchase any of our securities, other than as permitted under the Exchange Act, until it has completed its participation in the distribution.

Determination of Offering Price

The actual offering price of the securities we are offering, and the exercise price of the Preferred Warrants included in the Units that we are offering, were negotiated between us, the placement agent and the investors in the offering, including our history and prospects, the stage of development of our business, our business plans for the future and the extent to which they have been implemented, an assessment of our management, the general conditions of the securities markets at the time of the offering and such other factors as were deemed relevant.

Electronic Distribution

A prospectus in electronic format may be made available on a website maintained by the placement agent. In connection with the offering, the placement agent or selected dealers may distribute prospectuses electronically. No forms of electronic prospectus other than prospectuses that are printable as Adobe® PDF will be used in connection with this offering.

Other than the prospectus in electronic format, the information on the placement agent's website and any information contained in any other website maintained by the placement agent is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or the placement agent in its capacity as placement agent, and should not be relied upon by investors.

Certain Relationships

The placement agent and its respective affiliates may provide from time to time in the future certain commercial banking, financial advisory, investment banking and other services for us in the ordinary course of their business, for which they may receive customary fees and commissions. In addition, from time to time, the placement agent and its respective affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future. However, except as disclosed in this prospectus, we have no present arrangements with the placement agent for any further services.

Below is a description of certain recent investment banking and financial advisory services that Maxim has provided to us in the ordinary course of business, for which Maxim received customary fees, commissions and other compensation.

January 2023 Offering

On January 31, 2023, we entered into a securities purchase agreement with certain institutional investors pursuant to which we agreed to issue and sell to such investors (i) in a registered direct offering, 201,544 shares of our Common Stock and pre-funded warrants to purchase up to 381,762 shares of our Common Stock, at an exercise price of \$0.0001 per share, and (ii) in a concurrent private placement, Common Stock purchase warrants exercisable for an aggregate of up to 874,959 shares of our Common Stock, at an exercise price of \$10.49 per share of our Common Stock. The securities issued in the registered direct offering were offered pursuant to our shelf registration statement on Form S-3 (File 333-267211).

In connection with this offering, on January 31, 2023, we entered into a placement agency agreement with Maxim Group LLC, pursuant to which (i) Maxim agreed to act as placement agent on a "best efforts" basis in connection with the offering and (ii) we agreed to pay Maxim a fee equal to 8.0% of the gross proceeds raised in the offering.

On February 3, 2023, we closed the offering, raising gross proceeds of approximately \$6.2 million, before deducting placement agent fees and other offering expenses payable by us.

December 2022 Offering

On November 29, 2022, we entered into a securities purchase agreement with certain investors pursuant to which we agreed to issue and sell an aggregate of 504,000 units and 36,000 pre-funded units at an effective public offering price of \$14.00 per Unit. Each unit consisted of (i) one share of our Common Stock, (ii) one Series A Warrant, and (iii) one Series B Warrant, with each Series A Warrant and Series B Warrant being exercisable from time to time for one share of our Common Stock at an exercise price of \$14.00 per share. Each pre-funded unit consisted of (i) one pre-funded warrant, with each such pre-funded warrant being exercisable from time to time for one share of our Common Stock, (ii) one Series A Warrant and (iii) one Series B Warrant.

In connection with this offering, on November 29, 2022, we entered into a placement agency agreement with Maxim Group LLC, pursuant to which Maxim agreed to act as placement agent on a "best efforts" basis. We paid Maxim an aggregate fee equal to 8.0% of the gross proceeds raised in this offering, and a non-accountable expense allowance

equal to 1.0% of such gross proceeds. We also reimbursed Maxim \$100,000 for expenses in connection with this offering.

On December 1, 2022, we closed this offering, raising gross proceeds of approximately \$7.6 million, before deducting placement agent fees and other offering expenses payable by us.

Equity Distribution Agreement

On September 13, 2022, we, entered into an equity distribution agreement, or the 2022 Sales Agreement, with Maxim, which was amended in November 2022, pursuant to which we may issue and sell shares of our Common Stock having an aggregate offering price of up to \$4,000,000 from time to time through Maxim. Subject to the terms and conditions of the 2022 Sales Agreement, Maxim will use its commercially reasonable efforts to sell the shares of our Common Stock from time to time, based upon its instructions (including any price, time or size limits or other parameters or conditions that we may impose). We pay to Maxim a cash commission of up to 3.0% of the gross proceeds from the sale of any shares of Common Stock by Maxim under the 2022 Sales Agreement. We also granted Maxim, the right of first refusal, or the ROFR, during the term of the 2022 Sales Agreement to act as sole manager or sole placement agent in any and all future private or public equity offerings for the period commencing on the date hereof and ending on the earlier of (a) twelve (12) months from the date of execution of the 2022 Sales Agreement or (b) ninety (90) days following the effective date of the termination of the 2022 Sales Agreement. The ROFR shall be subject to FINRA Rule 5110(g)(5)(B), including that the ROFR may be terminated by us for “cause,” which shall include (i) the placement agent’s material failure to provide the services contemplated in the placement agency agreement, and (ii) our exercise of our right of “termination for cause” eliminates any obligations with respect to the payment of any termination fee or provision of any ROFR. On January 30, 2023, we and Maxim agreed to terminate the 2022 Sales Agreement, effective the same day.

August 2022 Private Placement

Maxim served as the sole placement agent for us in connection with a private placement offering of a senior secured convertible note and a warrant in August 2022, or the August 2022 Private Placement, and we entered into a placement agency agreement with Maxim, or the August 2022 Placement Agency Agreement, in connection with such offering, pursuant to which we paid Maxim a fee of \$240,000 and issued to Maxim a warrant to purchase up to an aggregate of 1,944 shares of Common Stock at an exercise price of \$99.70 per share, or the August 2022 PA Warrants. The form of August 2022 PA Warrant was filed as Exhibit 4.3 to our Current Report on Form 8-K that we filed with the SEC on August 19, 2022. The PA Warrants are exercisable at any time on or after the six-month anniversary of the closing date of such private placement and will expire on the fifth (5th) anniversary of its date of issuance, is subject to 4.99%/9.99% beneficial ownership limitations, and may be exercised on a cashless basis in the event that the shares of Common Stock underlying such warrant are not covered by a registration statement. The August 2022 PA Warrants were deemed compensation by FINRA for the offering and were therefore subject to a 180-day lock-up pursuant to FINRA Rule 5110(e)(1)(A). As a result, the placement agent (or permitted assignees under FINRA Rule 5110(e)(2)) will not sell, transfer, assign, pledge, or hypothecate these warrants or the securities underlying these warrants, nor will they engage in any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the warrants or the underlying securities for a period of 180 days following the commencement of sales of the securities issued in the August 2022 Private Placement.

In addition, the August 2022 PA Warrants includes a registration rights provision granting Maxim the same registration rights granted to the investor in the August 2022 Private Placement whereby we agreed to promptly, but no later than November 13, 2022, file with the SEC a registration statement on Form S-1 or Form S-3 covering the resale of all certain securities issued in the August 2022 Private Placement, including the shares of Common Stock issuable upon exercise of the August 2022 PA Warrants, or the Resale Registration Statement, and to ensure such Resale Registration Statement is declared effective no later than 180 days following the closing date of the August 2022 Private Placement and to grant certain piggyback registration rights. We filed the Resale Registration Statement with the SEC on November 7, 2022, which was declared effective on November 18, 2022. In addition, the warrant, as amended provides that the piggyback registration rights provided will not be greater than seven years from the commencement of sales of the securities issued in the August 2020 Private Placement in compliance with FINRA Rule 5110(g)(8)(D). We will bear all fees and expenses attendant to registering the securities issuable on exercise of the August 2022 PA Warrants other than underwriting commissions incurred and payable by the holders. The exercise price and number of shares issuable upon exercise of the August 2022 PA Warrants may be adjusted in certain circumstances including in the event of a stock dividend or our recapitalization, reorganization, merger or consolidation. However, the warrant exercise price or underlying shares will not be adjusted for issuances of shares of Common Stock at a price below the warrant exercise price. Pursuant to Rule 5110(e) the warrant as amended provides it may not sold, transferred, assigned or hypothecated or be the subject of any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of the warrant and/or the shares of Common Stock underlying such warrant, for a period of 180 days after the commencement of sales of the securities except the transfer of any security (i) by operation of law or by reason of reorganization of the Company, (ii) to any FINRA member firm participating in the offering and the officers or partners thereof, if all securities so transferred remain subject to the lock-up restriction described therein for the remainder of the time period, (iii) if the aggregate amount of securities of our company held by the holder or related person do not exceed 1% of the securities being offered, (iv) the exercise or conversion of any security, if all securities received remain subject to the lock-up restriction for the remainder of the 180-day lock-up period.

In addition, we also agreed to (i) grant Maxim a nine-month right of first refusal following the consummation of the August 2022 Private Placement to act as sole book-running manager, sole underwriter or sole placement agent in connection with a subsequent private placement or any other capital raising equity or equity-linked securities using an underwriter or placement agent, and (ii) grant Maxim the same cash fees and warrants with respect to any public or private offering or other financing or capital raising transaction consummated within 12 months of the termination of the August 2022 Placement Agency Agreement with any investor that was introduced to the Company by Maxim during such agreement’s term.

Solicitation Agent

Maxim Group LLC provided services as the exclusive solicitation agent, pursuant to the terms of an engagement letter, dated January 15, 2021 (the “Solicitation Agreement”). Pursuant to the Solicitation Agreement, the Company agreed to pay Maxim Group LLC a cash fee equal to \$197,684, which is equal to 7% of the total net proceeds received from the exercise of certain warrant. In addition, pursuant to the Solicitation Agreement, the Company granted Maxim Group LLC a right of first refusal, for a period of 280 days from the date that these warrants were exercised, to act as lead manager or lead placement agent in any and all future private or public equity offerings conducted by us.

Transfer Agent and Registrar; Warrant Agent

The transfer agent and registrar for our Common Stock, and the Warrant Agent for the Preferred Warrants, is VStock Transfer, LLC, whose address is 18 Lafayette Place, Woodmere, NY 11598 and telephone number is (212) 828-8436.

Listing

Our Common Stock is traded on Nasdaq under the symbol “WISA.”

There is no established trading market for the Series B Preferred Stock or the Preferred Warrants, and we do not expect a market to develop. In addition, we do not intend to list the Series B Preferred Stock or the Preferred Warrants on the Nasdaq Capital Market or any other national securities exchange or any other nationally recognized trading system.

Selling Restrictions

Other than in the United States, no action has been taken by us or the placement agents that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published, in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to this offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

Australia. No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission (ASIC), in relation to the offering.

This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (the Corporations Act) and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the securities may only be made to persons (the Exempt Investors) who are “sophisticated investors” (within the meaning of section 708(8) of the Corporations Act), “professional investors” (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the securities without disclosure to investors under Chapter 6D of the Corporations Act.

The securities applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring securities must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

Brazil. The offer of securities described in this prospectus will not be carried out by means that would constitute a public offering in Brazil under Law No. 6,385, of December 7, 1976, as amended, under the CVM Rule (Instrução) No. 400, of December 29, 2003. The offer and sale of the securities have not been and will not be registered with the Comissão de Valores Móbiliários in Brazil. The securities have not been offered or sold, and will not be offered or sold in Brazil, except in circumstances that do not constitute a public offering or distribution under Brazilian laws and regulations.

Canada. The securities may be sold in Canada only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31 103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Any resale of the securities must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser’s province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33 105 *Underwriting Conflicts* (NI 33 105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriters’ conflicts of interest in connection with this offering.

Cayman Islands. No invitation, whether directly or indirectly, may be made to the public in the Cayman Islands to subscribe for our securities.

European Economic Area. In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a “Relevant Member State”) an offer to the public of any securities may not be made in that Relevant Member State, except that an offer to the public in that Relevant Member State of any securities may be made at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:

- to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives for any such offer; or
- in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of securities shall result in a requirement for the publication by us or any placement agent of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer to the public” in relation to any securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any securities to be offered so as to enable an investor to decide to purchase any securities, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression “Prospectus Directive” means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State, and the expression “2010 PD Amending Directive” means Directive 2010/73/EU.

Hong Kong. The contents of this prospectus have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this prospectus, you should obtain independent professional advice. Please note that (i) our shares may not be offered or sold

in Hong Kong, by means of this prospectus or any document other than to “professional investors” within the meaning of Part I of Schedule 1 of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) (SFO) and any rules made thereunder, or in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong) (CO) or which do not constitute an offer or invitation to the public for the purpose of the CO or the SFO, and (ii) no advertisement, invitation or document relating to our shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere) which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to the shares which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the SFO and any rules made thereunder.

Israel. This document does not constitute a prospectus under the Israeli Securities Law, 5728-1968, or the Securities Law, and has not been filed with or approved by the Israel Securities Authority. In the State of Israel, this document is being distributed only to, and is directed only at, and any offer of the shares is directed only at, investors listed in the first addendum, or the Addendum, to the Israeli Securities Law, consisting primarily of joint investment in trust funds, provident funds, insurance companies, banks, portfolio managers, investment advisors, members of the Tel Aviv Stock Exchange, underwriters, venture capital funds, entities with equity in excess of NIS 50 million and “qualified individuals”, each as defined in the Addendum (as it may be amended from time to time), collectively referred to as qualified investors (in each case purchasing for their own account or, where permitted under the Addendum, for the accounts of their clients who are investors listed in the Addendum). Qualified investors will be required to submit written confirmation that they fall within the scope of the Addendum, are aware of the meaning of same and agree to it.

The People’s Republic of China. This prospectus may not be circulated or distributed in the PRC and the shares may not be offered or sold, and will not offer or sell to any person for re-offering or resale directly or indirectly to any resident of the PRC except pursuant to applicable laws, rules and regulations of the PRC. For the purpose of this paragraph only, the PRC does not include Taiwan and the special administrative regions of Hong Kong and Macau.

Switzerland. The securities may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange (the SIX) or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the securities or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, or the securities have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of securities will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA, and the offer of securities has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes (CISA). Accordingly, no public distribution, offering or advertising, as defined in CISA, its implementing ordinances and notices, and no distribution to any non-qualified investor, as defined in CISA, its implementing ordinances and notices, shall be undertaken in or from Switzerland, and the investor protection afforded to acquirers of interests in collective investment schemes under CISA does not extend to acquirers of securities.

Taiwan. The securities have not been and will not be registered with the Financial Supervisory Commission of Taiwan pursuant to relevant securities laws and regulations and may not be sold, issued or offered within Taiwan through a public offering or in circumstances which constitutes an offer within the meaning of the Securities and Exchange Act of Taiwan that requires a registration or approval of the Financial Supervisory Commission of Taiwan. No person or entity in Taiwan has been authorized to offer, sell, give advice regarding or otherwise intermediate the offering and sale of the securities in Taiwan.

United Kingdom. This prospectus has only been communicated or caused to have been communicated and will only be communicated or caused to be communicated as an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act of 2000, or the FSMA) as received in connection with the issue or sale of our Common Stock in circumstances in which Section 21(1) of the FSMA does not apply to us. All applicable provisions of the FSMA will be complied with in respect to anything done in relation to our Common Stock in, from or otherwise involving the United Kingdom.

DISCLOSURE OF COMMISSION POSITION ON INDEMNIFICATION FOR SECURITIES ACT LIABILITY

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

LEGAL MATTERS

The validity of the issuance of the securities offered hereby will be passed upon for us by Sullivan & Worcester LLP of New York, New York. Blank Rome LLP, New York, New York, is acting as counsel for the placement agent in connection with certain legal matters related to this offering.

EXPERTS

The consolidated financial statements of WiSA Technologies, Inc. (formerly Summit Wireless Technologies, Inc.) as of December 31, 2022 and 2021 and for each of the two years in the period ended December 31, 2022, incorporated in this prospectus by reference to the [Annual Report on Form 10-K for the year ended December 31, 2022](#) have been so incorporated in reliance on the report (which contains an explanatory paragraph relating to the Company’s ability to continue as a going concern as described in Note 1 to the consolidated financial statements) of BPM LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

This prospectus constitutes a part of a registration statement on Form S-1 filed under the Securities Act. As permitted by the SEC’s rules, this prospectus and any prospectus supplement, which form a part of the registration statement, do not contain all the information that is included in the registration statement. You will find additional information about us in the registration statement and its exhibits. Any statements made in this prospectus or any prospectus supplement concerning legal documents are not necessarily complete and you should read the documents that are filed as exhibits to the registration statement or otherwise filed with the SEC for a more complete understanding of the document or matter.

You can read our electronic SEC filings, including such registration statement, on the internet at the SEC’s website at www.sec.gov. We are subject to the information reporting requirements of the Exchange Act, and we file reports, proxy statements and other information with the SEC. These reports, proxy statements and other information will be available at the website of the SEC referred to above. We also maintain a website at www.wisatechnologies.com, at which you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. However, the information contained in or accessible through our website is not part of this prospectus or the registration statement of which this prospectus forms a part, and investors should not rely on such information in making a decision to purchase our securities in this offering.

INCORPORATION BY REFERENCE

We incorporate by reference the filed documents listed below (excluding those portions of any Current Report on Form 8-K that are not deemed “filed” pursuant to the General Instructions of Form 8-K), except as superseded, supplemented or modified by this prospectus or any subsequently filed document incorporated by reference herein as described below:

- [our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on March 17, 2023;](#)
- our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2023 and June 30, 2023 filed with the SEC on [May 15, 2023](#) and [August 14, 2023](#), respectively;
- our Current Reports on Forms 8-K filed with the SEC on [January 20, 2023](#), [January 25, 2023](#), [January 26, 2023](#), [February 3, 2023](#), [February 17, 2023](#), [March 17, 2023](#), [March 22, 2023](#), [March 24, 2023](#), [March 27, 2023](#), [March 29, 2023](#), [April 7, 2023](#), [April 12, 2023](#), [April 14, 2023](#), [May 15, 2023](#), [May 17, 2023](#), [May 17, 2023](#), [July 14, 2023](#), [July 25, 2023](#), [August 1, 2023](#), [August 16, 2023](#), [September 5, 2023](#), [September 8, 2023](#), [October 3, 2023](#) and [October 6, 2023](#); and
- the description of our Common Stock contained in (i) our registration statement on [Form 8-A, filed with the SEC on July 25, 2018](#) under Section 12(b) of the Exchange Act, including any amendments or reports filed for the purpose of updating such description and (ii) [Exhibit 4.14](#)-Description of Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934, to our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on March 17, 2023.

We also incorporate by reference into this prospectus additional documents we may file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act: (i) on or after the date of the initial filing of the registration statement of which this prospectus is a part and prior to effectiveness of the registration statement, and (ii) on or after the date of this prospectus but before the completion or termination of this offering (excluding any information not deemed “filed” with the SEC). Any statement contained in a previously filed document is deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or in a subsequently filed document incorporated by reference herein modifies or supersedes the statement, and any statement contained in this prospectus is deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in a subsequently filed document incorporated by reference herein modifies or supersedes the statement.

We will provide, without charge, to each person to whom a copy of this prospectus is delivered, including any beneficial owner, upon the written or oral request of such person, a copy of any or all of the documents incorporated by reference herein, but not delivered with such prospectus. Requests should be directed to:

WiSA Technologies, Inc.
15268 NW Greenbrier Pkwy
Beaverton, OR 97006
(408) 627-4716
info@wisatechnologies.com

Copies of these filings are also available on our website at www.wisatechnologies.com. For other ways to obtain a copy of these filings, please refer to “Where You Can Find More Information” above.

67

Up to 109,090 Units
(Each Unit Consisting of (i) One Share of Series B Convertible Preferred Stock, and
(ii) Two Preferred Warrants, with Each Preferred Warrant Exercisable for One Share of Series B Convertible Preferred Stock)
92,955,635 Shares of Common Stock Underlying the Series B Convertible Preferred Stock
119,010 Shares of Series B Convertible Preferred Stock Issuable as PIK Dividends
218,180 Shares of Series B Convertible Preferred Stock Underlying the Preferred Warrants



WISA TECHNOLOGIES, INC.

PROSPECTUS

Maxim Group LLC

The date of this prospectus is _____, 2023

68

PART II - INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth an estimate of the fees and expenses relating to the issuance and distribution of the securities being registered hereby, all of which shall be borne by the registrant. All of such fees and expenses, except for the SEC registration and the FINRA filing fee, are estimated:

SEC registration fee	\$	2,656.78
FINRA filing fee	\$	2,750.03

Transfer agent and registrar fees and expenses	\$	5,000.00
Legal fees and expenses	\$	200,000.00
Printing fees and expenses	\$	6,000.00
Accounting fees and expenses	\$	50,000.00
Miscellaneous fees and expenses	\$	3,593.19
Total	\$	270,000.00

Item 14. Indemnification of Directors and Officers.

Section 145 of the General Corporation Law of the State of Delaware provides that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, were or are a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests, provided that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him against the expenses which such officer or director has actually and reasonably incurred.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145.

Our bylaws provide that we must indemnify our directors and officers to the fullest extent permitted by the DGCL and must also pay expenses incurred in defending any such proceeding in advance of its final disposition upon delivery of an undertaking, by or on behalf of an indemnified person, to repay all amounts so advanced if it should be determined ultimately that such person is not entitled to be indemnified.

We have entered into indemnification agreements with certain of our executive officers and directors pursuant to which we have agreed to indemnify such persons against all expenses and liabilities incurred or paid by such person in connection with any proceeding arising from the fact that such person is or was an officer or director of our company, and to advance expenses as incurred by or on behalf of such person in connection therewith.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, provision of our certificate of incorporation, as amended, our bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

We maintain standard policies of insurance that provide coverage (1) to our directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to us with respect to indemnification payments that we may make to such directors and officers.

See "Item 17. Undertakings" for a description of the SEC's position regarding such indemnification provisions.

We plan to enter into a placement agency agreement that provides that we are to indemnify the placement agent under certain circumstances and the placement agent is obligated, under certain circumstances, to indemnify our directors, officers and controlling persons against specified liabilities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act").

Item 15. Recent Sales of Unregistered Securities

The following is a summary of all of our securities sold by us within the past three years which were not registered under the Securities Act of 1933, as amended (the "Securities Act"). The share and per share information included in the descriptions of the below transactions occurring prior to January 27, 2023, have not been adjusted to give effect to the 1-for-100 reverse split of the Company's outstanding shares of Common Stock, par value \$0.0001, or the Common Stock, of the Company, effective as of 5:00 pm, Eastern time, on January 26, 2023 and which began trading on the Nasdaq Capital Market, or Nasdaq, on a split-adjusted basis at the start of trading on January 27, 2023:

October 2020 Restricted Share Issuance

On October 5, 2020, we entered into an agreement with a third-party platform provider pursuant to which such provider agreed to host certain of our company information, including our presentations, on its platform. In partial consideration for such services, upon entering into such agreement, we issued 25,000 restricted shares of Common Stock to such provider.

November 9, 2020 Settlement Agreements

On November 9, 2020, in order to resolve a dispute between the Unit holders and the Company regarding certain registration rights in connection with the Unit Purchase Agreements, we entered into that certain Settlement and Release Agreement (the "Unit Settlement Agreements") with each Unit holder, pursuant to which (i) we and the Unit holders agreed to amend the February 2020 Warrants to provide for the purchase of one additional share of Common Stock for each share of Common Stock available under the February 2020 Warrants, (ii) we and the Unit holders agreed to amend the February 2020 Warrants to reduce the exercise price to \$2.55 (the "Amended Warrants"), and (iii) we agreed to issue an additional 236,375 shares of Common Stock and Common Stock purchase warrants to purchase up to an aggregate of 236,369 shares of Common Stock (the "New Unit Warrants"). As consideration for the foregoing, the Unit holders agreed to release any and all claims they may have against us, including, but not limited to, claims arising in connection with any shares of Common Stock, February 2020 Warrants, and Amended Warrants held by the Unit holders.

January 18, 2021 Inducement Agreements and January 19, 2021 Inducement Agreements

On January 18, 2021, the Company entered into letter agreements (the "January 18 Inducement Agreements") with holders of Common Stock purchase warrants previously issued by the Company to the holders pursuant to two private placements conducted concurrently with registered direct public offerings of the Company's securities that closed on June 8, 2020 and June 11, 2020, respectively (collectively, the "January 18 Original Warrants").

Pursuant to the January 18 Inducement Agreements, as an inducement and in consideration for a holder's exercise of the January 18 Original Warrants for some or all of the shares of Common Stock available thereunder, the Company delivered to each such holder new Common Stock purchase warrants (the "January 18 New Warrants") to purchase

a number of shares of Common Stock equal to 25% of the number of shares of Common Stock issued to such holder in connection with its exercise of its January 18 Original Warrants. The January 18 New Warrants are immediately exercisable upon issuance at an exercise price of \$4.20 per share, which is greater than the closing price of the Common Stock of \$4.16 on Nasdaq on January 15, 2021, have an expiration date of January 19, 2026 and are exercisable on a cashless basis if the January 18 New Warrant shares have not been registered by the Company on a registration statement on or before 6 months after the date of issuance and there is no currently effective registration statement covering the January 18 New Warrants at the time of exercise.

On January 19, 2021, the Company entered into letter agreements (the “January 19 Inducement Agreements” and, together with the January 18, 2021 Inducement Agreements, the “Inducement Agreements”) with holders of Common Stock purchase warrants (collectively, the “January 19 Original Warrants” and, together with the January 18 Original Warrants, the “Original Warrants”) previously issued by the Company to the holders pursuant to (i) a private placement in February 2020 and (ii) settlement agreements and releases, each dated November 9, 2020.

Pursuant to the January 19 Inducement Agreements, as an inducement and in consideration for a holder’s exercise of the January 19 Original Warrants for some or all of the shares of Common Stock available thereunder, the Company delivered to each such holder new Common Stock purchase warrants (the “January 19 New Warrants” and, together with the January 18 New Warrants, the “New Warrants”) to purchase a number of shares of Common Stock equal to 25% of the number of shares of Common Stock issued to such holder in connection with its exercise of its January 19 Original Warrants. The January 19 New Warrants are immediately exercisable upon issuance at an exercise price of \$4.20 per share, which is greater than the closing price of the Common Stock of \$4.16 on Nasdaq on January 15, 2021, have an expiration date of January 20, 2026 and are exercisable on a cashless basis if the January 19 New Warrant shares have not been registered by the Company on a registration statement on or before 6 months after the date of issuance and there is no currently effective registration statement covering the January 19 New Warrants at the time of exercise.

Pursuant to the Inducement Agreements, the holders exercised the Original Warrants to purchase an aggregate of 1,221,676 shares of Common Stock, resulting in gross proceeds to the Company of approximately \$3,147,000, and the holders received New Warrants exercisable for an aggregate of up to 305,419 shares of Common Stock.

June 2021 Exchange Agreement

The Company previously entered into a Securities Purchase Agreement, dated as of April 18, 2019, with an existing shareholder (the “Shareholder”), pursuant to which the Company issued 250,000 shares of our Series A 8% Convertible Preferred Stock (the “Original Securities”), par value \$0.0001 per share.

On June 4, 2021, the Company and the Shareholder entered into that certain Exchange Agreement (the “Exchange Agreement”) pursuant to which the Company exchanged with the Shareholder the Original Securities held by the Shareholder in exchange for: (i) 250,000 shares of Common Stock; and (ii) warrants (the “June 2021 Warrants”) to purchase up to 187,500 shares of Common Stock.

The June 2021 Warrants were exercisable beginning on June 4, 2021 and will be exercisable for a period of five (5) years and four (4) months thereafter. The exercise price with respect to the June 2021 Warrants is \$3.00 per share (the “Exercise Price”). The Exercise Price and the number of shares of Common Stock issuable upon exercise of the Warrants are subject to adjustment upon certain events, such as stock splits, combinations, dividends, distributions, reclassifications, mergers or other corporate change and dilutive issuances. The issuance of the Exchange Securities was made in reliance upon an exemption from registration pursuant to Section 3(a)(9) of the Securities Act.

June 2021 Inducement Agreements

On June 7, 2021, the Company entered into letter agreements (the “June 2021 Inducement Agreements”) with holders of Common Stock purchase warrants previously issued by the Company to the holders pursuant to two private placements conducted concurrently with registered direct public offerings of the Company’s securities that closed on June 8, 2020 and June 11, 2020, and which were still outstanding and had not been previously exercised (the “June 2021 Existing Warrants”).

Pursuant to the June 2021 Inducement Agreements, as an inducement and in consideration for a holder’s exercise of the June 2021 Existing Warrants for some or all of the shares of Common Stock available thereunder, the Company delivered to each such holder new Common Stock purchase warrants (the “June 2021 New Warrants”) to purchase a number of shares of Common Stock equal to 25% of the number of shares of Common Stock issued to such holder in connection with its exercise of its June 2021 Existing Warrants. The June 2021 New Warrants are immediately exercisable upon issuance at an exercise price of \$4.46 per share, which is greater than the average closing price of the Common Stock on Nasdaq for the five trading days prior to and including June 7, 2021, have an expiration date of June 8, 2026 and are exercisable on a cashless basis if the shares of Common Stock issuable upon exercise of the June 2021 New Warrants have not been registered by the Company on a registration statement on or before 6 months after the date of issuance and there is no currently effective registration statement covering the June 2021 New Warrants at the time of exercise. Pursuant to the June 2021 Inducement Agreements, holders agreed to exercise June 2021 Existing Warrants for an aggregate of 1,000,000 shares of Common Stock, resulting in gross proceeds to the Company of \$2,584,800, and the holders received June 2021 New Warrants exercisable for an aggregate of up to 250,000 shares of Common Stock.

September 2021 Equity Grants

In connection with the appointment of Eric Almgren as Chief Strategist of the Company, an inducement grant of 310,000 shares (the “inducement shares”), representing 2% of the outstanding shares of the Company on that date, was made to Mr. Almgren on September 13, 2021 outside of the Company’s existing incentive plans. The inducement shares were issued pursuant to Section 4(a)(2) of the Securities Act.

December 2021 Warrant Issuances

On December 16, 2021, the Company granted warrants to purchase up to 25,000 shares of Common Stock to a service provider in partial consideration for services rendered. The warrants have a five year life, an exercise price of \$1.52 per share and are fully vested.

On December 16, 2021, the Company granted warrants to purchase up to 15,000 shares of Common Stock to a service provider in partial consideration for services rendered. The warrants have a five year life, an exercise price of \$1.52 per share and are fully vested.

August 2022 Private Placement

On August 15, 2022, the Company completed a private placement (the “August 2022 Private Placement”) of a senior secured convertible instrument (the “August 2022 Note”) and a warrant (the “August 2022 Warrant”) to purchase 2,097,022 shares of Common Stock at an exercise price of \$0.997 per share. The August 2022 Note and August 2022 Warrant were issued pursuant to a securities purchase agreement, entered into as of August 15, 2022, by and between the Company and an institutional investor (the “August 2022 Investor”). The August 2022 Private Placement resulted in gross proceeds of \$3,000,000, before fees and other expenses associated with the transaction, including but not limited to, a \$105,000 commitment fee payable to the August 2022 Investor. Additionally, the Company agreed to issue to Maxim Group LLC, the placement agent for

the August 2022 Private Placement, in consideration for \$100 in cash, a warrant to purchase up to an aggregate of 194,384 shares of Common Stock at an exercise price of \$0.997 per share, subject to adjustment.

Effective August 24, 2022, the Company and the August 2022 Investor agreed to amend Section 3.1(b) of the August 2022 Note to provide that the Conversion Price (as defined in the August 2022 Note) could not be lower than \$0.50 (the “Floor Price”) until stockholder approval has been obtained, after which stockholder approval for the Floor Price may be reduced to no lower than \$0.25. The changes were effected by cancellation of the August 2022 Note and the issuance of a replacement senior secured convertible note (the “New Convertible Note”) to the August 2022 Investor. The New Convertible Note contains identical terms as the August 2022 Note, except for the amendment to the Section 3.1(b) of the August 2022 Note.

December 2022 Issuance of Additional Warrants

On November 28, 2022, the Company entered into a waiver of rights with the August 2022 Investor, pursuant to which the August 2022 Investor agreed to waive certain prohibitions under the August Purchase Agreement with respect to the December Public Offering in exchange for the issuance by the Company, on the closing date of the December Public Offering, of the Additional Warrants. On December 1, 2022, the Company issued 53,571 Series A Warrants and 53,571 Series B Warrants to the August 2022 Investor. The Company’s obligation to issue shares of Common Stock underlying the Additional Warrants was expressly conditioned upon stockholder approval of all of the transactions contemplated by the August 2022 Purchase Agreement, and the transaction documents related thereto. Such stockholder approval was obtained at the Company’s special meeting held on January 17, 2023.

February 2023 Warrant Issuances

On February 3, 2023, the Company issued Common Stock purchase warrants exercisable for an aggregate of up to 874,959 shares of Common Stock, at an exercise price of \$10.49 per share.

March 2023 Warrant Issuances

On March 29, 2023, the Company issued Common Stock purchase warrants exercisable for an aggregate of up to 1,674,414 shares of Common Stock, at an exercise price of \$1.91 per share.

April 2023 Warrant Issuances

On April 12, 2023, the Company issued Common Stock purchase warrants exercisable for an aggregate of up to 1,486,132 shares of Common Stock, at an exercise price of \$1.41 per share.

May 2023 Warrant Inducements

On May 15, 2023, the Company entered into letter agreements, or the May 2023 Inducement Agreements, with holders of Common Stock purchase warrants previously issued by the Company to the holders pursuant to a private placement conducted concurrently with a registered direct public offering of the Company’s securities that closed on April 12, 2023, and which were still outstanding and had not been previously exercised, or the April 2023 Existing Warrants.

Pursuant to the May 2023 Inducement Agreements, as an inducement and in consideration for a holder’s exercise of the April 2023 Existing Warrants for some or all of the shares of Common Stock available thereunder, the Company delivered to each such holder new Common Stock purchase warrants, or the May 2023 New Warrants, to purchase a number of shares of Common Stock equal to 200% of the number of shares of Common Stock issued to such holder in connection with its exercise of its April 2023 Existing Warrants. The May 2023 New Warrants are immediately exercisable upon issuance at an exercise price of \$1.33 per share, have an expiration date of May 17, 2028 and are exercisable on a cashless basis if the shares of Common Stock issuable upon exercise of the May 2023 New Warrants have not been registered by the Company on a registration statement on or before six (6) months after the date of issuance and there is no currently effective registration statement covering the May 2023 New Warrants at the time of exercise. Pursuant to the May 2023 Inducement Agreements, holders agreed to exercise April 2023 Existing Warrants for an aggregate of 1,486,132 shares of Common Stock, resulting in gross proceeds to the Company of approximately \$2.1 million before deducting fees and other offering expenses payable by us.

July 2023 Warrant Inducements

On July 26, 2023, the Company entered into warrant exercise inducement offer letters (the “July Inducement Letters”) with holders of the May Inducement Warrants pursuant to which the Company agreed to issue new inducement warrants (the “July Inducement Warrants”) to purchase a number of shares of Common Stock equal to 100% of the number of shares of Common Stock received upon exercise of the May Inducement Warrants during the period provided for in the July Inducement Letters, with such July Inducement Warrants to be issued on substantially the same terms as the May Inducement Warrants (“the July 2023 Warrant Inducement Transaction”). The holders exercised 510,000 of the May Inducement Warrants pursuant to certain of the July Inducement Letters, and the Company received aggregate gross proceeds of approximately \$678,000 from such exercises. In exchange for the exercises of the May Inducement Warrants, the Company issued July Inducement Warrants exercisable for an aggregate of up to 510,000 shares of Common Stock at an exercise price of \$1.29 per share. The inducement offering period closed at 5:00 p.m. EDT on August 8, 2023.

Each July Inducement Warrant was immediately exercisable upon issuance and will expire on the fifth anniversary of its issuance. The exercise price of the July Inducement Warrants is subject to appropriate adjustment in the event of recapitalization events, stock dividends, stock splits, stock combinations, reclassifications, reorganizations or similar events affecting the Company’s Common Stock. The July Inducement Warrants are callable by the Company at a redemption price of \$0.50 per July Inducement Warrant, provided that the resale of the shares of Common Stock underlying the July Inducement Warrants are then registered or may be resold under Rule 144 under the Securities Act.

July 2023 Equity Grants

On July 12, 2023, the Company issued an aggregate of 234,000 restricted shares of Common Stock to its directors and executive officers pursuant to the Company’s 2018 Long-Term Stock Incentive Plan.

Unless otherwise stated, the sale and the issuance of the foregoing notes, warrants and shares of Common Stock were offered and sold in reliance upon exemptions from registration pursuant to Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated under the Securities Act, or Regulation D. We made this determination based on the representations of each investor which included, in pertinent part, that each such investor was either (A) an “accredited investor” within the meaning of Rule 501 of Regulation D or (B) a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act and upon such further representations from each investor that

(i) such investor acquired the securities for his, her or its own account for investment and not for the account of any other person and not with a view to or for distribution, assignment or resale in connection with any distribution within the meaning of the Securities Act, (ii) such investor agreed not to sell or otherwise transfer the purchased securities unless they are registered under the Securities Act and any applicable state securities laws, or an exemption or exemptions from such registration are available, (iii) such investor had knowledge and experience in financial and business matters such that he, she or it was capable of evaluating the merits and risks of an investment in us, (iv) such investor had access to all of our documents, records, and books pertaining to the investment and was provided the opportunity to ask questions and receive answers regarding the terms and conditions of the offering and to obtain any additional information which we possessed or were able to acquire without unreasonable effort and expense, and (v) such investor had no need for the liquidity in its investment in us and could afford the complete loss of such investment. In addition, there was no general solicitation or advertising for securities issued in reliance upon these exemptions.

Item 16. Exhibits.

The list of exhibits in the Exhibit Index to this registration statement is incorporated herein by reference.

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - i. To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
 - ii. To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.
 - iii. To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; provided, however, that the undertakings set forth in paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, that are incorporated by reference in this registration statement or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of this registration statement.
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability of the registrant under the Securities Act of 1933, as amended, to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - i. Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - ii. Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - iii. The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - iv. Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (5) That, for purposes of determining any liability under the Securities Act of 1933, as amended, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934, as amended) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (6) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Beaverton, State of Oregon, on October 11, 2023.

WISA TECHNOLOGIES, INC.

By: /s/ Brett Moyer

Name: Brett Moyer
Title: President and Chief Executive Officer

76

Pursuant to the requirements of the Securities Act of 1933, the following persons in the capacities and on the dates indicated have signed this registration statement below.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ BRETT MOYER</u> Brett Moyer	Chief Executive Officer and Director (<i>principal executive officer</i>)	October 11, 2023
<u>/s/ *</u> Gary Williams	Chief Accounting Officer (<i>principal financial officer and principal accounting officer</i>)	October 11, 2023
<u>/s/ *</u> Lisa Cummins	Director	October 11, 2023
<u>/s/ *</u> Dr. Jeffrey M. Gilbert	Director	October 11, 2023
<u>/s/ *</u> David Howitt	Director	October 11, 2023
<u>/s/ *</u> Helge Kristensen	Director	October 11, 2023
<u>/s/ *</u> Sriram Peruvemba	Director	October 11, 2023
<u>/s/ *</u> Robert Tobias	Director	October 11, 2023
<u>/s/ *</u> Wendy Wilson	Director	October 11, 2023

* By: /s/ Brett Moyer
Brett Moyer, as attorney-in-fact

77

EXHIBIT INDEX

Exhibit No.	Description
2.1	Certificate of Conversion of Summit Semiconductor, Inc. (incorporated by reference to the Company's Registration Statement on Form S-1/A (File No. 333-224267) filed with the SEC on July 23, 2018).
2.2	Plan of Conversion of Summit Semiconductor, Inc.(incorporated by reference to the Company's Registration Statement on Form S-1/A (File No. 333-224267) filed with the SEC on July 23, 2018).
3.1(i)(a)	Certificate of Incorporation of Summit Semiconductor, Inc. (Incorporated by reference to the Company's Registration Statement on Form S-1/A (File No. 333-224267) filed with the SEC on July 2, 2018)
3.1(i)(b)	Certificate of Amendment to Certificate of Incorporation of Summit Semiconductor, Inc. (Incorporated by reference to the Company's Registration Statement on Form S-1/A (File No. 333-224267) filed with the SEC on July 25, 2018)
3.1(i)(c)	Certificate of Amendment to Certificate of Incorporation of Summit Semiconductor, Inc. (Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on September 14, 2018)
3.1(i)(d)	Form of Certificate of Designations of the Preferences, Rights and Limitations of the Series A 8% Senior Convertible Preferred Stock. (Incorporated by reference to the Company's Annual Report on Form 10-K filed with the SEC on March 25, 2020)
3.1(i)(e)	Certificate of Amendment to Certificate of Incorporation of Summit Semiconductor, Inc. (Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on April 8, 2020)
3.1(i)(f)	Certificate of Amendment of Certificate of Incorporation of the Company. (Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 11, 2022)
3.1(i)(g)	Series A Elimination Certificate. (Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 31, 2022)
3.1(i)(h)	Certificate of Amendment to Certificate of Incorporation of WiSA Technologies, Inc. (Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 26, 2023)
3.1(i)(i)	Bylaws of Summit Semiconductor, Inc. (Incorporated by reference to the Company's Registration Statement on Form S-1/A (File No. 333-224267) filed with the SEC on July 2, 2018)
3.1(i)(j)*	Form of Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock
4.1	Form of Common Stock Certificate (incorporated by reference to the Company's Annual Report on Form 10-K filed with the SEC on March 29, 2019).
4.2	Form of Common Stock Purchase Warrant issued to holders of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes. (incorporated by reference to the Company's Registration Statement on Form S-1/A (File No. 333-224267) filed with the SEC on July 2, 2018).
4.3	Form of Amended and Restated Common Stock Purchase Warrant issued to holder of Series E Senior Secured Original Issue Discount Convertible Notes (incorporated by reference to the Company's Annual Report on Form 10-K filed with the SEC on March 29, 2019).

- 4.4 [Form of Common Stock Purchase Warrant issued to holder of Series E Senior Secured Original Issue Discount Convertible Notes \(incorporated by reference to the Company's Annual Report on Form 10-K filed with the SEC on March 29, 2019\).](#)
- 4.5 [Form of Common Stock Purchase Warrant issued to holders of Series F Senior Secured 15% Convertible Notes \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- 4.6 [Form of Common Stock Purchase Warrant issued to holders of Series G 15% Original Issue Discount Senior Secured Promissory Notes in June 2018 \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- 4.7 [Form of Common Stock Purchase Warrant issued to holders of Series G 20% Original Issue Discount Senior Secured Promissory Notes in July 2018 \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 23, 2018\).](#)
- 4.8 [Amended and Restated Common Stock Purchase Warrant to purchase 110,000 shares of Common Stock issued to Michael Howse on December 27, 2018 \(incorporated by reference to the Company's Annual Report on Form 10-K filed with the SEC on March 29, 2019\).](#)

78

- 4.9 [Amended and Restated Common Stock Purchase Warrant to purchase 165,000 shares of Common Stock issued to Michael Howse on December 27, 2018 \(incorporated by reference to the Company's Annual Report on Form 10-K filed with the SEC on March 29, 2019\).](#)
- 4.10 [Form of Common Stock Purchase Warrant issued to holder of Series A 8% Senior Convertible Preferred Stock \(incorporated by reference to the Company's Registration Statement on Form S-1 \(File No. 333-230952\) filed with the SEC on April 19, 2019\).](#)
- 4.11 [Form of Pre-Funded Common Stock Purchase Warrant \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2019\).](#)
- 4.12 [Form of Amendment No. 1 to Series F Common Stock Purchase Warrant \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2019\).](#)
- 4.13 [Form of Common Stock Purchase Warrant, dated February 2020 \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 3, 2020\).](#)
- 4.14 [Description of Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934 \(incorporated by reference to the Company's Annual Report on Form 10-K filed with the SEC on March 25, 2020\).](#)
- 4.15 [Form of Senior Secured Convertible Instrument, dated March 2020 \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- 4.16 [Form of Common Stock Purchase Warrant, dated March 2020 \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- 4.17 [Form of Placement Agent Warrant, dated March 2020 \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- 4.18 [Form of Common Stock Purchase Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 5, 2020\).](#)
- 4.19 [Form of Common Stock Purchase Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 10, 2020\).](#)
- 4.20 [Form of Amendment to Common Stock Purchase Warrant \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)
- 4.21 [Form of Common Stock Purchase Warrant \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)
- 4.22 [Form of Common Stock Purchase Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 19, 2021\).](#)
- 4.23 [Form of Common Stock Purchase Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 7, 2021\).](#)
- 4.24 [Form of Common Stock Purchase Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 8, 2021\).](#)
- 4.25 [Form of Restricted Stock Agreement for Directors under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan \(incorporated by reference to the Company's Registration Statement on Form S-8 \(File No. 333-265060\) filed with the SEC on May 18, 2022\).](#)
- 4.26 [Form of Restricted Stock Agreement for Employees under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan \(incorporated by reference to the Company's Registration Statement on Form S-8 \(File No. 333-265060\) filed with the SEC on May 18, 2022\).](#)
- 4.27 [Form of Senior Secured Convertible Note \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- 4.28 [Form of Private Placement Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- 4.29 [Form of Placement Agent Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- 4.30 [Form of New Senior Secured Convertible Note \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 26, 2022\).](#)
- 4.31 [Form of Senior Indenture \(incorporated by reference to the Company's Registration Statement on Form S-3 \(File No. 333-267211\) filed with the SEC on September 1, 2022\).](#)

79

- 4.32 [Form of Subordinated Indenture \(incorporated by reference to the Company's Registration Statement on Form S-3 \(File No. 333-267211\) filed with the SEC on September 1, 2022\).](#)
- 4.33 [Warrant Amendment Agreement, dated November 21, 2022, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on November 21, 2022\).](#)
- 4.34 [Form of Series A Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 2, 2022\).](#)
- 4.35 [Form of Series B Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 2, 2022\).](#)
- 4.36 [Form of Pre-Funded Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 2, 2022\).](#)
- 4.37 [Form of Voting Agreement \(incorporated by reference to Amendment No. 2 to the Company's Registration Statement on Form S-1 \(File No. 333-268085\) filed with the SEC on November 29, 2022\).](#)
- 4.38 [Form of Private Placement Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 29, 2023\).](#)
- 4.39 [Form of Private Placement Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on April 12, 2023\).](#)
- 4.40 [Form of Inducement Warrant for April Warrants \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on May 17, 2023\).](#)
- 4.41 [Form of Inducement Warrant \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 1, 2023\)](#)
- 4.42* [Form of Preferred Warrant to Purchase Series B Convertible Preferred Stock](#)
- 5.1* [Opinion of Sullivan & Worcester LLP](#)
- 10.1 [Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- 10.2 [Form of Restricted Stock Agreement for Directors under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- 10.3 [Form of Restricted Stock Agreement for Employees under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- 10.4 [Form of Indemnity Agreement by and between Summit Semiconductor, Inc., and each of its directors and executive officers \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- 10.5 [Employment Agreement between FOCUS Enhancements, Inc. and Brett Moyer, dated August 6, 2002 \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)

- [10.6 First Amendment to Employment Agreement by and between Summit Semiconductor, LLC and Brett Moyer, effective May 2, 2011 \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- [10.7 Executive Employment Agreement between FOCUS Enhancements, Inc. and Gary Williams, dated May 28, 2004 \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- [10.8 First Amendment to Executive Employment Agreement by and between Summit Semiconductor, LLC and Gary Williams, effective May 2, 2011 \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- [10.9 Form of Securities Purchase Agreement between Summit Semiconductor, LLC and the purchasers of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- [10.10 Form of Amendment to Series D Transaction Documents \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- [10.11 Form of Securities Purchase Agreement by and among Summit Semiconductor, LLC and the purchasers of Series F Senior Secured 15% Convertible Notes \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)

80

- [10.12 Form of Amendment to Series F Transaction Documents \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 23, 2018\).](#)
- [10.13 Form of Series G Subscription Agreement by and among Summit Semiconductor, Inc. and the purchasers of Series G 15% Original Issue Discount Senior Secured Promissory Notes \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- [10.14 Form of Amendment to Series G Transaction Documents \(incorporated by reference to the Company's Registration Statement on Form S-1/A \(File No. 333-224267\) filed with the SEC on July 2, 2018\).](#)
- [10.15 Form of Securities Purchase Agreement, dated April 18, 2019, by and among Summit Wireless Technologies, Inc. and certain purchasers of Series A 8% Senior Convertible Preferred Stock \(incorporated by reference to the Company's Annual Report on Form 10-K filed with the SEC on March 25, 2020\).](#)
- [10.16 Form of Series F Warrant Amendment and Exercise Agreement by and between the Company and each of the Medalist Funds \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2019\).](#)
- [10.17 Form of Series G Warrant Amendment and Exercise Agreement by and between the Company and each of the Medalist Funds \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2019\).](#)
- [10.18 Form of Warrant Amendment and Exercise Agreement by and between the Company and certain other holders of the Company's Common Stock purchase warrants \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2019\).](#)
- [10.19 Form of Warrant Settlement Agreement by and between the Company and certain holders of the Company's Common Stock purchase warrants \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2019\).](#)
- [10.20 Form of Warrant Settlement Agreement by and between the Company and the Medalist Funds \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2019\).](#)
- [10.21 Form of Amended and Restated Offer Letter from Summit Wireless Technologies, Inc. to George Oliva, dated October 4, 2019 \(incorporated by reference to the Company's Annual Report on Form 10-K filed with the SEC on March 25, 2020\).](#)
- [10.22 Form of Unit Purchase Agreement, dated February 4, 2020, by and among the Company and the purchaser signatory thereto \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 3, 2020\).](#)
- [10.23 Form of Subscription Agreement, dated February 28, 2020, by and among the Company and the purchaser signatory thereto \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 3, 2020\).](#)
- [10.24 Form of Securities Purchase Agreement, dated March 2020, by and between the Company and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.25 Form of Security Agreement, dated March 2020, by and between the Company and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.26 Form of Security Agreement, dated March 2020, by and between WiSA and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.27 Form of Trademark Security Agreement, dated March 2020, by and between the Company and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.28 Form of Trademark Security Agreement, dated March 2020, by and between WiSA and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.29 Form of Patent Security Agreement, dated March 2020, between the Company and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.30 Form of Pledge Agreement, dated March 2020, between the Company, WiSA and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)

81

- [10.31 Form of Guaranty, dated March 2020 \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.32 Paycheck Protection Program Promissory Note and Agreement, dated May 3, 2020, by and between Wells Fargo Bank, National Association and Summit Wireless Technologies, Inc. \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on May 7, 2020\).](#)
- [10.33 Settlement Agreement and Release, dated May 14, 2020, by and between the Company and Alexander Capital, L.P. \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on May 27, 2020\).](#)
- [10.34 Leak-Out Agreement, dated May 14, 2020, by and between the Company and Alexander Capital, L.P. \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on May 27, 2020\).](#)
- [10.35 Placement Agency Agreement, dated June 4, 2020, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 5, 2020\).](#)
- [10.36 Form of Securities Purchase Agreement, dated as of June 4, 2020, by and between the Company and the investors \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 5, 2020\).](#)
- [10.37 Placement Agency Agreement, dated June 9, 2020, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 10, 2020\).](#)
- [10.38 Form of Securities Purchase Agreement, dated as of June 9, 2020, by and between the Company and the investors \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 10, 2020\).](#)
- [10.39 Form of Settlement and Release Agreement, dated November 9, 2020, by and among the Company and each holder \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)
- [10.40 Form of Registration Rights Agreement, dated November 9, 2020, by and among the Company and the holders \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)

- [10.41](#) [Form of Leak-Out Agreement, dated November 9, 2020, by and between the Company and each holder \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)
- [10.42](#) [Lease Agreement by and between Portland 2 LLC and the Company, dated August 18, 2020 \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)
- [10.43](#) [Summit Wireless Technologies, Inc. 2020 Stock Incentive Plan \(incorporated by reference to the Company's Proxy Statement on Form DEF 14A filed with the SEC on September 11, 2020\).](#)
- [10.44](#) [Lease Agreement by and between Portland 2 LLC and the Company, dated August 18, 2020 \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)
- [10.45](#) [Form of Inducement Agreement, dated January 18, 2021, by and between the Company and certain holders \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 19, 2021\).](#)
- [10.46](#) [Solicitation Agreement, dated January 15, 2021, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 19, 2021\).](#)
- [10.47](#) [Form of Inducement Agreement, dated January 19, 2021, by and between the Company and certain holders \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 20, 2021\).](#)
- [10.48](#) [Form of Exchange Agreement \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 7, 2021\).](#)
- [10.49](#) [Form of Inducement Agreement, dated as of June 7, 2021, by and between the Company and certain holders \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 8, 2021\).](#)

82

- [10.50](#) [Solicitation Agreement, dated June 7, 2021, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 8, 2021\).](#)
- [10.51](#) [Placement Agency Agreement, dated as of July 22, 2021, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on July 26, 2021\).](#)
- [10.52](#) [Form of Securities Purchase Agreement, dated as of July 22, 2021, by and between the Company and the investors \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on July 26, 2021\).](#)
- [10.53](#) [Equity Distribution Agreement, dated December 30, 2021, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 30, 2021\).](#)
- [10.54](#) [Form of Securities Purchase Agreement by and between the Company and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.55](#) [Form of Security Agreement by and between the Company and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.56](#) [Form of Security Agreement by and between WiSA and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.57](#) [Form of Trademark Security Agreement by and between the Company and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.58](#) [Form of Trademark Security Agreement by and between WiSA and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.59](#) [Form of Patent Security Agreement between the Company and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.60](#) [Form of Pledge Agreement between the Company, WiSA and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.61](#) [Form of Guaranty \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.62+](#) [Executive Employment Agreement, effective as of August 24, 2022, by and between the Company and Brett Moyer \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 26, 2022\).](#)
- [10.63+](#) [Executive Employment Agreement, effective as of August 24, 2022, by and between the Company and George Oliva \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 26, 2022\).](#)
- [10.64+](#) [Executive Employment Agreement, effective as of August 24, 2022, by and between the Company and Gary Williams \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 26, 2022\).](#)
- [10.65](#) [WiSA Technologies, Inc. Management Team Retention Bonus Plan, effective September 1, 2022 \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on September 1, 2022\).](#)
- [10.66](#) [Form of Securities Purchase Agreement \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 2, 2022\).](#)
- [10.67](#) [Form of Warrant Agency Agreement \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 2, 2022\).](#)
- [10.68](#) [Form of Inducement Letter for April Warrants \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on May 17, 2023\).](#)
- [10.69](#) [Separation Agreement, effective as of July 11, 2023, by and between the Company and George Oliva \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on July 14, 2023\).](#)
- [10.70](#) [Form of Inducement Letter for March Warrants \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 1, 2023\)](#)
- [10.71](#) [Form of Inducement Letter for May Warrants \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 1, 2023\)](#)
- [10.72*](#) [Form of Securities Purchase Agreement](#)

83

- [10.73*](#) [Form of Placement Agent Agreement by and between the Company and Maxim Group LLC](#)
- [10.74*](#) [Form of Warrant Agency Agreement \(Preferred Warrants\) by and between the Company and VStock Transfer, LLC](#)
- [10.75](#) [Form of Investor Waiver \(incorporated by reference to the Company's Registration Statement on Form S-1 filed with the SEC on September 5, 2023\)](#)
- [21.1](#) [List of Subsidiaries. \(Incorporated by reference to the Company's Registration Statement on Form S-1 \(File No. 333-239750\) with the SEC on July 8, 2020\)](#)
- [23.1*](#) [Consent of BPM LLP, independent registered public accounting firm](#)
- [23.2*](#) [Consent of Sullivan & Worcester LLP \(included in Exhibit 5.1\)](#)
- [24.1**](#) [Power of Attorney \(included on the signature page to previously filed registration statement\)](#)
- [107*](#) [Filing Fee Table](#)

- * Filed herewith.
- ** Previously filed.
- + Management compensatory agreement.

84

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES B CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 151 OF THE
DELAWARE GENERAL CORPORATION LAW

The undersigned, Brett Moyer, does hereby certify that:

1. He is the President and Chief Executive Officer of WiSA Technologies, Inc., a Delaware corporation (the "Corporation").
2. The Corporation is authorized to issue 20,000,000 shares of preferred stock, par value \$0.0001 per share, of which no shares are issued and outstanding.
3. The following resolutions were duly adopted by the board of directors of the Corporation (the "Board of Directors"):
 1. **WHEREAS**, the Certificate of Incorporation of the Corporation, as amended to date (the "Certificate of Incorporation"), provides for a class of its authorized stock known as preferred stock, consisting of 20,000,000 shares, \$0.0001 par value per share, issuable from time to time in one or more series;
 2. **WHEREAS**, the Board of Directors is authorized by resolution to provide for the issuance of preferred stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof; and
 3. **WHEREAS**, it is the desire of the Board of Directors, pursuant to its authority as described above, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 450,000 shares of the preferred stock which the Corporation has the authority to issue.

WHEREAS, the Certificate of Incorporation of the Corporation, as amended to date (the "Certificate of Incorporation"), provides for a class of its authorized stock known as preferred stock, consisting of 20,000,000 shares, \$0.0001 par value per share, issuable from time to time in one or more series;

WHEREAS, the Board of Directors is authorized by resolution to provide for the issuance of preferred stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as described above, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 450,000 shares of the preferred stock which the Corporation has the authority to issue.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock to be designated "Series B Convertible Preferred Stock" and does hereby fix and determine the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof as follows:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

"Alternate Consideration" shall have the meaning set forth in Section 7(d).

"Attribution Parties" shall have the meaning set forth in Section 6(d).

"Beneficial Ownership Limitation" shall have the meaning set forth in Section 6(d).

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Buy-In" shall have the meaning set forth in Section 6(c)(iv).

"Certificate of Designation" means this Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the Corporation's common stock, \$0.0001 par value per share, and stock of any other class or series of securities into which such securities may hereafter be reclassified as or converted or otherwise changed into shares of the Corporation's common stock, \$0.0001 par value per share.

"Common Stock Equivalents" means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Conversion Amount" means the sum of the Stated Value at issue and all accrued and unpaid dividends at issue.

"Conversion Date" shall have the meaning set forth in Section 6(a).

"Conversion Price" shall have the meaning set forth in Section 6(b).

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Series B Preferred Stock in accordance with the terms hereof.

"Convertible Securities" means any stock or other security (other than Options) 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 Common Stock.

"Corporation's Mandatory Redemption Price" shall have the meaning set forth in Section 9(a).

"Distribution" shall have the meaning set forth in Section 7(c).

"Dividends" shall have the meaning set forth in Section 3(a).

“Dividend Rate” means 20 percent (20%).

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

“Fundamental Transaction” shall have the meaning set forth in Section 7(d).

“Holder” shall have the meaning given such term in Section 2.

“Liquidation” shall have the meaning set forth in Section 5.

“Mandatory Redemption” shall have the meaning given such term in Section 9(a).

“Mandatory Redemption Date” shall have the meaning given such term in Section 9(a).

“Mandatory Redemption Share Amount” shall have the meaning given such term in Section 9(a).

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Options” means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

“Original Issue Date” means the initial closing date of the offering of Series B Preferred Stock to be issued and sold to the purchasers pursuant to the Securities Purchase Agreement and/or Registration Statement. For the avoidance of doubt, the issuance of additional shares of Series B Preferred Stock pursuant to the Corporation’s obligation to issue the Dividends, the issuance of additional shares of Series B Preferred Stock upon exercise of the Warrants, or otherwise, shall not create a new Original Issue Date with respect to such additional shares of Series B Preferred Stock issued.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Purchase Price” means the purchase price of \$55.00 for each share of Series B Preferred Stock.

“Purchase Rights” shall have the meaning set forth in Section 7(b).

“Registration Statement” means the registration statement on Form S-1, as amended, filed with the Commission (File No. 333-274331), including any registration statement prepared and filed by the Company in accordance with Rule 462(b) pursuant to the Securities Act).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Securities Purchase Agreement” means that certain securities purchase agreement, dated [], 2023, among the Company and the purchasers signatory thereto.

“Series B Preferred Stock” shall have the meaning set forth in Section 2.

“Share Delivery Date” shall have the meaning set forth in Section 6(c)(i).

“Standard Settlement Period” shall have the meaning set forth in Section 6(c)(i).

“Stated Value” shall have the meaning set forth in Section 2.

“Subsidiary” means any subsidiary of the Corporation.

“Successor Entity” shall have the meaning set forth in Section 7(d).

“Term” shall mean two (2) years from the Original Issue Date (meaning the Term shall end on [], 2025) unless all the securities are either redeemed or converted into Conversion Shares in accordance with the provisions hereof.

“Trading Day” means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Trading Market, or, if the Trading Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which the New York Stock Exchange (or any successor thereto) is open for trading of securities.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

“Transfer Agent” means VStock Transfer, LLC and any successor transfer agent of the Corporation.

“Warrants” shall mean the two-year warrants issued pursuant to the Corporation’s registration statement filed with the Commission on Form S-1, as amended (File No. 333-274331), or any successor or replacement therefor.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as “Series B Convertible Preferred Stock” (the “Series B Preferred Stock”) and the number of shares of such series shall be 450,000 (which shall not be subject to increase without the written consent of the holders of a majority of the then outstanding shares of the Series B Preferred Stock (each, a “Holder” and collectively, the “Holders”). Each share of Series B Preferred Stock shall have a par value of \$0.0001 per share and a stated value equal to \$100.00 (as adjusted for any stock splits, stock dividends, recapitalizations, or similar transaction with respect to the Series B Preferred Stock, the “Stated Value”).

Section 3. Dividends. Dividends on each share of Series B Preferred Stock shall be payable only out of funds legally available therefor and only if there is adequate surplus under Section 170 of the Delaware General Corporation Law, to holders of record at the close of business on the one-year anniversary of the Original Issue Date (the, a “Dividend Record Date”). Dividends on each share of Series B Preferred Stock shall be paid on the date that is three (3) Business Days after the Dividend Record Date in additional fully paid and nonassessable, registered shares of Series B Preferred Stock, in lieu of cash, in a number equal to the quotient obtained by dividing (A) the product obtained by multiplying (i) the Dividend Rate and (ii) the Stated Value, by (B) the Purchase Price.

Section 4. Voting Rights.

(a) Except as otherwise provided herein or as otherwise required by the Delaware General Corporation Law, the Series B Preferred Stock shall have no voting rights. However, as long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Series B Preferred Stock, (i) alter or change adversely the powers, preferences or rights given to the Series B Preferred Stock or alter or amend this Certificate of Designation, (ii) increase the number of authorized shares of Series B Preferred Stock, or (iii) enter into any agreement with respect to any of the foregoing. For all matters on which the Series B Preferred Stock may vote, each share of Series B Preferred Stock will be entitled to one vote per share.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a “Liquidation”), prior and in preference to the Common Stock, the Holders shall be entitled to receive out of the assets available for distribution to stockholders an amount equal in cash to 100% of the aggregate Stated Value of all shares of Series B Preferred Stock held by such Holder, plus any other fees then due and owing thereon under this Certificate of Designation, and no more, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The preference set forth in this Section 5 with respect to distributions to the Series B Preferred Stock upon a Liquidation shall apply *mutatis mutandis* to any distributions to be made upon the consummation of a Fundamental Transaction. The Corporation shall mail written notice of any such Liquidation or Fundamental Transaction not less than 45 days prior to the payment date stated therein, to each Holder. To the extent necessary, the Corporation shall cause such actions to be taken by each of its Subsidiaries so as to enable, to the maximum extent permitted by law, the proceeds of a Liquidation to be distributed to the Holders in accordance with this Section 5. All the preferential amounts to be paid to the Holders under this Section 5 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation funds of the Corporation to the holders of shares of the Common Stock in connection with a Liquidation as to which this Section 5 applies.

Section 6. Conversion.

(a) Conversions at Option of Holder. Subject to Section 6(d), each share of Series B Preferred Stock shall be convertible after its issuance, at any time and from time to time from and after the Original Issue Date, at the option of the Holder thereof, into that number of shares of Common Stock determined by dividing the Stated Value of such share of Series B Preferred Stock by the Conversion Price. Holders shall effect conversions by delivering to the Corporation a conversion notice in the form attached hereto as Annex A (a “Notice of Conversion”). Each Notice of Conversion shall specify the number of shares of Series B Preferred Stock to be converted, the number of shares of Series B Preferred Stock owned prior to the conversion at issue, the number of shares of Series B Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers such Notice of Conversion to the Corporation (such date, the “Conversion Date”). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be as of the close of business on the Business Day that such Notice of Conversion is delivered to the Corporation, or if such day is not a Business Day or if the Notice of Conversion is delivered after regular business hours, the next Business Day. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. From and after the Conversion Date, until presented for transfer or exchange, certificates (if in certificated form) that previously represented shares of Series B Preferred Stock shall represent, in lieu of the number of shares of Series B Preferred Stock previously represented by such certificate (if in certificated form), the number of shares of Series B Preferred Stock, if any, previously represented by such certificate (if in certificated form) that were not converted pursuant to the Notice of Conversion, plus the number of Conversion Shares into which the shares of Series B Preferred Stock previously represented by such certificate (if in certificated form) were converted. To effect conversions of shares of Series B Preferred Stock, a Holder shall not be required to surrender the certificate(s), if any, representing the shares of Series B Preferred Stock to the Corporation unless all of the shares of Series B Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Series B Preferred Stock promptly following the Conversion Date at issue. Shares of Series B Preferred Stock converted into Common Stock shall be canceled and shall not be reissued. Without limiting the rights and remedies of a holder of Series B Preferred Stock hereunder and without limiting the right of a Holder to deliver a Notice of Conversion to the Corporation, a holder whose interest in the shares of Series B Preferred Stock is a beneficial interest in certificate(s) representing the shares of Series B Preferred Stock held in book-entry form through DTC (or another established clearing corporation performing similar functions), shall effect conversions made pursuant to this Section 6(a) by delivering to DTC (or such other clearing corporation, as applicable) the appropriate instruction form for conversion, complying with the procedures to effect conversions that are required by DTC (or such other clearing corporation, as applicable).

(b) Conversion Price. The conversion price for the Series B Preferred Stock shall equal \$[] per share, subject to adjustment herein (the “Conversion Price”).

(c) Mechanics of Conversion.

(i) Delivery of Conversion Shares Upon Conversion. Not later than the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) after each Conversion Date (the “Share Delivery Date”), the Corporation shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Series B Preferred Stock. The Corporation shall cause such Conversion Shares to be issued free of such restrictive legends and trading legends. The Corporation shall deliver the Conversion Shares required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company (“DTC”) or another established clearing corporation performing similar functions. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Corporation’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion. Notwithstanding the foregoing, with respect to any Notice(s) of Conversion delivered by 12:00 p.m. (New York City time) on the Original Issue Date, the Corporation agrees to deliver the Conversion Shares subject to such notice(s) by 5:00 p.m. (New York City time) on the Original Issue Date and the Original Issue Date shall be the Share Delivery Date for purposes hereunder. In addition, notwithstanding the foregoing, following its satisfaction of the applicable Exercise Conditions (as defined in the Warrant), a holder of a Warrant may convert the shares of Series B Preferred Stock subject to the Notice of Exercise (as defined in the Warrant) pursuant to the terms in the Warrant into Conversion Shares pursuant to this Certificate of Designation

by simultaneously delivering a Notice of Conversion to the Corporation hereunder, and upon the delivery of said Notice of Conversion, the Corporation shall deliver, or cause to be delivered, to the converting Holder the applicable number of Conversion Shares subject to the Notice of Conversion by the Share Delivery Date.

(ii) Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Series B Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

(iii) Obligation Absolute; Partial Liquidated Damages. Subject to Section 6(d), the Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Series B Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance, which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Series B Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, other than pursuant to Section 6(d), unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Series B Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of the Series B Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, subject to Section 6(d), the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(c)(i) by the Share Delivery Date applicable to such conversion, other than pursuant to Section 6(d), the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$250 of Stated Value of Series B Preferred Stock being converted, \$2.50 per Trading Day (increasing to \$5 per Trading Day on the third Trading Day after the Share Delivery Date and increasing to \$10 per Trading Day on the sixth Trading Day after the Share Delivery Date) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

7

(iv) Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Series B Preferred Stock equal to the number of shares of Series B Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series B Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver the Conversion Shares upon conversion of the shares of Series B Preferred Stock as required pursuant to the terms hereof.

(v) Reservation of Shares Issuable Upon Conversion. From and after the Original Issue Date and until no shares of Series B Preferred Stock remain outstanding, the Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series B Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Series B Preferred Stock), not less than 100% of the aggregate number of shares of the Common Stock as shall be issuable (taking into account any adjustments under Section 7) upon the conversion of the then outstanding shares of Series B Preferred Stock and the payment of any and all Dividends payable to the Holders. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and non-assessable.

(vi) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series B Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round down to the next whole share. Notwithstanding anything to the contrary contained herein, but consistent with the provisions of this subsection with respect to fractional Conversion Shares, nothing shall prevent any Holder from converting fractional shares of Series B Preferred Stock.

8

(vii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of the Series B Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation 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 such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Series B Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to DTC (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

(d) Beneficial Ownership Limitation. Notwithstanding anything to the contrary set forth herein, the Corporation shall not effect any conversion of the Series B Preferred Stock, and a Holder shall not have the right to convert any portion of the Series B Preferred Stock, to the extent that, after giving effect to the conversion set forth on

the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Series B Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series B Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series B Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(d) applies, the determination of whether the Series B Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series B Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Series B Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Series B Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this Section 6(d) and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Corporation shall within one (1) Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Series B Preferred Stock, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% (or, upon election by a Holder prior to the issuance of any shares of Series B Preferred Stock, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Series B Preferred Stock held by the applicable Holder. A Holder, upon notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(d) applicable to its Series B Preferred Stock; provided, that the Beneficial Ownership Limitation shall not in any event exceed 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Series B Preferred Stock held by the Holder and the provisions of this Section 6(d) shall continue to apply. Any such increase will not be effective until the 61st day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The Beneficial Ownership Limitation shall not be waived by the Corporation or the Holder and upon issuance of the Series B Preferred Stock by the Corporation, and the purchase thereof by the Holder, each of the Corporation and the Purchaser shall be deemed to acknowledge such limitation and to agree not to waive it. The provisions of this Section 6(d) shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(d) to correct this Section (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this Section shall apply to any successor or assign of a Holder.

Section 7. Certain Adjustments.

(a) Stock Dividends and Stock Splits. If the Corporation, at any time while the Series B Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution that is payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Series B Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and, in the case of a subdivision, combination or re-classification, shall become effective immediately after the effective date of such subdivision, combination or re-classification. Notwithstanding the foregoing in no event may the Conversion Price be less than the par value per share of Series B Preferred Stock.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property *pro rata* to the record holders of Common Stock or any class thereof (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Series B Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the record date for the grant, issuance or sale of such Purchase Rights, or, if no such record date is established, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(c) Distributions. During such time as the Series B Preferred Stock is outstanding, if the Corporation declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Series B Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the record date for such Distribution, or, if no such record date is established, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation.

(d) Fundamental Transaction. If, at any time while the Series B Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person (other than a merger to bring about a reincorporation under applicable state law and Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended), (ii) the Corporation (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any

sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of at least 50% of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (each a “Fundamental Transaction”), then, upon any subsequent conversion of the Series B Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of the Series B Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which the Series B Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of the Series B Preferred Stock). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of the Series B Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders’ right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Corporation under this Certificate of Designation in accordance with the provisions of this Section 7(d) pursuant to written agreements in customary form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for the Series B Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Series B Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of the Series B Preferred Stock (without regard to any limitations on the conversion of the Series B Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of the Series B Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation referring to the “Corporation” shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation with the same effect as if such Successor Entity had been named as the Corporation herein.

(e) [Reserved].

(f) [Reserved].

(g) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(h) Notice of Holders.

(i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder by facsimile or email a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation (and all of its Subsidiaries, taken as a whole), or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series B Preferred Stock, and shall cause to be delivered by email to each Holder at its last email address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of the Series B Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Covenants. As long as any shares of Series B Preferred Stock or Warrants remain outstanding:

(a) the Corporation is obligated to maintain an effective registration statement under the Securities Act covering: (a) the issuance of shares of Common Stock issuable upon conversion of the Series B Preferred Stock and (b) the issuance of additional shares of Series B Preferred Stock pursuant to the Corporation’s obligation to pay Dividends, in each case, unless there is available an exemption from, or a transaction not subject to, the registration requirements of the Securities Act that would allow the issuance of the Series B Preferred Stock and the Conversion Shares without registration.

Section 9. Redemption

(a) Mandatory Redemption. If any shares of Series B Preferred are outstanding at the end of the Term, then the Corporation shall promptly redeem all of such outstanding shares of Series B Preferred Stock on a *pro rata* basis among all of the Holders of Series B Preferred Stock commencing on the second-year anniversary of the Original Issue Date (“Mandatory Redemption Date”) in cash at a price per share of Series B Preferred Stock equal to the sum of (x) the Stated Value plus (y) all accrued and unpaid Dividends and (z) all other amounts due in respect of the Series B Preferred Stock (the “Corporation’s Mandatory Redemption Price”). On the Mandatory Redemption Date, the Corporation shall pay the Corporation’s Mandatory Redemption Price, subject to any adjustment pursuant to the immediately preceding sentence, to the Holders of Series B Preferred Stock on a *pro rata* basis. If a Mandatory Redemption Date is not a Business Day, then the Corporation’s Mandatory Redemption Price shall be due and payable on the Business Day immediately following such Mandatory Redemption Date. The Corporation shall pay the Corporation’s Mandatory Redemption Price due under this Section 9(a) to the Holders in cash. Notwithstanding the foregoing, if the shares of Series B Preferred Stock are issued in book-entry form through DTC or any other similar facility, notice of redemption may be given to the holders of Series B Preferred Stock at such time and in any manner permitted by such facility. The Corporation covenants and agrees that it will honor all Notices of Conversion tendered up until the Mandatory Redemption Share Amount is paid in full.

13

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) [Reserved].

(j) General. Notwithstanding anything to the foregoing contained herein, on the Mandatory Redemption Date, the Corporation shall redeem, on *apro rata* basis in accordance with the number of shares of Series B Preferred Stock owned by each Holder, that number of outstanding shares of Series B Preferred Stock which the Corporation is obligated to redeem pursuant to this Section 9. If on the Mandatory Redemption Date, Delaware law governing distributions to stockholders prevents the Corporation from redeeming all shares of Series B Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares of Series B Preferred Stock that it may redeem consistent with such law. If on the Mandatory Redemption Date, any cash payment to be made pursuant to this Section 9 is not made due to the aforementioned prohibitions under Delaware law, then the Corporation shall, provided there is no prohibition under Delaware law, redeem the Series B Preferred Stock by paying to the Holder the unpaid cash redemption payment in duly authorized, validly issued, fully paid and non-assessable shares of Common Stock equal in number to the quotient obtained by dividing such unpaid amount by the closing price of the Common Stock on the Trading Market on the Mandatory Redemption Date.

14

Section 10. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile or email attachment, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at 15268 NW Greenbrier Pkway, Beaverton, OR 97006 Attention: Brett Moyer, President and Chief Executive Officer, email address: bmoyer@wisatechnologies.com, or such other email address or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 10. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by email attachment, or sent by a nationally recognized overnight courier service addressed to each Holder at the email address or address of such Holder appearing on the books of the Corporation, or if no such email address or address appears on the books of the Corporation, such email address or address as the Holder may specify. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via email attachment at the email address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via email attachment at the email address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by a U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) Lost or Mutilated Preferred Stock Certificate. If a Holder’s Series B Preferred Stock certificate (if in certificated form) shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series B Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation (which shall not include the posting of any bond).

(c) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances.

(d) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(e) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(f) Status of Converted or Redeemed Preferred Stock. If any shares of Series B Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares may not be reissued and shall automatically be retired and canceled and shall resume the status of authorized but unissued shares of preferred stock.

15

(g) Certificates. The Corporation may at its option issue shares of the Series B Preferred Stock without certificates. If DTC or its nominee is the registered owner of the Series B Preferred Stock, the following provisions of this Section 10 shall apply. If and as long as DTC or its nominee is the registered owner of the Series B Preferred Stock, DTC or its nominee, as the case may be, shall be considered the sole owner and holder of all such shares of the Series B Preferred Stock of which DTC or its nominee is the registered owner for all purposes under the instruments governing the rights and obligations of holders of shares of the Series B Preferred Stock. If DTC discontinues providing its services as securities depository with respect to the shares of the Series B Preferred Stock, or if DTC ceases to be registered as a clearing agency under the Exchange Act, in the event that a successor securities depository is not obtained within ninety (90) days, the Corporation shall either print and deliver certificates for the shares of the Series B Preferred Stock or provide for the direct registration of the Series B Preferred Stock with the Transfer Agent. If the Corporation decides to discontinue the use of the system of book-entry-only transfers through DTC (or a successor securities depository), the Corporation shall print certificates for the shares of the Series B Preferred Stock and deliver such certificates to DTC or shall provide for the direct registration of the Series B Preferred Stock with the Transfer Agent. Except in the limited circumstances referred to above, owners of beneficial interests in the Series B Preferred Stock of which DTC or its nominee is the registered owner:

- (i) shall not be entitled to have such Series B Preferred Stock registered in their names;
 - (ii) shall not receive or be entitled to receive physical delivery of securities certificates in exchange for beneficial interests in the Series B Preferred Stock;
- and
- (iii) shall not be considered to be owners or holders of the shares of the Series B Preferred Stock for any purpose under the instruments governing the rights and obligations of holders of shares of the Series B Preferred Stock.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this [] day of [], 2023.

Name: Brett Moyer
Title: President and Chief Executive Officer

ANNEX A

**NOTICE OF CONVERSION
(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF SERIES B PREFERRED STOCK)**

The undersigned hereby elects to convert the number of shares of Series B Convertible Preferred Stock indicated below into shares of common stock, par value \$0.0001 per share (the "Common Stock"), of WiSA Technologies, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion:
Number of shares of Series B Preferred Stock owned prior to Conversion:
Number of shares of Series B Preferred Stock to be Converted:
Stated Value of shares of Series B Preferred Stock to be Converted:
Number of shares of Common Stock to be Issued:
Applicable Conversion Price:
Number of shares of Series B Preferred Stock subsequent to Conversion:
Address for Delivery:

Or

DWAC Instructions:
Broker no:
Account no:

HOLDER

By: _____
Name:
Title:

FORM OF PREFERRED STOCK PURCHASE WARRANT

WISA TECHNOLOGIES, INC.

Preferred Warrant Shares: _____

Initial Exercise Date: [], 2023

Issuance Date: [], 2023

THIS PREFERRED STOCK PURCHASE WARRANT (the “Warrant”) certifies that, for value of \$0.0001 received by the Company, _____ or its assigns (the “Holder”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after [], 2023 (the “Initial Exercise Date”) and prior to 5:00 p.m. (New York City time) on [], 2025 (the “Termination Date”) but not thereafter, to subscribe for and purchase from WiSA Technologies, Inc., a Delaware corporation (the “Company”), up to _____ shares of Series B Preferred Stock (as subject to adjustment hereunder, the “Preferred Warrant Shares”). The purchase price of one share of Series B Preferred Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b). This Warrant shall initially be issued and maintained in the form of a security held in book-entry form and the Depository Trust Company or its nominee (“DTC”) shall initially be the sole registered holder of this Warrant, subject to a Holder’s right to elect to receive a Warrant in certificated form pursuant to the terms of the Warrant Agency Agreement, in which case this sentence shall not apply. This Warrant is being issued pursuant to the Securities Purchase Agreement (as defined herein) and/or Registration Statement (as defined herein) and Warrant Agency Agreement (the “Warrant Agent Agreement”), dated as of [], 2023, between the Company and VStock Transfer, LLC, and any successor warrant agent under thereunder (collectively, the “Warrant Agent”).

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1.

“**Affiliate**” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“**Business Day**” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“**Commission**” means the United States Securities and Exchange Commission.

“**Common Stock**” means the common stock of the Company, par value \$0.0001 per share, and any other class or series of securities into which such securities may hereafter be reclassified as or converted or otherwise changed into shares of the Company’s common stock, \$0.0001 par value per share.

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

“**Fundamental Transaction**” means (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (other than a stock split whether by the Company or another Person) is completed pursuant to which holders of shares of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding shares of Common Stock or 50% or more of the voting power of the Common Stock of the Company, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization (other than a stock split) of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization (other than a stock split), spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires 50% or more of the outstanding shares of Common Stock or 50% or more of the voting power of the Common Stock of the Company.

“**Person**” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

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

“**Preferred Stock Equivalents**” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time shares of Series B Preferred Stock, including, without limitation, any debt, preferred shares, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, shares of Preferred Stock, other than shares of Series B Preferred Stock payable in-kind as dividends pursuant to the Series B Certificate of Designations.

“**Registration Statement**” means the Company’s registration statement on Form S-1, as amended (File No. 333-274331) which was filed with the Commission and became effective on [], 2023.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Securities Purchase Agreement**” means that certain securities purchase agreement, dated [], 2023, among the Company and the purchasers signatory thereto.

“**Registration Statement**” means the registration statement on Form S-1 filed with the Commission (File No. 333-274331), including any registration statement prepared and filed by the Company in accordance with Rule 462(b) pursuant to the Securities Act).

“**Series B Certificate of Designation**” means the Certificate of Designation of Preferences, Rights and Limitations of Series B Preferred Stock of the Company.

“**Series B Preferred Stock**” means Series B Convertible Preferred Stock of the Company, par value \$0.0001 per share, issued and issuable pursuant to the Series B Certificate of Designation and (ii) any capital stock into which such Series B Convertible Preferred Stock shall have been changed or any share capital resulting from a reclassification of such Series B Convertible Preferred Stock.

“**Subsidiary**” means any subsidiary of the Company, which is actively engaged in a trade or business, and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“**Successor Entity**” means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

“**Trading Day**” means a day on which the Common Stock is traded on a Trading Market.

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“**Transfer Agent**” means VStock Transfer, LLC, the current transfer agent of the Company, and any successor transfer agent of the Company.

Section 2. Exercise.

(a) Exercise of Warrant. Subject to the provisions of Section 2(e) hereof, exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and prior to 5:00 p.m. (New York City time) on the Termination Date by delivery to the Warrant Agent and the Company of a duly executed PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the “Notice of Exercise”). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Preferred Warrant Shares specified in the applicable Notice of Exercise to the Company by wire transfer or cashier’s check drawn on a United States bank. Neither the Company nor the Warrant Agent shall have any obligation to inquire with respect to or otherwise confirm the authenticity of the signature(s) contained on any Notice of Exercise nor the authority of the person so executing such Notice of Exercise. No ink original Notice of Exercise shall be required nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company or the Warrant Agent until the Holder has subscribed for all of the Preferred Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Warrant Agent for cancellation within three (3) Trading Days after the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in subscriptions for a portion of the total number of Preferred Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Preferred Warrant Shares issuable hereunder in an amount equal to the applicable number of Preferred Warrant Shares subscribed for. The Holder and the Warrant Agent shall maintain records showing the number of Preferred Warrant Shares subscribed for and the date of such purchase. The Company shall deliver to the Holder and Warrant Agent any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase for a portion of the Preferred Warrant Shares hereunder, the number of Preferred Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

Notwithstanding the foregoing in this Section 2(a), a holder whose interest in this Warrant is a beneficial interest in certificate(s) representing this Warrant held in book-entry form through DTC (or another established clearing corporation performing similar functions), shall effect exercises made pursuant to this Section 2(a) by delivering to DTC (or such other clearing corporation, as applicable) the appropriate instruction form for exercise, complying with the procedures to effect exercise that are required by DTC (or such other clearing corporation, as applicable), subject to a Holder’s right to elect to receive a Warrant in certificated form pursuant to the terms of the Warrant Agency Agreement, in which case this sentence shall not apply.

(b) Exercise Price. The exercise price per share of Series B Preferred Stock under this Warrant shall be \$55.00, subject to adjustment hereunder (the “Exercise Price”).

(c) [Reserved].

(d) Mechanics of Exercise.

(i) Delivery of Preferred Warrant Shares Upon Exercise. The Company shall cause the Preferred Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder’s or its designee’s balance account with DTC through its Deposit or Withdrawal at Custodian system (“DWAC”) if the Company is then a participant in such system and there is an effective registration statement permitting the issuance of the Preferred Warrant Shares to the Holder, and otherwise by physical delivery of a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of Preferred Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company and the Warrant Agent of the Notice of Exercise, provided that payment of the aggregate Exercise Price is received by the Company one (1) Trading Day prior to such second Trading Day after the delivery of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company and Warrant Agent of the Notice of Exercise, provided that payment of the aggregate Exercise Price is received by the Company one (1) Trading Day prior to such second Trading Day after the delivery of the Notice of Exercise (such date, the “Warrant Share Delivery Date” and such conditions, the “Exercise Conditions”). For the purposes of Regulation SHO under the Exchange Act, upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Preferred Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Preferred Warrant Shares, provided that payment of the aggregate Exercise Price is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. If the Company fails for any reason to deliver or cause the delivery to the Holder the Preferred Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Preferred Warrant Shares subject to such exercise (based on the stated value of the Series B Preferred Stock, as set forth in the Series B Certificate of Designation), \$10.00 per Trading Day (increasing to \$20.00 per Trading Day on the fifth Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Preferred Warrant Shares are delivered or the Holder rescinds such exercise; provided, however, that the Holders may convert the Preferred Warrant Shares into shares of Common Stock in accordance with the terms of the Series B Certificate of Designation at any time, at the option of the Holder, following its satisfaction of the applicable Exercise Conditions (such conversion, a “Forced Conversion”). In the event of a Forced Conversion, the liquidated damages referred to in the preceding sentence shall cease to accrue under this Warrant on the date that shares of Common Stock are delivered to the Holder pursuant to the Series B Certificate of Designation. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Trading Market as in effect on the date of delivery of the Notice of Exercise. In addition, notwithstanding the foregoing, a Holder may convert the shares of Series B Preferred Stock subject to the Notice of Exercise into Conversion Shares (as defined in the Series B Certificate of Designation) pursuant to the Series B Certificate of Designation by simultaneously delivering the Notice of Exercise and a Notice of Conversion (as defined in the Series B Certificate of Designation) to the Company thereunder, and upon the delivery of said Notice of Conversion, the Company shall deliver, or cause to be delivered, to the converting Holder the applicable number of Conversion Shares subject to the Notice of Conversion by the Share Delivery Date (as defined in the Series B Certificate of Designation).

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Preferred Warrant Shares, cause the Warrant Agent to deliver to the Holder a new Warrant

evidencing the rights of the Holder to subscribe for the unsubscribed for Preferred Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(i i i) Rescission Rights and Forced Conversion. If the Company fails to cause the Transfer Agent to transmit to the Holder the Preferred Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise or effect a Forced Conversion by delivering written notice to the Company at any time prior to the delivery of such Preferred Warrant Shares (in which case any liquidated damages payable under Section 2(d)(i) shall no longer be payable).

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

4

(v) No Fractional Shares or Scrip. Notwithstanding any provision to the contrary contained in this Warrant, the Company shall not be required to issue any fraction of a Preferred Warrant Shares or scrip representing fractional shares of Preferred Warrant Shares upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the stated value of the Series B Preferred Stock, as set forth in the Series B Certificate of Designation. Accordingly, a Holder is entitled to exercise a number of Warrants that would solely result in the Holder receiving one or more whole Warrant Shares.

(v i) Charges, Taxes and Expenses. Issuance of Preferred Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Preferred Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Preferred Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Preferred Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto; and (ii) the Company shall use its best efforts to pay, or procure payment of issue or stamp taxes levied in connection with the issuance of the Warrant or Preferred Warrant Shares to the Holder ("Relevant Taxes"). The Holder agrees to cooperate with the Company and provide all necessary and reasonable information and documentation to the Company in a timely manner (and in any event within 10 Business Days of request) to enable the Company to procure payment of any Relevant Taxes and facilitate the making of any necessary filings in respect of Relevant Taxes required to be made within applicable time limits. The Company shall not be liable for any Relevant Taxes or any penalty, fine, surcharge, interest, charge, cost or other similar imposition arising in respect of Relevant Taxes to the extent that such amount arises or is increased as a result of any failure by a Holder to timely provide the Company with any information or documentation reasonably requested pursuant to this Section 2(d)(vi). The Company shall pay all Transfer Agent fees required for processing of any Notice of Exercise and all fees to DTC (or another established clearing corporation performing similar functions) required for electronic delivery of the Preferred Warrant Shares.

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

(e) [Reserved].

(f) [Reserved].

Section 3. Certain Adjustments.

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

5

(b) [Reserved].

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time that this Warrant is outstanding the Company grants, issues or sells any Preferred Stock Equivalents or rights to purchase shares, warrants, securities or other property pro rata to all of the record holders of the Series B Preferred Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights

which the Holder could have acquired if the Holder had held the number of shares of Series B Preferred Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the record date for the grant, issuance or sale of such Purchase Rights, or, if no such record date is established, the date as of which the record holders of shares of Series B Preferred Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(d) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Series B Preferred Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, share or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (except to the extent an adjustment was already made pursuant to Section 3(a)) (a “Distribution”), at any time after the issuance of this Warrant, then, in each such case, the Holder shall, subject to the terms of this Section 3(d), be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Series B Preferred Stock acquirable upon complete exercise of this Warrant immediately before the record date for such Distribution, or, if no such record date is established, the date as of which the record holders of shares of Series B Preferred Stock are to be determined for the participation in such Distribution. Any Distribution or Distributions to be paid to any Holder under this Section 3(d) shall be held in trust for the benefit of the Holder holding the Warrant at the time of exercise of the Warrant, and paid to such Holder only upon such exercise. In the event that this Warrant is not exercised, such Distribution held in trust for the benefit of the Holder shall be forfeited.

(e) Fundamental Transaction.

(i) Fundamental Transactions. If, at any time while this Warrant is outstanding, a Fundamental Transaction occurs, the Company shall cause any Successor Entity in a Fundamental Transaction in which the Company is not the survivor to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(e) pursuant to written agreements prior to such Fundamental Transaction, including agreements to deliver to the Holder, at the Holder’s option, in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of shares of capital stock equivalent to the shares of Series B Preferred Stock acquirable and receivable upon exercise of this Warrant prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Series B Preferred Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a “Corporate Event”), the Company shall make appropriate provision to ensure that the Holder will thereafter have the right to receive upon an exercise of this Warrant and conversion of the underlying Preferred Warrant Shares at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property) issuable upon the exercise of the Warrant and conversion of the underlying Preferred Warrant Shares prior to such Fundamental Transaction, such shares of stock or securities which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised and converted into Preferred Warrant Shares immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant).

6

(ii) The Company shall instruct the Warrant Agent in writing to mail, by first class mail, postage prepaid, to each Holder, written notice of the execution of any such amendment, supplement or agreement with the Successor Entity. Any supplemented or amended agreement entered into by the Successor Entity shall provide for adjustments, which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 3(e). The Warrant Agent shall have no duty, responsibility or obligation to determine the correctness of any provisions contained in such agreement or such notice, including but not limited to any provisions relating either to the kind or amount of securities or other property receivable upon exercise of warrants or with respect to the method employed and provided therein for any adjustments, and shall be entitled to rely conclusively for all purposes upon the provisions contained in any such agreement. The provisions of this Section 3(e) shall similarly apply to successive reclassifications, changes, consolidations, mergers, sales and conveyances of the kind described above.

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

(g) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder and to the Warrant Agent by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Preferred Warrant Shares and setting forth a brief statement of the facts requiring such adjustment; provided, however, that the Company may satisfy the notice requirement with respect to the Holder (but not the Warrant Agent) in this Section 3(g) by filing such information with the Commission on its EDGAR system pursuant to a Current Report on Form 8-K or Quarterly Report on Form 10-Q or Annual Report on Form 10-K.

(ii) Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form other than a stock split) on the Series B Preferred Stock, except for any recurring cash dividend, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Series B Preferred Stock (excluding any granting or issuance of rights to all of the Company’s stockholders pursuant to a stockholder rights plan), (C) the Company shall authorize the granting to all holders of the Series B Preferred Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Series B Preferred Stock other than a reverse stock split, any consolidation or merger to which the Company (and its Subsidiaries, taken as a whole) is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Series B Preferred Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least five (5) calendar days prior to the applicable record or effective date hereinafter specified, (unless such information is filed with the Commission on its EDGAR system in which case a notice shall not be required) a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Series B Preferred Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Series B Preferred Stock of record shall be entitled to exchange their shares of Series B Preferred Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

(a) Transferability. This Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant at the office of the Warrant Agent designated for such purpose, together with a written assignment of this Warrant substantially in the form attached hereto properly completed and duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer accompanied by reasonable evidence of authority of the party making such request that may be required by the Warrant Agent including but not limited to, the signature guarantee of a guarantor institution which is a participant in a signature guarantee program approved by the Securities Transfer Association. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Preferred Warrant Shares without having a new Warrant issued.

(b) New Warrants. If this Warrant is not held in global form through DTC, this Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a) herein and Section 2.1.5 of the Warrant Agency Agreement, as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Issuance Date and shall be identical with this Warrant except as to the number of Preferred Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Warrant Agent shall register this Warrant, upon records to be maintained by the Warrant Agent for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company and the Warrant Agent may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary. Notwithstanding the foregoing, nothing herein shall prevent the Warrant Agent or any agent of the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or any other depository governing the exercise of the rights of a holder of a beneficial interest in any Warrant. The rights of beneficial owners in a Warrant held in global shall be exercised by the Holder or a Participant (as defined in the Warrant Agency Agreement) through the depository's system, except to the extent expressly set forth in the Warrant Agency Agreement.

Section 5. Registration Statement. Following the Issuance Date, the Company is obligated to maintain an effective registration statement on Form S-1 (or other appropriate form) with the Commission covering the issuance of the Preferred Warrant Shares and shares of Common Stock issuable upon conversion of Preferred Warrant Shares until such time as no Warrants remain outstanding, unless there is available an exemption from, or a transaction not subject to, the registration requirements of the Securities Act that covers the issuance of Preferred Warrant Shares and shares of Common Stock issuable upon conversion of Preferred Warrant Shares.

Section 6. Miscellaneous.

(a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company and the Warrant Agent of an affidavit of loss reasonably satisfactory to the Company and the Warrant Agent evidencing the loss, theft, destruction or mutilation of this Warrant or any share certificate relating to the Preferred Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it and the Warrant Agent, and upon surrender and cancellation of such Warrant or share certificate, if mutilated, the Company will make and deliver a new Warrant or share certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or share certificate.

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

(d) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve a sufficient number of shares of authorized and unissued Series B Preferred Stock to provide for the issuance of securities upon the exercise of any subscription rights under this Warrant plus all dividends to be paid on any shares of Series B Preferred Stock outstanding. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Preferred Warrant Shares upon the exercise of the subscription rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such securities may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Preferred Warrant Shares which may be issued upon the exercise of the subscription rights represented by this Warrant will, upon exercise of the subscription rights represented by this Warrant and payment of the Exercise Price for such Preferred Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue). Except and to the extent as waived or consented to by the holders of a majority of the then outstanding Warrants (based on the number of Preferred Warrant Shares underlying such Warrants), the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Preferred Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Preferred Warrant Shares upon the exercise of this Warrant, and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be necessary to enable the Company to perform its obligations under this Warrant. Before taking any action which would result in an adjustment in the number of Preferred Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof.

(f) Jurisdiction. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Warrant (whether brought against a party hereto or their respective affiliates, directors, officers, stockholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, 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 any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Warrant. As between a Holder and the Company, (i) each party irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant 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 other manner permitted by law), and (ii) if either party shall commence an action, suit or proceeding to enforce any provisions of this Warrant, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding. Notwithstanding the foregoing, nothing in this paragraph shall limit or restrict the federal district court in which a Holder may bring a claim under the federal securities laws.

(g) Restrictions. The Holder acknowledges that the Preferred Warrant Shares issuable upon the exercise of this Warrant, if not registered, will have restrictions upon resale imposed by state and federal securities laws.

(h) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(i) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Exercise, shall be in writing and delivered personally, by facsimile, e-mail (other than to the Warrant Agent) or sent by a nationally recognized overnight courier service, addressed to:

WiSA Technologies, Inc.
15268 NW Greenbrier Pkwy
Beaverton, OR 97006
Attention: Brett Moyer
Email: bmoyer@wisatechnologies.com

VStock Transfer, LLC
18 Lafayette Place
Woodmere, NY 11598
Attention: Client Services

or such other facsimile number, email address or address as the Company may specify for such purposes by notice to the Holders. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, e-mail address or address of such Holder appearing on the books of the Warrant Agent. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (a) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or e-mail (or e-mail attachment) at the email address set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or e-mail (or e-mail attachment) at the e-mail address as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

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

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

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

(m) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company, on the one hand, and the Holders of a majority of the Preferred Warrant Shares underlying the Warrants of the Company issued on the Closing Date that are outstanding as of such date.

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

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

(p) Warrant Agency Agreement. This Warrant is issued subject to the Warrant Agency Agreement. To the extent any provision of this Warrant conflicts with the express provisions of the Warrant Agency Agreement, the provisions of this Warrant shall govern and be controlling; provided, however, that all provisions with respect to the rights, duties, obligations, protections, immunities and liability of the Warrant Agent only shall be determined and interpreted solely by the provisions of the Warrant Agency Agreement.

(Signature Page Follows)

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

WISA TECHNOLOGIES, INC.

By: _____
Name: Brett Moyer
Title: President and Chief Executive Officer

Dated: [____], 2023

Countersigned:

VSTOCK TRANSFER, LLC,
as Warrant Agent

By: _____
Name:
Title:

NOTICE OF EXERCISE

TO: VSTOCK TRANSFER, LLC
WISA TECHNOLOGIES, INC.

(1) The undersigned hereby elects to purchase _____ Preferred Warrant Shares of the Company pursuant to the terms of the attached Warrant (only required if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of lawful money of the United States.

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

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

DTC number: _____
Account name: _____
Account number: _____

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____
Signature of Authorized Signatory of Investing Entity: _____
Name of Authorized Signatory: _____
Title of Authorized Signatory: _____
Date: _____

EXHIBIT A
ASSIGNMENT FORM

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

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

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number:
Email Address:
Dated: _____, _____

Holder's Signature: _____
Holder's Address: _____

(Holder's signature must conform in all respects to the name of the Holder and must bear a signature guarantee by an Eligible Guarantor Institution (as that term is defined in Rule 17Ad-15 of the Securities Exchange Act of 1934, as amended).



Sullivan & Worcester LLP
1633 Broadway
New York, NY 10019

212 660 3000
sullivanlaw.com

October 11, 2023

WiSA Technologies, Inc.
15268 NW Greenbrier Pkwy
Beaverton, OR 97006

Ladies and Gentlemen:

We have acted as securities counsel for WiSA Technologies, Inc., a Delaware corporation (the “Company”), in connection with the preparation of a Registration Statement on Form S-1 (Registration No. 333-274331) (the “Registration Statement”) originally filed by the Company with the U.S. Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), on September 5, 2023 and amended on the date hereof, relating to the proposed public offering of: up to 109,090 units (the “Units”), consisting of (i) 109,090 shares (the “Shares”) of Series B Convertible Preferred Stock, par value \$0.0001 per share (the “Series B Convertible Preferred Stock”), (ii) 218,180 Series B Convertible Preferred Stock purchase warrants (the “Warrants”), exercisable from time to time for 218,180 shares of Series B Convertible Preferred Stock (the “Warrant Shares”), and (iii) 92,955,635 shares of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”), issuable upon conversion of the Shares and Warrant Shares (the “Conversion Shares”). The Company is also registering under the Registration Statement up to an additional 119,010 shares of Series B Convertible Preferred Stock (“PIK Dividend Shares”) that are issuable as paid in-kind dividends (“PIK dividends”) and the 119,010 shares of Common Stock issuable upon conversion of the PIK Dividend Shares (the “PIK Conversion Shares”). The Warrants are being issued pursuant to the terms of that certain warrant agency agreement (the “Warrant Agency Agreement”) to be entered into by and among the Company and VStock Transfer LLC (the “Warrant Agent”), the form of which Warrant Agency Agreement has been filed as Exhibit 10.74 to the Registration Statement.

The Units, Shares, Warrants, Warrant Shares, PIK Dividend Shares and PIK Conversion Shares are collectively referred to herein as the “Securities”. The Securities will be sold pursuant to a Securities Purchase Agreement (the “Agreement”) between the Company and certain accredited investors or qualified institutional buyers identified on the signature pages thereto (collectively, the “Investors”) or may be purchased directly from the Company pursuant to the Registration Statement. This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the Registration Statement.

As counsel to the Company in connection with the proposed potential issuance and sale of the Securities, we have examined: (i) the Company’s certificate of incorporation and bylaws, both as currently in effect; (ii) certain resolutions of the Board of Directors relating to the sale of the Securities (the “Resolutions”); (iii) the form of Agreement; (iv) the Registration Statement; (v) the form of Warrant, (vi) the form of placement agency agreement by and between the Company and Maxim Group LLC (the “Placement Agency Agreement”), (vii) the form of Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock (the “Certificate of Designation”), (viii) the Warrant Agency Agreement and (viii) such other proceedings, documents, and records as we have deemed necessary to enable us to render this opinion. In all such examinations, we have assumed the genuineness of all signatures, the authenticity of all documents, certificates, and instruments submitted to us as originals, and the conformity with the originals of all documents, certificates, and instruments submitted to us as copies. We have also assumed the due execution and delivery of all documents where due execution and delivery are prerequisite to the effectiveness thereof.

Our opinions expressed herein are subject to the following qualifications and exceptions: (i) the effect of bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, including, without limitation, laws relating to fraudulent transfers or conveyances, preferences, and equitable subordination; (ii) the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law); and (iii) we render no opinion as to the effect of the laws of any state or jurisdiction other than the General Corporation Law of the State of Delaware.

BOSTON LONDON NEW YORK TEL AVIV WASHINGTON, DC

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) execution and delivery by the Company and each of the Investors of the Agreement, (ii) effectiveness of the Registration Statement, (iii) issuance of the Securities pursuant to the terms of the Agreement and/or in the manner described in the Registration Statement, and (iv) receipt by the Company of the consideration for the Securities specified in the Resolutions:

(a) The Shares will be duly authorized for issuance and, when issued, delivered and paid for in accordance with the terms of the Agreement and/or in the manner described in the Registration Statement, will be validly issued, fully paid and nonassessable;

(b) The Units and Warrants will be duly authorized for issuance and, when issued and sold in accordance with the Agreement and/or in the manner described in the Registration Statement, will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms; and

(c) The Warrant Shares will be duly authorized and, when issued and paid for in accordance with the provisions of the Warrants and the Warrant Agency Agreement, as applicable, will be validly issued, fully paid and nonassessable.

(d) The Conversion Shares will be duly authorized for issuance and, when issued, delivered and paid for in accordance with the terms of the Agreement and/or in the manner described in the Registration Statement and the Certificate of Designation, and assuming a sufficient number of authorized but unissued shares of Common Stock is available for issuance when the Series B Convertible Preferred Stock is converted, will be validly issued, fully paid and non-assessable.

(e) The PIK Dividend Shares will be duly authorized for issuance and, when issued and delivered in accordance with the terms of the Agreement and the Certificate of Designation, if, as and when lawfully declared as dividends by the Board of Directors of the Company validly issued, fully paid and non-assessable.

(f) The PIK Conversion Shares will be duly authorized for issuance and, when issued and delivered in accordance with the terms of the Agreement and the Certificate of Designation, and assuming a sufficient number of authorized but unissued shares of Common Stock is available for issuance when the Series B Convertible Preferred Stock is converted, will be validly issued, fully paid and non-assessable.

It is understood that this opinion is to be used only in connection with the offer, sale, and issuance of the Securities while the Registration Statement is in effect.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Registration Statement. In giving this consent, we do not admit that we are "experts" within the meaning of Section 11 of the Securities Act or within the category of persons whose consent is required by Section 7 of the Securities Act.

Very truly yours,

/s/ Sullivan & Worcester LLP

Sullivan & Worcester LLP

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this “Agreement”) is dated as of [], 2023, between WiSA Technologies, Inc., a Delaware corporation (the “Company”), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a “Purchaser” and collectively the “Purchasers”).

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to an effective registration statement under the Securities Act of 1933, as amended (the “Securities Act”), the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

ARTICLE I.

DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

“Acquiring Person” shall have the meaning ascribed to such term in Section 4.5.

“Action” shall have the meaning ascribed to such term in Section 3.1(j).

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person as such terms are used in and construed under Rule 405 under the Securities Act.

“Applicable Laws” shall have the meaning ascribed to such term in Section 3.1(n).

“Authorizations” shall have the meaning ascribed to such term in Section 3.1(n).

“Blank Rome” means Blank Rome LLP, with offices located at 1271 Avenue of the Americas, New York, NY 10020.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain 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 generally are open for use by customers on such day.

“Closing” means the individual and collective reference to the Initial Closing and each subsequent closing on or before the Final Closing Date with one or more Purchasers of the purchase and sale of the Securities pursuant to Section 2.1.

“Closing Date” means the Initial Closing Date and the Final Closing Date.

“Commission” means the United States Securities and Exchange Commission.

1

“Common Stock” means the common stock of the Company, par value \$0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company that would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company Counsel” means Sullivan & Worcester LLP, with offices located at 1633 Broadway, New York, NY 10019.

“D&O Lock-Up Agreement” means the Lock-Up Agreement, dated on or about the date hereof, by each of the directors and officers of the Company, in a form reasonably acceptable to the Purchasers.

“Disclosure Time” means, (i) if this Agreement is signed on a day that is not a Trading Day or after 9:00 a.m. (New York City time) and before midnight (New York City time) on any Trading Day, 9:01 a.m. (New York City time) on the Trading Day immediately following the date hereof, unless otherwise instructed as to an earlier time by the Placement Agent, and (ii) if this Agreement is signed between midnight (New York City time) and 9:00 a.m. (New York City time) on any Trading Day, no later than 9:01 a.m. (New York City time) on the date hereof, unless otherwise instructed as to an earlier time by the Placement Agent.

“Dividend Shares” means dividends payable in shares of Series B Preferred Stock on the Shares and Warrant Shares as provided for in the Series B Certificate of Designation and shares of Series B Preferred Stock issued to holders of Warrants pursuant to Section 3(d) of the Warrant, if applicable.

“Evaluation Date” shall have the meaning ascribed to such term in Section 3.1(s).

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

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended.

“FDA” shall have the meaning ascribed to such term in Section 3.1(n).

“FDCA” shall have the meaning ascribed to such term in Section 3.1(n).

“Final Closing Date” shall mean that date which shall be the earlier of (a) completion of the sale of all Securities in the Offering and (b) the expiration of the Offering Period.

“Final Prospectus” means the supplement to the Prospectus complying with Rule 424(b) of the Securities Act that is filed with the Commission and delivered by the Company to each Purchaser at the Closing.

“FTC” shall have the meaning ascribed to such term in Section 3.1(n).

“GAAP” shall have the meaning ascribed to such term in Section 3.1(h).

“Indebtedness” shall have the meaning ascribed to such term in Section 3.1(aa).

“Initial Closing” shall mean the Closing of the sale of Securities on the Initial Closing Date.

“Initial Closing Date” means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers’ obligations to pay the Subscription Amount and (ii) the Company’s obligations to deliver the Units, in each case, have been satisfied or waived, but in no event later than the third Trading Day following the date of this Agreement.

“Intellectual Property Rights” shall have the meaning ascribed to such term in Section 3.1(p).

“Liens” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Material Adverse Effect” shall have the meaning assigned to such term in Section 3.1(b).

“Offering Period” means from the effective date of the post-effective amendment to the Registration Statement to the earlier of (i) the completion of the sale of all Units in the Offering and (ii) the date that is sixty (60) calendar days following such effective date, unless such 60-day period is extended by the mutual written agreement of the Company and the Placement Agent for an additional period of up to thirty (30) calendar days from such date (the “Offering Period”). After the initial Closing, subsequent closings with respect to accepted subscriptions may take place at any time during the Offering Period in accordance with the Purchase Agreement.

“Per Unit Purchase Price” equals \$55.00, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Series B Preferred Stock that occur after the date of this Agreement and before the Closing Date.

2

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Placement Agency Agreement” means the Placement Agency Agreement by and between the Company and the Placement Agent dated the date hereof.

“Placement Agent” means Maxim Group LLC.

“Preferred Stock” means the preferred stock of the Company, par value \$0.0001 per share.

“Preferred Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time shares of Preferred Stock, including, without limitation, any debt, preferred shares, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, shares of Preferred Stock.

“Preliminary Prospectus” means any preliminary prospectus included in the Registration Statement, as originally filed or as part of any amendment thereto.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or, to the Company’s knowledge, threatened.

“Prospectus” means the final pricing prospectus filed for the Registration Statement.

“Purchaser Party” shall have the meaning ascribed to such term in Section 4.8.

“Registration Statement” means the effective registration statement on Form S-1, as amended (File No. 333-274331) filed with Commission and which registers the sale of the Units, the Shares, the Warrants, the Dividend Shares, and the Warrant Shares, and the shares of Common Stock upon conversion of the Shares, the Dividend Shares, and the Warrant Shares.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“SEC Reports” shall have the meaning ascribed to such term in Section 3.1(h).

“Securities” means the Shares, the Dividend Shares, the Warrants, the Warrant Shares, and shares of Common Stock underlying the Shares, Warrant Shares and Dividend Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Series B Certificate of Designation” means the Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock of the Company.

“Series B Preferred Stock” means Series B Convertible Preferred Stock of the Company, par value \$0.0001 per share, issued and issuable pursuant to the Series B Certificate of Designation and (ii) any capital stock into which such Series B Convertible Preferred Stock shall have been changed or any share capital resulting from a reclassification of such Series B Convertible Preferred Stock.

“Shares” means the shares of Series B Preferred Stock issued or issuable to each Purchaser pursuant to this Agreement.

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include locating and/or borrowing shares of Common Stock).

“Subscription Amount” means, as to each Purchaser, the aggregate amount to be paid for the Units purchased hereunder as specified below such Purchaser’s name on the signature page of this Agreement and next to the heading “Subscription Amount,” in United States dollars and in immediately available funds.

“Subsidiaries” means any subsidiary of the Company, which is actively engaged in a trade or business, and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“Transaction Documents” means this Agreement, the Warrants, the Warrant Agency Agreement and the Placement Agency Agreement, all exhibits and schedules thereto and hereto, and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Transfer Agent” means VStock Transfer, LLC, the current transfer agent of the Company, with a mailing address of 18 Lafayette Place, Woodmere, NY 11598, and any successor transfer agent of the Company.

“Unit” means a fixed combination of one (1) Share and two (2) Warrants, each to purchase one (1) share of Series B Preferred Stock.

“Unit Subscription Amount” means, as to each Purchaser, the aggregate amount to be paid for Units purchased hereunder as specified below such Purchaser’s name on the signature page of this Agreement and next to the heading “Unit Subscription Amount,” in United States dollars and in immediately available funds.

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

“Warrants” means, collectively, the purchase warrants delivered to the Purchasers at the Closing in accordance with Section 2.2(a) hereof, which Warrants shall be immediately exercisable and will expire two (2) years from the Closing Date, in the form of Exhibit A attached hereto.

“Warrant Agency Agreement” means that certain warrant agency agreement, dated as of the Closing Date, by and between the Company and the Transfer Agent, as warrant agent.

“Warrant Shares” means the shares of Series B Preferred Stock issuable upon exercise of the Warrants.

ARTICLE II.

PURCHASE AND SALE

2.1 Closing. On each Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, up to an aggregate of [] Units, with each Unit consisting of one (1) Share of Series B Preferred Stock and two (2) Warrants, each to purchase one (1) share of Series B Preferred Stock. Each Purchaser’s Subscription Amount as set forth on the signature page hereto executed by such Purchaser shall be made available for “Delivery Versus Payment” (“DVP”) / “Receipt Versus Payment” (“RVP”) settlement with the Company or its designee. The Company shall deliver to each Purchaser its respective Shares and Warrants, and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at each Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, each Closing shall occur at the offices of Blank Rome or such other location as the parties shall mutually agree or virtually (or remotely) in accordance with the provisions of this Agreement. Unless otherwise directed by the Placement Agent, settlement of the Shares shall occur via DVP/RVP (i.e., on each Closing Date, the Company shall issue the Shares registered in the Purchasers’ names and addresses and released by the Transfer Agent directly to the account(s) at the Placement Agent identified by each Purchaser; upon receipt of such Shares, the Placement Agent shall promptly electronically deliver such Shares to the applicable Purchaser, and payment therefor shall be made by the Placement Agent (or their clearing firm) by wire transfer to the Company), and delivery of the Warrants shall be made via The Depository Trust Company Deposit or Withdrawal at Custodian system (“DWAC”) for the account of the applicable Purchaser.

2.2 Deliveries.

(a) On or prior to the each Closing Date, the Company shall deliver or cause to be delivered to each Purchaser and the Placement Agent the following:

(i) this Agreement duly executed by the Company;

(ii) a legal opinion of Company Counsel, in a form reasonably satisfactory to the Placement Agent;

(iii) the Company shall have provided the Placement Agent and/or each Purchaser with the Company’s wire instructions, on Company letterhead and executed by the Chief Executive Officer or Chief Financial Officer;

(iv) a copy of the irrevocable instructions to the Transfer Agent instructing the Transfer Agent to deliver on an expedited basis via DWAC Shares equal to such Purchaser's Unit Subscription Amount divided by the Per Unit Purchase Price, registered in the name of such Purchaser;

(v) the Prospectus and Final Prospectus (which may be delivered in accordance with Rule 172 under the Securities Act);

(vi) a certificate evidencing a number of Shares equal to such Purchaser's Subscription Amount divided by the Stated Value, registered in the name of such Purchaser and evidence of the filing and acceptance of the Certificate of Designation from the Secretary of State of Delaware;

(vii) the Warrant Agency Agreement duly executed by the Company; and

(viii) a Warrant or Warrants registered in the name of such Purchaser to purchase, in aggregate, up to a number of shares of Series B Preferred Stock equal to 200% of such Purchaser's Shares with an exercise price per share equal to \$55.00, subject to adjustment therein.

(b) On or prior to the applicable Closing Date, each Purchaser shall deliver or cause to be delivered to the Company, the following:

(i) this Agreement duly executed by such Purchaser; and

(ii) such Purchaser's Subscription Amount, which shall be made available for DVP/RVP settlement with the Company or its designee.

2.3 Closing Conditions.

(a) Subject to Section 5.21 herein, as applicable, the obligations of the Company hereunder in connection with each Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) on such Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to such Closing Date shall have been performed; and

(iii) the delivery by each Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) Subject to Section 5.21 herein, as applicable, the respective obligations of the Purchasers hereunder in connection with each Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on such Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to such Closing Date shall have been performed;

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;

(iv) there shall have been no Material Adverse Effect with respect to the Company since the date of this Agreement and to such Closing Date;

(v) the Registration Statement shall be effective on the date of this Agreement and at each Closing Date, no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or shall be pending or contemplated by the Commission and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of the Placement Agent; and

(vi) from the date hereof to such Closing Date, trading in the Common Stock shall not have been suspended by the Commission or the Company's principal Trading Market, and, at any time prior to such Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of such Purchaser, makes it impracticable or inadvisable to purchase the Units at the Closing.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company hereby makes the following representations and warranties to each Purchaser as of the date hereof and on each Closing Date (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Subsidiaries. All of the direct and indirect Subsidiaries of the Company are set forth in the Registration Statement. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) Organization and Qualification. Each of the Company and its Subsidiaries is an entity duly incorporated or otherwise formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles

of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents to which the Company is a party and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, liquidation, possessory liens, rights of set off, merger, consolidation, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the statutory limitation of the time within which proceedings may be brought or availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii) such as would not reasonably be expected to result in a Material Adverse Effect.

7

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, provincial, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.4 of this Agreement, (ii) such as have been obtained or made under the Securities Act, (iii) the filing with the Commission of the Final Prospectus, (iii) application(s) to each applicable Trading Market for the listing of the shares of Common Stock upon the conversion of the Shares, the Warrant Shares and the Dividend Shares, for trading thereon in the time and manner required thereby, (iv) such filings as are required to be made under applicable state securities laws and (v) such as those that, if not obtained, given or made, would not reasonably be expected to result in a Material Adverse Effect (collectively, the "Required Approvals").

(f) Issuance of the Securities; Registration.

(i) The Shares, Warrant Shares and Dividend Shares to be issued on each Closing Date are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, to the extent applicable, will be duly and validly issued, fully paid and non-assessable, free and clear of all Liens imposed by the Company. The Warrants have been duly authorized and, when executed and delivered by the Company against payment therefor pursuant to the applicable Transaction Documents, will be valid and binding agreements of the Company enforceable against the Company in accordance with their terms. The Warrant Shares, when issued in accordance with the terms of the Warrants, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Company has reserved from its duly authorized capital stock the maximum number of shares of Series B Preferred Stock issuable pursuant to this Agreement, including the Dividend Shares, the Series B Certificate of Designation and the Warrants and the maximum number of shares of Common Stock issuable upon conversion of the shares of Series B Preferred Stock issued in accordance with this Agreement, including the Dividend Shares, the Series B Certificate of Designation and the Warrants. All corporate action required to be taken for the authorization, issuance and sale of the Securities has been duly and validly taken.

(ii) The Company has prepared and filed the Registration Statement in conformity with the requirements of the Securities Act, which became effective on [___], 2023 (the "Effective Date"), including the Prospectus, and such amendments and supplements thereto as may have been required to the date of this Agreement. The Registration Statement is effective under the Securities Act and no stop order preventing or suspending the effectiveness of the Registration Statement or suspending or preventing the use of the Prospectus has been issued by the Commission and no proceedings for that purpose have been instituted or, to the knowledge of the Company, are threatened by the Commission. The Company, if required by the rules and regulations of the Commission, shall file the Final Prospectus with the Commission pursuant to Rule 424(b). At the time the Registration Statement and any amendments thereto became effective, at the date of this Agreement and at each Closing Date, the Registration Statement and any amendments thereto conformed and will conform in all material respects to the requirements of the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading; and the Prospectus and any amendments or supplements thereto, at the time the Prospectus or any amendment or supplement thereto was issued and at each Closing Date, conformed and will conform in all material respects to the requirements of the Securities Act and did not and will not contain an 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. All corporate action required to be taken for the authorization, issuance and sale of the Shares, Warrants, Warrant Shares, Dividend Shares, and the shares of Common Stock issuable upon conversion of the Shares, Warrant Shares, Dividend Shares has been duly and validly taken. The Securities conform in all material respects to all statements with respect thereto contained in the Registration Statement and the Prospectus.

8

(g) Capitalization. The capitalization of the Company is as disclosed in the SEC Reports as of the date thereof. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, except as disclosed or contemplated in the SEC Reports. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. The Securities will not be subject to the preemptive rights of any holders of any security of the Company or similar contractual rights granted by the Company. There are no outstanding options,

warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or Preferred Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock, Common Stock Equivalents, Preferred Stock, or Preferred Stock Equivalents or the capital stock of any Subsidiary. The issuance and sale of the Securities and the issuance of securities upon the conversion or exercise of the Securities will not obligate the Company or any Subsidiary to issue shares of Series B Preferred Stock or other securities to any Person (other than the Purchasers). Except as set forth in the SEC Reports, there are no outstanding securities or instruments of the Company with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company. Except as set forth in the SEC Reports, there are no outstanding securities or instruments of the Company that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company is or may become bound to redeem a security of the Company. The Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, together with the Registration Statement, Prospectus and the Final Prospectus, being collectively referred to herein as the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company is not and has never been an issuer subject to Rule 144(i) under the Securities Act. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments. The agreements and documents described in the Registration Statement and the SEC Reports conform in all material aspects to the descriptions thereof contained therein and there are no agreements or other documents required by the Securities Act and the rules and regulations thereunder to be described in the Registration Statement, the Prospectus or the SEC Reports or to be filed with the Commission as exhibits to the Registration Statement, that have not been so described or filed. Each agreement or other instrument (however characterized or described) to which the Company is a party or by which it is or may be bound or affected and (i) that is referred to in the Registration Statement or the SEC Reports, or (ii) is material to the Company's business, has been duly authorized and validly executed by the Company, is in full force and effect in all material respects and is enforceable against the Company and, to the Company's knowledge, the other parties thereto, in accordance with its terms, except (x) as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, (y) as enforceability of any indemnification or contribution provision may be limited under the federal and state securities laws, and (z) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to the equitable defenses and to the discretion of the court before which any proceeding therefore may be brought. None of such agreements or instruments has been assigned by the Company, and neither the Company nor, to the best of the Company's knowledge, any other party is in default thereunder and, to the best of the Company's knowledge, no event has occurred that, with the lapse of time or the giving of notice, or both, would constitute a default thereunder that has had or that could reasonably be expected to result in a Material Adverse Effect. To the best of the Company's knowledge, performance by the Company of the material provisions of such agreements or instruments will not result in a violation of any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over the Company or any of its assets or businesses, including, without limitation, those relating to environmental laws and regulations. The other financial and statistical information included in the SEC Reports present fairly, in all material respects, the information included therein and have been prepared on a basis consistent with that of the financial statements that are included in the SEC Reports and the books and records of the respective entities presented therein.

9

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest financial statements included within the SEC Reports, except as set forth in the SEC Reports (i) there has been no event, occurrence or development that has had or that would reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, other than the payment of the Dividend Shares and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company equity plans and employee stock purchase plans, and the issuance of Common Stock Equivalents as disclosed in the SEC Reports. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement or as set forth in the SEC Reports, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made. Unless otherwise disclosed in SEC Reports filed prior to the date hereof, the Company has not: (i) issued any securities or incurred any liability or obligation, direct or contingent, for borrowed money; or (ii) declared or paid any dividend or made any other distribution on or in respect to its capital stock.

(j) Litigation. There has not been and to the knowledge of the Company, there is not pending or contemplated, any action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") that, if there were an unfavorable decision, would reasonably be expected to result in a Material Adverse Effect. None of the Actions set forth in the SEC Reports, (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor, to the Company's knowledge, any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. To the knowledge of the Company there has not been, and there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. There are no Actions required to be disclosed in the SEC Reports that have not been disclosed. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company or any of its Subsidiaries, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or any Subsidiary's employees is a member of a union that relates to such employee's relationship with the Company or any Subsidiary, and neither the Company nor any Subsidiary is a party to a collective bargaining agreement, and the Company believes that its relationships with its employees are good. To the knowledge of the Company or its Subsidiaries, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any Subsidiary to any liability with respect to any of the foregoing matters that would reasonably be expected to have a Material Adverse Effect. Each of the Company and its Subsidiaries is in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters or in each case as would not reasonably be expected to result in a Material Adverse Effect.

(m) Environmental Laws. Each of the Company and the Subsidiaries (i) is in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous 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 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 ("Environmental Laws"); (ii) has received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) is in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply or receive would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

11

(n) Regulatory Permits. (1) Each of the Company and the Subsidiaries possesses all certificates, licenses, authorizations, approvals, clearances, consents, registration and permits issued by the appropriate federal, state, local or foreign regulatory authorities including, without limitation, those administered by the U.S. Food and Drug Administration ("FDA") of the U.S. Department of Health and Human Services, the Federal Trade Commission (the "FTC"), or by any foreign, federal, state or local governmental or regulatory authority performing functions similar to those performed by the FDA and the FTC, or reasonably necessary to conduct their respective businesses as described in the Registration Statement or the Prospectus, except where the failure to possess such permits would not reasonably be expected to result in a Material Adverse Effect (each, an "Authorization"), and neither the Company or any Subsidiary has received any written notice of proceedings relating to the revocation or modification of any Authorization or the noncompliance with any ordinance, law, rule or regulation applicable to the Company. The disclosures in the Registration Statement, if any concerning the effects of federal, state, local and all foreign regulation on the Company's business as currently contemplated are correct in all material respects. The Company is and has been in material compliance with any term of any such Authorizations, except for any violations which would not reasonably be expected to have a Material Adverse Effect. The Company has not failed to file with the applicable regulatory authorities (including the FDA or any foreign, federal, state or local governmental or regulatory authority performing functions similar to those performed by the FDA) any filing, declaration, listing, registration, report or submission that is required to be so filed for the Company's business operation as currently conducted. All such filings were in material compliance with applicable laws when filed and no deficiencies have been asserted in writing by any applicable regulatory authority (including, without limitation, the FDA or any foreign, federal, state or local governmental or regulatory authority performing functions similar to those performed by the FDA) with respect to any such filings, declarations, listings, registrations, reports or submissions.

(2) Each of the Company and the Subsidiaries: (i) is and at all times has been in substantial compliance with all statutes, rules, or regulations applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, advertising, sale, offer for sale, storage, import, export or disposal of any product manufactured or distributed by the Company, including but not limited to the U.S. Food, Drug and Cosmetic Act (the "FDCA") (21 U.S.C. § 301 et seq.), the Federal Trade Commission Act (15 U.S.C. § 41-58) and the rules and regulations of the Consumer Product Safety Commission ("Applicable Laws"), except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (ii) has not received any warning letter, untitled letter or other correspondence or notice from any other governmental authority alleging or asserting noncompliance with any Applicable Laws or any Authorizations; (iii) possesses all material Authorizations and such Authorizations are valid and in full force and effect and are not in material violation of any term of any such Authorizations; (iv) has not received notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any governmental authority or third party alleging that any product operation or activity is in violation of any Applicable Laws or Authorizations and has no knowledge that any such governmental authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding; (v) has not received notice that any governmental authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such governmental authority is considering such action and the FDA has not sent any warning letters; imposed any fines, penalties or injunctions; or required or requested termination of any distribution of the Company's products; requested or required any recalls or seizures of products; or withdrawals or suspensions of clearances or approvals, resulting in prohibitions on sales of our products; (vi) has filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and correct on the date filed (or were corrected or supplemented by a subsequent submission); and (vii) to the Company's knowledge, has not, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, post-sale warning, or other notice or action relating to the alleged lack of safety or efficacy of any product or any alleged product defect or violation and, to the Company's knowledge, no third party has initiated, conducted or intends to initiate any such notice or action.

12

(3) Neither the Company or any Subsidiary is aware of any manufacturing site (whether Company-owned or that of a third-party manufacturer for the Company's products) that performs manufacturing activity for the Company subject to a governmental authority (including the FDA) shutdown or import or export prohibition.

(4) The statements included in the SEC Reports and incorporated by reference to the Registration Statement and the Prospectus under the caption: "Business—Government Regulations" are true and correct in all material respects; and to the Company's knowledge, there are no health care laws which as of this date

are material to the business of the Company which is not described in the Registration Statement or the Prospectus.

(o) Title to Assets. Each of the Company and the Subsidiaries has good and marketable title in fee simple or has valid and marketable rights to lease or otherwise use to all real property and all personal property owned by them that is material to the business of the Company and the Subsidiaries, free and clear of all Liens, except for (i) Liens incurred in connection with purchase money security interests and equipment financings, (ii) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (iii) Liens for the payment of federal, provincial, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company or any Subsidiary, as applicable, is in compliance except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(p) Intellectual Property. Each of the Company and the Subsidiaries has, or has rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses as described in the SEC Reports and which the failure to do so would reasonably be expected to have a Material Adverse Effect (collectively, the “Intellectual Property Rights”). Neither the Company or any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company or any Subsidiary has received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the operations of their respective businesses violate or infringe upon the intellectual property rights of any Person, except as would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. Each of the Company and the Subsidiaries has taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Insurance. Each of the Company and the Subsidiaries is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage in an amount sufficient to run the Company’s and any Subsidiary’s current business. Neither the Company nor any Subsidiary has any reason to believe that it will not be able 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 without a significant increase in cost.

(r) Transactions With Affiliates and Employees. None of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of \$120,000 other than for (i) payment of salary, bonus or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any equity incentive plan of the Company.

13

(s) Sarbanes-Oxley; Internal Accounting Controls. Each of the Company and the Subsidiaries is in compliance in all material respects with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date. The Company and the Subsidiaries maintain a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange 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 at reasonable intervals and appropriate action is taken with respect to any differences. The Company and the Subsidiaries maintain disclosure controls and procedures (as such term is defined in Rules 13a-15(e) under the Exchange Act) that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the Commission, 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 Exchange 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. The Company has not received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness in any part of the internal controls over financial reporting of the Company. The Company’s certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the “Evaluation Date”). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) of the Company that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company.

(t) Certain Fees. No brokerage or finder’s fees or commissions are or will be payable by the Company, any Subsidiary or Affiliate of the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents other than the compensation payable to the Placement Agent pursuant to the terms of the Placement Agency Agreement. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(u) Investment Company. The Company is not and immediately after receipt of payment for the Securities, will not be required to register as an “investment company” within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an “investment company” subject to registration under the Investment Company Act of 1940, as amended.

(v) Registration Rights. No Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiary.

14

(w) Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no

action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not, in the 12 months preceding the date hereof, received notice from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. The Common Stock, the Series B Preferred Stock and the Warrants are currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation and the Company is current in payment of the fees to the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer.

(x) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(y) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided any of the Purchasers or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information which is not otherwise disclosed in the Final Prospectus. The Company understands and confirms that the Purchasers will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company, its business and the transactions contemplated hereby, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading. There are no documents required to be filed with the Commission in connection with the transaction contemplated hereby that (a) have not been filed as required pursuant to the Securities Act or (b) will not be filed within the requisite time period. There are no contracts or other documents required to be described in the Prospectus, or to be filed as exhibits or schedules to the Registration Statement, which have not been described or filed as required. The statistical and market-related data included in the Prospectus, if any, are based on or derived from sources that the Company reasonably and in good faith believes are reliable and accurate or represent the Company's good faith estimates that are made on the basis of data derived from such sources. The Company has obtained all consents required for the inclusion of such statistical and market-related data in the Prospectus. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(z) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2 herein, neither the Company, nor any of its controlled Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act and (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(aa) Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder, (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. For the avoidance of doubt, such reorganization does not include the Company's mergers, acquisitions or other strategic transactions which are not for the primary purpose of avoiding bankruptcy. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP. The Company is not in default with respect to any Indebtedness.

(bb) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, each of the Company and its Subsidiaries (i) has made or filed or secured extensions for filing of, all applicable United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim. The term "taxes" mean all federal, state, local, foreign, and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments, or charges of any kind whatsoever, together with any interest and any penalties, additions to tax, or additional amounts with respect thereto. The term "returns" means all returns, declarations, reports, statements, and other documents required to be filed in respect to taxes.

(cc) Foreign Corrupt Practices. Neither the Company, any Subsidiary, nor to the knowledge of the Company, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any person acting on its behalf of which the Company is aware) which is in violation of law, or (iv) violated in any material respect any provision of FCPA. Each of the Company and the Subsidiaries has taken reasonable steps to ensure that its accounting controls and procedures are sufficient to cause the Company or any Subsidiary to comply in all material respects with the FCPA.

(dd) Illegal or Unauthorized Payments: Political Contributions. Neither the Company, any Subsidiary nor any of the officers, directors, employees, agents or other representatives of the Company or any other business entity or enterprise with which the Company is or has been affiliated or associated, 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 except for personal political contributions not involving the direct or indirect use of funds of the Company or any Subsidiary.

(ee) Accountants. The Company's registered independent accounting firm is BPM LLP. To the knowledge and belief of the Company, such accounting firm is a registered public accounting firm as required by the Exchange Act and shall express its opinion with respect to the financial statements to be included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023.

(ff) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(gg) Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding (except for Sections 3.2(f) and 4.13 hereof), it is understood and acknowledged by the Company that: (i) none of the Purchasers has been asked by the Company to agree, nor has any Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term; (ii) past or future open market or other transactions by any Purchaser, specifically including, without limitation, Short Sales or "derivative" transactions, before or after the closing of this or future, private, placement transactions, may negatively impact the market price of the Company's publicly-traded securities; (iii) any Purchaser, and counter-parties in "derivative" transactions to which any such Purchaser is a party, directly or indirectly, presently may have a "short" position in the Common Stock, and (iv) each Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (y) one or more Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Warrant Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

(hh) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company 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, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Placement Agent in connection with the placement of the Securities.

(ii) D&O Questionnaires. To the Company's knowledge, all information contained in the questionnaires most recently completed by each of the Company's directors and officers and beneficial owner of 5% or more of the Common Stock or Common Stock Equivalents is true and correct in all respects and the Company has not become aware of any information which would cause the information disclosed in such questionnaires become inaccurate and incorrect.

(jj) Cybersecurity. The Company's and each of the Subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (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 the Subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants that would reasonably be expected to have a Material Adverse Effect on the Company's or any Subsidiary's business. Each of the Company and the Subsidiaries has 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 all personal, personally identifiable, sensitive, confidential or regulated data ("Personal Data") used in connection with their businesses. There have been no breaches, violations, outages or unauthorized uses of or access to the IT Systems or Personal Data in use or possession of the Company or any Subsidiary, and each of the Company and the Subsidiaries is presently in 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, in each case, except for such breaches, violations, outages, unauthorized uses of or access to, or non-compliance, as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(kk) Compliance with Data Privacy Laws. Each of the Company and its Subsidiaries is, and at all prior times was, in compliance with all applicable state, federal, and international data privacy and security laws and regulations (collectively, the "Privacy Laws"), except where the failure to so comply would not reasonably be expected to result in a Material Adverse Effect. To ensure compliance with the Privacy Laws, each of the Company and its Subsidiaries has in place 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"). Each of the Company and its Subsidiaries has 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, except for any disclosures, inaccuracies or violations that would not reasonably be expected to result in a Material Adverse Effect. The Company further certifies that: (i) neither the Company nor any Subsidiary 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 knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) neither the Company nor any Subsidiary 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) neither the Company nor any Subsidiary is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law, in each case except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(ll) Stock Option Plans or Equity Incentive Plans. Each stock option granted by the Company under the Company's stock option plan or equity incentive plan was granted (i) in accordance with the terms of the Company's stock option plan or equity incentive plan 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. No stock option granted under the Company's stock option plan or equity incentive plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice 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.

(mm) Office of Foreign Assets Control. Neither the Company, nor any Subsidiary, nor, to the Company's knowledge, any director, officer, agent, employee or controlled affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(nn) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

(oo) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates 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 or Affiliates 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 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 or Affiliates 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.

(pp) Money Laundering. The operations of each of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(qq) Other Covered Persons. Other than the Placement Agent, the Company is not aware of any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Securities.

(rr) FINRA Affiliation. No officer, director or any beneficial owner of 10% or more of the Company's Common Stock or Common Stock Equivalents has any direct or indirect affiliation or association with any member of the Financial Industry Regulatory Authority ("FINRA") (as determined in accordance with the rules and regulations of FINRA) that is participating in the offering. Except for securities purchased on the open market, no Company Affiliate is an owner of stock or other securities of any member of FINRA. No Company Affiliate has made a subordinated loan to any member of FINRA. No proceeds from the sale of the Securities (excluding compensation as disclosed in the Prospectus to the Placement Agent) will be paid to any FINRA member, any persons associated with a FINRA member or an affiliate of a FINRA member. Except as disclosed in the Registration Statement and Prospectus and except for securities issued to the Placement Agent as disclosed in the Prospectus, no person to whom securities of the Company have been privately issued within the 180-day period prior to the initial filing date of the Prospectus is a FINRA member, is a person associated with a FINRA member or is an affiliate of a FINRA member. No FINRA member participating in the offering has a conflict of interest with the Company. For this purpose, a "conflict of interest" exists when a FINRA member, the parent or affiliate of a FINRA member or any person associated with a FINRA member in the aggregate beneficially own 5% or more of the Company's outstanding subordinated debt or common equity, or 5% or more of the Company's preferred equity. "FINRA member participating in the offering" includes any associated person of a FINRA member that is participating in the offering, any member of such associated person's immediate family and any affiliate of a FINRA member that is participating in the offering. "Any person associated with a FINRA member" means (1) a natural person who is registered or has applied for registration under the rules of FINRA and (2) a sole proprietor, partner, officer, director, or branch manager of a FINRA member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a FINRA member. When used in this Section 3.1(rr) the term "affiliate of a FINRA member" or "affiliated with a FINRA member" means an entity that controls, is controlled by or is under common control with a FINRA member. The Company will advise the Placement Agent and Blank Rome if it learns that any officer, director or owner of 5% or more of the Company's outstanding Common Stock or Common Stock Equivalents is or becomes an affiliate or associated person of a FINRA member firm.

(ss) Officers' Certificate. Any certificate signed by any duly authorized officer of the Company and delivered to the Purchasers shall be deemed a representation and warranty by the Company to the Purchasers as to the matters covered thereby.

(tt) Board of Directors. The qualifications of the persons serving as board members and the overall composition of the Board of Directors comply with SOX and the rules promulgated thereunder applicable to the Company and the rules of the Trading Market. At least one member of the Board of Directors qualifies as a "financial expert" as such term is defined under SOX and the rules promulgated thereunder and the rules of the Trading Market. In addition, at least a majority of the persons serving on the Board of Directors qualify as "independent" as defined under the rules of the Trading Market.

(uu) Ineligible Issuer Status. At the time of filing the Registration Statement and at the date hereof, the Company was not and is not an "ineligible issuer," as defined under Rule 405 under the Securities Act.

(vv) Emerging Growth Company. From the time of the initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly in or through any Person authorized to act on its behalf in any Testing-the-Waters Communication) through the date hereof, the Company has been and is an "emerging growth company," as defined in Section 2(a) of the Securities Act (an "Emerging Growth Company"). "Testing-the-Waters Communication" means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act.

(ww) No Relationships with Customers and Suppliers. No relationship, direct or indirect, exists between or among the Company, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of the Company's affiliates, on the other hand, which is required to be described in the Registration Statement and the Prospectus or a document incorporated by reference therein and which is not so described.

3.2 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date of this Agreement and as of each applicable Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Organization; Authority. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Understandings or Arrangements. Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business. Such Purchaser is acquiring such Securities as principal for his, her or its own account and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding

the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Purchaser's right to sell such Securities pursuant to a registration statement or otherwise in compliance with applicable federal and state securities laws).

(c) [RESERVED]

20

(d) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the SEC Reports and has been afforded, (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities 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. Such Purchaser acknowledges and agrees that none of the Placement Agent or any Affiliate of the Placement Agent has provided such Purchaser with any information or advice with respect to the Securities nor is such information or advice necessary or desired. None of the Placement Agent or any Affiliate has made or makes any representation as to the Company or the quality of the Securities and the Placement Agent and any Affiliate may have acquired non-public information with respect to the Company which such Purchaser agrees need not be provided to it. In connection with the issuance of the Securities to such Purchaser, none of the Placement Agent or any of its Affiliates has acted as a financial advisor or fiduciary to such Purchaser.

(f) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, such Purchaser has not, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser, directly or indirectly executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that the Registration Statement was initially publicly filed with the Commission. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement. Other than to other Persons party to this Agreement or to such Purchaser's representatives, including, without limitation, its officers, directors, partners, legal and other advisors, employees, agents and Affiliates, such Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to locating or borrowing shares in order to effect Short Sales or similar transactions in the future.

The Company acknowledges and agrees that the representations contained in this Section 3.2 shall not modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to locating or borrowing shares in order to effect Short Sales or similar transactions in the future.

ARTICLE IV.

OTHER AGREEMENTS OF THE PARTIES

4.1 Legends. The Shares, the shares of Common Stock issuable upon conversion of the Series B Preferred Stock, the Warrants, the Warrant Shares issuable upon exercise of the Warrants, and the Dividend Shares shall be issued free of all restrictive legends.

21

4.2 Furnishing of Information. Until the earlier of the time that (i) no Purchaser owns any Securities, or (ii) the Warrants have expired, the Company covenants to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

4.3 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Warrants or Warrant Shares or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.4 Securities Laws Disclosure; Publicity. The Company shall (a) by the Disclosure Time, issue a press release disclosing the material terms of the transactions contemplated hereby, and (b) file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the Commission within the time required by the Exchange Act. From and after the issuance of such press release, the Company represents to the Purchasers that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Company, or any of their respective officers, directors, employees, controlled Affiliates or agents, including, without limitation, the Placement Agent, in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the issuance of such press release, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company or any of their respective officers, directors, agents, employees, controlled Affiliates or agents, including, without limitation, the Placement Agent, on the one hand, and any of the Purchasers or any of their Affiliates on the other hand, shall terminate and be of no further force or effect. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. The Company and each Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except (a) as required by federal securities law in connection with the filing of final Transaction Documents with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchasers with prior notice of such disclosure permitted under this clause (b) and reasonably cooperate with such Purchaser regarding such disclosure.

4.5 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Purchaser is an “Acquiring Person” under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

4.6 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, which shall be disclosed pursuant to Section 4.4, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide any Purchaser or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto such Purchaser shall have consented in writing to the receipt of such information and agreed in writing with the Company to keep such information confidential. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. To the extent that the Company or any of their respective officers, directors, agents, employees or controlled Affiliates delivers any material, non-public information to a Purchaser without such Purchaser’s consent, the Company hereby covenants and agrees that such Purchaser shall not have any duty of confidentiality to the Company or any of their respective officers, directors, employees, controlled Affiliates or agents, including, without limitation, the Placement Agent, or a duty to the Company or any of their respective officers, directors, employees, Affiliates or agents, including, without limitation, the Placement Agent, not to trade on the basis of, such material, non-public information, provided that the Purchaser shall remain subject to applicable law. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company, the Company shall simultaneously with the delivery of such notice file such notice with the Commission pursuant to a Current Report on Form 8-K. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.7 Use of Proceeds. The Company shall use the net proceeds from the sale of the Units hereunder as described in the “Use of Proceeds” section of the Registration Statement and Prospectus and shall not be used in violation of OFAC or FCPA regulations.

4.8 Indemnification of Purchasers. Subject to the provisions of this Section 4.8, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a “Purchaser Party”) harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys’ fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is solely based upon a material breach of such Purchaser Party’s representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which is finally judicially determined to constitute fraud, gross negligence or willful misconduct). The Company will indemnify each Purchaser Party, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys’ fees) and expenses, as incurred, arising out of or relating to (i) any untrue or alleged untrue statement of a material fact contained in such registration statement, any prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that such untrue statements or omissions are based solely upon information regarding such Purchaser Party furnished in writing to the Company by such Purchaser Party expressly for use therein, or (ii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder in connection therewith. If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company’s prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party’s breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.8 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 are incurred, *provided that*, in the event that it is judicially determined in a final judgment not subject to appeal by a court of competent jurisdiction that such Purchaser Party was not entitled to receive payments for legal and other expenses pursuant to this subparagraph, the Purchaser Party will promptly return all sums that had been advanced pursuant hereto. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.9 Reservation of Capital Stock. As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Series B Preferred Stock for the purpose of enabling the Company to issue shares of Series B Preferred Stock pursuant to the Transaction Documents. As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue shares of Common Stock issuable upon any conversion of Series B Preferred Stock.

4.10 Listing of Common Stock. The Company hereby agrees to maintain the trading of the Common Stock on the Trading Market for at least three (3) years after the Initial Closing Date.

4.11 Effectiveness. The Company will cause the Registration Statement to remain effective with a current prospectus covering: (A)(i) the issuance of shares of Common Stock issuable upon conversion of Series B Preferred Stock and (ii) the issuance of additional shares of Series B Preferred Stock pursuant to, or arising as a result of, the Company’s obligation to pay dividends pursuant to the Series B Certificate of Designation or terms of the Warrants and (B) the issuance of the Warrant Shares upon exercise of the Warrants, in each case, until such time as set forth in Series B Certificate of Designation and/or Warrant, as applicable.

4.12 Equal Treatment of Purchasers. No consideration (including any modification of this Agreement) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration is also offered to all of the parties to this Agreement. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Securities or

otherwise.

4.13 Certain Transactions and Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, covenants that neither it nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.4. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.4, such Purchaser will maintain the confidentiality of the existence and terms of this transaction. Notwithstanding the foregoing, and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (i) no Purchaser makes any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.4, (ii) no Purchaser shall be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.4 and (iii) no Purchaser shall have any duty of confidentiality or duty not to trade in the securities of the Company to the Company or any of their respective officers, directors, employees, Affiliates, or agent, including, without limitation, the Placement Agent, after the issuance of the initial press release as described in Section 4.4. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

4.15 Exercise Procedures. The form of Notice of Exercise included in the Warrants set forth the totality of the procedures required of the Purchasers in order to exercise the Warrants. No additional legal opinion, other information or instructions shall be required of the Purchasers to exercise their Warrants. Without limiting the preceding sentences, no ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required in order to exercise the Warrants. The Company shall honor exercises of the Warrants and shall deliver Warrant Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.16 D&O Lock-Up Agreements. The Company shall not amend, modify, waive or terminate any provision of any of the D&O Lock-Up Agreements except to extend the term of the lock-up period and shall enforce the provisions of each D&O Lock-Up Agreement in accordance with its terms. If any party to a D&O Lock-Up Agreement breaches any provision of a D&O Lock-Up Agreement, the Company shall promptly use its best efforts to seek specific performance of the terms of such D&O Lock-Up Agreement.

ARTICLE V. MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Initial Closing has not been consummated on or before the fifth (5th) Trading Day following the date hereof; provided, however, that no such termination will affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, the Preliminary Prospectus and the Final Prospectus, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and Purchasers which purchased at least 50.1% in interest of the Shares based on the Subscription Amounts hereunder (or, prior to the Initial Closing, by the Company and each Purchaser) or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought, provided that if any amendment, modification or waiver disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) shall also be required. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. Any proposed amendment or waiver that disproportionately, materially and adversely affects the rights and obligations of any Purchaser relative to the comparable rights and obligations of the other Purchasers shall require the prior written consent of such adversely affected Purchaser. Any amendment effected in accordance with this Section 5.5 shall be binding upon each Purchaser and holder of Securities and the Company.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5.8 No Third-Party Beneficiaries. The Placement Agent shall be a third-party beneficiary of the representations and warranties of the Company in Section 3.1 and the representations and warranties of the Purchasers in Section 3.2. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.8 and this Section 5.8.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for 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 other manner permitted by law. If any party shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.7, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

5.10 Survival. The representations and warranties contained herein shall survive each Closing and the delivery of the Securities for the applicable statute of limitations.

5.11 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transaction Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docuSign.com), such signature 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 facsimile or ".pdf" signature page were an original thereof.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

26

5.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that, in the case of a rescission of an exercise of a Warrant, the applicable Purchaser shall be required to return any Common Stock subject to any such rescinded exercise notice concurrently with the return to such Purchaser of the aggregate exercise price paid to the Company for such shares and the restoration of such Purchaser's right to acquire such shares pursuant to such Purchaser's Warrant (including, if applicable, issuance of a replacement warrant certificate evidencing such restored right).

5.14 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.15 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.16 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights 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, 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.

5.17 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. For reasons of administrative convenience only, each Purchaser and its respective counsel have chosen to communicate with the Company through Blank Rome. Blank Rome does not represent any of the Purchasers and only represents the Placement Agent. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers. Notwithstanding anything to the contrary in the foregoing, each of the Purchasers has been advised, and is being advised by this Agreement, to consult with an attorney before executing this Agreement, and each Purchase has consulted (or had an opportunity to consult) with counsel of such Purchaser's choice concerning the terms and conditions of this Agreement and the other Transaction Documents for a reasonable period of time prior to the execution hereof and thereof.

27

5.18 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

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

5.20 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Series B Preferred Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Series B Preferred Stock that occur after the date of this Agreement.

5.21 Sales During Pre-Settlement Period. Notwithstanding anything herein to the contrary, if at any time on or after the time of execution of this Agreement by the Company and an applicable Purchaser, through, and including the time immediately prior to a Closing (the "Pre-Settlement Period"), such Purchaser sells to any Person all, or any portion, of any Shares or Warrants to be issued hereunder to such Purchaser at such Closing (collectively, the "Pre-Settlement Securities"), such Purchaser shall, automatically hereunder (without any additional required actions by such Purchaser or the Company), be deemed to be unconditionally bound to purchase, and the Company shall be deemed unconditionally bound to sell, such Pre-Settlement Securities to such Purchaser at such Closing; provided, that the Company shall not be required to deliver any Pre-Settlement Securities to such Purchaser prior to the Company's receipt of the purchase price of such Pre-Settlement Securities hereunder; and provided further that the Company hereby acknowledges and agrees that the forgoing shall not constitute a representation or covenant by such Purchaser as to whether or not during the Pre-Settlement Period such Purchaser shall sell any Securities to any Person and that any such decision to sell any Securities by such Purchaser shall be made, in the sole discretion of such Purchaser, at the time such Purchaser elects to effect any such sale, if any.

5.22 WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH HEREBY KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

WISA TECHNOLOGIES, INC.

By: _____
Name: Brett Moyer
Title: President and Chief Executive Officer

Address for Notice:
15268 NW Greenbrier Pkwy
Beaverton, OR 97006
Email: bmoyer@wisatechnologies.com

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

Sullivan & Worcester LLP
1633 Broadway
New York, New York 10019
Email: ddanovitch@sullivanlaw.com, aschleicher@sullivanlaw.com
Attention: David E. Danovitch, Aaron M. Schleicher

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

[PURCHASER SIGNATURE PAGES TO WISA
SECURITIES PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: _____
Signature of Authorized Signatory of Purchaser: _____
Name of Authorized Signatory: _____
Title of Authorized Signatory: _____
Email Address of Authorized Signatory: _____
Facsimile Number of Authorized Signatory: _____
Address for Notice to Purchaser: _____
Address for Delivery of the Securities to Purchaser (if not same as address for notice): _____
DWAC for Shares: _____
Unit Subscription Amount: \$ _____

Units: _____
Warrants: _____ Beneficial Ownership Blocker " 4.99% or " 9.99%
EIN Number: _____

" Notwithstanding anything contained in this Agreement to the contrary, by checking this box (i) the obligations of the above-signed to purchase the securities set forth in this Agreement to be purchased from the Company by the above-signed, and the obligations of the Company to sell such securities to the above-signed, shall be unconditional and all conditions to Closing shall be disregarded and (ii) any condition to each Closing, as applicable, contemplated by this Agreement (but prior to being disregarded by clause (i) above) that required delivery by the Company or the above-signed of any agreement, instrument, certificate or the like or purchase price (as applicable) shall no longer be a condition and shall instead be an unconditional obligation of the Company or the above-signed (as applicable) to deliver such agreement, instrument, certificate or the like or purchase price (as applicable) to such other party on the applicable Closing Date.

PLACEMENT AGENCY AGREEMENT

[____], 2023

WiSA Technologies, Inc.
 15268 NW Greenbrier Pkwy
 Beaverton, Oregon 97006
 Attn: Brett Moyer, Chief Executive Officer

Dear Mr. Moyer:

This letter agreement (the "Agreement") constitutes the agreement between Maxim Group LLC ("Maxim" or the "Placement Agent") and WiSA Technologies, Inc., a Delaware corporation (together with its subsidiaries, the "Company"), that Maxim shall serve as the exclusive placement agent for the Company, on a "reasonable best efforts" basis, for the proposed placement to certain purchasers (the "Purchasers") of up to an aggregate of [____] units (each a "Unit" and collectively, the "Units"), with each Unit consisting of (i) of one share of the Company's Series B Convertible Preferred Stock, par value \$0.0001 per share, with a liquidation preference of \$100.00 per share (the "Series B Preferred Stock"), and (ii) two preferred warrants (the "Preferred Warrants"), each exercisable for one share of Series B Preferred Stock (the "Preferred Warrant Shares"). The Series B Preferred Stock is convertible into shares of the Company's common stock, par value, \$0.0001 per share (the "Series B Conversion Shares"). The Units, the Series B Preferred Stock, the Preferred Warrants, the Series B Conversion Shares and the Preferred Warrant Shares are referred to herein as the "Securities." The documents executed and delivered by the Company and the Purchasers in connection with the Offering (as defined below), including, without limitation, a securities purchase agreement (the "Purchase Agreement"), shall be collectively referred to herein as the "Transaction Documents." The purchase price to the Purchasers for each Unit is \$[____]. The Placement Agent may retain other brokers or dealers to act as sub-agents or selected-dealers on its behalf in connection with the Offering.

Notwithstanding anything herein to the contrary, in the event that the Placement Agent determines that any of the terms provided for hereunder do not comply with a rule of the Financial Industry Regulatory Authority ("FINRA"), including but not limited to FINRA Rule 5110, then the Company shall agree to amend this Agreement in writing upon the request of the Placement Agent to comply with any such rules; provided that any such amendments shall not provide for terms that are less favorable to the Company than the terms of this Agreement.

Section 1. Agreement to Act as Placement Agent

(a) On the basis of the representations, warranties and agreements of the Company herein contained, and subject to all the terms and conditions of this Agreement, the Placement Agent shall be the exclusive placement agent in connection with the offering and sale by the Company of the Securities pursuant to the Company's registration statement on Form S-1, as amended (File No. 333-274331) (and including any registration statement prepared and filed by the Company in accordance with Rule 462(b) pursuant to the Securities Act) (the "Registration Statement"), with the terms of such offering (the "Offering") to be subject to market conditions and negotiations between the Company, the Placement Agent and the prospective Purchasers. The Placement Agent will act on a reasonable best efforts basis and the Company agrees and acknowledges that there is no guarantee of the successful placement of the Securities, or any portion thereof, in the prospective Offering. Under no circumstances will the Placement Agent or any of their "Affiliates" (as defined below) be obligated to underwrite or purchase any of the Securities for its own account or otherwise provide any financing. The Placement Agent shall act solely as the Company's agent and not as principal. The Placement Agent shall have no authority to bind the Company with respect to any prospective offer to purchase the Securities and the Company shall have the sole right to accept offers to purchase the Securities and may reject any such offer, in whole or in part. Subject to the terms and conditions hereof, payment of the purchase price for, and delivery of, the Series B Preferred Stock and the Preferred Warrants shall be made at the closing (the "Closing") and the date on which the Closing occurs, the "Closing Date"). The Closing shall occur via "Delivery Versus Payment" ("DVP"), i.e., on the Closing Date, the Company shall issue the Series B Preferred Stock and the Preferred Warrants directly to the account designated by the Placement Agent and, upon receipt of such securities, the Placement Agent shall cause the Series B Preferred Stock and the Preferred Warrants to be electronically delivered to the applicable Purchaser and payment shall be made by the Placement Agent (or their clearing firm) by wire transfer to the Company, and delivery of the Series B Preferred Stock and the Preferred Warrants shall be delivered via The Depository Trust Company Deposit or Withdrawal at Custodian system for the account of the applicable Purchaser as set forth in the Purchase Agreement. As compensation for services rendered, the Company shall pay to the Placement Agent the fees and expenses set forth below:

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- (i) a cash fee equal to eight percent (8.0%) of the gross proceeds received by the Company from the sale of the Series B Preferred Stock and the Preferred Warrants at the Closing; provided that the cash fee shall be five percent (5.0%) of the gross proceeds received by the Company for the investors set forth on Exhibit A hereto;
 - (ii) for a period of twelve (12) months from the initial Closing Date, the Company grants the Placement Agent the right of first refusal to act as sole managing underwriter and sole book runner, sole placement agent, or sole sales agent, for any and all future public or private equity, equity-linked or debt (excluding commercial bank debt and loans against tax credits) offerings for which the Company retains the service of an underwriter, agent, advisor, finder or other person or entity in connection with such offering during such twelve (12) month period of the Company, or any successor to or any subsidiary of the Company (a "Subsequent Offering"). The Company shall not offer to retain any entity or person in connection with any such Subsequent Offering on terms more favorable than terms on which it offers to retain the Placement Agent. Such offer shall be made in writing in order to be effective. The Placement Agent shall notify the Company within ten (10) business days of its receipt of the written offer contemplated above as to whether or not it agrees to accept such retention. If the Placement Agent should decline such retention, the Company shall have no further obligations to the Placement Agent with respect to the offering for which it has offered to retain the Placement Agent, except as otherwise provided for herein; and

2

- (iii) reimbursement of the Placement Agent's accountable expenses, including the Placement Agent's legal counsel's legal fees, up to \$100,000.

The Placement Agent reserves the right to reduce any item of compensation or adjust the terms thereof as specified herein in the event that a determination shall be made by FINRA to the effect that the Placement Agent's aggregate compensation is in excess of FINRA Rules or that the terms thereof require adjustment.

(b) The Placement Agent's engagement hereunder shall become effective on the date hereof and shall continue until the later of (i) the final Closing Date of the Offering and (ii) December 31, 2023 (the "Termination Date"). Notwithstanding anything to the contrary contained herein, the provisions concerning confidentiality, indemnification and contribution contained herein and the Company's obligations contained in the indemnification provisions will survive any expiration or termination of this Agreement, and the Company's obligation to pay fees actually earned and payable and to reimburse expenses actually incurred and reimbursable pursuant to Section 1 hereof and which are permitted to be reimbursed under the FINRA Rules, will survive any expiration or termination of this Agreement. All such fees and reimbursements due shall be paid to the Placement Agent on or before the Termination Date (in the event such fees and reimbursements are earned or owed as of the Termination Date) or upon the closing of the Offering or any applicable portion thereof (in the event such fees are due pursuant to the terms of Section 1 hereof).

(c) Nothing in this Agreement shall be construed to limit the ability of the Placement Agent or its Affiliates to pursue, investigate, analyze, invest in, or engage in investment banking, financial advisory or any other business relationship with Persons (as defined below) other than the Company. As used herein (i) "Persons" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind and (ii) "Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person as such terms are used in and construed under Rule 405 under the Securities Act of 1933, as amended (the "Securities Act").

Section 2. Representations, Warranties and Covenants of the Company. The Company hereby represents, warrants and covenants to the Placement Agent as of the date hereof, and as of each Closing Date, unless such representation, warranty or agreement specifies a different date or time, as follows:

(a) Securities Law Filings. The Company has filed with the Securities and Exchange Commission (the "Commission") the Registration Statement under the Securities Act, which was filed on September 5, 2023, as amended on September 29, 2023 and October [], 2023, and declared effective on [], 2023 for the registration of the Securities under the Securities Act. Following the determination of pricing among the Company and the prospective Purchasers introduced to the Company by Placement Agent, the Company will file with the Commission pursuant to Rules 430A and 424(b) under the Securities Act, and the rules and regulations (the "Rules and Regulations") of the Commission promulgated thereunder, a final prospectus relating to the placement of the Securities, their respective pricings and the plan of distribution thereof and will advise the Placement Agent of all further information (financial and other) with respect to the Company required to be set forth therein. Such registration statement, at any given time, including the exhibits thereto filed at such time, as amended at such time, is hereinafter called the "Registration Statement"; such prospectus in the form in which it appears in the Registration Statement at the time of effectiveness, is hereinafter called the "Preliminary Prospectus"; and the final prospectus, in the form in which it will be filed with the Commission pursuant to Rules 430A and/or 424(b) (including the Preliminary Prospectus as it may be amended or supplemented) is hereinafter called the "Final Prospectus." The Registration Statement at the time it originally became effective is hereinafter called the "Original Registration Statement." Any reference in this Agreement to the Registration Statement, the Original Registration Statement, the Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein (the "Incorporated Documents"), if any, which were or are filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), at any given time, as the case may be; and any reference in this Agreement to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, the Original Registration Statement, the Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the date of this Agreement, or the issue date of the Preliminary Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference. All references in this Agreement to financial statements and schedules and other information which is "contained," "included," "described," "referenced," "set forth" or "stated" in the Registration Statement, the Preliminary Prospectus or the Final Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement, the Preliminary Prospectus or the Final Prospectus, as the case may be. As used in this paragraph and elsewhere in this Agreement, "Time of Sale Disclosure Package" means the Preliminary Prospectus, the Transaction Documents, the final terms of the Offering provided to the Purchasers (orally or in writing), and any issuer free writing prospectus as defined in Rule 433 of the Act (each, an "Issuer Free Writing Prospectus"), if any, that the parties hereto shall hereafter expressly agree in writing to treat as part of the Time of Sale Disclosure Package. The term "any Prospectus" shall mean, as the context requires, the Preliminary Prospectus, the Final Prospectus and any supplement to either thereof. The Company has not received any notice that the Commission has issued or intends to issue a stop order suspending the effectiveness of the Registration Statement or the use of the Preliminary Prospectus or the Final Prospectus or intends to commence a proceeding for any such purpose.

3

(b) Assurances. The Original Registration Statement, as amended, (and any further documents to be filed with the Commission) contains all exhibits and schedules as required by the Securities Act. Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the Securities Act and the applicable Rules and Regulations and 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. The Final Prospectus, as of its date, complied or will comply in all material respects with the Securities Act and the applicable Rules and Regulations. The Final Prospectus, as amended or supplemented, did not and will not contain as of the date thereof any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Incorporated Documents, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act and the applicable Rules and Regulations promulgated thereunder, and none of such documents, when they were filed with the Commission, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein (with respect to Incorporated Documents incorporated by reference in the Final Prospectus), in light of the circumstances under which they were made not misleading. No post-effective amendment to the Registration Statement reflecting any facts or events arising after the date thereof which represent, individually or in the aggregate, a fundamental change in the information set forth therein is required to be filed with the Commission. Except for this Agreement and the Transaction Documents, there are no documents required to be filed with the Commission in connection with the transaction contemplated hereby that (i) have not been filed as required pursuant to the Securities Act or (ii) will not be filed within the requisite time period under the Rules and Regulations. Except for this Agreement and the Transaction Documents, there are no contracts or other documents required to be described in the Final Prospectus, or to be filed as exhibits or schedules to the Registration Statement, which have not been described or filed as required. The foregoing shall not apply to statements in, or omissions from, any such document made in reliance upon, and in conformity with, information furnished to the Company by the Placement Agent specifically for use in the preparation thereof.

4

(c) Offering Materials. Neither the Company nor any of its directors and officers has distributed and none of them will distribute, prior to each Closing Date, any offering material in connection with the offering and sale of the Securities other than the Time of Sale Disclosure Package.

(d) Authorization; Enforcement. The Company has full legal right, power and authority to enter into this Agreement and perform the transactions contemplated hereby. This Agreement has been duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(e) No Conflicts. The execution, delivery and performance by the Company of this Agreement, the Transaction Documents and the transactions contemplated pursuant to the Time of Sale Disclosure Package, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby to which it is a party do not and will not (i) conflict with or violate any provision of the Company's, or any of its subsidiaries', certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction upon any of the properties or assets of the Company, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a debt or otherwise) or other understanding to which the Company is a party or by which any property or asset of the Company is bound or affected, or (iii) subject to any required approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company is bound or affected; except in the case of each of clauses (ii) and (iii), such as would not reasonably be expected to result in a material adverse effect on: (x) the legality, validity or enforceability of any Transaction Document; (y) the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company; or (z) the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (x), (y), or (z), a "Material Adverse Effect").

(f) Reliance. The Company has not relied upon the Placement Agent or legal counsel for the Placement Agent for any legal, tax or accounting advice in connection with the offering and sale of the Securities.

(g) Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act (“Forward-Looking Statement”)) contained in the Time of Sale Disclosure Package has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith. The Forward-Looking Statements incorporated by reference in the Registration Statement and the Prospectus (i) are within the coverage of the safe harbor for Forward Looking Statements set forth in Section 27A of the Securities Act, Rule 175(b) under the Securities Act or Rule 3b-6 under the Exchange Act, as applicable, (ii) were made by the Company with a reasonable basis and in good faith and reflect the Company’s good faith commercially reasonable best estimate of the matters described therein, and (iii) have been prepared in accordance with Item 10 of Regulation S-K under the Securities Act.

(h) Representations and Warranties Incorporated by Reference. Each of the representations and warranties (together with any related disclosure schedules thereto) made by the Company to the Purchasers in the Purchase Agreement is hereby incorporated herein by reference (as though fully restated herein) and is hereby made to, and in favor of, the Placement Agent.

(i) FINRA Affiliations. There are no affiliations with any FINRA member firm among the Company’s officers, directors or, to the knowledge of the Company, any 5.0% or greater stockholder of the Company.

Section 3. Delivery and Payment. The Closing shall occur at the offices of Blank Rome LLP, located at 1271 Avenue of the Americas, New York, New York 10020 (“Placement Agent Counsel”) (or at such other place as shall be agreed upon by the Placement Agent and the Company, including remotely via electronic transmission). Subject to the terms and conditions hereof and of the Purchase Agreement, at the Closing, payment of the purchase price for the Securities sold on such Closing Date shall be made by Federal Funds wire transfer, against delivery of such Securities, and such Securities shall be registered in such name or names and shall be in such denominations, as the Placement Agent may request at least one business day before the Closing Date. Deliveries of the documents with respect to the purchase of the Securities, if any, shall be made at the offices of Placement Agent Counsel. All actions taken at the Closing shall be deemed to have occurred simultaneously.

Section 4. Covenants and Agreements of the Company. The Company further covenants and agrees with the Placement Agent as follows:

(a) Registration Statement Matters. The Company will advise the Placement Agent promptly after it receives notice thereof of the time when any amendment to the Registration Statement has been filed or becomes effective or any supplement to the Final Prospectus has been filed and will furnish the Placement Agent with copies thereof. The Company will file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 14 or 15(d) of the Exchange Act subsequent to the date of any Prospectus and for so long as the delivery of a prospectus is required in connection with the Offering. The Company will advise the Placement Agent, promptly after it receives notice thereof (i) of any request by the Commission to amend the Registration Statement or to amend or supplement any Prospectus or for additional information, and (ii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or any order directed at any Incorporated Document, if any, or any amendment or supplement thereto or any order preventing or suspending the use of the Preliminary Prospectus or the Final Prospectus or any prospectus supplement or any amendment or supplement thereto or any post-effective amendment to the Registration Statement, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, of the institution or threatened institution of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or a Prospectus or for additional information. The Company shall use its best efforts to prevent the issuance of any such stop order or prevention or suspension of such use. If the Commission shall enter any such stop order or order or notice of prevention or suspension at any time, the Company will use its best efforts to obtain the lifting of such order at the earliest possible moment, or will file a new registration statement and use its best efforts to have such new registration statement declared effective as soon as practicable. Additionally, the Company agrees that it shall comply with the provisions of Rules 424(b), 430A, 430B and 430C, as applicable, under the Securities Act, including with respect to the timely filing of documents thereunder, and will use its reasonable efforts to confirm that any filings made by the Company under such Rule 424(b) are received in a timely manner by the Commission.

(b) Blue Sky Compliance. The Company will cooperate with the Placement Agent and the Purchasers in endeavoring to qualify the Securities for sale under the securities laws of such jurisdictions (United States and foreign) as the Placement Agent and the Purchasers may reasonably request and will make such applications, file such documents, and furnish such information as may be reasonably required for that purpose, provided the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction where it is not now so qualified or required to file such a consent, and provided further that the Company shall not be required to produce any new disclosure document. The Company will, from time to time, prepare and file such statements, reports and other documents as are or may be required to continue such qualifications in effect for so long a period as the Placement Agent may reasonably request for distribution of the Securities. The Company will advise the Placement Agent promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Securities for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof at the earliest possible moment.

(c) Amendments and Supplements to a Prospectus and Other Matters. The Company will comply with the Securities Act and the Exchange Act, and the rules and regulations of the Commission thereunder, so as to permit the completion of the distribution of the Securities as contemplated in this Agreement, the Incorporated Documents and any Prospectus. If during the period in which a prospectus is required by law to be delivered in connection with the distribution of Securities contemplated by the Incorporated Documents or any Prospectus (the “Prospectus Delivery Period”), any event shall occur as a result of which, in the judgment of the Company or in the opinion of the Placement Agent or counsel for the Placement Agent, it becomes necessary to amend or supplement the Incorporated Documents or any Prospectus in order to make the statements therein, in light of the circumstances under which they were made, as the case may be, not misleading, or if it is necessary at any time to amend or supplement the Incorporated Documents or any Prospectus or to file under the Exchange Act any Incorporated Document to comply with any law, the Company will promptly prepare and file with the Commission, and furnish at its own expense to the Placement Agent and to dealers, an appropriate amendment to the Registration Statement or supplement to the Registration Statement, the Incorporated Documents or any Prospectus that is necessary in order to make the statements in the Incorporated Documents and any Prospectus as so amended or supplemented, in light of the circumstances under which they were made, as the case may be, not misleading, or so that the Registration Statement, the Incorporated Documents or any Prospectus, as so amended or supplemented, will comply with law. Before amending the Registration Statement or supplementing the Incorporated Documents or any Prospectus in connection with the Offering, the Company will furnish the Placement Agent with a copy of such proposed amendment or supplement and will not file any such amendment or supplement to which the Placement Agent reasonably objects.

(d) Copies of any Amendments and Supplements to a Prospectus. The Company will furnish the Placement Agent, without charge, during the period beginning on the date hereof and ending on the later of the final Closing Date of the Offering, as many copies of any Prospectus or prospectus supplement and any amendments and supplements thereto, as the Placement Agent may reasonably request.

(e) Free Writing Prospectus. The Company covenants that it will not, unless it obtains the prior written consent of the Placement Agent, make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus” (as defined in Rule 405 of the Securities Act) required to be filed by the Company with the Commission or retained by the Company under Rule 433 of the Securities Act. In the event that the Placement Agent expressly consents in writing to any such free writing prospectus (a “Permitted Free Writing Prospectus”), the Company covenants that it shall (i) treat each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, and (ii) comply with the requirements of Rule 164 and 433 of the Securities Act applicable to such Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

8

(f) Transfer Agent. The Company will maintain, at its expense, a registrar and transfer agent for the Common Stock for at least three years after the initial Closing Date.

(g) Earnings Statement. As soon as practicable and in accordance with applicable requirements under the Securities Act, but in any event not later than 18 months after the initial Closing Date, the Company will make generally available to its security holders and to the Placement Agent an earnings statement, covering a period of at least 12 consecutive months beginning after the initial Closing Date, that satisfies the provisions of Section 11(a) and Rule 158 under the Securities Act.

(h) Periodic Reporting Obligations. During the Prospectus Delivery Period, the Company will duly file, on a timely basis, with the Commission and the market or exchange on which the Common Stock is listed or quoted for trading (the “Trading Market”) all reports and documents required to be filed under the Exchange Act within the time periods and in the manner required by the Exchange Act.

(i) Additional Documents. The Company will enter into any subscription, purchase or other customary agreements as the Placement Agent or the Purchasers deem necessary or appropriate to consummate the Offering, all of which will be in form and substance reasonably acceptable to the Placement Agent and the Purchasers. The Company agrees that the Placement Agent may rely upon, and each is a third party beneficiary of, the representations and warranties, and applicable covenants, set forth in any such purchase, subscription or other agreement with Purchasers in the Offering.

(j) No Manipulation of Price. The Company will not take, directly or indirectly, any action designed to cause or result in, or that has constituted or might reasonably be expected to constitute, the stabilization or manipulation of the price of any securities of the Company.

(k) Acknowledgment. The Company acknowledges that any advice given by the Placement Agent to the Company is solely for the benefit and use of the Board of Directors of the Company and may not be used, reproduced, disseminated, quoted or referred to, without the Placement Agent’s prior written consent.

(l) Publicity. The Company acknowledges and agrees that the Placement Agent may, subsequent to the Closing, make public its involvement with the Offering. The Company agrees that, until 45 days after the initial Closing Date, it will not issue press releases or engage in any other publicity, without Maxim’s prior written consent (not to be unreasonably withheld), other than normal and customary releases issued in the ordinary course of the Company’s business. Notwithstanding the foregoing, in no event shall the Company be prohibited from issuing any press releases or engaging in any other publicity required by law, except that including the name of the Placement Agent therein shall require the prior written consent of the Placement Agent.

(m) Reliance on Others. The Company confirms that it will rely on its own counsel and accountants for legal and accounting advice.

(n) Research Matters. By entering into this Agreement, the Placement Agent does not provide any promise, either explicitly or implicitly, of favorable or continued research coverage of the Company and the Company hereby acknowledges and agrees that the Placement Agent’s selection as a placement agent for the Offering was in no way conditioned, explicitly or implicitly, on the Placement Agent providing favorable or any research coverage of the Company. In accordance with the FINRA Rules, the parties acknowledge and agree that the Placement Agent has not directly or indirectly offered favorable research, a specific rating or a specific price target, or threatened to change research, a rating or a price target, to the Company or inducement for the receipt of business or compensation.

9

(o) Trading Market. The Company will use its best efforts to maintain the listing of its Common Stock on the Trading Market for a period of at least three years after the initial Closing Date.

(p) Engagement of Professionals. The Company will retain a nationally recognized, PCAOB registered firm of independent certified public accountants reasonably acceptable to Maxim for a period of at least three years after the initial Closing Date. The Company will retain a financial public relations firm reasonably acceptable to Maxim for a period of two years after the initial Closing Date. The Company will retain a financial printer reasonably acceptable to Maxim to handle the printing and related aspects of the Offering.

(q) Subsequent Equity Sales. From the date hereof until forty-five (45) days after the final Closing Date, without the prior written consent of the Placement Agent, the Company shall not (i) issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents or (ii) file any registration statement or any amendment or supplement thereto, other than the Final Prospectus or a registration statement on Form S-8 in connection with any employee benefit plan (the “Lock-Up Period”). Notwithstanding the foregoing, this Section 4(q) shall not apply in respect of an Exempt Issuance. “Exempt Issuance” means the issuance of (a) the Securities hereunder; (b) shares of Common Stock or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company; (c) securities upon the exercise or exchange of or conversion of securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities and (d) securities issued pursuant to acquisitions or strategic transactions and the payment of contractor invoices in the ordinary course of business approved by a majority of the disinterested directors of the Company, provided that such securities are issued as “restricted securities” (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith during the Lock-Up Period, and provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

(r) Variable Rate Transactions. From the date hereof until forty-five (45) days after the final Closing Date, without the prior written consent of the Placement Agent, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents (or a combination of units thereof) involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional shares of Common Stock or preferred stock of the Company either (A) at a conversion price, exercise price 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 debt or equity securities, 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 debt or equity security 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 or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit or an "at-the-market offering", whereby the Company may issue securities at a future determined price regardless of whether shares pursuant to such agreement have actually been issued and regardless of whether such agreement is subsequently canceled.

Section 5. Conditions of the Obligations of the Placement Agent. The obligations of the Placement Agent hereunder shall be subject to the accuracy of the representations and warranties on the part of the Company set forth in Section 2 hereof and in the Purchase Agreement, in each case as of the date hereof and as of the applicable Closing Date as though then made, to the timely performance by each of the Company of its covenants and other obligations hereunder on and as of such dates, and to each of the following additional conditions:

(a) Accountants' Comfort Letter. On the date of this Agreement and on each Closing Date, the Placement Agent shall have received, and the Company shall have caused to be delivered to the Placement Agent, a cold "comfort letter" and a bring-down "comfort letter", respectively, from BPM LLP, the current independent registered public accounting firm of the Company ("BPM"), addressed to the Placement Agent, dated as of the date of this Agreement or the applicable Closing Date, as the case may be, in form and substance satisfactory to the Placement Agent. The letter shall not disclose any change in the condition (financial or other), earnings, operations, business or prospects of the Company from that set forth in the Incorporated Documents or the applicable Prospectus or prospectus supplement, which, in the Placement Agent's sole judgment, is material and adverse and that makes it, in the Placement Agent's sole judgment, impracticable or inadvisable to proceed with the Offering of the Securities as contemplated by such Prospectus.

(b) Compliance with Registration Requirements; No Stop Order; No Objection from the FINRA. Each Prospectus shall have been duly filed with the Commission, as appropriate; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; no order preventing or suspending the use of any Prospectus shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; no order having the effect of ceasing or suspending the distribution of the Securities or any other securities of the Company shall have been issued by any securities commission, securities regulatory authority or stock exchange and no proceedings for that purpose shall have been instituted or shall be pending or, to the knowledge of the Company, contemplated by any securities commission, securities regulatory authority or stock exchange; all requests for additional information on the part of the Commission shall have been complied with; and, prior to the Closing, FINRA shall have raised no objection to the fairness and reasonableness of the placement terms and arrangements.

(c) Corporate Proceedings. All corporate proceedings and other legal matters in connection with this Agreement, the Registration Statement and each Prospectus, and the registration, sale and delivery of the Securities, shall have been completed or resolved in a manner reasonably satisfactory to the Placement Agent's counsel, and such counsel shall have been furnished with such papers and information as it may reasonably have requested to enable such counsel to pass upon the matters referred to in this Section 5.

(d) No Material Adverse Change. Subsequent to the execution and delivery of this Agreement and prior to each Closing Date, in the Placement Agent's sole judgment after consultation with the Company, there shall not have occurred any Material Adverse Effect or any material adverse change or development involving a prospective material adverse change in the condition or the business activities, financial or otherwise, of the Company from the latest dates as of which such condition is set forth in the Registration Statement and Prospectus ("Material Adverse Change").

(e) Opinion of Counsel for the Company. The Placement Agent shall have received on each Closing Date the favorable opinion of Sullivan & Worcester LLP, legal counsel to the Company, dated as of such Closing Date, including, without limitation, a negative assurance letter addressed to the Placement Agent and in form and substance satisfactory to the Placement Agent.

(f) Officers' Certificate. The Placement Agent shall have received on each Closing Date a certificate of the Company, dated as of such Closing Date, signed by the Chief Executive Officer and Principal Financial Officer of the Company, to the effect that, and the Placement Agent shall be satisfied that, the signers of such certificate have reviewed the Registration Statement, the Incorporated Documents, the Final Prospectus, the Transaction Documents and this Agreement and to the further effect that:

(i) The representations and warranties of the Company in this Agreement are true and correct, as if made on and as of such Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to such Closing Date;

(ii) No stop order suspending the effectiveness of the Registration Statement or the use of the Final Prospectus has been issued and no proceedings for that purpose have been instituted or are pending or, to the Company's knowledge, threatened under the Securities Act; no order having the effect of ceasing or suspending the distribution of the Securities or any other securities of the Company has been issued by any securities commission, securities regulatory authority or stock exchange in the United States and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Company, contemplated by any securities commission, securities regulatory authority or stock exchange in the United States;

(iii) When the Registration Statement became effective, at the time of sale, and at all times subsequent thereto up to the delivery of such certificate, the Registration Statement and the Incorporated Documents, if any, when such documents became effective or were filed with the Commission, and any Prospectus, contained all material information required to be included therein by the Securities Act and the Exchange Act and the applicable rules and regulations of the Commission thereunder, as the case may be, and in all material respects conformed to the requirements of the Securities Act and the Exchange Act and the applicable rules and regulations of the Commission thereunder, as the case may be, and the Registration Statement and the Incorporated Documents, if any, and any Prospectus, did not and do not include 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, in light of the circumstances under which they were made, not misleading (provided, however, that the preceding representations and warranties contained in this paragraph (iii) shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by the Placement Agent expressly for use therein) and, since the effective date of the

Registration Statement, there has occurred no event required by the Securities Act and the rules and regulations of the Commission thereunder to be set forth in the Incorporated Documents which has not been so set forth; and

(iv) Subsequent to the respective dates as of which information is given in the Registration Statement, the Incorporated Documents and the Final Prospectus, there has not been: (a) any Material Adverse Change; (b) any transaction that is material to the Company taken as a whole, except transactions entered into in the ordinary course of business; (c) any obligation, direct or contingent, that is material to the Company taken as a whole, incurred by the Company, except obligations incurred in the ordinary course of business; (d) any material change in the capital stock (except changes thereto resulting from the exercise of outstanding stock options or warrants) or outstanding indebtedness of the Company; (e) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company; or (f) any loss or damage (whether or not insured) to the property of the Company which has been sustained or will have been sustained which has a Material Adverse Effect.

(g) Secretary's Certificate. The Placement Agent shall have received on each Closing Date a certificate of the Company, dated as of the applicable Closing Date, signed by the Secretary of the Company, dated as of the date of such Closing, certifying to the organizational documents, good standing in the state of incorporation of the Company and board resolutions relating to the Offering.

(h) Chief Financial Officer Certificate. On the date of this Agreement and on each Closing Date, the Placement Agent shall have received a certificate of Principal Financial Officer addressed to the Placement Agent and in form and substance satisfactory in all respects to the Placement Agent and Placement Agent's counsel.

(i) Stock Exchange Listing. The Common Stock shall be registered under the Exchange Act and shall be listed on the Trading Market, and the Company shall not have taken any action designed to terminate, or likely to have the effect of terminating, the registration of the Common Stock under the Exchange Act or delisting or suspending from trading the Common Stock from the Trading Market, nor shall the Company have received any information suggesting that the Commission or the Trading Market is contemplating terminating such registration or listing except as disclosed in any Prospectus.

13

(j) Lock-Up Agreements. On the date of this Agreement, the Placement Agent shall have received the executed lock-up agreement, in the form attached hereto as Exhibit B, from each of the directors and executive officers of the Company.

(k) Warrant Agency Agreement. On or before the initial Closing Date, the Company shall have executed and delivered the duly executed one or more warrant agency agreements by and between the Company and the transfer agent, acting as warrant agent.

(l) Warrants. On each Closing Date, the Company shall deliver or shall cause to be delivered the Preferred Warrants and the Preferred Warrants registered in such name or names and in such denominations as the Placement Agent may request at least one business day before the applicable Closing Date.

(m) Series B Certificate of Designation. At least one Business Day prior to the initial Closing Date, the Company shall have filed with the Secretary of State of the State of Delaware the Certificate of Designation of Preferences, Rights and Limitations of the Series B Convertible Preferred Stock (the "Certificate of Designation") and deliver or shall cause to be delivered a stamped copy of the Certificate of Designation to the Placement Agent.

(n) Additional Documents. On or before each Closing Date, the Placement Agent and counsel for the Placement Agent shall have received such information and documents as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

If any condition specified in this Section 5 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Placement Agent by notice to the Company at any time on or prior to the initial Closing Date, which termination shall be without liability on the part of any party to any other party, except that Sections 1(a), 7 and 8 shall at all times be effective and shall survive such termination.

Section 6. Further Agreements.

(a) Other Activities. The Company acknowledges that the Placement Agent has been, and may in the future be, engaged to provide services as an underwriter, placement agent, finder, advisor or investment banker to other companies in the industry in which the Company is involved. The Company acknowledges and agrees that nothing contained in this Agreement shall limit or restrict the right of the Placement Agent or of any member, manager, officer, employee, agent or representative of the Placement Agent, to be a member, manager, partner, officer, director, employee, agent or representative of, investor in, or to engage in, any other business, whether or not of a similar nature to the Company's business, nor to limit or restrict the right of the Placement Agent to render services of any kind to any other corporation, firm, individual or association; provided that the Placement Agent and any of its members, managers, officers, employees, agents or representatives shall not use the Information to the detriment of the Company.

14

(b) Placement Agent Introductions. Upon Closing of the Offering, or if the Termination Date is prior to the Closing of the Offering (other than a termination for "Cause"), then if within twelve (12) months following such time, the Company completes any financing of equity, equity-linked, or debt financing, or any other capital raising activity with, or receives any proceeds from any of the investors contacted or introduced to the Company by the Placement Agent, including, but not limited to, any proceeds received by the Company upon the cash exercise of the Preferred Warrants, then the Company will pay the Placement Agent upon the closing of such financing or receipt of proceeds the compensation equivalent to that set forth in Section 1(a)(i) hereof.

Section 7. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless the Placement Agent, its affiliates and each person controlling the Placement Agent (within the meaning of Section 15 of the Securities Act), and the directors, officers, agents and employees of the Placement Agent, its affiliates and each such controlling person (the Placement Agent, and each such entity or person, an "Indemnified Person") from and against any losses, claims, damages, judgments, assessments, costs and other liabilities (collectively, the "Liabilities"), and shall reimburse each Indemnified Person for all fees and expenses (including the reasonable fees and expenses of one counsel for all Indemnified Persons, except as otherwise expressly provided herein) (collectively, the "Expenses") as they are incurred by an Indemnified Person in investigating, preparing, pursuing or defending any action, suit, inquiry, notice of violation, proceeding or investigation (collectively, an "Action"), whether or not any Indemnified Person is a party thereto, (i) caused by, or arising out of or in connection with, any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Incorporated Document, or any Prospectus or by any omission or alleged omission to state therein a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (other than untrue statements or alleged untrue statements in, or omissions or alleged omissions from, information relating to an Indemnified Person furnished in writing by or on behalf of such Indemnified Person expressly for use in the Incorporated Documents) or (ii) otherwise arising out of or in connection with advice or services rendered or to be rendered by any Indemnified Person pursuant to this Agreement, the transactions contemplated thereby or any Indemnified Person's actions or inactions in connection with any such advice, services or transactions; provided, however, that, in the case of clause (ii) only, the Company shall not be responsible for any

Liabilities or Expenses of any Indemnified Person that are finally judicially determined to have resulted solely from such Indemnified Person's (x) gross negligence or willful misconduct in connection with any of the advice, actions, inactions or services referred to above or (y) use of any offering materials or information concerning the Company in connection with the offer or sale of the Securities in the Offering which were not authorized for such use by the Company and which use constitutes gross negligence or willful misconduct. The Company also agrees to reimburse each Indemnified Person for all Expenses as they are incurred in connection with enforcing such Indemnified Person's rights under this Agreement.

15

(b) Upon receipt by an Indemnified Person of actual notice of an Action against such Indemnified Person with respect to which indemnity may be sought under this Agreement, such Indemnified Person shall promptly notify the Company in writing; provided that failure by any Indemnified Person so to notify the Company shall not relieve the Company from any liability which the Company may have on account of this indemnity or otherwise to such Indemnified Person, except to the extent the Company shall have been prejudiced by such failure. The Company shall, if requested by the Placement Agent, assume the defense of any such Action including the employment of counsel reasonably satisfactory to the Placement Agent, which counsel may also be counsel to the Company. Any Indemnified Person shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless: (i) the Company has failed promptly to assume the defense and employ counsel or (ii) the named parties to any such Action (including any impeded parties) include such Indemnified Person and the Company, and such Indemnified Person shall have been advised in the reasonable opinion of counsel that there is an actual conflict of interest that prevents the counsel selected by the Company from representing both the Company (or another client of such counsel) and any Indemnified Person; provided that the Company shall not in such event be responsible hereunder for the fees and expenses of more than one firm of separate counsel for all Indemnified Persons in connection with any Action or related Actions, in addition to any local counsel. The Company shall not be liable for any settlement of any Action effected without its written consent (which shall not be unreasonably withheld). In addition, the Company shall not, without the prior written consent of the Placement Agent (which shall not be unreasonably withheld), settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate any pending or threatened Action in respect of which indemnification or contribution may be sought hereunder (whether or not such Indemnified Person is a party thereto) unless such settlement, compromise, consent or termination includes an unconditional release of each Indemnified Person from all Liabilities arising out of such Action for which indemnification or contribution may be sought hereunder. The indemnification required hereby shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

(c) In the event that the foregoing indemnity is unavailable to an Indemnified Person other than in accordance with this Agreement, the Company shall contribute to the Liabilities and Expenses paid or payable by such Indemnified Person in such proportion as is appropriate to reflect (i) the relative benefits to the Company, on the one hand, and to the Placement Agent and any other Indemnified Person, on the other hand, of the matters contemplated by this Agreement or (ii) if the allocation provided by the immediately preceding clause is not permitted by applicable law, not only such relative benefits but also the relative fault of the Company, on the one hand, and the Placement Agent and any other Indemnified Person, on the other hand, in connection with the matters as to which such Liabilities or Expenses relate, as well as any other relevant equitable considerations; provided that in no event shall the Company contribute less than the amount necessary to ensure that all Indemnified Persons, in the aggregate, are not liable for any Liabilities and Expenses in excess of the amount of fees actually received by the Placement Agent pursuant to this Agreement. For purposes of this paragraph, the relative benefits to the Company, on the one hand, and to the Placement Agent on the other hand, of the matters contemplated by this Agreement shall be deemed to be in the same proportion as (a) the total value paid or contemplated to be paid to or received or contemplated to be received by the Company in the transaction or transactions that are within the scope of this Agreement, whether or not any such transaction is consummated, bears to (b) the fees paid to the Placement Agent under this Agreement. Notwithstanding the above, no person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the Securities Act, as amended, shall be entitled to contribution from a party who was not guilty of fraudulent misrepresentation.

16

(d) The Company also agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company for or in connection with advice or services rendered or to be rendered by any Indemnified Person pursuant to this Agreement, the transactions contemplated thereby or any Indemnified Person's actions or inactions in connection with any such advice, services or transactions except for Liabilities (and related Expenses) of the Company that are finally judicially determined to have resulted solely from such Indemnified Person's gross negligence or willful misconduct in connection with any such advice, actions, inactions or services.

(e) The reimbursement, indemnity and contribution obligations of the Company set forth herein shall apply to any modification of this Agreement and shall remain in full force and effect regardless of any termination of, or the completion of any Indemnified Person's services under or in connection with, this Agreement.

Section 8. Representations and Indemnities to Survive Delivery. The respective indemnities, agreements, representations, warranties and other statements of the Company or any person controlling the Company, of its officers, and of the Placement Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Placement Agent, the Company, or any of its or their partners, officers or directors or any controlling person, as the case may be, and will survive delivery of and payment for the Securities sold hereunder and any termination of this Agreement. A successor to a Placement Agent, or to the Company, its directors or officers or any person controlling the Company, shall be entitled to the benefits of the indemnity, contribution and reimbursement agreements contained in this Agreement.

17

Section 9. Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered, e-mailed or telecopied and confirmed to the parties hereto as follows:

If to the Placement Agent:

Maxim Group LLC
300 Park Avenue, 16th Floor
New York, New York 10022
Attention: Clifford A. Teller, Co-President
Email: cteller@maximgrp.com

With a copy to:

Blank Rome LLP
1271 Avenue of the Americas
New York, New York 10020

Attention: Leslie Marlow, Esq. or Patrick J. Egan, Esq.
Email: leslie.marlow@blankrome.com or patrick.egan@blankrome.com

If to the Company:

WiSA Technologies, Inc.
15268 NW Greenbrier Pkwy
Beaverton, Oregon 97006
Attention: Brett Moyer, Chief Executive Officer
Email: bmoyer@wisatechnologies.com

With a copy to:

Sullivan & Worcester LLP
1633 Broadway
New York, New York 10019
Attention: David E. Danovitch, Esq. and Aaron M. Schleicher, Esq.
Email: ddanovitch@sullivanlaw.com and aschleicher@sullivanlaw.com

Any party hereto may change the address for receipt of communications by giving written notice to the others.

Section 10. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 7 hereof, and to their respective successors, and personal representative, and no other person will have any right or obligation hereunder.

Section 11. Partial Unenforceability. The invalidity or unenforceability of any section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph or provision hereof. If any section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

18

Section 12. Governing Law Provisions. This Agreement shall be deemed to have been made and delivered in New York City and both this Agreement and the transactions contemplated hereby shall be governed as to validity, interpretation, construction, effect and in all other respects by the internal laws of the State of New York, without regard to the conflict of laws principles thereof. Each of the Placement Agent and the Company: (i) agrees that any legal suit, action or proceeding arising out of or relating to this Agreement and/or the transactions contemplated hereby shall be instituted exclusively in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York (ii) waives any objection which it may have or hereafter to the venue of any such suit, action or proceeding, and (iii) irrevocably consents to the jurisdiction of the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York in any such suit, action or proceeding. Each of the Placement Agent and the Company further agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York and agrees that service of process upon the Company mailed by certified mail to the Company's address shall be deemed in every respect effective service of process upon the Company, in any such suit, action or proceeding, and service of process upon the Placement Agent mailed by certified mail to the Placement Agent's address shall be deemed in every respect effective service process upon the Placement Agent, in any such suit, action or proceeding. Notwithstanding any provision of this Agreement to the contrary, the Company agrees that neither the Placement Agent nor its affiliates, and the respective officers, directors, employees, agents and representatives of the Placement Agent, its affiliates and each other person, if any, controlling the Placement Agent or any of its affiliates, shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company for or in connection with the engagement and transaction described herein except for any such liability for losses, claims, damages or liabilities incurred by us that are finally judicially determined to have resulted from the willful misconduct or gross negligence of such individuals or entities. If either party shall commence an action or proceeding to enforce any provision of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorney's fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

Section 13. General Provisions.

(a) This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

19

(b) The Company acknowledges that in connection with the offering of the Securities: (i) the Placement Agent has acted at arm's length, are not agents of, and owe no fiduciary duties to the Company or any other person, (ii) the Placement Agent owes the Company only those duties and obligations set forth in this Agreement and (iii) the Placement Agent may have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Placement Agent arising from an alleged breach of fiduciary duty in connection with the offering of the Securities.

[The remainder of this page has been intentionally left blank.]

20

If the foregoing is in accordance with your understanding of our agreement, please sign below whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

MAXIM GROUP LLC

By: _____
Name: Clifford A. Teller
Title: Co-President

The foregoing Agreement is hereby confirmed and accepted as of the date first written above.

WISA TECHNOLOGIES, INC.

By: _____
Name: Brett Moyer
Title: Chief Executive Officer

[Signature Page to Placement Agency Agreement]

21

Exhibit A

List of certain investors pursuant to Section 1(a)(i)

Exhibit B

Form of Lock-Up Agreement

_____, 2023

Maxim Group LLC
300 Park Avenue, 16th Floor
New York, New York 10022

Re: WiSA Technologies, Inc.—Proposed Offering of Securities

Ladies and Gentlemen:

The undersigned, a holder of common stock, par value \$0.0001 per share (“**Shares**”), or rights to acquire Shares, of WiSA Technologies, Inc., a company incorporated under the laws of the State of Delaware (the “**Company**”), understands that you (“**Maxim**”) propose to enter into a Placement Agency Agreement (the “**Placement Agency Agreement**”) providing for the offer and sale (the “**Offering**”) of certain securities of the Company, including shares of the Company’s Series B Convertible Preferred Stock, par value \$0.0001 per share (the “**Series B Preferred Stock**”), and preferred warrants to purchase shares of the Series B Preferred Stock (the “**Securities**”) pursuant to a registration statement on Form S-1, as amended (File No. 333-274331), filed with the U.S. Securities and Exchange Commission (the “**SEC**”). The Securities are being directly issued by the Company pursuant to the terms of that certain Securities Purchase Agreement (the “**Purchase Agreement**”) between the Company and the purchasers signatory thereto (each, a “**Purchaser**” and, collectively, the “**Purchasers**”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth for them in the Placement Agency Agreement.

In consideration of Maxim’s agreement to enter into the Placement Agency Agreement and to proceed with the Offering of the Securities, and the Purchasers’ agreement to enter into the Purchase Agreement and proceed with the purchase of the Securities, and for other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby agrees, for the benefit of the Company, Maxim and the Purchasers that, without the prior written consent of Maxim, the undersigned will not, during the period specified in the following paragraph (the “**Lock-Up Period**”), directly or indirectly, unless otherwise provided herein, (a) offer, sell, agree to offer or sell, solicit offers to purchase, convert, exercise, exchange, grant any call option or purchase any put option with respect to, pledge, encumber, assign, borrow or otherwise dispose of or transfer (each a “**Transfer**”) any Relevant Security (as defined below) or otherwise publicly disclose the intention to do so, or (b) establish or increase any “put equivalent position” or liquidate or decrease any “call equivalent position” with respect to any Relevant Security (in each case within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations thereunder) with respect to any Relevant Security or otherwise enter into any swap, derivative or other transaction or arrangement that Transfers to another, in whole or in part, any economic consequence of ownership of a Relevant Security, whether or not such transaction is to be settled by the delivery of Relevant Securities, other securities, cash or other consideration, or otherwise publicly disclose the intention to do so. As used herein, the term “**Relevant Security**” means any Share, warrant to purchase Shares or any other security of the Company or any other entity that is convertible into, or exercisable or exchangeable for, Shares or any other equity security of the Company, in each case owned beneficially or otherwise by the undersigned as of the date of the Placement Agency Agreement or acquired by the undersigned during the Lock-Up Period.

23

The restrictions in the foregoing paragraph shall not apply to the transfer, sale or other disposition of any shares of Common Stock held by the undersigned or issued or issuable pursuant to the Company’s equity incentive plans upon the exercise of any stock options or upon the vesting of any other equity-based awards held by the undersigned through the net issuance by the Company of shares of Common Stock, a broker-assisted cashless exercise or otherwise, in each case in order to satisfy any tax obligations due as a result of such exercise or vesting; *provided*, that if any filing is required under Section 16(a) of the Exchange Act in connection with such exercise, vesting or disposition, such filing shall include a statement to the effect that such filing is the result of the exercise or vesting of equity-based securities pursuant to the Company’s equity incentive plans. The Lock-Up Period will commence on the date of this Lock-up Agreement and continue and include the date that is ninety (90) days after the closing of the Offering.

In addition, the undersigned further agrees that during the Lock-Up Period the undersigned will not, without the prior written consent of Maxim: (a) file or participate in the filing with the SEC of any registration statement or circulate or participate in the circulation of any preliminary or final prospectus or other disclosure document, in each case with respect to any proposed offering or sale of a Relevant Security, or (b) exercise any rights the undersigned may have to require registration with the SEC of any proposed offering or sale of a Relevant Security.

In furtherance of the undersigned's obligations hereunder, the undersigned hereby authorizes the Company during the Lock-Up Period to cause any transfer agent for the Relevant Securities to decline to transfer, and to note stop transfer restrictions on the stock register and other records relating to, Relevant Securities for which the undersigned is the record owner and the transfer of which would be a violation of this Lock-Up Agreement and, in the case of Relevant Securities for which the undersigned is the beneficial but not the record owner, agrees that during the Lock-Up Period it will cause the record owner to cause the relevant transfer agent to decline to transfer, and to note stop transfer restrictions on the stock register and other records relating to, such Relevant Securities to the extent such transfer would be a violation of this Lock-Up Agreement.

Notwithstanding the foregoing, the undersigned may transfer the undersigned's Relevant Securities:

- (i) as a *bona fide* gift or gifts,
- (ii) to any trust, partnership, limited liability company or other legal entity commonly used for estate planning purposes which is established for the direct or indirect benefit of the undersigned or a member of members of the immediate family of the undersigned,
- (iii) if the undersigned is a corporation, partnership, limited liability company, trust or other business entity (1) to another corporation, partnership, limited liability company, trust or other business entity that is a direct or indirect affiliate (as defined in Rule 405 under the Securities Act) of the undersigned, (2) to limited partners, limited liability company members or stockholders of the undersigned, or (3) in connection with a sale, merger or transfer of all or substantially all of the assets of the undersigned or any other change of control of the undersigned, not undertaken for the purpose of avoiding the restrictions imposed by this Lock-Up Agreement,

24

- (iv) if the undersigned is a trust, to the beneficiary of such trust,
- (v) by testate or intestate succession,
- (vi) by operation of law, such as pursuant to a qualified domestic order or in connection with a divorce settlement,
- (vii) if the undersigned is or was an officer, director or employee of the Company, to the Company pursuant to the Company's right of repurchase upon termination of the undersigned's service with the Company, or
- (viii) pursuant to the Placement Agency Agreement;

provided, in the case of clauses (i)-(vii), that (A) such transfer shall not involve a disposition for value, (B) the transferee agrees in writing with Maxim and the Company to be bound by the terms of this Lock-Up Agreement, and (C) such transfer would not require any filing under Section 16(a) of the Exchange Act and no such filing is voluntarily made.

In addition, the restrictions set forth herein shall not prevent the undersigned from entering into a sales plan pursuant to Rule 10b5-1 under the Exchange Act after the date hereof, provided that (i) a copy of such plan is provided to Maxim promptly upon entering into the same and (ii) no sales or transfers may be made under such plan until the Lock-Up Period ends or this Lock-Up Agreement is terminated in accordance with its terms.

For purposes of this Lock-Up Agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement and that this Lock-Up Agreement has been duly authorized (if the undersigned is not a natural person) and constitutes the legal, valid and binding obligation of the undersigned, enforceable in accordance with its terms. Upon request, the undersigned will execute any additional documents necessary in connection with the enforcement hereof. Any obligations of the undersigned shall be binding upon the successors and assigns of the undersigned from the date of this Lock-Up Agreement.

25

The undersigned understands that, if the Placement Agency Agreement does not become effective, or if the Placement Agency Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Securities to be sold thereunder, the undersigned shall be released from all obligations under this Lock-Up Agreement.

This Letter Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person. "Persons" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

The undersigned, whether or not participating in the Offering, understands that Maxim is entering into the Placement Agency Agreement and proceeding with the Offering in reliance upon this Lock-Up Agreement.

[Signature page follows]

26

This Lock-Up Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof. Delivery of a signed copy of this Lock-Up Agreement by facsimile or e-mail/.pdf transmission shall be effective as the delivery of the original hereof.

Very truly yours,

Signature: _____

Name (printed):

Title (if applicable):

Entity (if applicable):

WARRANT AGENCY AGREEMENT

WARRANT AGENCY AGREEMENT (this “Warrant Agency Agreement”) dated as of [●], 2023 (the “Issuance Date”) between WiSA Technologies, Inc., a company incorporated under the laws of the State of Delaware (the “Company”) and VStock Transfer, LLC (the “Warrant Agent”).

WHEREAS, pursuant to the terms of that certain placement agency agreement (the “Placement Agency Agreement”), dated [●], 2023, by and between the Company and Maxim Group LLC, the Company is engaged in a public offering (the “Offering”) of (i) 109,090 units (the “Units”), with each Unit consisting of (A) one share of the Company’s Series B Convertible Preferred Stock, par value \$0.0001 per share (the “Series B Convertible Preferred Stock”) and (B) two preferred warrants (each, a “Preferred Warrant” and collectively the “Preferred Warrants”), each exercisable for one share of the Series B Preferred Stock, (ii) the shares of Series B Convertible Preferred Stock issuable upon exercise of the Preferred Warrants (the “Preferred Warrant Shares”), (iii) the shares of Series B Convertible Preferred Stock issuable upon the payment in-kind of dividends (“PIK Dividends”), and (iv) the shares of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”), issuable upon conversion of the shares of Series B Convertible Preferred Stock (the “Conversion Shares”).

WHEREAS, the Company has filed with the Securities and Exchange Commission (the “Commission”) a Registration Statement on Form S-1 (File No. 333-274331) (as the same may be amended from time to time, the “Registration Statement”), for the registration under the Securities Act of 1933, as amended (the “Securities Act”), of the Units, the Series B Convertible Preferred Stock, the Preferred Warrants, the Preferred Warrant Shares, the PIK Dividends and the Conversion Shares, and such Registration Statement became effective on [●], 2023;

WHEREAS, on [●], 2023, the Company filed with the Delaware Secretary of State a Certificate of Designation of Preferences, Rights and Limitations (the “Certificate of Designation”) that sets forth the terms of such Series B Convertible Preferred Stock, which includes a liquidation preference of \$100.00 per share (“Stated Value”);

WHEREAS, the Company desires the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing to so act, in accordance with the terms set forth in this Warrant Agency Agreement in connection with the issuance, registration, transfer, exchange and exercise of the Preferred Warrants;

WHEREAS, the Company desires to provide for the provisions of the Preferred Warrants, the terms upon which they shall be issued and exercised, and the respective rights, limitation of rights, and immunities of the Company, the Warrant Agent, and the holders of the Preferred Warrants, as applicable; and

WHEREAS, all acts and things have been done and performed which are necessary to make the Preferred Warrants the valid, binding and legal obligations of the Company, and to authorize the execution and delivery of this Warrant Agency Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. **Appointment of Warrant Agent.** The Company hereby appoints the Warrant Agent to act as agent for the Company with respect to the Preferred Warrants in accordance with the express terms and conditions hereof, and the Warrant Agent hereby accepts such appointment and agrees to perform the same in accordance with the express terms and conditions set forth in this Warrant Agency Agreement (and no implied terms or conditions).

2. **Warrants.** The Preferred Warrants shall be registered securities in book-entry form and shall initially be evidenced by a global certificate in the form of Exhibit A (the “Global Certificate”) attached to this Warrant Agency Agreement, which shall be deposited on behalf of the Company with a custodian for The Depository Trust Company (“DTC”) and registered in the name of Cede & Co., a nominee of DTC. If DTC subsequently ceases to make its book-entry settlement system available for the Preferred Warrants, the Company shall instruct the Warrant Agent regarding making other arrangements for book-entry settlement. In the event that the Preferred Warrants are not eligible for, or it is no longer necessary to have the Preferred Warrants available in, book-entry form, the Company shall instruct the Warrant Agent to provide written instructions to DTC to deliver to the Warrant Agent for cancellation the Global Certificate or Certificates, and the Company shall instruct the Warrant Agent to deliver to DTC separate certificates evidencing Warrants (“Definitive Certificates”) and, together with the Global Certificate, “Preferred Warrant Certificates”) registered as requested through the DTC system. The Definitive Certificates, together with the form of election to purchase shares of Series B Convertible Preferred Stock (the “Notice of Exercise”) and the form of assignment to be printed on the reverse thereof, shall be substantially in the form of Exhibit B attached hereto.

2.1. **Issuance and Registration of Preferred Warrants.**

2.1.1. **Warrant Register.** The Warrant Agent shall maintain books (“Warrant Register”) for the registration of original issuance and the registration of transfer of the Preferred Warrants.

2.1.2. **Issuance of Preferred Warrants.** Upon the initial issuance of the Preferred Warrants, the Warrant Agent shall issue the Global Certificates and deliver the Preferred Warrants in the DTC book-entry settlement system in accordance with written instructions delivered to the Warrant Agent by the Company. Ownership of beneficial interests in the Preferred Warrants shall be shown on, and the transfer of such ownership shall be effected through, records maintained (i) by DTC and (ii) by institutions that have accounts with DTC (each, a “Participant”). A Holder has the right to elect at any time or from time to time a Preferred Warrant Exchange (as defined below) pursuant to a Preferred Warrant Certificate Request Notice (as defined below). Upon written notice by a Holder to the Warrant Agent and the Company for the exchange of some or all of such Holder’s Preferred Warrants held in book-entry form for a Definitive Certificate evidencing the same number of Preferred Warrants, which request shall be in the form attached hereto as Annex A (such notice, the “Preferred Warrant Certificate Request Notice” and the date of delivery of such Preferred Warrant Certificate Request Notice by the Holder, the “Preferred Warrant Certificate Request Notice Date” and the actual surrender upon delivery by the Holder of a number of Preferred Warrants in the DTC book-entry settlement system for the same number of Preferred Warrants evidenced by a Definitive Certificate, a “Preferred Warrant Exchange”), the Warrant Agent shall, as promptly as practicable, effect the Preferred Warrant Exchange and the Company shall promptly issue and deliver (or cause to be delivered) to the Holder a Definitive Certificate for such number of Preferred Warrants in the name set forth in the Preferred Warrant Certificate Request Notice. Such Definitive Certificate shall be dated the original issue date of the Preferred Warrants and shall be executed manually or by facsimile signature by an authorized signatory of the Company and shall be in the form attached hereto as Exhibit B. In connection with a Preferred Warrant Exchange, the Company agrees to deliver, or to direct the Warrant Agent to deliver, the Definitive Certificate to the Holder within three (3) Trading Days of the Preferred Warrant Certificate Request Notice pursuant to the delivery instructions in the Preferred Warrant Certificate Request Notice (“Preferred Warrant Certificate Delivery Date”). If the Company fails for any reason to deliver or cause the delivery to the Holder the Definitive Certificate subject to the Preferred Warrant Certificate Request Notice by the Preferred Warrant Certificate Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Preferred Warrant Shares evidenced by such Definitive Certificate (based on the Stated Value of the Series B Convertible Preferred Stock, as set forth in the Certificate of Designation), of the Series B Convertible Preferred Stock on the Preferred Warrant Certificate Request Notice Date), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after the Preferred Warrant Share Delivery Date) for each Trading Day after such Preferred Warrant Certificate Delivery Date until such Definitive Certificate is delivered or, prior to delivery of such Preferred Warrant Certificate, the Holder rescinds such Preferred Warrant Exchange. Notwithstanding the forgoing, the Warrant Agent shall not, in any event, be subject to, or responsible for, liquidated damages or any “buy-in” penalties or any other amounts payable or paid to any Holder or any other Person for any failure or delay to deliver the Definitive Certificate as aforesaid. In addition, the Company shall indemnify and hold harmless the Warrant Agent against any claims made against the Warrant Agent for any such failure. The Company covenants and agrees that, upon the date of delivery of the Preferred Warrant Certificate Request Notice, the Holder shall be deemed to be the holder of the Definitive Certificate and, notwithstanding anything to the contrary set forth herein, the Definitive Certificate shall be deemed for all purposes to contain all of the terms and conditions of the Preferred Warrants evidenced by such Definitive Certificate and the terms of this Warrant Agency Agreement. A party requesting a Preferred Warrant Exchange must provide to the

2.1.3. Beneficial Owner; Holder. Prior to due presentment for registration of transfer of any Preferred Warrant, the Company and the Warrant Agent shall deem and treat the person in whose name that Preferred Warrant shall be registered on the Warrant Register (the "Holder") as the absolute owner of such Preferred Warrant for purposes of any exercise thereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by DTC governing the exercise of the rights of a holder of a beneficial interest in any Preferred Warrant. The rights of beneficial owners in a Preferred Warrant evidenced by the Global Certificate shall be exercised by the Holder or a Participant through the DTC system, except to the extent set forth herein or in the Global Certificate.

2.1.4. Execution. The Preferred Warrant Certificates shall be executed on behalf of the Company by any authorized officer of the Company (an "Authorized Officer"), which need not be the same authorized signatory for all of the Preferred Warrant Certificates, either manually or by facsimile signature. The Preferred Warrant Certificates shall be countersigned, either manually or by facsimile signature, by an authorized signatory of the Warrant Agent, which need not be the same signatory for all of the Preferred Warrant Certificates, and no Preferred Warrant Certificate shall be valid for any purpose unless so countersigned. In case any Authorized Officer of the Company that signed any of the Preferred Warrant Certificates ceases to be an Authorized Officer of the Company before countersignature by the Warrant Agent and issuance and delivery by the Company, such Preferred Warrant Certificates, nevertheless, may be countersigned by the Warrant Agent, issued and delivered with the same force and effect as though the person who signed such Preferred Warrant Certificates had not ceased to be such officer of the Company; and any Preferred Warrant Certificate may be signed on behalf of the Company by any other person who, at the actual date of the execution of such Preferred Warrant Certificate, shall be an Authorized Officer of the Company authorized to sign such Preferred Warrant Certificate, although at the date of the execution of this Warrant Agency Agreement any such person was not such an Authorized Officer.

2.1.5. Registration of Transfer. Subject to the provisions of the Preferred Warrants, at any time prior to 5:00 p.m. (New York City time) on the Termination Date (as defined below), a transfer of any Preferred Warrants may be registered and any Preferred Warrant Certificate or Preferred Warrant Certificates may be split up, combined or exchanged for another Preferred Warrant Certificate or Preferred Warrant Certificates evidencing the same number of Preferred Warrants as the Preferred Warrant Certificate or Preferred Warrant Certificates surrendered. Any Holder desiring to register the transfer of Preferred Warrants or to split up, combine or exchange any Preferred Warrant Certificate shall make such request in writing delivered to the Warrant Agent, and shall surrender to the Warrant Agent the Preferred Warrant Certificate or Preferred Warrant Certificates evidencing the Preferred Warrants the transfer of which is to be registered or that is or are to be split up, combined or exchanged together with any required form of assignment and certificate duly executed and properly completed by such Holder at the office or offices of the Warrant Agent designated for such purpose and, in the case of registration of transfer, shall provide a signature guarantee (a "signature guarantee") from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association and such other documentation as the Warrant Agent may reasonably request. Thereupon, the Warrant Agent shall countersign and deliver to the person entitled thereto a Preferred Warrant Certificate or Preferred Warrant Certificates, as the case may be, as so requested. The Company and the Warrant Agent may require payment, by the Holder requesting a registration of transfer of Preferred Warrants or a split-up, combination or exchange of a Preferred Warrant Certificate (but, for purposes of clarity, not upon the exercise of the Preferred Warrants and issuance of Preferred Warrant Shares to the Holder), of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with such registration of transfer, split-up, combination or exchange, together with reimbursement to the Company and the Warrant Agent of all reasonable expenses incidental thereto. The Warrant Agent shall not have any duty or obligation to take any action under any section of this Warrant Agreement that requires the payment of taxes and/or charges unless and until it is satisfied that all such payments have been made.

2.1.6. Loss, Theft and Mutilation of Warrant Certificates. Upon receipt by the Company and the Warrant Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Preferred Warrant Certificate, which evidence shall include an affidavit of loss, or in the case of mutilated certificates, the certificate or portion thereof remaining, and, in case of loss, theft or destruction, of indemnity or security in customary form and amount satisfactory to the Warrant Agent, and satisfaction of any other reasonable requirements, and reimbursement to the Company and the Warrant Agent of all reasonable expenses incidental thereto, and upon surrender to the Warrant Agent and cancellation of the Preferred Warrant Certificate if mutilated, the Company shall make and deliver a new Warrant Certificate of like tenor to the Warrant Agent for countersignature and delivery to the Holder in lieu of the Preferred Warrant Certificate so lost, stolen, destroyed or mutilated. The Warrant Agent may charge the Holder an administrative fee for processing the replacement of lost Warrant Certificates, which shall be charged only once in instances where a single surety bond obtained covers multiple certificates. The Warrant Agent may receive compensation from the surety companies or surety agents for administrative services provided to them.

2.1.7. Proxies. The Holder of a Preferred Warrant may grant proxies or otherwise authorize any person, including the Participants and beneficial holders that may own interests through the Participants, to take any action that a Holder is entitled to take under this Warrant Agency Agreement or the Preferred Warrants; provided, however, that at all times that Preferred Warrants are evidenced by a Global Certificate, exercise of those Warrants shall be effected on their behalf by Participants through DTC in accordance the procedures administered by DTC.

2.1.8. Opinion of Counsel. On or prior to the execution of this Warrant Agency Agreement, the Company shall provide the Warrant Agent with an opinion of counsel to set up a reserve of Preferred Warrant Shares for the outstanding Preferred Warrants. The opinion shall state that all Preferred Warrants or Preferred Warrant Shares, as applicable, are (a) registered under the Securities Act of 1933, as amended (the "Securities Act"), or are exempt from such registration, and all appropriate state securities law filings have been made with respect to the warrants or shares or alternatively, that the securities are "covered securities" under Section 18 of the Securities Act; and (b) validly issued, fully paid and non-assessable.

3. Terms and Exercise of Preferred Warrants

3.1. Exercise Price. Each Preferred Warrant shall entitle the Holder, subject to the provisions of the applicable Preferred Warrant Certificate and of this Warrant Agency Agreement, to purchase from the Company the number of shares of Series B Convertible Preferred Stock, stated therein, at the exercise price of \$55.00 per whole share, subject to the subsequent adjustments provided by Section 4 hereof and Section 3 of the Preferred Warrant Certificates. The term "Exercise Price" as used in this Warrant Agency Agreement refers to the price per share at which shares of Series B Convertible Preferred Stock, may be purchased at the time a Preferred Warrant is exercised.

3.2. Duration of Preferred Warrants. The Preferred Warrants have a two-year term and may be exercised only during the period ("Exercise Period") commencing on or after [●], 2023 and ending on 5:00 p.m. (New York City time) on [●], 2025 (the "Termination Date"). Each Preferred Warrant not exercised before 5:00

p.m. (New York City time) on the Termination Date shall become void, and, subject to Sections 7.11 and 9.5 hereof, all rights thereunder and all rights in respect thereof under this Warrant Agency Agreement shall cease at the close of business on the Termination Date.

3.3. Exercise of Preferred Warrants.

3.3.1. Exercise and Payment. (a) Subject to the provisions of this Warrant Agency Agreement, a Holder of a Definitive Certificate may exercise Preferred Warrants evidenced by such Definitive Certificate by delivering to the Warrant Agent and the Company, a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed to the Preferred Warrant Certificate. Notwithstanding any other provision in this Warrant Agency Agreement, a holder whose interest in a Preferred Warrant is a beneficial interest in a Global Certificate held in book-entry form through DTC (or another established clearing corporation performing similar functions), shall effect exercises by delivering to DTC (or such other clearing corporation, as applicable) the appropriate instruction form for exercise, complying with the procedures to effect exercise that are required by DTC (or such other clearing corporation, as applicable). Any Holder exercising a Preferred Warrant shall deliver payment of the Exercise Price pursuant to Section 2(a) and Section 2(b) of the Preferred Warrant Certificate set forth in Exhibit B attached hereto. The Company acknowledges that the bank accounts maintained by the Warrant Agent in connection with the services provided under this Warrant Agency Agreement will be in its name and that the Warrant Agent may receive investment earnings in connection with the investment at Warrant Agent risk and for its benefit of funds held in those accounts from time to time. Neither the Company nor the Holders will receive interest on any deposits or Exercise Price. If the materials discussed in this Section 3.3.1 are received or deemed to be received after the Termination Date, the exercise thereof will be null and void and any funds delivered to the Company will be returned to the Holder or Participant, as the case may be, as soon as practicable. In no event will interest accrue on any funds deposited with the Company in respect of an exercise or attempted exercise of the Preferred Warrants. (b) The Preferred Warrants shall cease to be exercisable and shall terminate and become void and callable as set forth in the applicable Preferred Warrant Certificate. The Company hereby instructs the Warrant Agent to record cost basis for newly issued shares in a manner to be subsequently communicated by the Company in writing to the Warrant Agent.

5

3.3.2. Issuance of Preferred Warrant Shares.

(a) The Warrant Agent shall, as promptly as practicable following the date of exercise of any Preferred Warrant, advise the Company (to the extent known the Warrant Agent) and the transfer agent and registrar for the Company's Series B Convertible Preferred Stock, which on the date hereof is VStock Transfer, LLC (the "Transfer Agent"), in respect of (i) the number of Preferred Warrant Shares indicated on the Notice of Exercise as issuable upon such exercise with respect to such exercised Warrants, (ii) the instructions of the Holder or Participant, as the case may be, provided to the Warrant Agent with respect to the delivery of the Preferred Warrant Shares and the number of Preferred Warrants that remain outstanding after such exercise, and (iii) such other information as the Company or the Transfer Agent shall reasonably request.

(b) Upon the Warrant Agent's receipt, at or prior to the Close of Business on the Termination Date set forth in a Preferred Warrant Certificate, of the executed Notice of Exercise, accompanied by payment of the Exercise Price pursuant to Section 2(a) and 2(b) of the Preferred Warrant Certificate set forth in Exhibit B attached hereto, the Warrant Agent shall cause the Preferred Warrant Shares underlying such Preferred Warrant to be delivered by the Transfer Agent to or upon the order of the Holder of such Preferred Warrant, registered in such name or names as may be designated by such Holder, no later than the Preferred Warrant Share Delivery Date. If the Company is then a participant in DTC's Deposit or Withdrawal at Custodian ("DWAC") system and there is an effective registration statement permitting the issuance of the Preferred Warrant Shares to or resale of the Preferred Warrant Shares by Holder, then the Company shall cause the Preferred Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's account with DTC through its Deposit or Withdrawal at Custodian system.

3.3.3. Valid Issuance. All Preferred Warrant Shares issued by the Company upon the proper exercise of a Preferred Warrant in conformity with this Warrant Agency Agreement shall be validly issued, fully paid and non-assessable.

3.3.4. No Fractional Shares or Scrip. Notwithstanding any provision to the contrary contained in this Agreement or the Preferred Warrant, the Company shall not be required to issue any fraction of a Preferred Warrant Share or scrip representing fractional shares upon the exercise of the Preferred Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Stated Value of the Series B Convertible Preferred Stock, as set forth in the Series B Certificate of Designation. Accordingly, a holder of a Preferred Warrant is entitled to exercise a number of Preferred Warrants that would result solely in the holder receiving one or more whole Preferred Warrant Shares. Prior to paying an adjustment in cash in respect of a fractional interest, the Company shall first provide to the Transfer Agent an initial funding of one thousand dollars (\$1,000) for the purpose of issuing cash in lieu of fractional shares. From time to time thereafter, the Transfer Agent may request additional funding to cover fractional payments. The Transfer Agent shall have no obligation to make fractional payments unless the Company shall have provided the necessary funds to pay in full all amounts due and payable with respect thereto.

6

3.3.5. Charges, Taxes, and Expenses. Issuance of Preferred Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Preferred Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Preferred Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Preferred Warrant Shares are to be issued in a name other than the name of the Holder, the Preferred Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached to the Preferred Warrant properly completed and duly executed by the Holder and accompanied by a signature guarantee and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto; and (the Company shall use its best efforts to pay, or procure payment of issue or stamp taxes levied in connection with the issuance of the Preferred Warrant or Preferred Warrant Shares to the Holder ("Relevant Taxes"). The Holder agrees to cooperate with the Company and provide all necessary and reasonable information and documentation to the Company in a timely manner (and in any event within 10 Business Days of request) to enable the Company to procure payment of any Relevant Taxes and facilitate the making of any necessary filings in respect of Relevant Taxes required to be made within applicable time limits. The Company shall not be liable for any Relevant Taxes or any penalty, fine, surcharge, interest, charge, cost or other similar imposition arising in respect of Relevant Taxes to the extent that such amount arises or is increased as a result of any failure by a Holder to timely provide the Company with any information or documentation reasonably requested pursuant to Section 2(d)(vi) of the Preferred Warrant Certificate set forth in Exhibit B attached hereto. The Company shall pay all Transfer Agent fees required for processing of any Notice of Exercise and all fees to DTC (or another established clearing corporation performing similar functions) required for electronic delivery of the Preferred Warrant Shares.

3.3.6. Date of Issuance. The Company will treat an exercising Holder as a beneficial owner of the Preferred Warrant Shares as of the date of exercise of any Preferred Warrant, except that, if such date of exercise is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the open of business on the next succeeding date on which the stock transfer books are open.

3.3.7. [Reserved].

3.3.8. [Reserved].

3.3.9. Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the number of Preferred Warrant Shares issuable in connection with any exercise, the Company shall promptly deliver to the Holder the number of Preferred Warrant Shares that are not disputed.

4. Adjustments. The Exercise Price, the number of shares of Series B Convertible Preferred Stock covered by each Preferred Warrant and the number of Preferred Warrants outstanding are subject to adjustment from time to time as provided in Section 3 of the Preferred Warrant Certificate set forth in Exhibit B attached hereto. The Company hereby agrees that it will provide the Warrant Agent with reasonable notice of any such adjustments. The Warrant Agent shall have no obligation under any Section of this Agreement to determine whether an event resulting in any such adjustment has occurred or to calculate any of the adjustments set forth herein. All Preferred Warrants originally issued by the Company subsequent to any adjustment made to the Exercise Price pursuant to the Warrant shall evidence the right to purchase, at the adjusted Exercise Price, the number of shares of Series B Convertible Preferred Stock, purchasable from time to time hereunder upon exercise of the Preferred Warrants, all subject to further adjustment as provided herein. Whenever the Exercise Price or the number of Preferred Warrant Shares issuable upon the exercise of each Preferred Warrant is adjusted, the Company shall (a) promptly prepare a certificate setting forth the Exercise Price of each Preferred Warrant as so adjusted and the increase or decrease, if any, in the number of Preferred Warrant Shares purchasable at such price upon the exercise of a Preferred Warrant, and a brief statement of the facts accounting for such adjustment, (b) promptly file with the Warrant Agent and with the Transfer Agent a copy of such certificate and (c) instruct the Warrant Agent to send a brief summary thereof to each Holder of a Preferred Warrant. If the Company requests the Warrant Agent to send such notices, it shall provide the Warrant Agent with a draft notice to be used for this purpose. The Warrant Agent shall be entitled to rely conclusively on, and shall be fully protected in relying on, any certificate, notice or instructions provided by the Company with respect to any adjustment of the Exercise Price or the number of shares issuable upon exercise of a Preferred Warrant, or any related matter, and the Warrant Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with any such certificate, notice or instructions or pursuant to this Warrant Agency Agreement. The Warrant Agent shall not be deemed to have knowledge of any such adjustment unless and until it shall have received written notice thereof from the Company.

7

5. Restrictive Legends; Fractional Warrants. In the event that a Preferred Warrant Certificate surrendered for transfer bears a restrictive legend, the Warrant Agent shall not register that transfer until the Warrant Agent has received an opinion of counsel for the Company stating that such transfer may be made and indicating whether the Preferred Warrants must also bear a restrictive legend upon that transfer. The Company shall not issue fractions of Preferred Warrants or distribute a Global Certificate or Warrant Certificates that evidence fractional Warrants. Whenever any fractional Warrant would otherwise be required to be issued or distributed, the actual issuance or distribution shall be paid via a cash adjustment as set forth in Section 3.3.4 of this Agreement. The Warrant Agent shall not be required to effect any registration of transfer or exchange which will result in the transfer of or delivery of a Preferred Warrant Certificate for a fraction of a Preferred Warrant. The Company shall not issue fractions of shares of Series B Convertible Preferred Stock upon exercise of Preferred Warrants or distribute stock certificates that evidence fractional shares of Series B Convertible Preferred Stock. Whenever any fraction of a share of Series B Convertible Preferred Stock would otherwise be required to be issued or distributed, the actual issuance or distribution in respect thereof shall be made in accordance with Section 2(d)(v) of the Preferred Warrant Certificate attached hereto as Exhibit B.

6. Other Provisions Relating to Rights of Holders of Preferred Warrants

6.1. No Rights as Stockholder. Except as otherwise specifically provided herein and in accordance with the Preferred Warrant Certificates, a Holder, solely in his, her or its capacity as a holder of Preferred Warrants, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant Agency Agreement be construed to confer upon a Holder, solely in its capacity as the registered holder of Preferred Warrants, any of the rights of a shareholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of share capital, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights or rights to participate in new issues of shares, or otherwise, prior to the issuance to the Holder of the Preferred Warrant Shares which it is then entitled to receive upon the due exercise of Preferred Warrants.

6.2. Reservation of Series B Convertible Preferred Stock. The Company shall at all times reserve and keep available a number of its authorized but unissued shares of Series B Convertible Preferred Stock pursuant to this Agreement and Section 6(d) of the Preferred Warrant Certificate attached hereto as Exhibit B.

7. Conditions of the Warrant Agent's Obligations. The Warrant Agent accepts its obligations herein set forth upon the express terms and conditions hereof, including the following to all of which the Company agrees and to all of which the rights hereunder of the Holders from time to time shall be subject.

8

7.1. Compensation and Indemnification. The Company agrees promptly to pay the Warrant Agent the compensation set forth in a mutually agreed upon fee schedule executed on or before the date hereof for all services rendered by the Warrant Agent and on demand of the Warrant Agent to reimburse the Warrant Agent for reasonable out-of-pocket expenses (including reasonable counsel fees) and other disbursements incurred in the preparation, delivery, negotiation, amendment, administration and execution of this Warrant Agency Agreement and the exercise and performance of its duties hereunder. The Company covenants and agrees to indemnify and to hold harmless the Warrant Agent against, any and all loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable and documented fees and expenses of legal counsel) that may be paid, incurred or suffered by it, or which it may become subject, without gross negligence, bad faith or willful misconduct on the part of the Warrant Agent (which gross negligence, bad faith, or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction), for any action taken, suffered, or omitted to be taken by the Warrant Agent in connection with the execution, acceptance, administration, exercise and performance of its duties under this Warrant Agency Agreement, including the reasonable and documented costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly, or enforcing its rights hereunder. The Warrant Agent shall not be liable for the Company's failure to timely deliver Preferred Warrant Shares pursuant to the terms of the Preferred Warrants, nor shall the Warrant Agent be liable for any liquidated damages or any other damages associated therewith.

7.2. Agent for the Company. In acting under this Warrant Agency Agreement and in connection with the Preferred Warrant Certificates, the Warrant Agent is acting solely as agent of the Company and does not assume any obligations or relationship of agency or trust for or with any of the Holders of Warrant Certificates or beneficial owners of Warrants.

7.3. Counsel. The Warrant Agent may consult with counsel satisfactory to it, which may include counsel for the Company, and the advice or opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent, and the Warrant Agent shall have no liability for or in respect of any action taken, suffered or omitted by it hereunder in the absence of bad faith and in accordance with the advice or opinion of such counsel.

7.4. Documents. From time to time, Company may provide Warrant Agent with instructions concerning the services performed by the Warrant Agent hereunder. The Warrant Agent and its agents and subcontractors shall be protected and shall incur no liability for or in respect of any action taken or omitted to be taken, suffered by it in reliance upon any Preferred Warrant Certificate, notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper parties. The Warrant Agent shall not be held to have notice of any change of authority of any person, until receipt of written notice thereof from Company.

7.5. Certain Transactions. The Warrant Agent, and its officers, directors and employees, may become the owner of, or acquire any interest in, Warrants,

with the same rights that it or they would have if it were not the Warrant Agent hereunder, and, to the extent permitted by applicable law, it or they may engage or be interested in any financial or other transaction with the Company and may act on, or as depository, trustee or agent for, any committee or body of Holders of Warrant Securities or other obligations of the Company as freely as if it were not the Warrant Agent hereunder. Nothing in this Warrant Agency Agreement shall be deemed to prevent the Warrant Agent from acting as trustee under any indenture to which the Company is a party. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

7.6. No Liability for Interest. Unless otherwise agreed with the Company, the Warrant Agent shall have no liability for interest on any monies at any time received by it pursuant to any of the provisions of this Warrant Agency Agreement or of the Preferred Warrant Certificates.

9

7.7. No Liability for Invalidity. The Warrant Agent shall not be under any responsibility in respect of the validity of this Warrant Agency Agreement or the execution and delivery hereof (except the due execution hereof by the Warrant Agent) or in respect of the validity or execution of any Preferred Warrant Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agency Agreement or in any Preferred Warrant Certificate; nor shall it be responsible for the adjustment of the Exercise Price or the making of any change in the number of shares of Series B Convertible Preferred Stock required under the provisions of Section 4 (Adjustments) or Sections 5 and 3.3.4 regarding fractional shares or responsible for the manner, method or amount of any such change or the ascertaining of the existence of facts that would require any such adjustment or change (except with respect to the exercise of Preferred Warrants evidenced by Preferred Warrant Certificates after actual notice of any adjustment of the Exercise Price); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Series B Convertible Preferred Stock to be issued pursuant to this Warrant Agency Agreement or any Preferred Warrant Certificate or as to whether any shares of Series B Convertible Preferred Stock will, when issued, be duly authorized, validly issued, fully paid and nonassessable.

7.8. No Responsibility for Representations. The Warrant Agent shall not be responsible for any of the recitals, statement of facts or representations herein or in the Preferred Warrant Certificates (except as to the Warrant Agent's countersignature thereon), all of which are made solely by the Company.

7.9. No Implied Obligations. The Warrant Agent shall be obligated to perform only such duties as are herein and in the Preferred Warrant Certificates specifically set forth and no implied duties or obligations shall be read into this Warrant Agency Agreement or the Preferred Warrant Certificates against the Warrant Agent. The Warrant Agent shall not be under any obligation to take any action hereunder which may tend to involve it in any expense or liability, the payment of which within a reasonable time or adequate indemnification is not, in its reasonable opinion, assured to it. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any of the Preferred Warrant Certificates authenticated by the Warrant Agent and delivered by it to the Company pursuant to this Warrant Agency Agreement or for the application by the Company of the proceeds of the Preferred Warrant Certificates. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained herein or in the Preferred Warrant Certificates or in the case of the receipt of any written demand from a Holder of a Preferred Warrant Certificate with respect to any action or default by the Company, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law.

7.10. Signature Guarantee. A party requesting transfer of Preferred Warrants or the Preferred Warrant Shares must provide any evidence of authority that may be required by the Warrant Agent, including but not limited to, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association.

7.11. Survival. Notwithstanding anything contained herein to the contrary, the rights and obligations of the parties set forth in this Section 7 shall survive the exercise or expiration of the Preferred Warrants, the termination of this Warrant Agency Agreement and the resignation, replacement or removal of the Warrant Agent.

7.12. Limitation of Liability. Neither party to this Warrant Agency Agreement shall be liable to the other party for any consequential, indirect, special or incidental damages under any provisions of this Warrant Agency Agreement or for any consequential, indirect, punitive, special or incidental damages arising out of any act or failure to act hereunder even if that party has been advised of or has foreseen the possibility of such damages. Notwithstanding anything contained herein to the contrary, the Warrant Agent's aggregate liability during any term of this Warrant Agency Agreement with respect to, arising from, or arising in connection with this Warrant Agency Agreement, or from all services provided or omitted to be provided under this Warrant Agency Agreement, whether in contract, or in tort, or otherwise is limited to, and shall not exceed, the amounts paid hereunder by the Company to Warrant Agent as fees and charges, but not including reimbursable expenses, during the twelve (12) months immediately preceding the event for which recovery from Warrant Agent is being sought.

10

8. Purchase or Consolidation or Change of Name of Warrant Agent.

8.1. Any Person into which the Warrant Agent or any successor Warrant Agent may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Warrant Agent or any successor Warrant Agent shall be party, or any Person succeeding to the corporate trust, stock transfer or shareholder services business of the Warrant Agent or any successor Warrant Agent, shall be the successor to the Warrant Agent under this Warrant Agency Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such Person would be eligible for appointment as a successor Warrant Agent under the provisions of Section 9 of this Warrant Agency Agreement. In case at the time such successor Warrant Agent shall succeed to the agency created by this Warrant Agency Agreement any of the Preferred Warrant Certificates shall have been countersigned but not delivered, any such successor Warrant Agent may adopt the countersignature of the predecessor Warrant Agent and deliver such Preferred Warrant Certificates so countersigned; and in case at that time any of the Preferred Warrant Certificates shall not have been countersigned, any successor Warrant Agent may countersign such Preferred Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases such Preferred Warrant Certificates shall have the full force provided in the Preferred Warrant Certificates and in this Warrant Agency Agreement.

8.2. In case at any time the name of the Warrant Agent shall be changed and at such time any of the Preferred Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignature under its prior name and deliver Warrant Certificates so countersigned; and in case at that time any of the Preferred Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Preferred Warrant Certificates either in its prior name or in its changed name; and in all such cases such Preferred Warrant Certificates shall have the full force provided in the Preferred Warrant Certificates and in this Warrant Agency Agreement.

9. Duties of Warrant Agent. The Warrant Agent undertakes the duties and obligations imposed by this Warrant Agency Agreement upon the following express terms and conditions (and no implied duties or obligations shall be read into this Warrant Agency Agreement against the Warrant Agent), by all of which the Company, by its acceptance hereof, shall be bound:

9.1. Whenever in the performance of its duties under this Warrant Agency Agreement, the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein

specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the Chief Executive Officer, Chief Financial Officer, General Counsel or Secretary of the Company; and such certificate shall be full authentication to the Warrant Agent and the Warrant Agent shall be fully protected and shall incur no liability for any action taken, suffered or omitted to be taken by it under the provisions of this Warrant Agency Agreement in reliance upon such certificate in the absence of bad faith.

9.2. Subject to the limitation set forth in Section 7.12 of this Warrant Agency Agreement, the Warrant Agent shall be liable hereunder only for its own gross negligence, bad faith or willful misconduct (which gross negligence, bad faith, or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction).

11

9.3. The Warrant Agent is hereby authorized to accept instructions with respect to the performance of its duties hereunder from the Chief Executive Officer, Chief Financial Officer, General Counsel or Secretary of the Company, and to apply to such officers for advice or instructions with respect to any matter arising in connection with the services to be performed by the Warrant Agent under this Warrant Agency Agreement, and it shall not be liable and shall be indemnified and held harmless by the Company for any action taken, suffered or omitted to be taken by it in the absence of bad faith in accordance with instructions of any such officer, provided Warrant Agent carries out such instructions without gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgement of a court of competent jurisdiction).

9.4. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorney or agents, and the Warrant Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorney or agents or for any loss to the Company resulting from any such act, default, neglect or misconduct, provided reasonable care was exercised in the selection and continued employment thereof.

9.5. This Section 9 shall survive the exercise or expiration of the Preferred Warrants, the termination of this Warrant Agency Agreement and the resignation, replacement or removal of the Warrant Agent.

10. Change of Warrant Agent. The Warrant Agent, or any successor to it hereafter appointed, may resign and be discharged from its duties under this Warrant Agency Agreement upon 30 days' notice in writing sent to the Company, and in the event that the Warrant Agent or one of its affiliates is not also the transfer agent for the Series B Convertible Preferred Stock, to each transfer agent of the Series B Convertible Preferred Stock known to the Warrant Agent, and to the Holders of record of the Preferred Warrant Certificates. In the event the transfer agency relationship in effect between the Company and the Warrant Agent terminates, the Warrant Agent will be deemed to have resigned automatically and be discharged from its duties under this Warrant Agency Agreement as of the effective date of such termination, and the Company shall be responsible for sending any required notice. The Company may remove the Warrant Agent or any successor Warrant Agent upon 30 days' notice in writing, sent to the Warrant Agent or successor Warrant Agent, as the case may be, and to each transfer agent of the Common Stock, and to the Holders of the Preferred Warrant Certificates. If the Warrant Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Warrant Agent. If the Company shall fail to make such appointment within a period of 30 days after such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Warrant Agent or by the Holder of a Preferred Warrant Certificate (who shall, with such notice, submit his Warrant Certificate for inspection by the Company), then the Holder of any Preferred Warrant Certificate may apply to any court of competent jurisdiction for the appointment of a new Warrant Agent, provided that, for purposes of this Warrant Agency Agreement, the Company shall be deemed to be the Warrant Agent until a new warrant agent is appointed. Any successor Warrant Agent, whether appointed by the Company or by such a court, shall be an entity organized and doing business under the laws of the United States or of a state thereof, in good standing, which is authorized under such laws to exercise stock transfer powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Warrant Agent a combined capital and surplus (together with its affiliates) of at least \$50,000,000. After appointment, the successor Warrant Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Warrant Agent without further act or deed; but the predecessor Warrant Agent shall deliver and transfer to the successor Warrant Agent any property at the time held by it hereunder and execute and deliver, at the expense of the Company, any further assurance, conveyance, act or deed necessary for such purpose without assumption of any liability on the part of the former Warrant Agent. Not later than the effective date of any such appointment, the Company shall file notice thereof in writing with the predecessor Warrant Agent and each transfer agent of the Common Stock, and mail or other deliver a notice thereof in writing to the Holders of the Preferred Warrant Certificates. However, failure to give any notice provided for in this Section 9, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Warrant Agent or the appointment of the successor Warrant Agent, as the case may be.

12

11. Issuance of New Warrant Certificates. Notwithstanding any of the provisions of this Warrant Agency Agreement or of the Preferred Warrants to the contrary, the Company may, at its option, issue new Preferred Warrant Certificates evidencing Preferred Warrants in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Exercise Price per share and the number or kind or class of shares of stock or other securities or property purchasable under the several Preferred Warrant Certificates made in accordance with the provisions of this Warrant Agency Agreement.

12. Notices. Notices or demands authorized by this Warrant Agency Agreement to be given or made (i) by the Warrant Agent or by the Holder of any Preferred Warrant Certificate to or on the Company, (ii) subject to the provisions of Section 10, by the Company or by the Holder of any Preferred Warrant Certificate to or on the Warrant Agent or (iii) by the Company or the Warrant Agent to the Holder of any Preferred Warrant Certificate, shall be deemed given (a) on the date delivered, if delivered personally, (b) when deposited with Federal Express or another recognized overnight courier, if sent by Federal Express or another recognized overnight courier, (c) when mailed with postage prepaid, if mailed by registered or certified mail (return receipt requested), and (d) the date of transmission, if such notice or communication is delivered via facsimile (with confirmation) or email attachment (other than to the Warrant Agent) at or prior to 5:30 p.m. (New York City time) on a Business Day and (e) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile (with confirmation) or email attachment (other than to the Warrant Agent) on a day that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day, in each case to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

12.1. Notice Information.

If to the Company, to:

WiSA Technologies, Inc.
15268 NW Greenbrier Pkwy
Beaverton, OR 97006
Attention: Brett Moyer
President and Chief Executive Officer
Email: bmoyer@wisatechnologies.com

If to the Warrant Agent, to:

Notwithstanding anything to the contrary herein, for any notice delivered by email to be deemed given or made, such notice must be followed by notice sent by overnight courier service to be delivered on the next business day following such email, unless the recipient of such email has acknowledged via return email receipt of such email.

12.2.If to the Holder of any Preferred Warrant Certificate, to the address of such Holder as shown on the registry books of the Company. Any notice required to be delivered by the Company to the Holder of any Preferred Warrant may be given by the Warrant Agent on behalf of the Company. Notwithstanding any other provision of this Warrant Agency Agreement, where this Warrant Agency Agreement provides for notice of any event to a Holder of any Preferred Warrant, such notice shall be sufficiently given if given to the Depository (or its designee) pursuant to the procedures of the Depository or its designee.

13. Supplements and Amendments.

13.1.The Company and the Warrant Agent may from time to time supplement or amend this Warrant Agency Agreement without the approval of any Holders of Preferred Warrants in order to: (a) add to the covenants and agreements of the Company for the benefit of the Holders of the Preferred Warrants or to surrender any rights or power reserved to or conferred upon the Company in this Warrant Agency Agreement; or (b) to cure any ambiguity, to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein, or to make any other provisions with regard to matters or questions arising hereunder which the Company and the Warrant Agent may deem necessary or desirable; provided that such addition or surrender or such change shall not adversely affect the interests of the Holders of the Preferred Warrants in any material respect.

13.2.In addition to the foregoing, with the consent of Holders of Warrants entitled, upon exercise thereof, to receive not less than a majority of the shares of Preferred Warrant Shares issuable thereunder, the Company and the Warrant Agent may modify this Warrant Agency Agreement for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Warrant Agency Agreement or modifying in any manner the rights of the Holders of the Warrants; provided, however, that no modification of the terms (including but not limited to the adjustments described in Section 4) upon which the Warrants are exercisable or reducing the percentage required for consent to modification of this Warrant Agency Agreement may be made without the consent of the Holder of each outstanding Warrant affected thereby. As a condition precedent to the Warrant Agent's execution of any amendment, the Company shall deliver to the Warrant Agent a certificate from a duly authorized officer of the Company that states that the proposed amendment complies with the terms of this Section 13. Notwithstanding anything in this Warrant Agent Agreement to the contrary, the Warrant Agent shall not be required to execute any amendment to this Warrant Agent Agreement that it has determined would adversely affect its own rights, duties, obligations or immunities under this Warrant Agent Agreement. No amendment to this Warrant Agent Agreement shall be effective unless duly executed by the Warrant Agent.

14. Successors. All covenants and provisions of this Warrant Agency Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

15. Benefits of this Warrant Agency Agreement. Nothing in this Warrant Agency Agreement shall be construed to give any Person other than the Company, the Holders of Preferred Warrants and the Warrant Agent any legal or equitable right, remedy or claim under this Warrant Agency Agreement; but this Warrant Agency Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent and the Holders of the Preferred Warrants.

16. Governing Law. This Warrant Agency Agreement and each Preferred Warrant issued hereunder shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to the conflicts of law principles thereof. The Company hereby agrees that any action, proceeding or claim against it arising out of or relating in any way to this Warrant Agency Agreement shall be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and the appellate courts thereof, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenience forum.

17. Severability. This Warrant Agency Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Warrant Agency Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Warrant Agency Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable. If an invalid or unenforceable provision shall affect the rights, immunities, liabilities, duties or obligations of the Warrant Agent, the Warrant Agent shall be entitled to resign immediately upon written notice to the Company.

18. Force Majeure. Notwithstanding anything to the contrary contained herein, the Warrant Agent will not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, pandemics, epidemics, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

19. Confidentiality. The Warrant Agent and the Company agree that all books, records, information and data pertaining to the business of the other party, including inter alia, personal, nonpublic Holder information, which are exchanged or received pursuant to the negotiation or the carrying out of this Warrant Agency Agreement including the compensation for services performed hereunder shall remain confidential, and shall not be voluntarily disclosed to any other person, except as may be required by law, including, without limitation, pursuant to subpoenas from state or federal government authorities (e.g., in divorce and criminal actions).

20. Miscellaneous Provisions.

20.1. Further Assurances. The Company shall perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing by any party of the provisions of this Warrant Agency Agreement.

20.2. Examination of the Warrant Agreement. A copy of this Warrant Agency Agreement shall be available at all reasonable times at the office of the Warrant Agent designated for such purpose for inspection by any Holder. Prior to such inspection, the Warrant Agent may require any such holder to provide reasonable evidence of its interest in the Preferred Warrants.

20.3. Counterparts. This Warrant Agency Agreement may be executed in any number of original, facsimile or electronic counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

20.4. Effect of Headings. The Section headings herein are for convenience only and are not part of this Warrant Agency Agreement and shall not affect the interpretation thereof.

15

21. Certain Definitions. As used herein, the following terms shall have the following meanings:

21.1. "Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

21.2. "Preferred Warrant Share Delivery Date" means the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company and the Warrant Agent of the Notice of Exercise, provided that payment of the aggregate Exercise Price is received by the Company one (1) Trading Day prior to such second Trading Day after the delivery of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company and Warrant Agent of the Notice of Exercise, provided that payment of the aggregate Exercise Price is received by the Company one (1) Trading Day prior to such second Trading Day after the delivery of the Notice of Exercise.

21.3. "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

21.4. "Trading Day" means any day on which the Common Stock is traded on the Trading Market.

21.5. "Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

[Signature Page to Follow]

16

IN WITNESS WHEREOF, this Warrant Agency Agreement has been duly executed by the parties hereto as of the day and year first above written.

WISA TECHNOLOGIES, INC.

By: _____

Name: Brett Moyer
Title: President and Chief Executive Officer

VSTOCK TRANSFER, LLC
as the Warrant Agent

By: _____

Name:
Title:

[Signature Page to the WISA Technologies, Inc. Warrant Agency Agreement]

ANNEX A

PREFERRED WARRANT CERTIFICATE REQUEST NOTICE

To: VStock Transfer, LLC, as Warrant Agent for WiSA Technologies, Inc. (the "Company")

The undersigned Holder of Preferred Stock Purchase Warrants ("Preferred Warrants") in the form of Global Certificates issued by the Company hereby elects to receive a Definitive Certificate evidencing the Preferred Warrants held by the Holder as specified below:

1. Name of Holder of Preferred Warrants in form of Global Certificates:

2. Name of Holder in Definitive Certificate (if different from name of Holder of Preferred Warrants in form of Global Certificates):

3. Number of Preferred Warrants in name of Holder in form of Global Certificates:

4. Number of Preferred Warrants for which Definitive Certificate shall be issued:

5. Number of Preferred Warrants in name of Holder in form of Global Certificates after issuance of Definitive Certificate, if any:

6. Definitive Certificate shall be delivered to the following address:

The undersigned hereby acknowledges and agrees that, in connection with this Preferred Warrant Exchange and the issuance of the Definitive Certificate, the Holder is deemed to have surrendered the number of Preferred Warrants in form of Global Certificates in the name of the Holder equal to the number of Preferred Warrants evidenced by the Definitive Certificate.

[SIGNATURE OF HOLDER

18

Name of Investing Entity:

Signature of Authorized Signatory of Investing Entity:

Name of Authorized Signatory:

Title of Authorized Signatory:

Date:

19

EXHIBIT A

[FORM OF GLOBAL WARRANT CERTIFICATE OF WARRANT TO PURCHASE SERIES B CONVERTIBLE PREFERRED STOCK]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

Certificate No.: [●]

CUSIP No.: [●]

Number of Preferred Warrants: [●] Issue Date: [●], 2023

WISA TECHNOLOGIES, INC.

GLOBAL WARRANT CERTIFICATE

NOT EXERCISABLE AFTER [●], 2025

This certifies that CEDE & CO., or its registered assigns, is the registered owner of the number of Warrants set forth above (the “Preferred Warrants”). Each Preferred Warrant entitles its registered holder to purchase from WiSA Technologies, Inc., a Delaware corporation (the “Company”), at any time prior to 5:00 P.M. (New York City time) on [●], 2025, one share of Series B Convertible Preferred Stock, par value \$0.0001 per share, of the Company (each, a “Preferred Warrant Share” and collectively, the “Preferred Warrant Shares”), at an exercise price of \$55.00 per share, subject to possible adjustments as provided in the Warrant Agency Agreement (as defined below) and the Preferred Warrant Certificate in the form of Exhibit A attached to this Global Warrant Certificate (the “Preferred Warrant Certificate”).

The terms and conditions of the Preferred Warrants and the rights and obligations of the holder of this Global Warrant Certificate are set forth in the Preferred Warrant Certificate and the Warrant Agency Agreement, dated as of September [●], 2023 (the “Warrant Agency Agreement”) between the Company and VStock Transfer, LLC (the

“Warrant Agent”), which Preferred Warrant Certificate and Warrant Agency Agreement are each hereby incorporated by reference in and made a part of this Global Warrant Certificate. A copy of the Warrant Agency Agreement is available for inspection during business hours at the office of the Warrant Agent. Defined terms used in this Global Warrant Certificate but not defined herein shall have the meanings given to them in the Preferred Warrant Certificate or Warrant Agency Agreement. In the event of any discrepancy or inconsistency between the terms and conditions of the Preferred Warrant Certificate and the Warrant Agency Agreement, the terms and conditions of the Preferred Warrant Certificate shall prevail, govern and control.

20

The Company and the Warrant Agent may deem and treat the registered Holder(s) hereof as the absolute owner(s) of this Global Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by anyone), for the purpose of any exercise hereof, of any distribution to the holder(s) hereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary. Neither the Preferred Warrants nor this Global Warrant Certificate entitles any holder hereof to any rights of a holder of Series B Convertible Preferred Stock. This Global Warrant Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by an authorized signatory of the Warrant Agent.

[Signature Page Follows]

21

IN WITNESS WHEREOF, the parties hereto have caused this Global Warrant Certificate to be duly executed as of the date first written above.

WISA TECHNOLOGIES, INC.

By: _____

Name: Brett Moyer

Title: President and Chief Executive Officer

Dated: [●], 2023

Countersigned:

VSTOCK TRANSFER, LLC, as Warrant Agent

By: _____

Name:

Title:

22

Exhibit A To Global Warrant Certificate

Preferred Warrant Certificate

(ATTACHED)

23

EXHIBIT B

**FORM OF DEFINITIVE WARRANT CERTIFICATE OF
WARRANT TO PURCHASE SERIES B CONVERTIBLE PREFERRED STOCK**

(ATTACHED)

24

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in this Registration Statement on Form S-1 of our report (which contains an explanatory paragraph relating to the Company's ability to continue as a going concern as described in Note 1 to the consolidated financial statements) dated March 16, 2023, relating to the consolidated financial statements, which appears in the Annual Report on Form 10-K of WiSA Technologies, Inc. for the year ended December 31, 2022.

/s/ BPM LLP

San Jose, California
October 10, 2023

Calculation of Filing Fee Tables

Form S-1
(Form Type)WiSA Technologies, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered and Carry Forward Securities

Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount To Be Registered (1)	Maximum Offering Price Per Share (2)	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial Effective Date	Filing Fee Previously Paid in Connection with Unsold Securities to be Carried Forward
Newly Registered Securities											
Fees to be paid	Equity	Units consisting of (i) Series B Convertible Preferred Stock, par value \$0.0001 per share, and (ii) Preferred Warrants to purchase shares of Series B Convertible Preferred Stock (2)	Rule 457(o)	—	— \$	5,999,950	0.00014760	\$	885.59		
Fees to be paid	Equity	Shares of Series B Convertible Preferred Stock, included as part of the Units	Rule 457(i)	—	—	—					
Fees to be paid	Equity	Preferred Warrants to purchase shares of Series B Convertible Preferred Stock, included as part of the Units	Rule 457(i)	—	—	—					
Fees to be paid	Equity	Shares of Series B Convertible Preferred Stock issuable upon exercise of the Preferred Warrants included in the Units	Rule 457(i)	—	—	11,999,900	0.00014760	\$	1,771.19		
Fees to be paid	Equity	Shares of Common Stock issuable upon conversion of Series B Convertible Preferred Stock issuable upon exercise of the Preferred Warrants(3)	Rule 457(i)	—	—	—					
Fees to be paid	Equity	Shares of Series B Convertible Preferred Stock issuable as pay in-kind (PIK) dividends(4)	Rule 457(i)	—	—	—					
Fees to be paid	Equity	Shares of Common Stock issuable upon conversion of the Series B Convertible Preferred Stock issued as PIK dividends (4)	Rule 457(i)	—	—	—					
Fees Previously Paid	—	—	—	—	—	—	\$	1,653.02			
Carry Forward Securities											
Carry Forward Securities	—	—	—	—	—	—					
Total Offering Amounts							\$	2,656.78			
Total Fees Previously Paid							\$	1,653.02			
Total Fee Offset								—			
Net Fee Due							\$	1,003.76			

(1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), includes any additional shares of Common Stock, par value \$0.0001 per share (the "Common Stock"), of WiSA Technologies, Inc. (the "Registrant") that may from time to time be offered or issued to prevent dilution from any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of Common Stock.

(2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) of the Securities Act.

(3) No separate registration fee is required for the shares of the Registrant's Common Stock, par value \$0.0001 per share (the "Common Stock"), issuable upon conversion of the Series B Convertible Preferred Stock because no additional consideration will be received in connection with the exercise of the conversion privilege.