

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

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
(IRS Employer
Identification No.)

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:

Non-accelerated filer:

Accelerated filer:

Smaller reporting company:

Emerging growth company:

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 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 Securities and Exchange Commission acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS

SUBJECT TO COMPLETION

DATED FEBRUARY 5, 2024

**Up to 100,000,000 Units
(Each Unit Consisting of One Share of Common Stock and
One Warrant Exercisable for One Share of Common Stock)
Up to 100,000,000 Pre-Funded Units**

**(Each Pre-Funded Unit Consisting of One Pre-Funded Warrant Exercisable for One Share of Common Stock and One Warrant Exercisable for One Share of
Common Stock)**

**100,000,000 Shares of Common Stock Underlying the Warrants
100,000,000 Shares of Common Stock Underlying the Pre-Funded Warrants**



WiSA Technologies, Inc.

We are offering on a reasonable best-efforts basis up to 100,000,000 units ("Units"), each consisting of one share of our common stock, par value \$0.0001 per share ("Common Stock") and one warrant to purchase one share of our Common Stock (each, a "Warrant"), at an assumed offering price of \$0.10 per Unit, which is equal to the closing price of our Common Stock on the Nasdaq Capital Market ("Nasdaq") on January 29, 2024. The Units have no stand-alone rights and will not be certificated or issued as stand-alone securities. The Common Stock and Warrants included in the Units are immediately separable and will be issued separately in this offering.

The Warrants offered hereby will initially have an exercise price equal to 100% of the public offering price of each Unit sold in this offering, and shall not be exercisable until after the date that stockholder approval is obtained to approve each of (i) the issuance of the shares of Common Stock issuable upon the exercise of the Warrants (the "Warrant Shares"), as may be required by the applicable rules and regulations of The Nasdaq Stock Market LLC and (ii) if necessary, a proposal to amend the Company's certificate of incorporation, as amended (the "Certificate of Incorporation"), to increase the authorized share capital of the Company to an amount sufficient to cover the Warrant Shares or to effectuate a reverse stock split whereby the authorized share capital is not split and is sufficient to cover the Warrant Shares (and such reverse split is effectuated ("Stockholder Approval"), and will expire on the fifth (5th) anniversary of the date on which Stockholder Approval is received and deemed effective under Delaware law. The exercise price of each Warrant will be reset on the sixth (6th) trading day following the date of the Company's next reverse stock split of shares of Common Stock to the lower of (a) the exercise price of the Warrant then in effect after giving effect to such reverse stock split and (b) the lowest VWAP (as defined in the Warrants) of the Common Stock in the five (5) trading days immediately prior to such date.

We are also offering to those purchasers, if any, whose purchase of Units in this offering would otherwise result in the purchaser, together with its affiliates and related parties, beneficially owning more than 4.99% (or, at the election of the purchaser, 9.99%) of our outstanding Common Stock immediately following the consummation of this offering, the opportunity to purchase, if they so choose, pre-funded units ("Pre-Funded Units") in lieu of the Units that would otherwise result in ownership in excess of 4.99% (or, at the election of the purchaser, 9.99%) of our outstanding Common Stock, with each Pre-Funded Unit consisting of one pre-funded warrant to purchase one share of our Common Stock (each, a "Pre-Funded Warrant"), and one Warrant. The purchase price of each Pre-Funded Unit will equal the price per Unit, minus \$0.0001, and the exercise price of each Pre-Funded Warrant included in the Pre-Funded Unit will be \$0.0001 per share of our Common Stock. The Pre-Funded Units have no stand-alone rights and will not be certificated or issued as stand-alone securities. The Pre-Funded Warrants and Warrants included in the Pre-Funded Units are immediately separable and will be issued separately in this offering. There can be no assurance that we will sell any of the Pre-Funded Units being offered. The Pre-Funded Warrants offered hereby will be immediately exercisable and may be exercised at any time until exercised in full. For each Pre-Funded Unit we sell, the number of Units we are offering will be decreased on a one-for-one basis. Because we will issue one Warrant as part of each Unit or Pre-Funded Unit, the number of Warrants sold in this offering will not change as a result of a change in the mix of the Units and Pre-Funded Units sold.

We are also registering the Common Stock issuable from time to time upon exercise of the Warrants and Pre-Funded Warrants included in the Units and Pre-Funded Units offered hereby. See "Description of the Securities We Are Offering" in this prospectus for more information. We refer to the shares of our Common Stock, the Warrants, the Pre-Funded Warrants, and the shares of our Common Stock issued or issuable upon exercise of the Warrants and Pre-Funded Warrants, collectively, as the securities.

Our shares of Common Stock are listed on Nasdaq under the symbol "WISA." On February 2, 2024, the last reported sale price of our shares of Common Stock on Nasdaq was \$0.086 per share.

There is no established public trading market for the Units, Pre-Funded Units, Warrants or Pre-Funded Warrants, and we do not expect a market to develop. Without an active trading market, the liquidity of such securities will be limited. In addition, we do not intend to list the Warrants or Pre-Funded Warrants on Nasdaq, any other national securities exchange or any other trading system.

The securities will be offered at a fixed price and are expected to be issued in a single closing. Investors purchasing securities offered hereby will have the option to execute a securities purchase agreement with us. When we price the securities, we will simultaneously enter into securities purchase agreements relating to the offering with those investors who so choose. We expect this offering to be completed not later than two (2) business days following the commencement of this offering and we will deliver all securities to be issued in connection with this offering delivery versus payment/receipt versus payment upon receipt of investor funds received by us. Accordingly, neither we nor the placement agent have 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.

We have engaged Maxim Group LLC as our exclusive placement agent ("Maxim" or the "placement agent") to use its reasonable best efforts to solicit offers to purchase our securities in this offering. The placement agent has no obligation to purchase any of the securities from us or to arrange for the purchase or sale of any specific number or dollar amount of the securities. Because there is no minimum offering amount required as a condition to closing in this offering, the actual public offering amount, placement agent's

fee, and proceeds to us, if any, are not presently determinable and may be substantially less than the total maximum offering amounts set forth above and throughout this prospectus. We have agreed to pay the placement agent the placement agent fees set forth in the table below. See “Plan of Distribution” in this prospectus for more information.

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

(1) Represents a cash fee equal to 7.0% of the aggregate purchase price paid by investors in this offering. We have also agreed to reimburse the placement agent for certain of its offering-related expenses. See “Plan of Distribution” beginning on page 66 of this prospectus for a description of the compensation to be received by the placement agent.

(2) Does not include proceeds from the exercise of the Warrants and Pre-Funded Warrants in cash, if any.

Investing in our securities involves a high degree of risk. See “Risk Factors” beginning on page 9 of this prospectus 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 _____, 2024.

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.

Maxim Group LLC

The date of this prospectus is _____, 2024

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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, or to which we have referred you, before making your investment decision. Neither we, nor the placement agent or any 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, nor any placement agent or 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, the statement in the document having the later date modifies or supersedes the earlier statement.

Neither we nor the placement agent have 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.

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. These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

PROSPECTUS SUMMARY

This summary contains basic information about us and this offering. Because it is a summary, it does not contain all of the information that you should consider before deciding to invest in our securities. Before you decide to invest in our securities, you should read this entire prospectus carefully, any related free writing prospectus that we have authorized for use in connection with the offering, including the information included under the heading titled “Risk Factors” and our financial statements and the related notes included elsewhere in this prospectus.

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

October 2023 Series B Preferred Stock Offering

On October 17, 2023, the Company completed a public offering (the “Series B Preferred Stock Offering”) consisting of an aggregate of 87,000 units (each a “Series B Preferred Unit” and collectively, the “Series B Preferred Units”), with each Series B Preferred Unit consisting of (A) one (1) share of the Company’s Series B Convertible Preferred Stock, par value \$0.0001 per share (the “Series B Preferred Stock”), and (B) two Series B Preferred Stock purchase warrants (each, a “Series B Preferred Warrant” and collectively, the “Series B Preferred Warrants”), with each Series B Preferred Warrant exercisable for one share of Series B Preferred Stock (the “Series B Preferred Warrant Shares”), at the public offering price of \$55.00 per Unit. The Series B Preferred Warrants are immediately exercisable, each with an exercise price of \$55.00 and expire on October 17, 2025. The Series B Preferred Stock 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 Units, the shares of Series B Preferred Stock, the Series B Preferred Warrants, the Series B Preferred Warrant Shares and the shares of Common Stock issuable upon conversion of the Series B Preferred Stock, were offered and sold by the Company pursuant to the Company's Registration Statement on Form S-1 (Registration No. 333-274331), filed by the Company with the SEC under the Securities Act of 1933, as amended (the "Securities Act"), including the Post-Effective Amendment No. 1 to the Registration Statement filed with the Commission pursuant to Rule 462(c) of the Securities Act that became effective automatically upon filing on October 16, 2023 and the Post-Effective Amendment No. 2 to the Registration Statement filed with the SEC pursuant to Rule 462(d) of the Securities Act that became effective automatically upon filing on October 17, 2023.

Maxim acted as the exclusive placement agent for the Company in connection with the Series B Preferred Stock Offering. Pursuant to that certain placement agency agreement, dated October 16, 2023, by and between the Company and Maxim (the "Series B Preferred Placement Agency Agreement"), Maxim was paid a cash fee of 8.0% of the aggregate gross cash proceeds to the Company from the sale of the securities in the Series B Preferred Stock Offering; provided, however, the cash fee was reduced to 5.0% from the sale of securities in the Offering to those certain investors having a prior existing relationship with the Company. The Company agreed with Maxim 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 its officers and directors from the date of the Series B Preferred Placement Agency Agreement without the prior written consent of Maxim. In addition, the Company also agreed not to enter into variable rate transactions for 45 days after completing the Series B Preferred Stock Offering.

The gross proceeds to the Company from the Series B Preferred Stock Offering were approximately \$4.8 million. Subsequent to the pricing of the Series B Preferred Stock Offering, the Company entered into letter agreements (the "Side Letters") with certain holders of outstanding Common Stock purchase warrants, pursuant to which the Company agreed to purchase from the holders an aggregate of 1,674,414 warrants with an exercise price of \$1.91, 2,462,264 warrants with an exercise price of \$1.33 and 510,000 warrants with an exercise price of \$1.29 (collectively, the "Former Warrants"), for \$0.50 per Former Warrant. The Company used approximately \$2.3 million in proceeds from the Series B Preferred Stock Offering to repurchase the Former Warrants on October 17, 2023 (such repurchase transaction, the "Warrant Repurchase").

On October 16, 2023, the Company filed a Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock (the "Series B COD") with the Secretary of State of the State of Delaware designating 375,000 shares of the Company's authorized preferred stock as Series B Preferred Stock, with a liquidation preference of \$100.00 per share, and further establishing the powers, preferences and rights of the shares of Series B Preferred Stock and the qualifications, limitations or restrictions thereof.

On or about February 2, 2024, the Company entered into side letter agreements with the Holders (defined below), whereby the Holders agreed to (i) allow the Company to repurchase all 62,657 outstanding shares of Series B Preferred Stock currently held by them at \$100 per share with a portion of the proceeds received from this offering and (ii) cancel all outstanding Series B Preferred Warrants to purchase up to 81,315 shares of Series B Preferred Stock, currently held by them, immediately prior to the closing of this offering (collectively, the "Series B Repurchase and Cancellation Transaction"). The Company and the Holders also agreed (i) to amend Annex A to the Inducement Agreements (as defined below) on the commencement date of the required period of reservation of New Warrant Shares (as defined below) from the Company's authorized and unissued shares of Common Stock, from the date of issuance of the New Warrants (as defined) to the Warrant Inducement Stockholder Approval Date (as defined below), and (ii) that any future issuance of New Warrants under the Inducement Agreements shall conform with the form of the New Warrant as amended by the Warrant Amendment Agreement (as defined below). Following the Series B Repurchase and Cancellation Transaction, provided no other holder of Series B Preferred Warrants exercise their respective Series B Preferred Warrants, there will be no share of Series B Preferred Stock outstanding and there will be Series B Preferred Warrants to purchase up to 1,750 shares of Series B Preferred Stock outstanding.

December 2023 Warrant Inducement

On December 5, 2023, we entered into warrant inducement letter agreements (the "Inducement Agreements") with certain holders of the Series B Preferred Warrants exercisable for up to 168,972 shares of Series B Preferred Stock, issued pursuant to a public offering that closed on October 17, 2023 (the "Existing Warrants"). Pursuant to the Inducement Agreements, the holders of the Existing Warrants (the "Holders") agreed to a reduced exercise price of \$35.72 per share of Series B Preferred Stock, while maintaining the original fixed conversion price of \$0.4147 (the "Conversion Price") of the Series B Preferred Stock, upon the exercise of any Existing Warrants during the period from the date of the Inducement Agreements until the later of (i) the day immediately preceding the date stockholder approval is obtained which approval may be required by the applicable rules and regulations of The Nasdaq Stock Market LLC from the Company stockholders with respect to each of (a) the issuance of common stock purchase warrants (the "New Warrants") to purchase up to an aggregate 81,491,198 shares of Common Stock in connection with the Inducement Agreements and the shares of Common Stock issuable upon the exercise thereof (the "New Warrant Shares") and (b) if necessary, a proposal to amend the Certificate of Incorporation to increase the authorized share capital of the Company to an amount sufficient to cover the New Warrant Shares or to effectuate a reverse stock split whereby the authorized shares capital is not split and is sufficient to cover the New Warrant Shares (and such reverse split is effectuated) (the "Warrant Inducement Stockholder Approval Date"), or (ii) January 15, 2024 (the "Inducement Period"). As of February 5, 2024, the Inducement Period is still ongoing.

The aggregate gross proceeds to be received by the Company will depend on the number of Existing Warrants actually exercised by the Holders. There is no guarantee that all of the Existing Warrants will be exercised by the Holders in accordance with the Inducement Agreements. As of February 2, 2024, the Holders have exercised Existing Warrants to purchase 87,657 shares of Series B Preferred Stock, and we have received approximately \$3.1 million in gross proceeds from such exercises (the "Warrant Inducement Transaction").

In consideration of each Holders' agreement to exercise the Existing Warrants in accordance with the applicable Inducement Agreement, the Company agreed to issue each such Holder common stock purchase warrants (the "New Warrants"), to purchase New Warrant Shares at a per share exercise price equal to \$0.1482, which New Warrants will contain 4.99/9.99% beneficial ownership limitations, be exercisable at any time on or after the Warrant Inducement Stockholder Approval Date and expire five years from the Warrant Inducement Stockholder Approval Date.

Pursuant to the Inducement Agreements, the Company agreed to file a registration statement to register the resale of the New Warrant Shares upon exercise of the New Warrants (the "Resale Registration Statement") as soon as reasonably practicable, but in any event no later than 45 calendar days following the Warrant Inducement Stockholder Approval Date, and to use commercially reasonable efforts to have such Resale Registration Statement declared effective by the SEC as soon as practicable and to keep such registration statement effective at all times until no such holder owns any such New Warrants or New Warrant Shares issuable upon exercise thereof. Additionally, pursuant to the Inducement Agreements, the Company has agreed to hold an annual or special meeting of stockholders on or prior to the date that is ninety (90)

days following the date of the Inducement Agreements for the purpose of obtaining stockholder approval of such transaction.

The Company engaged Maxim as exclusive financial advisor (the “Advisor”) to provide financial services in connection with the transactions summarized above and, pursuant to a certain financial advisory agreement, dated December 5, 2023, by and between the Company and the Advisor, has agreed to pay the Advisor a cash financial advisory fee equal to 8% of the aggregate gross proceeds received from the Holders’ exercise of their Existing Warrants. In addition, the Company has also agreed to reimburse the Advisor for its accountable legal expenses in connection with the exercise of the Existing Warrants and the issuance of the New Warrants of up to \$10,000.

On or about February 2, 2024, the Company and the Holders entered into a warrant amendment agreement, whereby the Company amended Section 6(d) of the New Warrants on the commencement date of the required period of reservation of New Warrant Shares from the Company’s authorized and unissued shares of Common Stock, from the date of issuance of the New Warrants to the Warrant Inducement Stockholder Approval Date (the “Warrant Amendment Agreement”).

2024 Bridge Note and Warrant

On January 22, 2024, the Company entered into securities purchase agreements (the “2024 Bridge Purchase Agreements”), with the Holders, pursuant to which the Company agreed to issue to the Holders promissory notes in the aggregate principal amount of \$1,000,000 (the “2024 Bridge Promissory Notes”) and common stock purchase warrants (the “2024 Bridge Warrants”) to purchase up to an aggregate of 10,000,000 shares of the Company’s Common Stock (“2024 Bridge Warrant Shares”), in consideration for \$600,000 (the “2024 Bridge Private Placement”).

Each of the 2024 Bridge Promissory Notes matures on the earlier to occur of: (i) July 17, 2024 and (ii) the full or partial exercise of certain Series B Preferred Warrants currently held by the applicable Holder, issuable for at least 9,322 shares of the Series B Preferred Stock upon such full or partial exercise. The 2024 Bridge Promissory Notes do not bear interest except upon the occurrence of an event of default. The 2024 Bridge Promissory Notes are not convertible into shares of Common Stock or Series B Preferred Stock.

At any time after issuance of the 2024 Bridge Promissory Notes, the Company may repay all or less than all of the outstanding principal amount of the 2024 Bridge Promissory Notes, with no penalty or premium of any kind, upon at least one (1) days’ written notice to the applicable Holder.

The 2024 Bridge Warrants are not exercisable until after the date that stockholder approval is obtained to approve each of (i) the issuance of the 2024 Bridge Warrant Shares issuable upon the exercise of the 2024 Bridge Warrants, as may be required by the applicable rules and regulations of The Nasdaq Stock Market LLC and (ii) if necessary, a proposal to amend the Certificate of Incorporation to increase the authorized share capital of the Company to an amount sufficient to cover the 2024 Bridge Warrant Shares or to effectuate a reverse stock split whereby the authorized share capital is not split and is sufficient to cover the 2024 Bridge Warrant Shares (and such reverse split is effectuated) (“Bridge Warrant Stockholder Approval”), and will expire on the fifth (5th) anniversary of the date on which Bridge Warrant Stockholder Approval is received and deemed effective under Delaware law. The exercise price of the 2024 Bridge Warrants is subject to downward adjustment, upon any subsequent transaction at a price lower than the exercise price then in effect and standard adjustments in the event of certain events, such as stock splits, combinations, dividends, distributions, reclassifications, mergers or other corporate changes.

The exercise of the 2024 Bridge Warrants is subject to beneficial ownership limitations such that each Holder may not exercise the 2024 Bridge Warrant to the extent that such exercise would result in the Holder being the beneficial owner in excess of 4.99% (or, upon election of the Holder, 9.99%) of the outstanding shares of Common Stock, which beneficial ownership limitation may be increased up to 9.99% upon notice to the Company, provided that any increase in such limitation will not be effective until 61 days following notice to the Company.

The closing of the 2024 Bridge Private Placement occurred on January 23, 2024, pursuant to which, the Company issued the 2024 Bridge Promissory Notes and the 2024 Bridge Warrants to the Holders in accordance with the 2024 Bridge Purchase Agreements.

Repayment of 2024 Bridge Promissory Notes

Between January 26, 2024 and February 2, 2024, the 2024 Bridge Promissory Notes were paid back in full.

Conversion of Series B Preferred Stock

As of February 2, 2024, the holders of Series B Preferred Stock have converted 115,278 shares of Series B Preferred Stock into 27,797,889 shares of Common Stock (the “Conversion”).

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. If we do not raise sufficient capital in the short term, we may be forced to cease operations, liquidate our assets and possibly seek bankruptcy protection or engage in a similar process;
- 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;
- 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;
- There is no public market for the Units, Pre-Funded Units, Pre-Funded Warrants or the Warrants being offered in this offering;
- 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;
- You may be unable to exercise the Warrants and they may have no value if Stockholder Approval is not obtained;

- 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 The Nasdaq Stock Market LLC, our Common Stock could be delisted from Nasdaq;
- 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; and
- 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.

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 100,000,000 Units, each consisting of one share of our Common Stock and one Warrant to purchase one share of our Common Stock. The Units have no stand-alone rights and will not be certificated or issued as stand-alone securities. The Common Stock and Warrants are immediately separable and will be issued separately in this offering.
Pre-Funded Units offered by us	We are also offering to those purchasers, if any, whose purchase of Units in this offering would otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, at the election of the purchaser, 9.99%) of our outstanding Common Stock immediately following the consummation of this offering, Pre-Funded Units, each consisting of one Pre-Funded Warrant to purchase one share of our Common Stock and one Warrant to purchase one share of our Common Stock. The Pre-Funded Units have no stand-alone rights and will not be certificated or issued as stand-alone securities. The Pre-Funded Warrants and Warrants are immediately separable and will be issued separately in this offering. For each Pre-Funded Unit we sell, the number of Units we are offering will be decreased on a one-for-one basis. Because we will issue a Warrant as part of each Unit or Pre-Funded Unit, the number of Warrants sold in this offering will not change as a result of a change in the mix of the Units and Pre-Funded Units sold.
Warrants	Each Warrant will have an exercise price equal to 100% of the public offering price of each Unit sold in this offering, and shall not be exercisable until after the date that Stockholder Approval is obtained and will expire on the fifth (5th) anniversary of the date on which Stockholder Approval is received and deemed effective under Delaware law. To better understand the terms of the Warrants, you should carefully read the "Description of the Securities We Are Offering" section of this prospectus. You should also read the form of Warrant, which is filed as an exhibit to the registration statement of which this prospectus forms a part. This offering also relates to the shares of Common Stock issuable upon exercise of the Warrants.
Pre-Funded Warrants	Each Pre-Funded Warrant will be immediately exercisable at an exercise price of \$0.0001 per share of our Common Stock and may be exercised at any time until exercised in full. To better understand the terms of the Pre-Funded Warrants, you should carefully read the "Description of the Securities We are Offering" section of this prospectus. You should also read the form of Pre-Funded Warrant, which is filed as an exhibit to the registration statement of which this prospectus forms a part. This offering also relates to the shares of Common Stock issuable upon exercise of the Pre-Funded Warrants.

Common Stock outstanding immediately after the offering ⁽¹⁾	134,562,545 shares of Common Stock (assuming the sale of all securities offered hereby, and assuming no sale of any Pre-Funded Units and no exercise of the Warrants issued in this offering).
Use of Proceeds	<p>We estimate that the net proceeds to us from the offering will be approximately \$9.0 million (calculated based on an assumed public offering price of \$0.10 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 assuming no sale of any Pre-Funded Units and no exercise of the Warrants issued in this offering. 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 the net proceeds of this offering for repurchase of 62,657 outstanding shares of Series B Preferred Stock at \$100 per share and other working capital and general corporate purposes. See "Use of Proceeds" for a more complete description of the intended use of proceeds from this offering.</p>

Risk Factors	An investment in our securities is highly speculative and involves substantial risk. Please carefully consider the “Risk Factors” section on page 9 and other information in this prospectus for a discussion of factors to consider before deciding to invest in the securities offered hereby. Additional risks and uncertainties not presently known to us or that we currently deem to be immaterial may also impair our business and operations.
Voting Agreements	We will request that certain investors who purchase in excess of \$100,000 in this offering enter into a voting agreement pursuant to which such investors agree to vote all shares of Common Stock they beneficially own on the closing date of this offering, including the shares of Common Stock purchased by them in this offering, with respect to any proposals presented to the stockholders of the Company at the Company’s next special meeting of stockholders; provided, however, that such voting agreement will not require such investor to vote its shares for or against any particular proposal or proposals, whether or not such proposal or proposals are recommended by our board of directors (the “Board”). There can be no assurance that such investors will agree to enter into a voting agreement in connection with our request.
Lock-up Agreements	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 of our Common Stock or securities convertible into common stock for a period of 60 days from the date of this prospectus without the prior written consent of the placement agent. See “Plan of Distribution.”
Participation Rights	The Company is party to a waiver agreement (the “Waiver Agreement”), dated September 1, 2023, with various purchasers (the “Spring 2023 Purchasers”) to a securities purchase agreement, dated March 27, 2023 and April 7, 2023, respectively, whereby, in consideration for a waiver on prohibition on variable rate transactions as set forth in each such securities purchase agreement, the Company granted to the Spring 2023 Purchasers the right to participate in any subsequent financings of the Company occurring on or prior to September 1, 2024, up to an amount equal to 90%, in aggregate, of the total dollar value raised in any such financing, on the same terms and conditions provided to other investors.
Nasdaq Symbol and Trading	Our Common Stock is listed on Nasdaq under the symbol “WISA”. There is no established trading market for the Units, Pre-Funded Units, Warrants or Pre-Funded Warrants, and we do not expect a trading market for those securities to develop. We do not intend to list the Units, Pre-Funded Units, Warrants or Pre-Funded Warrants on any securities exchange or other trading market. Without a trading market, the liquidity of those securities will be extremely limited.

Transfer Agent and Warrant Agent	VStock Transfer, LLC, whose address is 18 Lafayette Place, Woodmere, NY 11598 and telephone number is (212) 828-8436.
Reasonable best efforts	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. See “Plan of Distribution” on page 66 of this prospectus.
	(1) Shares of our Common Stock that will be outstanding after this offering is based on 34,562,545 shares of Common Stock outstanding as of February 2, 2024, but excludes the following as of such date: (a) up to an aggregate of 43,258,183 shares of Common Stock issuable upon exercise of our outstanding common stock purchase warrants (including up to an aggregate of 42,274,893 shares of Common Stock issuable upon exercise of issued and outstanding New Warrants and up to an aggregate of 10,000,000 shares of Common Stock issuable upon exercise of the 2024 Bridge Warrants), (b) 2,670,313 shares of Common Stock reserved for future issuance under the Company’s 2018 Long-Term Stock Incentive Plan (the “LTIP”), the 2020 Stock Incentive Plan (the “2020 Plan”) and the Technical Team Retention Plan of 2022 (the “2022 Plan”), (c) an aggregate of 2,598 shares of Common Stock issuable upon vesting of restricted stock units (“RSUs”) that were issued pursuant to the 2020 Plan and 2022 Plan, (d) up to an aggregate of 35,139,112 shares of Common Stock issuable upon conversion of all outstanding shares of Series B Preferred Stock (which shares of Series B Preferred Stock assumes the exercise of all 83,065 Series B Preferred Warrants outstanding), and (e) up to 39,216,297 shares of Common Stock issuable upon exercise of 81,315 additional New Warrants that are not currently outstanding, but which we will be obligated to issue, upon the Holders’ exercise of their remaining Existing Warrants pursuant to the Inducement Agreements.

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 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. 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, 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. If we do not raise sufficient capital in the short term, we may 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 our immediate operational needs. Assuming the sale of all securities offered hereby, after deducting placement agent fees, estimated offering expenses and approximately \$6.3 million in cash to complete the Series B Repurchase and Cancellation Transaction, we anticipate that we would receive net proceeds of approximately \$2.8 million from this offering. We believe that such net proceeds, together with our existing cash and cash equivalents, will meet our capital needs for the next 2-3 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 \$240.7 million as of September 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 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 on occasion during the fiscal year ended December 31, 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 September 30, 2023, the Company had two customers accounting for 78% and 11% of accounts receivable. As of December 31, 2022, the Company had two customers accounting for 62% and 12% of accounts receivable. The Company had three customers accounting for 40%, 28% and 21% of its net revenue for the three months ended September 30, 2023. The Company had four customers accounting for 22%, 17%, 16% and 15% of its net revenue for the nine months ended September 30, 2022.

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.

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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;

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- 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; and
- general economic and political conditions, both domestically and internationally; and
- the effects of outbreaks, epidemics or pandemics of contagious diseases.

Any one of these or other factors discussed elsewhere in this prospectus 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.

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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.

Future acquisitions may have a material adverse effect on our ability to manage our business and our results of operations and financial condition.

We may acquire businesses, technologies, services, or products which are complementary to our business. Future acquisitions may expose us to potential risks, including risks associated with the integration of new operations, services, and personnel, unforeseen or hidden liabilities, the diversion of resources and management attention from our existing business and technology, our potential inability to generate sufficient revenue to offset new costs, the costs and expenses incurred in connection with such acquisitions, or the potential loss of or harm to relationships with suppliers, employees, and customers resulting from our integration of new businesses.

Any of the potential risks listed above could have a material adverse effect on our ability to manage our business or our results of operations and financial condition. In addition, we may need to fund any such acquisitions through the incurrence of additional debt or the sale of additional debt or equity securities, which would result in increased debt service obligations, including additional operating and financing covenants, or liens on our assets, that would restrict our operations, or dilution to our shareholders.

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.

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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.

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 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 February 2, 2024, 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.

Without obtaining adequate capital funding or improving our financial performance, we may not be able to continue as a going concern.

Our recurring losses from operations and negative cash flows raise substantial doubt about our ability to continue as a going concern without additional capital-raising activities. As a result, we have concluded that there is substantial doubt about our ability to continue as a going concern. Failure to secure additional funding may require us to modify, delay, or abandon some of our planned future expansion or development, or to otherwise enact operating cost reductions available to management, which could have a material adverse effect on our business, operating results, financial condition, and ability to achieve our intended business objectives. Please also see "Risk Factors – Risks Related to Our Financial Condition – We need financing in the near term to support our ongoing operations. If we do not raise sufficient capital in the short term, we may be forced to cease operations, liquidate our assets and possibly seek bankruptcy protection or engage in a similar process."

There is no public market for the Units, Pre-Funded Units, Pre-Funded Warrants or the Warrants being offered in this offering.

There is no established public trading market for the Units, Pre-Funded Units, Pre-Funded Warrants or the Warrants being offered in this offering, and we do not expect a market to develop. In addition, we do not intend to apply to list the Pre-Funded Warrants or the Warrants on any securities exchange or nationally recognized trading system, including Nasdaq. Without an active market, the liquidity of the Pre-Funded Warrants or the Warrants will be limited.

The Pre-Funded Warrants and the Warrants are speculative in nature.

Following this offering, the market value of the Pre-Funded Warrants and Warrants, if any, is uncertain and there can be no assurance that the market value of the Pre-Funded Warrants and Warrants will equal or exceed their imputed public offering price. In the event that our Common Stock price does not exceed the exercise price of the Warrants during the period when such Warrants are exercisable, such Warrants may not have any value. Furthermore, if Stockholder Approval is not obtained, the Warrants will not be exercisable.

Holders of the Pre-Funded Warrants and Warrants will not have rights of holders of our shares of Common Stock until such Warrants and Pre-Funded Warrants are exercised.

The Warrants and Pre-Funded 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 Common Stock at a fixed price. Until holders of Warrants and Pre-Funded Warrants acquire shares of our Common Stock upon exercise of the Warrants and Pre-Funded Warrants, as applicable, holders of Warrants and Pre-Funded Warrants will have no rights with respect to our shares of Common Stock underlying such Warrants and Pre-Funded Warrants.

You may be unable to exercise the Warrants and they may have no value if Stockholder Approval is not obtained.

The Warrants shall not be exercisable until after the date that Stockholder Approval is obtained, and the Warrants will expire five (5) years after the date we obtain Stockholder Approval. If we are unable to obtain such Stockholder Approval, the Warrants may have no value and may expire worthless. In no event may the Warrants be net cash settled, until they initially become exercisable. We will request that certain investors in this offering whose investment exceeds \$100,000 enter into a voting agreement whereby each such investor will agree to vote all shares of Common Stock that they beneficially own on the closing date of this offering with respect to any proposals presented to the stockholders of the Company at the Company's next meeting of its stockholders, including the contemplated reverse stock split proposal. However, existing holders of Common Stock may have an incentive to vote against the proposal for such a reverse stock split in order to prevent dilution in their interests by the shares of Common Stock issuable upon exercise of the Warrants. In addition, there is no guarantee that any investors in this offering will agree to enter into any voting agreement.

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 The Nasdaq Stock Market LLC, 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. There can be no assurances that we will be able to comply with the applicable listing standards of The Nasdaq Stock Market LLC.

On October 5, 2023, we received written notice from the Nasdaq Listing Qualifications staff (the "Staff"), notifying us that we are 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 the Common Stock was below \$1.00 per share for the previous thirty (30) consecutive business days. Pursuant to Nasdaq Listing Rule 5810(c)(3)(A), we were provided with a compliance period of 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 by April 2, 2024, we may be eligible for additional time to regain compliance.

On November 17, 2023, we received a letter from the Nasdaq Listing Qualifications staff (the "Staff") notifying us that we were not in compliance with Nasdaq Listing Rule 5550(b)(1), which requires companies listed on Nasdaq to maintain a minimum of \$2,500,000 in stockholders' equity for continued listing (the "Stockholders' Equity Requirement"). We reported stockholders' equity (deficit) of \$885,000 in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2023, and, as a result, we did not satisfy the Stockholders' Equity Requirement pursuant to Listing Rule 5550(b)(1). Pursuant to the letter, we were required to submit to Nasdaq a plan to regain compliance with the Stockholders' Equity Requirement by January 2, 2024. We submitted to Nasdaq a plan to regain and demonstrate long-term Nasdaq Listing Qualifications compliance on January 2, 2024.

If the Staff accepts the plan, the Staff may grant the Company an extension of up to 180 calendar days from November 17, 2023 to evidence compliance with the Stockholders' Equity Requirement. If the Staff does not accept the Company's plan, the Company may request a hearing, at which hearing it would present its plan to a Nasdaq Hearings Panel and request the continued listing of its securities on Nasdaq pursuant to and pending the completion of such plan. During the pendency of the hearing process, the Company's securities would continue to be listed on Nasdaq.

There can be no assurances that we will be able to regain compliance, or, in the event we regain compliance, maintain continued compliance. If we are unable to regain or maintain compliance with the Nasdaq continued listing 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 Stockholders' Equity Requirement, or 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 Securities Exchange Act of 1934, as amended (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.

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 December 31, 2023, the reported closing price of our Common Stock has fluctuated between \$0.12 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, 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.

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.

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. 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.

We may issue “blank check” preferred stock 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. Our Board 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 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.

The Series B Preferred Stock has a liquidation preference over our Common Stock.

The Series B Preferred Stock has a liquidation preference that gets paid prior to any payment on our Common Stock. As a result, if we were to liquidate, dissolve or wind-up, each holder of our Series B Preferred Stock would have the right to receive payment out of our assets available for distribution, before any amount is paid to the holders of our Common Stock, in an amount equal in cash to 100% of the stated value of all shares of Series B Preferred Stock held by such holder, plus any other fees then due and owing thereon, 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 of Series B Preferred Stock 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 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 \$100.00 per share at the dividend rate of 20%. The PIK dividends will be a one time payment payable to the holders of the Series B Preferred Stock of record at the close of business on October 17, 2024. The payment of the liquidation preferences on the Series B Preferred Stock could result in holders of our Common Stock not receiving any proceeds if we were to liquidate, dissolve or wind up, either voluntarily or involuntarily.

The existence of the liquidation preferences may reduce the value of our Common Stock, make it harder for us to sell shares of Common Stock in offerings in the future, or prevent or delay a change of control.

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.

You may experience immediate and substantial dilution in the pro forma net tangible book value per share of the Common Stock included as part of the Units sold in this offering or that may be issued upon the exercise of any Pre-Funded Warrants included as parts of the Pre-Funded Units sold in this offering.

The price per share of our Common Stock being offered as part of the Units or that may be issued upon the exercise of any Pre-Funded Warrants included as part of the Pre-Funded Units is higher than the pro forma net tangible book value per share of our Common Stock. Therefore, you will suffer immediate and substantial dilution in the pro forma net tangible book value of the Common Stock if you purchase securities in this offering. Furthermore, if outstanding warrants are exercised, or the Warrants issued in connection with this offering are exercised, you could experience further dilution. See the section entitled “Dilution” below for a more detailed discussion of the dilution you will incur if you invest in this offering.

You may experience future dilution as a result of future equity offerings and other issuances of our Common Stock or other securities. In addition, this offering and future equity offerings and other issuances of our Common Stock or other securities may adversely affect our Common Stock price.

In order to raise additional capital, we may in the future offer additional shares of our Common Stock or other securities convertible into or exchangeable for our Common Stock at prices that may not be the same as the price per Unit or Pre-Funded Unit in this offering. We may not 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 Unit or Pre-Funded Unit paid by the investors in this offering, and investors purchasing shares or other securities in the future could have rights superior to existing stockholders. 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 Unit or Pre-Funded Unit in this offering. You may incur dilution upon exercise of any outstanding warrants or upon the issuance of shares of Common Stock under our equity incentive programs. In addition, the sale of securities in this offering and any future sales of a substantial number of shares of our Common Stock in the public market, or the perception that such sales may occur, could adversely affect the price of our Common Stock. We cannot predict the effect, if any, that market sales of those shares of Common Stock or the availability of those shares for sale will have on the market price of our Common Stock.

General Risk Factors

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.

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, RSUs 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.

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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.

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CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains various forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of 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, 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 headings “Prospectus Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business” 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 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.

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USE OF PROCEEDS

We estimate that the net proceeds from this offering will be approximately \$9.0 million (assuming the sale of all securities offered hereby, at the assumed public offering price of \$0.10 per Unit, the closing sale price of our Common Stock on Nasdaq on January 29, 2024, and assuming no sale of any Pre-Funded Units and no exercise of the Warrants issued in connection with this offering), after deducting the placement agent fees and estimated offering expenses payable by us. However, 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's 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.

A \$0.03 increase (decrease) in the assumed public offering price of \$0.10 per Unit would increase (decrease) the net proceeds to us from this offering by approximately \$2.8 million, using the same assumptions set forth above.

Similarly, a 100,000 increase (decrease) in the number of Units offered by us, as set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us by approximately \$9,000, using the same assumptions set forth above.

We intend to use the proceeds of this offering for repurchase of 62,657 shares of outstanding Series B Preferred Stock at \$100 per share and other 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 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.

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DILUTION

If you invest in the securities being offered by this prospectus, your interest will be diluted immediately to the extent of the difference between the public offering price per Unit and the pro forma net tangible book value per share of our Common Stock after this offering.

Our historical net tangible book value as of September 30, 2023 was \$885,000, or \$0.13 per share of our Common Stock. Historical net tangible book value per share represents the amount of our total tangible assets, less total liabilities, divided by the number of shares of our Common Stock outstanding as of September 30, 2023.

Our pro forma net tangible book value was \$5,095,000, or \$0.15 per share of our Common Stock. Pro forma net tangible book value represents the amount of our total tangible assets less our total liabilities, after giving effect to (i) the Series B Preferred Stock Offering (including the Warrant Repurchase), (ii) the Warrant Inducement Transaction, (iii) the repayment in full of the Meriwether Loan (as defined below), (iv) the net issuance of 184,699 shares of Common Stock under the Company's equity incentive plans (the "Restricted Stock Activity"), (v) the Conversion, (vi) the 2024 Bridge Private Placement, (vii) the repayment in full of the 2024 Bridge Promissory Notes and (viii) the exercise of 32,600 Series B Preferred Stock Warrants.

After giving effect to (i) the sale of 100,000,000 Units at the assumed public offering price of \$0.10 per Unit (the closing sale price of our Common Stock on Nasdaq on January 29, 2024, and assuming no sale of any Pre-Funded Units and no exercise of the Warrants issued in connection with this offering), after deducting the placement agent fees and estimated offering expenses payable by us and (ii) the Series B Repurchase and Cancellation Transaction, our pro forma as adjusted net tangible book value as of September 30, 2023 would have been approximately \$7,869,000 or approximately \$0.06 per share. This represents an immediate decrease in net tangible book value of approximately \$0.09 per share to our existing stockholders and an immediate dilution of approximately \$0.04 per share to purchasers of our securities in this offering, as illustrated by the following table:

Assumed public offering price per Unit	\$	0.10
Pro forma net tangible book value per share, as of September 30, 2023, before giving effect to this offering	\$	0.15
Decrease in pro forma net tangible book value (deficit) per share attributable to new investors in this offering	\$	0.09
Pro forma as adjusted net tangible book value per share, after this offering	\$	0.06
Dilution to pro forma as adjusted net tangible book value per share to investors in this offering	\$	0.04

The dilution information discussed above is illustrative only and will change based on the actual public offering price and other terms of this offering determined at pricing. A \$0.03 increase or decrease in the assumed public offering price of \$0.10 per Unit (and \$0.10 per Pre-Funded Unit) would increase or decrease the pro forma, as adjusted net tangible book value per share by approximately \$2.8 million, and increase or decrease the pro forma, as adjusted net tangible book value per share to investors participating in this offering by approximately \$0.02 per share, assuming the number of Units (and Pre-Funded Units) offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting the placement agent fee and estimated offering expenses payable by us.

To the extent that our outstanding warrants are exercised, you could experience further dilution. To the extent that we raise additional capital through the sale of additional equity, the issuance of any of our shares of Common Stock could result in further dilution to our stockholders.

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MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion together with our financial statements and the related notes included elsewhere in this prospectus. This discussion contains forward-looking statements that are based on our current expectations, estimates and projections about our business and operations. Our actual results may differ materially from those currently anticipated and expressed in such forward-looking statements as a result of a number of factors, including those which we discuss under "Risk Factors" and elsewhere in this prospectus. See "Cautionary Statement Regarding Forward-Looking Statements."

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.

To date, our operations have been funded through sales of our common and preferred equity, proceeds from the exercise of warrants, sale of debt instruments, and revenue from the sale of our products. Our condensed consolidated financial statements contemplate the continuation of our business as a going concern. However, we are subject to the risks and uncertainties associated with an emerging business, as noted above we have no established source of capital, and we have incurred recurring losses from operations since inception.

To date, travel restrictions and border closures have not materially impacted our ability to obtain inventory or manufacture or deliver products or services to customers. However, if such restrictions become more severe, they could negatively impact those activities in a way that would harm our business over the long term. Travel restrictions impacting people can restrain our ability to assist our customers and distributors as well as impact our ability to develop new distribution channels, but at present we do not expect these restrictions on personal travel to be material to our business operations or financial results.

Critical Accounting Estimates

The following discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in conformity with accounting principles generally accepted in the United States of America. Certain accounting policies and estimates are particularly important to the understanding of our financial position and results of operations and require the application of significant judgment by our management or can be materially affected by changes from period to period in economic factors or conditions that are outside of our control. As a result, they are subject to an inherent degree of uncertainty. In applying these policies, our management uses their judgment to determine the appropriate assumptions to be used in the determination of certain estimates. Those estimates are based on our historical operations, our future business plans and projected financial results, our observance of trends in the industry and information available from other outside sources, as appropriate.

Comparison of the Three and Nine Months Ended September 30, 2023 and 2022

Revenue

Revenue for the three months ended September 30, 2023 was \$769,000, a decrease of \$168,000 or 18%, compared to the revenue for the three months ended September 30, 2022 of \$937,000. The decrease in overall sales is primarily related to a slow-down in consumer spending on consumer electronics which resulted in lower Component revenue of \$437,000 offset partially by higher Consumer Audio Product revenue of \$269,000, when compared to the three months ended September 30, 2022.

Revenue for the nine months ended September 30, 2023 was \$1,663,000, a decrease of \$786,000 or 32%, compared to the revenue for the nine months ended September 30, 2022 of \$2,449,000. The decrease in overall sales is primarily related to a slow-down in consumer spending on consumer electronics which resulted in lower Component revenue of \$870,000 offset slightly by higher Consumer Audio Product revenue of \$84,000, when compared to the nine months ended September 30, 2022.

Gross Profit and Operating Expenses

Gross Profit (Deficit)

Gross deficit for the three months ended September 30, 2023 was (\$1,669,000) a decrease of \$1,799,000, compared to \$130,000 gross profit for the three months ended September 30, 2022. The gross margin (deficit) as a percent of sales was (217%) for the three months ended September 30, 2023, compared to 14% for the three months ended September 30, 2022. The decrease in gross profit and gross margin as a percent of sales is mainly attributable to a \$1.4 million increase in inventory reserves primarily attributable to our semiconductor chips, lower sales volumes in relation to the fixed portion of costs and lower pricing of our Consumer Audio Products.

Gross deficit for the nine months ended September 30, 2023 was (\$3,123,000), a decrease of \$3,503,000 compared to \$380,000 gross profit for the nine months ended September 30, 2022. The gross margin (deficit) as a percent of sales was (188%) for the nine months ended September 30, 2023, compared to 16% for the nine months ended September 30, 2022. The decrease in gross profit and gross margin as a percent of sales is mainly attributable to a \$2.8 million increase in inventory reserves primarily attributable to our semiconductor chips, lower sales volumes in relation to the fixed portion of costs and lower pricing of our Consumer Audio Products.

Research and Development

Research and development expenses for the three months ended September 30, 2023 were \$1,838,000, a decrease of \$101,000, compared to the research and development expenses for the three months ended September 30, 2022 of \$1,939,000. The decrease in research and development expenses is primarily related to decreased salary and benefit expenses of \$71,000 and consulting expenses, which includes outside engineering expenses of \$52,000.

Research and development expenses for the nine months ended September 30, 2023 were \$5,664,000, an increase of \$305,000 compared to the research and development expenses for the nine months ended September 30, 2022 of \$5,359,000. The increase in research and development expenses is primarily related to increased consulting

expenses, which includes outside engineering and direct materials used in research and development of \$292,000 and \$48,000, respectively, partially offset by reduced recruiting fees of \$128,000.

Sales and Marketing

Sales and marketing expenses for the three months ended September 30, 2023 were \$1,404,000, a decrease of \$135,000, compared to the sales and marketing expenses for the three months ended September 30, 2022 of \$1,539,000. The decrease in sales and marketing expenses is primarily related to lower website development and advertising fees of \$96,000 and \$61,000, respectively, partially offset by increased consulting fees of \$31,000.

Sales and marketing expenses for the nine months ended September 30, 2023 were \$3,787,000 a decrease of \$378,000, compared to the sales and marketing expenses for the nine months ended September 30, 2022 of \$4,165,000. The decrease in sales and marketing expenses is primarily related to lower advertising expenses and website expenses of \$191,000 and \$160,000, respectively.

General and Administrative

General and administrative expenses for the three months ended September 30, 2023 were \$1,428,000, an increase of \$28,000, compared to the general and administrative expenses for the three months ended September 30, 2022 of \$1,400,000. The increase in general and administrative expenses is primarily related to increased investor relations expenses of \$173,000, offset partially by reduced legal fees of \$107,000.

General and administrative expenses for the nine months ended September 30, 2023 were \$4,260,000, an increase of \$652,000, compared to the general and administrative expenses for the nine months ended September 30, 2022 of \$3,608,000. The increase in general and administrative expenses is primarily related to increased investor relations expenses, accounting fees and legal fees of \$465,000, \$100,000 and \$61,000, respectively.

Interest Expense, net

Interest expense, net for the three and nine months ended September 30, 2023 was \$52,000 and \$812,000, respectively. Interest expense, net for the three and nine months ended September 30, 2022 was \$173,000 and \$174,000, respectively.

Interest expense for the three months ended September 30, 2023 was primarily due to the amortization of debt discounts associated with the short-term loan that the Company issued in September 2023. Interest expense for the nine months ended September 30, 2023 was primarily due to the amortization of debt discounts associated with the senior secured convertible note that the Company issued in August 2022 and repaid in full on April 11, 2023.

Interest expense for the three and nine months ended September 30, 2022 was primarily due to the amortization of debt discounts associated with the convertible debt that the Company issued in August 2022.

Change in Fair Value of Warrant Liabilities

Change in fair value of warrant liabilities for the three months ended September 30, 2023 was \$284,000, compared to \$274,000 for the three months ended September 30, 2022. The change in fair value of the warrant liabilities for the three months ended September 30, 2023 was primarily due to the decrease in the price of our common stock at September 30, 2023 compared to the price of our common stock on the date of the warrant issuance as well as the decline in our common stock price from June 30, 2023, related to existing warrant liabilities.

Change in fair value of warrant liabilities for the nine months ended September 30, 2023 was \$6,134,000, compared to \$274,000 for the nine months ended September 30, 2022. The change in fair value of the warrant liabilities for the nine months ended September 30, 2023 was due to the issuance of warrants in February 2023 and the subsequent decrease in the price of our common stock at September 30, 2023 compared to the price of our common stock on the date of the warrant issuance as well as the decline in our common stock price from December 31, 2022, related to existing warrant liabilities.

Loss on Debt Extinguishment

During the three and nine months ended September 30, 2023, the Company recorded a loss on debt extinguishment of \$0 and \$837,000. The loss is directly related to the Company's April 2023 repayment of the Convertible Note in the amount of \$1,656,744. The repayment of the entirety of the outstanding balance of such note, included the unpaid principal, interest through the payoff date, and a pre-payment premium of \$276,000. The loss also includes the expensing of the related unamortized debt discounts totaling \$894,000, offset partially by a \$333,000 gain on termination of a derivative liability that was established in connection with the Convertible Note.

Comparison of the Years Ended December 31, 2022 and 2021

Revenue

Revenue for the year ended December 31, 2022 was \$3,365,000, a decrease of \$3,176,000, or 49%, compared to the revenue of \$6,541,000 for the year ended December 31, 2021. The decrease was a result of lower Component revenue which decreased by \$3,189,000, compared to the year ended December 31, 2021, offset partially by Consumer Audio Product sales which increased by \$13,000, compared to the year ended December 31, 2021. The decrease in Component revenue was due in part to (i) a slow-down in consumer spending on consumer electronics which resulted in excess end product inventory at retailers and (ii) supply chain interruptions experienced by certain of our customers as a result of COVID-19, with their delaying orders to us until other components for their products could be obtained.

Gross Profit and Operating Expenses

Gross Profit

Gross profit for the year ended December 31, 2022 was \$395,000 a decrease of \$1,469,000 compared to \$1,864,000 gross profit for the year ended December 31, 2021. The decrease in gross profit is mainly attributable to low volumes of Component sales. The gross margin as a percent of sales was 11.7% for the year ended December 31, 2022 compared to 28.5% for the year ended December 31, 2021, a decrease of 16.8 points. The decrease in gross margin as a percent of sales was due in part to (i) reduced sales volumes in comparison to the fixed portion of costs included in our manufacturing and (ii) the Company's fourth quarter 2022 price reductions of its consumer audio products in response to the slowdown in consumer spending on consumer electronics.

Research and Development

Research and development expenses for the year ended December 31, 2022 were \$7,144,000, an increase of \$1,908,000, compared to expenses of \$5,236,000 for the year ended December 31, 2021. The increase in research and development expenses is primarily related to increased salary and benefit expense of \$874,000, increased stock-based compensation, professional and consulting expense and recruiting fees of \$106,000, \$783,000 and \$95,000, respectively.

Sales and Marketing

Sales and marketing expenses for the year ended December 31, 2022 were \$6,140,000, an increase of \$2,017,000, compared to expenses of \$4,123,000 for the year ended December 31, 2021. The increase in sales and marketing expenses is primarily related increased salary and benefit expenses of \$336,000, increased stock-based compensation, professional and consulting expenses, advertising and public relation expenses and tradeshow expenses of \$286,000, \$283,000, \$808,000, \$69,000, respectively.

General and Administrative

General and administrative expenses for the year ended December 31, 2022 were \$5,155,000, an increase of \$1,139,000, compared to expenses of \$4,016,000 for the year ended December 31, 2021. The increase in general and administrative expenses is primarily related to increased stock-based compensation, professional and consulting expenses and board fees of \$227,000, \$653,000 and \$85,000, respectively.

Interest Expense, net

Interest expense, net for the year ended December 31, 2022 was \$898,000, compared to \$9,000 for the year ended December 31, 2021. The increase of \$889,000 in interest expense, net for the year ended December 31, 2022, was primarily due to the amortization of debt discounts associated with the senior secured convertible note in the principal amount of \$3,600,000 (the "Convertible Note") that the Company incurred in August 2022. Minimal interest expense, net for the year ended December 31, 2021, was primarily related to interest accrued on the Paycheck Protection Loan which was forgiven in the third quarter of 2021.

Change in Fair Value of Warrant Liability

Change in fair value of warrant liability for the year ended December 31, 2022 was approximately \$2,852,000, compared to \$0 for the year ended December 31, 2021. The change in fair value of the warrant liability for the year ended December 31, 2022 was due to the issuance of warrants during December 2022 associated with our stock offering and the subsequent decrease in our common stock price at year end compared to the price of our stock on the date of the warrant issuance.

Change in Fair Value of Derivative Liability

Change in fair value of derivative liability for the year ended December 31, 2022 was approximately \$47,000, compared to \$0 for the year ended December 31, 2021. The change in fair value of the derivative liability for the year ended December 31, 2022 was due to the decrease in our common stock price.

Gain on Forgiveness of Paycheck Protection Program Loan

We recorded a gain of \$859,000 due to the forgiveness of the Paycheck Protection Loan for the year ended December 31, 2021. No such forgiveness occurred during the year ended December 31, 2022.

Warrant Inducement Expense

Warrant inducement expense was \$1,146,000 for the year ended December 31, 2021. Such warrant inducement expense represents the fair value of warrants issued to warrant holders in connection with a solicitation of such warrant holders to exercise their outstanding warrants during the year ended December 31, 2021. No such inducement expense occurred during the year ended December 31, 2022.

Deemed Dividend on Exchange of Convertible Preferred Stock for Common Stock

During the year ended December 31, 2021, the Company recorded a deemed dividend of \$1,192,000 in connection with the exchange of all 250,000 shares of preferred stock for 250,000 shares of common stock and warrants to purchase up to 187,500 shares of common stock, which warrants were subsequently fully exercised on a cashless basis for 79,244 shares of common stock. No such deemed dividend occurred the year ended December 31, 2022.

Liquidity and Capital Resources

Cash and cash equivalents as of September 30, 2023 were \$212,000 compared to \$2,897,000 as of December 31, 2022.

We incurred a net loss of \$12,358,000 for the nine months ended September 30, 2023 and used net cash in operating activities of \$12,101,000. We incurred a net loss of \$12,661,000 for the nine months ended September 30, 2022 and used net cash in operating activities of \$12,896,000. Excluding non-cash adjustments, the primary reasons for the decrease in the use of net cash from operating activities during the nine months ended September 30, 2023, was related to a decrease in inventories, partially offset by an increase in accounts receivable and prepaid expenses and a decrease in accrued liabilities.

We have financed our operations to date primarily through the issuance of equity securities, proceeds from the exercise of warrants common stock and sale of debt instruments. In August 2022, we received net proceeds of \$2.5 million from the issuance of a convertible promissory note to an investor. In December 2022, we received net proceeds of \$6.4 million, from the issuance of 540,000 shares of common stock (includes the exercise of 36,000 pre-funded warrants) and the issuance of 1,080,000 warrants to purchase common stock. In February 2023, we received net proceeds of approximately \$5.3 million from the issuance of 583,306 shares of common stock (includes the exercise of 381,762 pre-funded warrants) and the issuance of 874,959 warrants to purchase common stock. In March 2023, we received net proceeds of approximately \$1.6 million from the issuance of 837,207 shares of common stock and the issuance of 1,674,414 warrants to purchase common stock. In April 2023, we received net proceeds of approximately \$1.0 million through the issuance of common stock and warrants. In May 2023, we received net proceeds of approximately \$1.9 million in connection with a warrant inducement. In July 2023, we received net proceeds of approximately \$0.6 million in connection with a warrant inducement. In September 2023, we secured a term loan in the principal amount of \$650,000 from a related party. In October 2023, we received gross proceeds of approximately \$4.8 million, prior to underwriting discounts, commissions, and offering expenses, from the issuance of 87,000 shares of preferred stock and the issuance of 174,000 warrants to purchase preferred stock. In December 2023, we received gross proceeds of approximately \$2.1 million in connection with the Warrant Inducement Transaction. We will need to raise additional proceeds via the issuance of equity securities and/or the sale of debt instruments in the first quarter of 2024 to fund operations for the second, third and fourth quarters of fiscal year 2024.

Going Concern

The Company has incurred net operating losses each year since inception. As of September 30, 2023, the Company had cash and cash equivalents of \$0.2 million and reported

net cash used in operations of \$12.1 million during the nine months ended September 30, 2023. The Company expects operating losses to continue in the foreseeable future because of additional costs and expenses related to research and development activities, plans to expand its product portfolio, and increase its market share. The Company's ability to attain profitable operations is dependent upon achieving a level of revenues adequate to support its cost structure.

Based on current operating levels, the Company will need to raise additional funds by selling additional equity or incurring debt. To date, the Company has funded its operations primarily through issuance of equity securities and proceeds from the exercise of warrants to purchase common stock and the sale of debt instruments. Additionally, future capital requirements will depend on many factors, including the rate of revenue growth, the selling price of the Company's 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 the Company's products. These factors raise substantial doubt about the Company's ability to continue as a going concern for the twelve months from the date of this prospectus.

Management of the Company intends to raise additional funds through the issuance of equity securities or debt. There can be no assurance that, in the event the Company requires additional financing, such financing will be available at terms acceptable to the Company, if at all. Failure to generate sufficient cash flows from operations, raise additional capital and reduce discretionary spending could have a material adverse effect on the Company's ability to achieve its intended business objectives. As a result, the substantial doubt about the Company's ability to continue as a going concern has not been alleviated. The accompanying condensed consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

BUSINESS

Overview

We believe that the future of audio technology is in wireless devices and that WiSA is well positioned to deliver best-in-class immersive wireless sound technology for intelligent devices and next generation home entertainment systems. Historically we have sold modules which wirelessly transmit and receive audio directly to speakers. In late 2023, we launched a new wireless technology, WiSA E, that is software based and works with standard Wi-Fi chips. Additionally, we plan to license our proprietary software technology, currently embedded in our wireless modules, to other companies who can then embed our technology into other Wi-Fi enabled smart devices. The segment of the wireless audio market that WiSA focuses on is comprised of scalable multichannel solutions with levels of latency that are low enough to synchronize with video. The term multichannel refers to the use of multiple audio tracks to reconstruct a sound field using multiple speakers.

As part of the effort to grow the wireless multichannel home audio segment, WiSA Technologies, Inc. was a founding member of the WiSA Association, an association dedicated to providing industry leadership and consumer choice through interoperability testing between brands. Products certified and marked with a WiSA Association logo have been tested to inter operate. This preserves consumer choice by enabling consumers to choose different wireless transmitting products across different brands where audio is decoded with speakers that have the WiSA Association logo displayed. Our marketing strategy focuses on, what we believe, are two emerging wireless audio market needs: immersive, multi-channel audio and robust wireless performance. WiSA sold custom semiconductor chips and wireless modules to premium audio brands in the consumer electronics industry. We believe that a growing adoption of our technology by leaders in this industry will revolutionize the way people experience media content through their mobile and handheld devices, televisions ("TVs"), soundbars ("SBs"), set-top-boxes/streaming devices and personal computers ("PCs").

Our Business Focus

Our primary business focus is to enable mainstream consumers and audio enthusiasts to experience high quality wireless immersive 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 software onto commercially available internet of things ("IoT") modules with integrated Wi-Fi technology.

Industry Background

The primary growth segments for in-home entertainment have been "Bluetooth" stereo accessories which include single speakers, headsets, and more recently, "multi-room" stereo speakers that use your home's Wi-Fi network to stream audio throughout house. Another market that continues to grow is the sound bar market. Sound bars are typically sold with wireless subwoofers and may also be sold with wireless rear speakers.

Our Technology

Our fundamental technology addresses some of the main issues that we perceive hinder the growth of immersive audio in the home: complexity of setup, cost, interoperability between smart devices and the speakers, and robust wireless performance. We believe that consumers want to experience theater-quality immersive sound from the comfort of their homes. However, traditional immersive audio systems, commonly referred to as home theater surround sound systems, are wired and often require expensive audio-visual ("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. 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. Our next generation technology, WiSA E, is software IP designed for (i) easy implementation for the manufacturing brand to design with, (ii) broad flexibility to accommodate various price points and business models, and (iii) maintaining high quality wireless performance for the consumer.

Having successfully developed wireless audio solutions for the high-end of the immersive audio market, WiSA is continuing its development of proprietary software (WiSA E) targeted at bringing its best-of-class immersive audio technology to entry/mid-level audio systems. Noting the growth of the sound bar market, WiSA plans a low-cost, entry-level wireless audio solution designed to meet the needs of the consumer looking for a sound bar-based, value-driven immersive audio system. To address this market segment, WiSA is currently developing certain proprietary software for which patent applications have been submitted that will enable sound bars as well as smart devices that have Wi-Fi and video media to deliver immersive audio. First development kits for WiSA E began to ship during late Q3 2023 (pursuant to confidentiality agreements). Our goal is to commercialize 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 systems on a chip ("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.

WiSA Association

Our wholly-owned subsidiary, WiSA, LLC, operates the WiSA Association, which is an association 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 WiSA's technology. The WiSA Association creates, maintains and manages specifications for wireless interoperability that are available to all WiSA Association members. For products with a WiSA Association certification, the WiSA Association also creates, maintains, and manages testing criteria and specifications for all products to be listed, marketed and sold. WiSA-certification is an industry-wide "stamp of approval" certifying that a product is interoperable with other products in the WiSA ecosystem and has passed several high-performance tests ensuring interoperability and wireless performance standards are met. As the sole owner of WiSA, LLC, we certify all WiSA Association products.

WiSA, LLC is also the IP licensing organization for WiSA E interoperable transmission from smart devices to audio devices. In Q4, 2023, WiSA, LLC announced a licensing program for display devices (TVs and projectors). In the first 90 days three manufacturers have signed licenses.

Currently, WiSA-certified products are required to use WiSA modules in order to meet the standards set by the WiSA Association. As a result, WiSA Association members purchase modules from us in order to build their products to meet such standards.

Among WiSA-certified products, consumers will be able to outfit their home entertainment system with WiSA-certified speakers and components from any participating vendor with the assurance that the devices will interoperate and provide high quality wireless HD surround sound.

The WiSA Association manages logo usage and trademark guidelines, investigates alternative markets, connects brands to manufacturing resources, and, we believe, provides industry leadership in solving the challenges facing the home theater and commercial markets in the integration of wireless audio technology.

Modules

WiSA has designed wireless modules that provide high performance wireless audio for our customers to integrate into their products, such as a speakers, TVs, soundbars, set-top-boxes, and HDMI dongles. These modules can be designed using our custom semiconductors with our IP built in, as well as a Wi-Fi radio for communications or with our WiSA E software loaded onto a third party IoT Wi-Fi chip. By designing and selling these modules, we believe that we can reduce our customers' design expense, accelerate their time-to-market cycle, and reduce the cost of each module. The consumer's smart devices must have interoperable WiSA modules compatible with the WiSA transmit technology. Speakers, with the matching "RX" model, receive the wireless audio signal and processes it for audio play out.

The WiSA Opportunity

We believe that the following attributes: cost, mobility, video support, ease of installation and quality create a market opportunity for WiSA's technologies to be adopted by the consumer electronics industry as described further below.

Cost

We believe that the simplicity and cost structure of both our original technology and our embedded software solution will make our prices competitive for a wider range of applications in their respective markets, allowing consumer electronics companies to integrate our technology, while also delivering high quality audio.

Video Support

Wireless audio capable of supporting video has become a priority for consumers across a variety of high-volume multimedia platforms, including TV's, smartphones, game consoles and set-top boxes. Video applications require audio and video to be perfectly synchronized in order to avoid lip-sync and speaker audio phase distortion issues. WiSA's technology prioritizes wireless robustness, latency and speaker synchronization to create an entertaining experience.

Ease of Installation

We believe that the home entertainment market has moved toward simplicity in recent years. The costly and inconvenient home theaters of the past have left consumers with a desire for audio systems that provide a simplified installation process. We believe that as the TVs adopt broad use of Dolby Atmos and Dolby Atmos Music, which delivers the immersive audio decoding, new audio systems, including the predominant sound bar system, will need to provide a higher level of performance, especially in the surround-sound market. WiSA's technology greatly simplifies the installation process of true surround-sound systems. This allows consumers to install an immersive audio system with the same amount of effort as a sound bar, but enjoy a far superior experience. We believe that an overwhelming majority of the content entering consumers' homes through digital TV and streaming services is provided in a multi-channel format, which is why WiSA's goal is to facilitate enjoyment of true surround sound for both the everyday consumer and audio enthusiast.

In addition to easy installation, WiSA's technology provides consumers with a multitude of options, allowing customization of the immersive audio experience individualized to each consumer, without being forced to stick with one brand of speaker. For example, our hope is that a consumer might start with a WiSA enabled sound bar for their TV and then add a WiSA enabled subwoofer. That same system can be easily upgraded to a variety of surround sound systems by simply adding more speakers. Our technology will allow consumers to upgrade an audio system or just one component of the system without the need to replace the entire system. Consumers can keep the original transmitter, sound bar, and subwoofer and integrate them seamlessly into a new system. Being able to outfit a home entertainment system with WiSA-enabled speakers and components gives consumers the ability to express their individual preference and needs and provides the assurance that the devices will interoperate, delivering what we believe is the highest standard in HD wireless surround sound.

Dissatisfaction with Bluetooth Performance and Quality

We believe that consumers want better performance and quality from their Bluetooth audio devices. For example, they may want headsets that stay connected over longer distances or products that offer better audio fidelity. By offering a solution that addresses these needs at a comparable price point to Bluetooth, we believe that we can build consumer demand for our technology.

Enjoyment of improved audio on existing content

We believe that the growth in the number of video devices streaming multi-channel audio content, coupled with new 3D immersive sound experiences from Dolby's Atmos and DTS' DTS:X formats, will help propel the demand for wireless speakers well into the future.

Having other devices nearby that also use the 5 GHz band should not affect the performance of a WiSA-enabled audio system, as WiSA's technology can seamlessly switch to another frequency within the 5 GHz band. The 5 GHz U-NII spectrum utilized by WiSA technology has up to 24 channels available that are constantly monitored for interference using the Dynamic Frequency Selection sub-band between 5.2 and 5.8 GHz. When interference is detected, the next channel, having been monitored for over one minute and confirmed for accessibility, is ready to be accessed and WiSA-enabled devices switch seamlessly to that channel, without the user ever noticing or the audio experience being affected.

What Distinguishes WiSA from its Competitors

Both the proprietary technology and the adoption of the technology by leaders in consumer electronics are differentiating factors for WiSA. Our management believes that WiSA is one of the only companies with the technical capabilities of transmitting high resolution, low latency, and speaker synchronization of wireless audio capable of supporting up to eight channels. Premium consumer brands, like Bang & Olufsen, Harman International, a division of Samsung, and LG Electronics have begun to adopt our technology as a valued feature in performance products.

Category Defining Wireless Audio

Our first generation wireless audio technology delivers industry leading eight channels of uncompressed audio directly to the speakers in 24 bit and up to 96 kHz sample rates. This means that a consumer can experience audio exactly as it was mastered in the studio. WiSA's technology supports surround sound systems up to 7.1 or 5.1.2 for Dolby Atmos® configurations.

Alternative technologies such as, Bluetooth and Wi-Fi standards were not designed to transmit fixed low latency audio that is synchronized to video. However, Bluetooth and Wi-Fi standards can work well for audio-only wireless transmission, when video is not a part of the listening experience. In audio-only applications, latency is less critical and audio data can be buffered in memory to ensure proper speaker synchronization even when data retransmissions are needed in today's congested wireless environments. In video applications, retransmissions add to latency. Standard Bluetooth and Wi-Fi standards have long variable latency that can exceed acceptable audio to video synchronization and make quality multichannel audio experience unachievable. A few custom silicon-based solutions exist today that improve on Bluetooth and Wi-Fi standards based performance, but compared to WiSA, such products have longer latencies, lower performing speaker synchronization, and are limited to 2-4 audio channels and often only support 16 bit CD quality audio.

WiSA's technology roadmap includes proprietary software that will enable standard Wi-Fi protocol to support multi-channel audio for video applications, while permitting WiSA to leverage Wi-Fi's lower chip and module cost structure. WiSA's first generation technology was designed for the mid to high end home theater market and offers a unique feature set that is expected to be included in new product designs for years. WiSA's new Wi-Fi strategy enables the Company to compete in the entry-level home theater market at Bluetooth price points, while delivering superior multi-channel performance for higher volume applications. The Company's recently announced Discovery module is the first product that integrates WiSA's new software which enables a transceiver module to keep up to four independent wireless audio channels synchronized in a room size up to 10 meters square. The Discovery modules is ideally suited for entry level home entertainment systems, including sound bars, TVs, subwoofers and Dolby Atmos® applications.

WiSA Customers

WiSA currently sells wireless modules containing custom semiconductor chips to a growing list of consumer electronics customers, including major brands such as Bang & Olufsen, KEF, LG, Harman International, a division of Samsung, Savant, Skyworth and System Audio. We believe that the use of our products by well-known consumer electronics brands will provide an opportunity to create wireless audio products that are simple to install and perform at high levels. Brands such as Bang & Olufsen and Harman have chosen WiSA technology to drive their wireless home audio/theater product assortments. We believe that their leadership has brought credibility to the technology and paved the way at retail for other brands to follow.

Our Strategy

Our goal is to establish and maintain a leadership position as the ubiquitous standard for hi-fidelity wireless, multichannel audio. To obtain and enhance our position as the leading standard in the audio space, we intend to:

- improve recognition of our WiSA Certification brand and the WiSA standard brand;
- provide excellent products and services to our customers and members;
- make sure our technology is accessible to many consumers by having our technology in consumer electronics devices that sell at a variety of price points;
- expand market awareness of wireless multi-channel hi-fidelity audio experience availability;
- reduce hardware costs;

- enhance and protect our IP portfolio;
- invest in highly qualified personnel; and
- build innovative products alongside the world's leading consumer electronics companies.

We currently sell our modules in relatively small quantities. As we introduce WiSA E technology to customers, with its lower price points and great flexibility for designs, we expect that orders for our modules will increase. With larger orders, we believe that we can take advantage of economies of scale and improve gross margins on our modules.

Interoperability

Interoperability is a key aspect of wireless technology. We believe that this is especially true with audio technology, where unique designs, price points, audio quality and capabilities as well as consumer brand loyalties are significant factors for the end consumer. Creating home theater and audio components that all work with an interoperable standard creates a high level of confidence in retailers and consumers in the functionality of the entire entertainment system. Interoperability also increases the opportunity for specialized brands to create new and innovative products knowing they can focus on their specific part of the market and rely on others to create the necessary cohort components.

Proprietary Software

A significant amount of our time and resources are being allocated towards launching a software licensing part of our business under the WiSA E brand. Customers will receive a license for our TX software, so that any of their devices with a suitable Wi-Fi radio can transmit audio compliant with our standard without having to purchase and integrate our TX module. We believe that this software will be well positioned for use by major consumer electronics companies in many devices including TVs, handsets, gaming consoles, and computers. Patent applications have been submitted for key technology innovations in this software.

Research and Development

As of February 2, 2024, our research and development department consisted of 30 dedicated employees. WiSA's engineering team has a wide range of expertise, capable of developing all levels of product design, from Application Specific Integrated Circuits ("ASIC") to modules to finished products. WiSA research and development has and will continue developing trade secrets for Digital Signal Processing ("DSP"), RF design and testing of WiSA technologies.

WiSA has developed multiple ASICs and certified modules for integration into multiple wireless audio designs by ODMs which are currently shipping to consumers. The ASIC hardware solution uses a high-performance proprietary network protocol for transmission of multi-channel audio.

WiSA is also currently shipping and developing modules that are Wi-Fi compatible. The Software ("SW") solution enables multi-channel audio capabilities on off the shelf IoT modules running RTOS and future Linux/Android based multimedia systems. The software solution uses a Wi-Fi network for transmission of multi-channel audio. WiSA released to production a low cost 2.4GHz IoT module supporting (5) audio channels and in the process of porting our software to a 5GHz IoT module in 2024. We have engaged an Indian design center to focus on Android integration of the core SW for embedded TV applications.

Manufacturing, Logistics and Fulfillment

Our modules are designed and developed in Oregon, and our manufacturing is outsourced to contract manufacturers located in China. Our manufacturing facilities have been ISO 9001 and ISO 14001 certified. We purchase components and fabricated parts from multiple suppliers; however, we rely on sole source suppliers for certain components used to manufacture our modules. Several key strategic parts are purchased from suppliers by us and then consigned to our manufacturers, while the vast majority of parts are procured directly by our contract manufacturers. Our operations team manages the pricing and supply of the key components of our modules and seeks to achieve competitive pricing on the largest value-add components, while leveraging our contract manufacturers' volume purchases for best pricing on common parts. We have strong relationships with our manufacturers, helping us meet our supply and support requirements. Our manufacturing partners procure components and assemble our devices in accordance with our purchase orders. Demand forecasts and manufacturing purchase orders are based upon customer orders, historical trends, and analysis from our sales and product management functions. We believe that our manufacturing capabilities are essential to maintaining and improving product quality and performance, and that using outsourced manufacturing enables greater scale and flexibility than establishing our own manufacturing facilities.

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While some modules are delivered from our production facility in Oregon, we have a third-party warehouse and fulfillment center in Hong Kong that delivers the majority of our modules.

Sales Channels and Customers

WiSA sells modules and integrated circuits ("ICs") directly to OEM brands worldwide which in turn, sell their system level products to end customers through a vast channel of retailers and dealer networks. Internationally known brands such as Bang & Olufsen, Harman International, a division of Samsung, LG, System Audio, KEF, and many others are among our current customers, with products aimed at the wireless home theater market. Most of these brands sell through retailers store fronts and online e-tail.

Marketing and Advertising

Effective and consistent marketing and advertising is critical as we grow our wireless audio solutions. We have worked with multiple PR agencies on establishing effective messaging to face all segments within our category including press, brands, reviewers, retailers and consumers. Our focuses are ease of set-up, high quality performance, expandability and the benefits of a true multi-channel surround sound audio solutions.

Competition

The semiconductor industry is intensely competitive and has been characterized by price erosion and rapid technological change. We compete with major domestic and international semiconductor companies, many of which have greater market recognition and greater financial, technical, marketing, distribution and other resources than we have with which to pursue engineering, manufacturing, marketing and distribution of their products. Competitive products include products that: (a) are resistant to interference, low latency, long-range, and able to stream uncompressed audio; (b) target applications in the PC accessory audio, iPod accessory audio, home theater, and consumer & enterprise voice markets; (c) enable smart TVs, computers and mobile devices to connect to their multiple peripherals wirelessly, and simultaneously from a single host, with the ability to mix-and-match peripherals; and (d) utilize Bluetooth technology as a means of transmission.

We believe that our technology competes favorably with our competitors for a variety of reasons, including, among others:

- Our technology transmits audio packets with fixed latency in a manner well-suited for multi-channel audio networks and video applications.
- Our technology contains WiFi compatible software which provides the following future key benefits:
 - o WiFi is not inherently proficient for transporting low latency audio. WiSA has spent the last 5 years developing a protocol that can leverage off the shelf high volume low cost 2.4GHz and 5GHz IoT chips and modules and scale to higher audio channel counts. As chip technology performance improves so will our performance.
 - o WiFi compatibility allows us to operate more efficiently in congested environments while delivering the performance the market demands.
 - o A software solution will allow WiSA Technologies to pivot into new markets quicker than those making custom proprietary chip solutions.

There are many other factors that impact our ability to be competitive and may impact our success against both larger and emerging competitors.

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Intellectual Property

We have key IP assets, including patents and trade secrets developed based on our technical expertise. As of February 2, we had 13 issued and 10 pending U.S. patents covering our technology. Our currently issued patents expire at various times from September 25, 2027 through March 1, 2040.

IP is an important aspect of our business, and our practice is to seek protection for our IP as appropriate. A multi-channel audio for surround sound system has technical requirements not required by simple stereo only systems. Multi-channel systems require each audio channel to be precisely played in time to create a sound field that correlates to video being viewed by a consumer. WiSA has developed hardware and software core technologies that manage system network latency and speaker phase. WiSA's patents are based on protecting our low latency network algorithms and multi receiver synchronization.

We pursue a general practice of filing patent applications for our technologies in the U.S. and occasionally in foreign countries where our customers manufacture, distribute, or sell licensed products. We actively pursue new applications to expand our patent portfolio to address new technological innovations. We have multiple patents covering aspects and improvements for many of our technologies.

Our trademarks cover our various products, technologies, improvements, and features, as well as the services that we provide. These trademarks are an integral part of our technology licensing program, and licensees typically elect to place our trademarks on their products to inform consumers that their products incorporate our technology and meet our quality specifications.

We protect our IP rights both domestically and internationally. From time to time, we may experience problems with OEMs of consumer entertainment products in emerging economies. In the event it becomes necessary, we will take all necessary steps to enforce our IP rights.

Moreover, we have relatively no issued patents outside the U.S. Growing our licensing revenue in developing countries may depend in part on our ability to obtain and maintain patent rights in these countries, which is uncertain. Further, because of the limitations of the legal systems in many countries, the effectiveness of patents obtained or that may in the future be obtained, if any, is uncertain.

Employees

As of February 2, 2024, we had a total 46 employees working in the United States and internationally, 40 of which work full time. In the United States, we had 43 employees, including 30 employees that work in our research and development department, 8 employees in our sales and marketing department, 1 employee that works in our manufacturing/logistics/fulfillment department and 5 employees that work in our general and administrative department. Additionally, we have one logistics employee in China, one sales employee in Taiwan and one sales employee in Korea. None of our employees are currently covered by a collective bargaining agreement, and we have experienced no work stoppages. We consider our relationship with our employees to be good.

Our Corporate Information

We were formed as a limited liability company in Delaware on July 23, 2010. We converted to a Delaware corporation, effective December 31, 2017. Effective as of March 11, 2022, the Company changed its name to "WiSA Technologies, Inc." The address of our corporate headquarters is 15268 NW Greenbrier Pkwy, Beaverton, OR 97006. Our website address is www.wisatechnologies.com. The information contained in or accessible through our website is not part of this prospectus and is intended for informational purposes only.

MANAGEMENT

Executive Officers, Directors and Director Nominees

The following table sets forth the names and ages, as of the date of this prospectus, and titles of the individuals who will serve as our executive officers and members of our Board at the time of the offering.

Name	Position	Age
Brett Moyer	President, Chief Executive Officer and Chairman of the Board	65
Gary Williams	Chief Accounting Officer and VP of Finance	57
Lisa Cummins	Director (1)(3)	54
Dr. Jeffrey M. Gilbert	Director (2)(3)	52
David Howitt	Director	55
Helge Kristensen	Director	63
Sriram Peruvemba	Director (1)(2)	58
Robert Tobias	Director (2)(3)	59
Wendy Wilson	Director (1)	56

(1) Member of the audit committee.

(2) Member of the compensation committee.

(3) Member of the nominating and corporate governance committee.

The following is a summary of the biographical information about our officers and directors.

Brett Moyer, Chief Executive Officer, President and Director and Chairman. Brett Moyer is a founding member of the Company and has served as the President and Chief Executive Officer of the Company and as a member of its Board since August 2010. From August 2002 to July 2010, Mr. Moyer served as president and chief executive officer of Focus Enhancements, Inc., a developer and marketer of proprietary video technology and UWB wireless chips. From February 1986 to May 1997, Mr. Moyer worked at Zenith Electronics Inc. a consumer electronic company, where he had most recently been the vice president and general manager of its Commercial Products Division. Between August 2017 and October 2019, Mr. Moyer served as a member of the board of directors of DionyMed Brands Inc., a company which operated a multi-state, vertically integrated operating platform that designs, develops, markets and sold a portfolio of branded cannabis products. From June 2016 to November 2018, Mr. Moyer served as a member of the board of directors of Alliant International University, a private university offering graduate study in psychology, education, business management, law and forensic studies, and bachelor's degree programs in several fields. From 2003 to December 2015, he served as a member of the board of directors of HotChalk, Inc., a developer of software for the educational market, and from March 2007 to September 2008, he was a member of the board of directors of NeoMagic Corporation, a developer of semiconductor chips and software that enable multimedia applications for handheld devices. Mr. Moyer received a Bachelor of Arts in Economics from Beloit College in Wisconsin and a Master's of Business Administration with a concentration in finance and accounting from Thunderbird School of Global Management. The Company believes that Mr. Moyer is qualified to serve on the Board because of his extensive experience as an executive with technology and electronic companies.

Gary Williams, Chief Accounting Officer and Vice President of Finance. Gary Williams has served as Chief Accounting Officer since September 9, 2019 and as Vice President of Finance since the Company's founding in August 2010. Mr. Williams previously served as Secretary and Chief Financial Officer since the Company's founding in August 2010 until September 9, 2019. In addition, Mr. Williams served as the Chief Financial Officer of Quantum3D, Inc., a training and simulation technology company, from November 2012 to September 2016. Prior to joining the Company, Mr. Williams served as secretary, vice president of finance and chief financial officer of Focus Enhancements Inc., a developer and marketer of proprietary video technology, from January 2001 to July 2010, when the videography and semiconductor businesses of the company were purchased by VITEC Multimedia, Inc. and the Company, respectively. Mr. Williams served as controller, vice president of finance, chief financial officer and secretary of Videonics Inc., a publicly traded company in the consumer electronics business, from February 1995 to January 2001, when Videonics merged with Focus Enhancements, Inc.

From July 1994 to January 1995, Mr. Williams served as controller for Western Micro Technology, a publicly traded company in the electronics distribution business. From January 1990 to June 1994, Mr. Williams worked in public accounting for Coopers & Lybrand LLP. Mr. Williams is a certified public accountant, inactive, and received a Bachelor's Degree in Business Administration, with an emphasis in Accounting, from San Diego State University.

Lisa Cummins. Lisa Cummins has been a member of the Board since June 2019. Ms. Cummins currently serves as Chief Financial Officer for Ayar Labs, a venture backed startup that is developing an optical based "chiptlet" to provide high speed, high density & low power to replace traditional electrical based input/output. She joined Ayar Labs in January 2019 after overseeing a successful sale of Penguin Computing, a private equity backed company, to Smart Global Holdings in June 2018. Prior to that, from May 2007 to October 2012, she served as Chief Financial Officer at Adept Technology, a Nasdaq publicly traded global robotics company, where she oversaw investor relations, led the Sarbanes-Oxley Act of 2002, as amended, compliance, completed multiple acquisitions, and secured bank and equity financing including a secondary public offering. Ms. Cummins is a certified public accountant, inactive, earned a Business Economics degree from the University of California Santa Barbara and a Masters in Business Administration from St. Mary's College. The Company believes that Ms. Cummins is qualified to serve on the Board because of her over 25 years of experience as a growth-oriented financial executive in global high- tech organizations.

Dr. Jeffrey M. Gilbert. Dr. Gilbert has been a member of the Board since April 2015. Dr. Gilbert has been working in the Research and Machine Intelligence and Project Loon teams at Google, Inc. since March 2014, and from January 2014 to March 2014, Dr. Gilbert worked for Transformational Technology Insights LLC, a consulting company, where he served as the sole principal. Previously, from May 2011 to December 2013, Dr. Gilbert was chief technology officer of Silicon Image, Inc., a leading provider of wired and wireless connectivity solutions. Dr. Gilbert was responsible for Silicon Image Inc.'s technology vision, advanced technology, and standards initiatives. Prior to joining Silicon Image Inc., Dr. Gilbert was chief technical officer of SiBEAM Inc., a fabless semiconductor company pioneering the development of intelligent millimeter wave silicon solutions for wireless communications, from May 2005 to May 2011. Before SiBEAM Inc., Dr. Gilbert served as director of algorithms and architecture and other engineering and management positions at Atheros Communications, a semiconductor developer, from May 2000 to May 2005, where he led the development of that company's 802.11n, 802.11g, eXtended Range ("XR"), and Smart Antenna technologies. Dr. Gilbert received a Ph.D. in Electrical Engineering from the University of California Berkeley, an M.Phil. in Computer Speech and Language Processing from Cambridge University, and a B.A. in Computer Science from Harvard College. The Company believes that Dr. Gilbert is qualified to serve on the Board to advise the Company on technology developments and management based on his long-standing experience in the wireless and technology industries.

David Howitt. David Howitt has been a member of the Board since December 2021. Since March 2004, Mr. Howitt has served as the founder and CEO of Meriwether Group LLC, a strategic consulting firm that works with disruptive consumer brands by integrating their visions, developing growth strategies, scaling their brands, and increasing revenue in order to build enterprise value. Prior to founding Meriwether Group LLC, between 1997 to 2008 Mr. Howitt worked in various positions at Adidas US, including managing Licensing and Business Development and as corporate counsel from 1997 to 2001. Mr. Howitt serves as Member Of The Board Of Advisors, Bloch International. Mr. Howitt earned his bachelor's degree, political science/philosophy at Denison University and his JD, environmental and natural resources law at Lewis & Clark Law School. The Company believes that Mr. Howitt is qualified to serve on the Board because of his experience as a growth-oriented leader in a multitude of organizations.

Helge Kristensen. Helge Kristensen has been a member of the Board since August 2010. Mr. Kristensen has held high level management positions in technology companies for the last 25 years and for the last 18 years, he has served as vice president of Hansong Technology, an original device manufacturer of audio products based in China, and as president of Platin Gate Technology (Nanjing) Co. Ltd, a company with focus on service- branding in lifestyle products as well as pro line products based in China. Since August 2015, Mr. Kristensen has served as co-founder and director of Inizio Capital, an investment company based in the Cayman Islands. Mr. Kristensen has been involved in the audio and technology industries for more than 25 years. His expertise is centered on understanding and applying new and innovative technologies. He holds a master's degree in Engineering and an HD-R, a graduate diploma, in Business Administration (Financial and Management Accounting) from Alborg University in Denmark. The Company believes that Mr. Kristensen is qualified to serve on the Board because of his technology and managerial experience as well as his knowledge of the audio industry.

Sriram Peruvemba. Sriram Peruvemba has been a member of the Board since June 2020. He is the CEO of Marketer International Inc., a marketing services firm, a position he has held since July 2014. Mr. Peruvemba currently serves on a number of additional boards, including as a member of Visionect d.o.o since September 2017, as a member of Omniply Technologies since May 2020, as a member of Edgehog Technologies since January 2023, as a member of SmartKem Inc. since July 2023, and as a member of Azumo since July 2023. He previously served as board member and chair of marketing for the Society for Information Display from August 2014 to July 2020. Mr. Peruvemba was previously the Chief Marketing Officer at E Ink Holdings, where he played a major role in transforming the startup to a global company with a valuation greater than \$1 billion. With over 30 years of experience in the technology industry, Mr. Peruvemba has been an influential advocate in the advancement of electronic hardware technologies. Based in Silicon Valley, Mr. Peruvemba advises high tech firms in the US, Canada, and Europe. He received a bachelor's degree in Engineering from Bangalore University, an MBA degree from Wichita State University and a post-graduate diploma in management from Indira Gandhi National Open University. The Company believes that Mr. Peruvemba is qualified to serve on the Board because of such experience and because he is an acknowledged expert on electronic displays, haptics, touch screens, electronic materials and related technologies. He also consults, writes and presents on those subjects globally.

Robert Tobias. Robert Tobias has been a member of the Board since February 2020 and has served as CEO, Chairman and President of HDMI Licensing Administrator Inc. since January 2017, where he has been the strategic force behind the licensing, enforcement, compliance and growth of HDMI® technology around the world. Mr. Tobias leads efforts to promote the HDMI specification as the premier digital and audio interface to the consumer electronics, mobile, PC and entertainment industries. In addition, he oversees IP enforcement with 1700 HDMI licensees and partners responsible for the release of almost nine billion HDMI products worldwide, and as such brings a recognized level of expertise working with foreign regulatory channels, customs authorities, standards development organizations, media companies, etc., to grow the business and protect the HDMI brand. Prior to joining HDMI Licensing Administrator Inc., Mr. Tobias served as President of HDMI Licensing LLC, a wholly owned subsidiary of Lattice Semiconductor, from September 2015 to December 2016, where he led the marketing, licensing and compliance teams promoting and licensing the HDMI intellectual property, and prior to that, he held the roles of President at MHL and Senior Director of Strategic Product Marketing and Business Development at Silicon Image. Mr. Tobias earned a Bachelor's degree in Electrical Engineering from UC Davis, an MBA from Santa Clara University and sits on the UC Davis Engineering Faculty Dean's Executive Committee. The Company believes that Mr. Tobias is qualified to serve on the Board based on his experience and leadership in the consumer electronics industry as well as his strong relationships with top consumer electronics brands in Asia.

Wendy Wilson. Wendy Wilson has been a member of the Board since May 2021. Ms. Wilson previously served as Vice President of Marketing at ChargePoint, Inc. from August 2017 to November 2023, a leading electric vehicle charging network provider, where she had profit and loss responsibilities for the company's home business unit, assisted with run go-to- market functions for such company's SaaS businesses and helped to expand operations into European markets with scalable localization, web, and marketing processes. Previously, Ms. Wilson served as Vice President of Marketing at Jive Software, a communication software company, from August 2014 to July 2017, where she led demand generation, field and web teams, and has held leadership roles in small venture capital funded startups and publicly traded firms, including Yahoo! Inc. and The Walt Disney Company ("Disney"). In her leadership role at Infoseek, which was acquired by Disney in 1998, she was responsible for cross- disciplinary teams from ESPN, Go.com (ABC News), Mr. Showbiz and Infoseek brands. At Yahoo, she was responsible for both the monetization and editorial strategy for the Yahoo front page, known then as the world's homepage. Ms. Wilson is a graduate of Northwestern University with a bachelor's degree in English. The Company believes that Ms. Wilson is qualified to serve on the Board based on her expertise in digital marketing and go-to-market strategies for companies with "business to consumer" and "business to business to consumer" commerce models.

Family Relationships

There are no family relationships among any of our directors or executive officers.

Involvement in Certain Legal Proceedings

In 2015, Quantum3D, Inc. (“Quantum3D”), a company of which Mr. Williams had been serving as chief financial officer, as a result of his prior experience in corporate restructuring, was placed into an assignment for the benefit of creditors. Mr. Williams continued to serve as chief financial officer during Quantum3D’s restructuring and negotiated sale in September 2016.

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On October 29, 2019, DionyMed Brands Inc., a British Columbia company which Mr. Moyer had been serving as a director, was placed in receivership and Mr. Moyer resigned.

Other than the foregoing, to the best of our knowledge, none of our directors or executive officers has, during the past ten (10) years:

- been convicted in a criminal proceeding or been subject to a pending criminal proceeding (excluding traffic violations and other minor offenses);
- had any bankruptcy petition filed by or against the business or property of the person, or of any partnership, corporation or business association of which he was a general partner or executive officer, either at the time of the bankruptcy filing or within two (2) years prior to that time;
- been subject to any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction or federal or state authority, permanently or temporarily enjoining, barring, suspending or otherwise limiting, his involvement in any type of business, securities, futures, commodities, investment, banking, savings and loan, or insurance activities, or his association with persons engaged in any such activity;
- been found by a court of competent jurisdiction in a civil action or by the SEC or the Commodity Futures Trading Commission to have violated a federal or state securities or commodities law, and the judgment has not been reversed, suspended, or vacated;
- been the subject of, or a party to, any federal or state judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated (not including any settlement of a civil proceeding among private litigants), relating to an alleged violation of any federal or state securities or commodities law or regulation, any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order, or any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity; or
- been the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member.

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CORPORATE GOVERNANCE

Board of Directors

The Board oversees our business affairs and monitors the performance of our management. In accordance with our corporate governance principles, the Board does not involve itself in day-to-day operations. The directors keep themselves informed through discussions with the Chief Executive Officer, other key executives and by reading the reports and other materials sent to them and by participating in Board and committee meetings. Our directors hold office until the next Annual Meeting of Stockholders and until each of their respective successors are elected and qualified or until each of their earlier resignation or removal, or if for some other reason they are unable to serve in the capacity of director.

Our Board currently consists of eight (8) members: Brett Moyer, Lisa Cummins, David Howitt, Dr. Jeffrey M. Gilbert, Helge Kristensen, Sriram Peruvemba, Robert Tobias and Wendy Wilson. All of our directors will serve until our next annual meeting of stockholders and until their successors are duly elected and qualified or until their earlier resignation or removal.

Director Independence

As our Common Stock is listed on the Nasdaq Capital Market, our determination of the independence of directors is made using the definition of “independent director” contained in Rule 5605(a)(2) of the Marketplace Rules of The Nasdaq Stock Market LLC. Our Board affirmatively determined that Dr. Jeffrey M. Gilbert, Sriram Peruvemba, Lisa Cummins, Robert Tobias and Wendy Wilson are “independent directors,” as that term is defined in the Marketplace Rules of The Nasdaq Stock Market LLC (the “Nasdaq Rules”). Under the corporate governance rules of Nasdaq, our Board must be composed of a majority of “independent directors.” Additionally, subject to certain limited exceptions, our audit, compensation, and nominating and corporate governance committees also must be composed of all independent directors.

The Nasdaq Rules require that each member of a listed company’s audit, compensation and nominations committees be independent. Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Exchange Act. Under the Nasdaq Rules, a director will only qualify as an “independent director” if, in the opinion of that company’s board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

To be considered to be independent for purposes of Rule 10A-3 of the Exchange Act, a member of an audit committee of a listed company may not, other than in such member’s capacity as a member of such committee, such company’s board of directors, or any other committee of such board of directors: (1) accept, directly or indirectly, any consulting, advisory, or other compensatory fee from the listed company or any of its subsidiaries; or (2) be an affiliated person of the listed company or any of its subsidiaries.

Our Board has undertaken a review of its composition, the composition of its committees and the independence of each director. Based upon information requested from and provided by each director concerning such director’s background, employment and affiliations, including family relationships, our Board has determined that (a) the following members of our Board have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director: Brett Moyer, Helge Kristensen and David Howitt, and (b) other than such directors, each of our directors is “independent” as that term is defined under the Nasdaq Rules. In making this determination, our Board considered the current and prior relationships that each non-employee director has with our Company and all other facts and circumstances our Board deemed relevant in determining their independence, including the beneficial ownership of our shares of Common Stock by each non-employee director. Our Board has determined that (i) Ms. Cummins, Mr. Peruvemba and Ms. Wilson satisfy the independence standards for the Board’s audit committee established by the Nasdaq Rules and Rule 10A-3 of the Exchange Act, (ii) Mr. Peruvemba, Dr. Gilbert and Mr. Tobias satisfy the independence standards for the Board’s compensation committee established by the Nasdaq Rules and are “independent directors” for such committee’s purposes and (ii) Mr. Tobias, Dr. Gilbert and Ms. Cummins satisfy the independence standards for the

Board Committees

Our Board has an audit committee, a compensation committee and a nominating and corporate governance committee. Each Board committee has a charter, which is available on our website at <https://ir.wisatechnologies.com/corporate-governance/governance-documents>. Information contained on our website is not incorporated herein by reference. Each of the Board's committees has the composition and responsibilities described below.

As of February 2, 2024, the members of such committees are:

Audit Committee—Lisa Cummins*(1), Sriram Peruvemba and Wendy Wilson

Compensation Committee—Sriram Peruvemba*, Dr. Jeffrey M. Gilbert and Robert Tobias

Nominating and Corporate Governance Committee—Robert Tobias*, Lisa Cummins and Dr. Jeffrey M. Gilbert.

* Indicates Committee Chair

(1) Indicates Audit Committee Financial Expert

Audit Committee

Our Board's audit committee (the "Audit Committee") has been established in accordance with Section 3(a)(58)(A) of the Exchange Act. The members of our Audit Committee are Lisa Cummins, Sriram Peruvemba and Wendy Wilson, each of whom are "independent" within the meaning of Rule 10A-3 under the Exchange Act and the Nasdaq rules. Our Board has determined that Ms. Cummins shall serve as the "audit committee financial expert," as such term is defined in Item 407(d)(5) of Regulation S-K. In addition, Ms. Cummins serves as Chairperson of our Audit Committee.

The Audit Committee oversees our corporate accounting and financial reporting process and oversees the audit of our financial statements and the effectiveness of our internal control over financial reporting. The responsibilities of the Audit Committee include, among other matters:

- selecting a qualified firm to serve as the independent registered public accounting firm to audit our consolidated financial statements;
- helping to ensure the independence and performance of the independent registered public accounting firm;
- discussing the scope and results of the audit with the independent registered public accounting firm, and reviewing, with management and the independent registered public accounting firm, our interim and year-end operating results;
- developing procedures for employees to submit concerns anonymously about questionable accounting or audit matters;
- reviewing our policies on risk assessment and risk management;
- reviewing related party transactions;
- obtaining and reviewing a report by the independent registered public accounting firm at least annually, that describes our internal control procedures, any material weaknesses with such procedures, and any steps taken to deal with such material weaknesses when required by applicable law; and
- approving (or, as permitted, pre-approving) all audit and all permissible non-audit services, other than de minimis non-audit services, to be performed by the independent registered public accounting firm.

The Audit Committee operates under a written charter adopted by the Board that satisfies the applicable standards of Nasdaq.

Compensation Committee

The members of our Board's compensation committee (the "Compensation Committee") are Sriram Peruvemba, Dr. Jeffrey M. Gilbert and Robert Tobias. Dr. Gilbert and Messrs. Peruvemba and Tobias are "independent" within the meaning of the Nasdaq rules. In addition, each member of our Compensation Committee qualifies as a "non-employee director" under Rule 16b-3 of the Exchange Act. Our Compensation Committee assists the Board in the discharge of its responsibilities relating to the compensation of the members of the Board and our executive officers. Mr. Peruvemba serves as the Chairman of our Compensation Committee.

The Compensation Committee's compensation-related responsibilities include, among other matters:

- reviewing and approving, or recommending that our Board approve, the compensation of our executive officers;
- reviewing and recommending to our Board the compensation of our directors;
- reviewing and approving, or recommending that our Board approve, the terms of compensatory arrangements with our executive officers;
- administering our stock and equity incentive plans;
- reviewing and approving, or recommending that our Board approve, incentive compensation and equity plans; and
- reviewing and establishing general policies relating to compensation and benefits of our employees and reviewing our overall compensation philosophy

Mr. Moyer, our Principal Executive Officer, President and Chairman of the Board, does not participate in the determination of his own compensation or the compensation of directors. However, he makes recommendations to the Compensation Committee regarding the amount and form of the compensation of the other executive officers and key employees, and he often participates in the Compensation Committee's deliberations about such persons' compensation. Mr. Oliva, formerly our Principal Financial Officer, assisted the Compensation Committee in its deliberations regarding executive officer, director and employee compensation, prior to his resignation as Principal Financial Officer on July 11, 2023. No other executive officers participate in the determination of the amount or the form of the compensation of executive officers or directors. The Compensation Committee does not utilize the services of an independent compensation consultant to assist in its oversight of executive and director compensation. On January 30, 2018, the Board adopted a written charter for the Compensation Committee.

Nominating and Corporate Governance Committee

The members of our Board's nominating and corporate governance committee ("Nominating and Corporate Governance Committee") are Robert Tobias, Dr. Jeffrey M. Gilbert and Lisa Cummins, each of whom are "independent" within the meaning of the Nasdaq rules. In addition, each member of our Nominating and Corporate Governance Committee qualifies as a "non-employee director" under Rule 16b-3 of the Exchange Act. The purpose of the Nominating and Corporate Governance Committee is to recommend to the Board nominees for election as directors and persons to be elected to fill any vacancies on the Board, develop and recommend a set of corporate governance

principles and oversee the performance of the Board. Mr. Tobias serves as Chairman of our Nominating and Corporate Governance Committee.

The Nominating and Corporate Governance Committee's responsibilities include, among other things:

- identifying, evaluating and selecting, or recommending that our Board approve, nominees for election to our Board and its committees;
- evaluating the performance of our Board and of individual directors;
- considering and making recommendations to our Board regarding the composition of our Board and its committees;
- reviewing developments in corporate governance practices;
- evaluating the adequacy of our corporate governance practices and reporting;
- developing and making recommendations to our Board regarding corporate governance guidelines and matters; and
- overseeing an annual evaluation of the Board's performance.

Our Nominating and Governance Committee strives for a Board composed of individuals who bring a variety of complementary skills, expertise or background and who, as a group, will possess the appropriate skills and experience to oversee our business. The diversity of the members of the Board relates to the selection of its nominees. While the Committee considers diversity and variety of experiences and viewpoints to be important factors, it does not believe that a director nominee should be chosen or excluded solely or largely because of race, color, gender, national origin or sexual orientation or identity. In selecting a director nominee for recommendation to our Board, our Nominating and Governance Committee focuses on skills, expertise or background that would complement the existing members on the Board. Accordingly, although diversity may be a consideration in the Committee's process, the Committee and the Board do not have a formal policy regarding the consideration of diversity in identifying director nominees.

When the Nominating and Governance Committee has either identified a prospective nominee or determined that an additional or replacement director is required, the Nominating and Governance Committee may take such measures as it considers appropriate in connection with its evaluation of a director candidate, including candidate interviews, inquiry of the person or persons making the recommendation or nomination, engagement of an outside search firm to gather additional information, or reliance on the knowledge of the members of the Board or management. In its evaluation of director candidates, including the members of the Board eligible for re-election, the Nominating and Governance Committee considers a number of factors, including: the current size and composition of the Board, the needs of the Board and the respective committees of the Board, and such factors as judgment, independence, character and integrity, age, area of expertise, diversity of experience, length of service and potential conflicts of interest.

The Nominating and Governance Committee of the Board selects director nominees and recommends them to the full Board. In relation to such nomination process, the Nominating and Governance Committee:

- determines the criteria for the selection of prospective directors and committee members;
- reviews the composition and size of the Board and its committees to ensure proper expertise and diversity among its members;
- evaluates the performance and contributions of directors eligible for re-election;
- determines the desired qualifications for individual directors and desired skills and characteristics for the Board;
- identifies persons who can provide needed skills and characteristics;
- screens possible candidates for Board membership;
- reviews any potential conflicts of interests between such candidates and the Company's interests; and
- shares information concerning the candidates with the Board and solicits input from other directors.

The Nominating and Governance Committee has specified the following minimum qualifications that it believes must be met by a nominee for a position on the Board: the highest personal and professional ethics and integrity; proven achievement and competence in the nominee's field and the ability to exercise sound business judgment; skills that are complementary to those of the existing Board; the ability to assist and support management and make significant contributions to our success; the ability to work well with the other directors; the extent of the person's familiarity with the issues affecting our business; an understanding of the fiduciary responsibilities that are required of a member of the Board; and the commitment of time and energy necessary to diligently carry out those responsibilities. A candidate for director must agree to abide by our Code of Ethics and Conduct.

After completing its evaluation, the Nominating and Governance Committee makes a recommendation to the full Board as to the persons who should be nominated to the Board, and the Board determines the nominees after considering the recommendation and report of the Committee.

Our Board does not have a policy with regard to the consideration of director candidates recommended by stockholders but would consider candidates recommended by stockholders. Our Board does not have such a policy because we do not reasonably expect to receive any director candidates recommended by stockholders based on past meetings. In the case of director candidates recommended by stockholders, our Board would evaluate such candidates using the factors described above.

Director Nomination Procedures

There have been no material changes to the procedures by which security holders may recommend nominees to the Board.

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics that applies to all of our employees and officers, including those officers responsible for financial reporting. We have also adopted a code of business conduct and ethics that applies to our directors. Both codes of business conduct and ethics are available on our website at <https://ir.wisatechnologies.com/governance-docs>. The information contained in or accessible through the foregoing website is not incorporated herein by reference and is intended for informational purposes only. We intend to disclose any amendments to such codes, or any waivers of its requirements, on our website to the extent required by applicable SEC rules and Nasdaq requirements.

Compensation Committee Interlocks and Insider Participation

None of our executive officers has served as a member of a compensation committee (or if no committee performs that function, our Board) of any other entity that has an executive officer serving as a member of our Board.

EXECUTIVE COMPENSATION

The following table sets forth all plan and non-plan compensation for the last two completed fiscal years paid to all individuals who served as the Company's principal executive officer or acted in a similar capacity and the Company's two other most highly compensated executive officers during the last completed fiscal year, as required by Item 402(m)(2) of Regulation S-K of the Securities Act. We refer to all of these individuals collectively as our "Named Executive Officers."

Summary Compensation Table

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock awards (\$)(1)	Non-equity incentive plan compensation (\$)	All other compensation (\$)	Total (\$)
Brett Moyer President and Chief Executive Officer	2023	\$ 404,250	\$ 777	\$ 90,000	\$ —	\$ —	\$ 495,027
	2022	\$ 404,250	\$ 19,250(2)	\$ 353,500	\$ —	\$ —	\$ 777,000
George Oliva(3) Former Chief Financial Officer and Secretary	2023	\$ 255,939	\$ 178	\$ 36,000	\$ —	\$ —	\$ 292,117
	2022	\$ 288,750	\$ 13,750(4)	\$ 209,500	\$ —	\$ —	\$ 512,000
Gary Williams Chief Accounting Officer, VP of Finance	2023	\$ 267,496	\$ 92	\$ 62,400	\$ —	\$ —	\$ 329,987
	2022	\$ 262,495	\$ 37,500(5)	\$ 65,500	\$ —	\$ —	\$ 365,495

(1) Amounts reported in this column do not reflect the amounts actually received by our named executive officers. Instead, these amounts reflect the aggregate grant date fair value of each restricted stock award ("RSA") and each RSU granted to the named executive officers during the fiscal years ended December 31, 2023 and 2022, as computed in accordance with Financial Accounting Standards Board ("FASB") ASC 718. As required by SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions.

(2) Cash bonus of \$19,250 earned in 2021 and paid to Mr. Moyer in 2022.

(3) On July 11, 2023, George Oliva resigned as the Principal Financial Officer of the Company and assumed the role of the Senior Vice President of Finance and Strategic Operations of the Company.

(4) Cash bonus of \$13,750 earned in 2021 and paid to Mr. Oliva in 2022.

(5) Includes cash bonus of \$12,500 earned in 2021 that was paid to Mr. Williams in 2022.

Executive Employment Agreements and Arrangements

Brett Moyer

Effective August 24, 2022, the Company entered into an employment agreement with Brett Moyer (the "Moyer Agreement"). Pursuant to the Moyer Agreement, Mr. Moyer agreed to continue to serve as our Chief Executive Officer and President and Mr. Moyer's initial annual base salary will be \$404,250, which is subject to adjustment approved by the Board. The Moyer Agreement has an unspecified term and Mr. Moyer will serve in his position on an at-will basis, subject to the payment of severance in certain circumstances as set forth in the Moyer Agreement. Pursuant to the Moyer Agreement, if Mr. Moyer is terminated without cause or resigns with good reason, he is entitled to receive twelve (12) months of salary. Mr. Moyer is also entitled to continue to receive the employer subsidy under group health, dental and vision coverage for the period of severance, which is twelve (12) months, a pro rata bonus for the year of termination and the acceleration of vesting with respect to all unvested equity awards. Additionally, in the event of a Change in Control (as defined in each of the Moyer Agreement), all unvested equity awards held by such executive officer shall immediately vest and become exercisable, provided that subject to any exceptions in any award agreement entered into with such executive officer, no exercise may occur more than six (6) months after such termination and in no event after the expiration of such award. Mr. Moyer is also entitled to be made whole for income, employment and excise taxes in the event that payments, benefits and distributions, including the effects of accelerated vesting of equity, would result in the application of the "golden parachute" excise tax under Internal Revenue Code Section 4999.

George Oliva

Effective August 24, 2022, the Company entered into an employment agreement with George Oliva (the "Oliva Agreement"). Pursuant to the Oliva Agreement, Mr. Oliva agreed to continue to serve as then Chief Financial Officer and Secretary of the Company, and Mr. Oliva's initial annual base salary was \$288,750, which is subject to adjustment approved by the Board. The Oliva Agreement has an unspecified term and Mr. Oliva served in his position on an at-will basis, subject to the payment of severance in certain circumstances as set forth in the Oliva Agreement. Pursuant to the Oliva Agreement, if Mr. Oliva was terminated without cause or resigned with good reason, he was entitled to receive twelve (12) months of salary. Mr. Oliva was also entitled to continue to receive the employer subsidy under group health, dental and vision coverage for the period of severance, which is twelve (12) months, a pro rata bonus for the year of termination and the acceleration of vesting with respect to all unvested equity awards. Additionally, in the event of a Change in Control (as defined in each of the Oliva Agreement), all unvested equity awards held by such executive officer shall immediately vest and become exercisable, provided that subject to any exceptions in any award agreement entered into with such executive officer, no exercise may occur more than six months after such termination and in no event after the expiration of such award. Mr. Oliva was also entitled to be made whole for income, employment and excise taxes in the event that payments, benefits and distributions, including the effects of accelerated vesting of equity, would result in the application of the "golden parachute" excise tax under Internal Revenue Code Section 4999.

Effective July 11, 2023, George Oliva resigned as Principal Financial Officer of the Company and entered into a separation agreement with the Company (the "Separation Agreement"), whereby amongst other things, his only title would be Senior Vice President of Finance and Strategic Operations of the Company. The Separation Agreement provided that Mr. Oliva's employment would last until and through December 20, 2023 or such other date as mutually agreed between the Company and Mr. Oliva (the "Separation Date"). In connection with the Separation Agreement, Mr. Oliva was granted 30,000 RSAs on July 12, 2023 which are scheduled to fully vest on Mr. Oliva's

Separation Date. Additionally, as of the date of the Separation Agreement, Mr. Oliva had a total of 1,499 unvested RSAs and RSUs. The Company agreed to vest all of Mr. Oliva's unvested RSAs and RSUs as of the Separation Date. The Separation Agreement also sets forth various terms regarding the treatment of other employee benefits that Mr. Oliva was entitled to receive under the Company's existing plans. During the term of the Separation Agreement, Mr. Oliva's base annual salary remained unchanged. As a material condition to the Separation Agreement, Mr. Oliva executed a supplemental release, which included a customary release of claims by Mr. Oliva (on behalf of himself, his heirs, executors, administrators and assigns) in favor of the Company.

Gary Williams

Effective August 24, 2022, the Company entered into an employment agreement with Gary Williams (the "Williams Agreement"). Pursuant to the Williams Agreement, Mr. Williams agreed to continue to serve as Chief Accounting Officer and Vice President of Finance of the Company, and Mr. Williams' initial annual base salary will be \$262,495, which is subject to adjustment approved by the Board. The Williams Agreement has an unspecified term and Mr. Williams will serve in his position on an at-will basis, subject to the payment of severance in certain circumstances as set forth in the Williams Agreement. Pursuant to the Williams Agreement, if Mr. Williams is terminated without cause or resigns with good reason, he is entitled to receive six (6) months of salary. Mr. Williams is also entitled to continue to receive the employer subsidy under group health, dental and vision coverage for the period of severance, which is six (6) months, a pro rata bonus for the year of termination and the acceleration of vesting with respect to all unvested equity awards.

Additionally, in the event of a Change in Control (as defined in each of the Williams Agreement), all unvested equity awards held by such executive officer shall immediately vest and become exercisable, provided that subject to any exceptions in any award agreement entered into with such executive officer, no exercise may occur more than six (6) months after such termination and in no event after the expiration of such award.

Other Compensation

Other than as described above, there were no post-employment compensation, pension or nonqualified deferred compensation benefits earned by our Named Executive Officers during the years ended December 31, 2023 and 2022. We do not have any retirement, pension or profit-sharing programs for the benefit of our directors, officers or other employees. The Board may recommend adoption of one or more such programs in the future.

Outstanding Equity Awards as of December 31, 2023

The following table provides information regarding the unexercised warrants to purchase Common Stock and stock awards held by each of our named executive officers:

Name	Option/Warrant Awards				Stock Awards			Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested (\$)
	Number of Securities underlying Unexercised Options and Warrants (#)	Number of Securities underlying Unexercised Options and Warrants (#)	Option/Warrant Exercise Price (\$/Sh)	Option/Warrant Expiration Date	Number of shares or units of stock that have not vested	Market value of shares or units of stock that have not vested ⁽¹⁾	Equity incentive plan awards: Number of unearned shares, units or other rights that have not vested (#)	
Brett Moyer	—	—	—	—	833 ⁽²⁾ 1,165 ⁽³⁾ 333 ⁽⁴⁾ 62,475 ⁽⁵⁾	\$ 97.46 ⁽²⁾ 136.31 ⁽³⁾ 38.96 ⁽⁴⁾ 7,309.58 ⁽⁵⁾	—	—
George Oliva ⁽⁶⁾	—	—	—	—	—	\$ —	—	—
Gary Williams	—	—	—	—	66 ⁽⁷⁾ 231 ⁽⁸⁾ 43,316 ⁽⁹⁾	\$ 7.72 ⁽⁷⁾ 27.03 ⁽⁸⁾ 5,067.97 ⁽⁹⁾	—	—

- (1) Market value based upon the closing market price of \$0.117 on December 29, 2023.
- (2) Mr. Moyer was granted 2,500 shares of restricted Common Stock on February 24, 2021, which vest in equal installments on the first, second and third anniversaries of March 15, 2021.
- (3) Mr. Moyer was granted 2,500 shares of restricted Common Stock on January 13, 2022, which vest as follows: 1/5th of the grant to vest on September 15, 2022, and the remaining 4/5th of the grant to vest quarterly in equal installments over the next 36 months on each December 15th, March 15th, June 15th and September 15th thereafter until September 15, 2025.
- (4) Mr. Moyer was granted 500 shares of restricted Common Stock on September 19, 2022, which vest in equal installments on the first, second and third anniversaries of September 19, 2022.
- (5) Mr. Moyer was granted 75,000 shares of restricted Common Stock on July 12, 2023, which vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026.

- (6) Effective July 11, 2023, George Oliva resigned as Principal Financial Officer of the Company and entered into the Separation Agreement with the Company, whereby amongst other things, his only title would be Senior Vice President of Finance and Strategic Operations of the Company. In connection with the Separation Agreement, Mr. Oliva was granted 30,000 RSAs on July 12, 2023 which were fully vested on December 1, 2023. Additionally, as of the date of the Separation Agreement, Mr. Oliva had a total of 1,499 unvested RSAs and RSUs, which were fully vested on December 1, 2023.
- (7) Mr. Williams was granted 200 shares of restricted Common Stock on February 24, 2021, which vest in equal installments on the first, second and third anniversaries of March 15, 2021.
- (8) Mr. Williams was granted 500 shares of restricted Common Stock on January 13, 2022, which vest as follows: 1/5th of the grant to vest on September 15, 2022, and the remaining 4/5th of the grant to vest quarterly in equal installments over the next 36 months on each December 15th, March 15th, June 15th and September 15th thereafter until September 15, 2025.
- (9) Mr. Williams was granted 52,000 shares of restricted Common Stock on July 12, 2023, which vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026.

2022 Management Team Retention Bonus Plan

On September 1, 2022, the Company adopted its Management Team Retention Bonus Plan (the “Retention Plan”), to incentivize certain management level employees (the “Managers”) to remain intact through and shortly following a potential “Change of Control” (as defined in the Retention Plan). The aggregate Retention Plan bonus amounts for all Managers was \$1,250,000.

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The Retention Plan provided that each Manager is eligible to receive a lump sum cash amount under the Retention Plan, on the earlier of the six-month anniversary of the date of a Change of Control or at the time of such Manager’s involuntary termination other than for “Cause” (as defined in the Retention Plan) or termination for “Good Reason” (as defined in the Retention Plan). The Retention Plan expired on June 30, 2023, unused, and no accruals were made.

Equity Incentive Plans

2018 Long-Term Stock Incentive Plan of the Company (the “LTIP”)

On January 30, 2018, the Board approved the establishment of the LTIP. The LTIP is intended to enable the Company to continue to attract able directors, employees, and consultants and to provide a means whereby those individuals upon whom the responsibilities rest for successful administration and management of the Company, and whose present and potential contributions are of importance, can acquire and maintain Common Stock ownership, thereby strengthening their concern for the Company’s welfare. The aggregate maximum number of shares of Common Stock (including shares underlying options) that may be issued under the LTIP pursuant to awards of Restricted Shares or Options will be limited to 15% of the outstanding shares of Common Stock, which calculation shall be made on the first trading day of each new fiscal year; provided that, in any year no more than 8% of the Common Stock or derivative securitization with Common Stock underlying 8% of the Common Stock may be issued in any fiscal year. Based on the total shares of Common Stock outstanding on January 1, 2024, up to 2,668,548 shares of Common Stock are available for participants under the LTIP. The number of shares of Common Stock that are the subject of awards under the LTIP which are forfeited or terminated, are settled in cash in lieu of shares of Common Stock or in a manner such that all or some of the shares covered by an award are not issued to a participant or are exchanged for awards that do not involve shares will again immediately become available to be issued pursuant to awards granted under the LTIP. If shares of Common Stock are withheld from payment of an award to satisfy tax obligations with respect to the award, those shares of Common Stock will be treated as shares that have been issued under the LTIP and will not again be available for issuance under the LTIP.

The January 2018 Restricted Stock Grant and the LTIP were approved by a majority of the Company’s stockholders on January 31, 2018.

At a special meeting of our stockholders held on January 24, 2023, our stockholders approved certain amendments to the LTIP to: (i) increase the annual share limit of Common Stock that may be issued in any single fiscal year only for the 2023 fiscal year under the LTIP from 8% of the shares of Common Stock outstanding to 15% of the shares of Common Stock outstanding (which amount equates to the maximum amount that may be issued in the aggregate under the LTIP); and (ii) permit immediately quarterly calculations based on the number of shares of Common Stock outstanding as of the first trading day of each fiscal quarter, rather than solely as of the first trading day of the fiscal year.

2020 Stock Incentive Plan (the “2020 Plan”)

On July 27, 2020, the Board approved the establishment of the 2020 Plan and the reservation of an aggregate of 650,000 shares of Common Stock authorized for issuance under the 2020 Plan, subject to stockholder approval, which was obtained on October 20, 2020. The 2020 Plan authorizes the grant of equity-based compensation to the Company’s senior managers, employees, directors, consultants, professionals and service providers in the form of stock options, restricted stock and RSUs. All options granted under the 2020 Plan will be considered non-qualified stock options. The purpose of the 2020 Plan is to attract and retain senior managers, employees, directors, consultants, professionals and service providers who provide services to the Company, provided that such services are bona fide services that are not of a capital-raising nature during this period of unprecedented uncertainty and volatility in the COVID-19 environment and its impact on the value of the Company’s equity and grants. As of December 31, 2023, no options or RSAs have been granted under the 2020 Plan while an aggregate, net of cancellations, of 6,285 RSUs have been issued under the 2020 Plan of which 67 remained unvested at December 31, 2023.

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Technical Team Retention Plan of 2022 (the “2022 Plan”)

On June 21, 2022, the Board adopted the Company’s Technical Team Retention Plan of 2022 (the “2022 Plan”) and the reservation of an aggregate of 5,000 shares of the Company’s common stock authorized for issuance under the 2022 Plan, subject to stockholder approval. The 2022 Plan authorizes the grant of equity-based compensation, to the Company’s key managers, employees, consultants who provide technical and engineering and related services to the Company, in the form of restricted stock and RSUs. On August 19, 2022, the Company held the 2022 Annual Meeting of Stockholders and approved the adoption of the 2022 Plan and the reservation of an aggregate of 5,000 shares of the Company’s common stock. On September 19, 2022, the Company granted, an aggregate of 3,700 RSUs to managers, employees, consultants. Each RSU represents the right to receive one share of the Company’s common stock under the 2022 Plan. As of December 31, 2023, no options or RSAs have been granted under the 2022 Plan while an aggregate, net of cancellations, of 3,450 RSUs have been issued under the 2022 Plan of which 2,531 remained unvested at December 31, 2023.

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DIRECTOR COMPENSATION

The table below sets forth the compensation paid to our directors during the fiscal year ended December 31, 2023.

Director	Fees Earned			Total
	Fees Earned or Paid in Cash	Stock Awards (1)	All Other Compensation	
Lisa Cummins	\$ 30,000	\$ 13,200	-	\$ 43,200(2)
Dr. Jeffrey M. Gilbert	\$ 20,000	\$ 13,200	-	\$ 33,200(3)
David Howitt	\$ 20,000	\$ 13,200	-	\$ 33,200(4)
Helge Kristensen	\$ 20,000	\$ 13,200	-	\$ 33,200(5)
Sriram Peruvemba	\$ 20,000	\$ 13,200	-	\$ 33,200(6)
Robert Tobias	\$ 20,000	\$ 13,200	-	\$ 33,200(7)
Wendy Wilson	\$ 20,000	\$ 13,200	-	\$ 33,200(8)

- (1) Amounts reported in this column do not reflect the amounts actually received by our non-employee directors. Instead, these amounts reflect the aggregate grant date fair value of each restricted stock award and RSU granted to the Company's directors during the fiscal year ended December 31, 2023, as computed in accordance with FASB ASC 718. As required by SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions.
- (2) Ms. Cummins was granted 11,000 shares of restricted Common Stock on July 12, 2023, which vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026.
- (3) Dr. Gilbert was granted 11,000 shares of restricted Common Stock on July 12, 2023, which vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026.
- (4) Mr. Howitt was granted 11,000 shares of restricted Common Stock on July 12, 2023, which vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026.
- (5) Mr. Kristensen was granted 11,000 shares of restricted Common Stock on July 12, 2023, which vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026.
- (6) Mr. Peruvemba was granted 11,000 shares of restricted Common Stock on July 12, 2023, which vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026.
- (7) Mr. Tobias was granted 11,000 shares of restricted Common Stock on July 12, 2023, which vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026.
- (8) Ms. Wilson was granted 11,000 shares of restricted Common Stock on July 12, 2023, which vest in equal installments, commencing on November 15, 2023 and every six (6) months thereafter until May 15, 2026.

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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. 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 \$100.00 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 October 17, 2023.

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CAPITALIZATION

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

- on an actual basis;
- on a pro forma basis, after giving effect to: (i) the Series B Preferred Stock Offering (including the Warrant Repurchase), (ii) the Warrant Inducement Transaction, (iii) repayment in full of the Meriwether Loan, (iv) the Restricted Stock Activity, (v) the Conversion, (vi) the 2024 Bridge Private Placement, (vii) repayment in full of the 2024 Bridge Promissory Notes and (viii) the exercise of 32,600 Series B Preferred Stock Warrants; and
- on a pro forma as adjusted basis to give effect to: (i) the transactions set forth above, (ii) the sale of 100,000,000 Units at the assumed public offering price of \$0.10 per Unit (the closing sale price of our Common Stock on Nasdaq on January 29, 2024, and assuming no sale of any Pre-Funded Units, and no exercise of the Warrants issued in connection with this offering), and after deducting placement agent fees and estimated offering expenses payable by us and (iii) the Series B Repurchase and Cancellation Transaction.

You should read the following table in conjunction with the sections entitled "Use of Proceeds" and "Management's Discussion and Analysis of Financial Condition and

Results of Operations” included elsewhere in this prospectus and our unaudited consolidated financial statements and related notes included elsewhere in this prospectus.

	As of September 30, 2023 (unaudited)		
	Actual	Pro Forma	Pro Forma As Adjusted ⁽¹⁾
<i>(in thousands, except share data)</i>			
Cash and cash equivalents	\$ 212	\$ 3,793	\$ 6,567
Short term-debt	629	-	-
Series B Convertible Preferred Stock, par value \$0.0001 per share: zero shares authorized, zero shares outstanding, actual; 375,000 shares authorized, 62,657 shares outstanding, pro forma; and 375,000 shares authorized, zero shares outstanding, pro forma as adjusted	-	2,471	-
Stockholders' Equity (Deficit):			
Common Stock, par value \$0.0001 per share: 200,000,000 shares authorized, 6,579,957 shares outstanding, actual; 34,562,545 shares outstanding, pro forma; and 134,562,545 shares outstanding, pro forma as adjusted	7	10	20
Additional paid-in capital	241,557	243,785	249,020
Accumulated deficit	(240,679)	(241,170)	(241,170)
Total stockholders' equity (deficit)	885	2,624	7,869
Total capitalization	\$ 1,514	\$ 5,095	\$ 7,869

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

A \$0.03 increase in the assumed public offering price of \$0.10 per Unit (the closing sale price of our Common Stock on Nasdaq on January 29, 2024), would increase cash and cash equivalents and total stockholders' equity by approximately \$2.8 million, after deducting placement agent fees and estimated offering expenses payable by us, and assuming the sale of 100,000,000 Units set forth on the cover page of this prospectus remains the same and no sale of any Pre-Funded Units in this offering. The pro forma as adjusted information discussed above is illustrative only and will adjust based on the actual public offering price and other terms of this offering determined at pricing.

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The total number of shares of our Common Stock reflected in the discussion and table above, on an actual basis, is based on 6,579,957 shares of our Common Stock outstanding as of September 30, 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 with an weighted average exercise price of \$5.45, (b) 209,312 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 RSUs that were issued pursuant to the 2020 Plan and 2022 Plan, none of which have vested as of September 30, 2023.

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CERTAIN RELATIONS AND RELATED PERSON TRANSACTIONS

The following is a description of transactions since January 1, 2022, to which we have been a participant in which the amount involved exceeded or will exceed the lesser of (i) \$120,000 or (ii) 1% of the average of our total assets for the years ended December 31, 2023 and 2022, and in which any of our directors, executive officers or holders of more than 5% of our voting securities, or any members of their immediate family, had or will have a direct or indirect material interest, other than compensation arrangements which are described under “Executive Compensation.”

Helge Kristensen

Mr. Kristensen has served as a member of the Board since 2010. Mr. Kristensen serves as vice president of Hansong Technology, an original device manufacturer of audio products based in China, president of Platin Gate Aps, a company with focus on service-branding in lifestyle products as well as pro line products based in Denmark and co-founder and director of Inizio Capital, an investment company based in the Cayman Islands.

For the fiscal years ended December 31, 2023 and 2022, Hansong Technology purchased modules from the Company of approximately \$88,000 and \$361,000, respectively, and made payments to the Company of approximately \$254,000 and \$191,000, respectively. For the fiscal years ended December 31, 2023 and 2022, Hansong Technology sold speaker products to the Company of approximately \$128,000 and \$1,891,000, respectively, and the Company made payments to Hansong Technology of approximately \$1,223,000 and \$1,831,000, respectively.

At December 31, 2023 and 2022, the Company owed Hansong Technology approximately \$250,000 and \$874,000, respectively. At December 31, 2023 and 2022, Hansong Technology owed the Company approximately \$4,000 and \$170,000, respectively.

As of December 31, 2023 and December 31, 2022, Mr. Kristensen owned less than 1.0% of the outstanding shares of the Common Stock.

David Howitt

Mr. Howitt has served as a member of the Board since December 2021. Since March 2004, Mr. Howitt has served as the founder and CEO of Meriwether Group LLC (“MWG”), a strategic consulting firm that works with disruptive consumer brands by integrating their visions, developing growth strategies, scaling their brands, and increasing revenue in order to build enterprise value. MWG, which is also majority-owned by Mr. Howitt, owns a 25% general partner interest in Meriwether Group Capital Hero Fund LP (“Meriwether”).

On September 8, 2023, the Company entered into a Loan and Security Agreement with Meriwether. Pursuant to the Loan and Security Agreement, Meriwether provided the Company with a term loan in the principal amount of \$650,000 that was scheduled to mature on November 7, 2023, subject to further extension (the “Meriwether Loan”). The maturity date of the Meriwether Loan was subsequently extended to December 7, 2023. The Company paid back the loan in full on December 7, 2023.

DESCRIPTION OF THE SECURITIES WE ARE OFFERING

We are offering up to 100,000,000 Units, with each Unit consisting of one share of our Common Stock and a Warrant to purchase one share of our Common Stock; and up to 100,000,000 Pre-Funded Units, with each Pre-Funded Unit consisting of a Pre-Funded Warrant to purchase one share of our Common Stock, and a Warrant. The Units and Pre-Funded Units have no stand-alone rights and will not be certificated or issued as stand-alone securities. The shares of our Common Stock included in the Units will be issued separately from the Warrants included in the Units and the Pre-Funded Warrants included in the Pre-Funded Units will be issued separately from the Warrants included in the Pre-Funded Units. We are also registering the shares of our Common Stock issuable from time to time upon exercise of the Warrants and Pre-Funded Warrants offered hereby. The following descriptions of our Common Stock, Pre-Funded Warrants and Warrants and certain provisions of our Certificate of Incorporation, our by-laws and Delaware law are summaries. You should also refer to our Certificate of Incorporation, by-laws, form of Warrant and form of Pre-Funded Warrant, which are filed as exhibits to the registration statement of which this prospectus is part.

Common Stock

The material terms of our Common Stock are described under the caption “Description of Capital Stock” in this prospectus.

Warrants and Pre-Funded Warrants

The following summary of certain terms and provisions of the Warrants and Pre-Funded Warrants offered hereby is not complete and is subject to, and qualified in its entirety by, the provisions of the warrant agent agreement between us and VStock Transfer, LLC, as warrant agent, and the form of Warrant and Pre-Funded Warrant, all of which are filed as exhibits to the registration statement of which this prospectus is a part. Prospective investors should carefully review the terms and provisions set forth in the warrant agent agreement, including the annexes thereto, and the form of Warrant and Pre-Funded Warrant.

Form. Pursuant to warrant agent agreement between us and VStock Transfer, LLC, as Warrant and Pre-Funded Warrant agent, the Warrants and Pre-Funded Warrants will be issued in book-entry form and 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, or DTC, and registered in the name of Cede & Co., a nominee of DTC, or as otherwise directed by DTC.

Exercisability. The Pre-Funded Warrants are exercisable at any time after their original issuance until they are exercised in full. The Warrants shall not be exercisable until after the date that Stockholder Approval is obtained, and will expire on the fifth anniversary of the date on which Stockholder Approval is received and deemed effective under Delaware Law. Each of the Warrants and the Pre-Funded Warrants will be exercisable, at the option of each holder, in whole or in part by delivering to us a duly executed exercise notice accompanied by payment in full in immediately available funds for the number of shares of Common Stock subscribed for upon such exercise (except in the case of a cashless exercise as discussed below). The Pre-Funded Warrants may be exercised on a cashless basis. If a registration statement registering the issuance of the shares of Common Stock underlying the Warrants under the Securities Act is not effective or available, the holder may, in its sole discretion, elect to exercise the Warrants through a cashless exercise, in which case the holder would receive upon such exercise the net number of shares of Common Stock determined according to the formula set forth in the Warrants. The holder of a Warrant may also effect an “alternative cashless exercise” on or after the thirty (30) day anniversary of the date that Stockholder Approval is obtained. In such event, the aggregate number of shares of Common Stock issuable in such alternative cashless exercise pursuant to any given notice of exercise electing to effect an alternative cashless exercise shall equal the product of (x) the aggregate number of shares of Common Stock that would be issuable upon exercise of the Warrant in accordance with the terms of the Warrant if such exercise were by means of a cash exercise rather than a cashless exercise and (y) 0.65. No fractional shares of Common Stock will be issued in connection with the exercise of a Warrant or Pre-Funded Warrant. In lieu of fractional shares, we will pay the holder an amount in cash equal to the fractional amount multiplied by the exercise price.

Exercise Limitation. A holder will not have the right to exercise any portion of the Pre-Funded Warrants or Warrants if the holder (together with its affiliates) would beneficially own in excess of 4.99% (or, upon election by a holder prior to the issuance of any warrants, 9.99%) of the number of shares of Common Stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Warrants and Pre-Funded Warrants. However, any holder may increase or decrease such percentage to any other percentage not in excess of 9.99%, upon at least 61 days’ prior notice from the holder to us with respect to any increase in such percentage.

Exercise Price. The exercise price for the Pre-Funded Warrants is \$0.0001 per share. The initial exercise price per Warrants is 100% of the public offering price of each Unit sold in this offering. The exercise price and number of shares of Common Stock issuable upon exercise will adjust in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications, dilutive issuances or similar events. In addition, on the sixth (6th) trading day following the date on which the next reverse stock split is effected by the Company of its outstanding Common Stock following the date of issuance of the Warrants, the exercise price per Warrant shall be adjusted to equal the lower of (a) the exercise price then in effect (after taking into account and adjusting for the reverse stock split) and (b) the lowest VWAP (as defined in the Warrants) of the Common Stock in the 5 trading days immediately prior to such date.

Transferability. Subject to applicable laws, the Warrants and the Pre-Funded Warrants may be offered for sale, sold, transferred or assigned without our consent.

Exchange Listing. We do not intend to apply for the listing of the Warrants or Pre-Funded Warrants offered in this offering on any stock exchange. Without an active trading market, the liquidity of the Warrants and Pre-Funded Warrants will be limited.

Rights as a Shareholder. Except as otherwise provided in the Warrants or the Pre-Funded Warrants or by virtue of such holder’s ownership of our shares of Common Stock, the holder of a Warrant or Pre-Funded Warrant does not have the rights or privileges of a holder of our shares of Common Stock, including any voting rights, until the holder exercises the Warrant or Pre-Funded Warrant.

Fundamental Transactions. In the event of a fundamental transaction, as described in the Warrants and the Pre-Funded Warrants, and generally including, with certain exceptions, any reorganization, recapitalization or reclassification of our shares of 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 shares of Common Stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding shares of Common Stock, the holders of the Warrants and the Pre-Funded Warrants will be entitled to receive consideration in an amount equal to the Black Scholes Value (as defined in the Warrants and Pre-Funded Warrants) of the remaining unexercised portion of the Warrants or Pre-Funded Warrants on the date of consummation of such fundamental transaction.

Governing Law. The Pre-Funded Warrants and the Warrants are governed by New York law.

PLAN OF DISTRIBUTION

Pursuant to the placement agency agreement, dated as of [], 2024, we have engaged Maxim to act as our exclusive placement agent (“Maxim” or 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 expect to deliver the securities being offered pursuant to this prospectus on or about , 2024.

Placement Agent Fees, Commissions and Expenses

Upon the closing of this offering, we will pay the placement agent a cash transaction fee equal to 7.0% of the aggregate gross cash proceeds to us from the sale of the securities in the offering. 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 \$75,000. 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)(I).

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

	Per Unit	Per Pre-Funded Unit	Total
Public offering price	\$	\$	\$
Placement Agent Fees (7.0%)	\$	\$	\$
Proceeds, before fees and expenses, to us ⁽¹⁾	\$	\$	\$

- (1) 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 \$, 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 \$75,000.

Right Of First Refusal/Tail

For a period of twelve (12) months from the Closing Date, we granted 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) 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 of the Company, or any successor to or any subsidiary of the Company. We shall not offer to retain any entity or person in connection with any such 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 us 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, we 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. Such right of first refusal shall not have a duration of more than three (3) years from commencement of sales.

For a period of 12 months from the final Closing Date, we will pay the placement agent a cash fee equal to 8.0% of the gross proceeds of any equity, equity-linked, or debt financing, or any other capital raising activity received by us from investors introduced to us by the placement agent.

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 60 days after this offering is completed without the prior written consent of the placement agent.

The placement agent 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, the placement agent 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.

Other Compensation

If within twelve months following the consummation of this offering, we complete any equity, equity-linked, convertible or debt or other capital-raising activity of the Company for which the placement agent is not acting as underwriter or placement agent (other than the exercise by any person or entity of any options, warrants or other convertible securities) with any of the investors that were contacted, introduced or participated in this offering (excluding any investors that either held securities of the Company prior to the closing of this offering, or that were introduced by us to the placement agent), then we shall pay to the placement agent a commission as described in this section, in each case only with respect to the portion of such financing received from such investors.

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 might 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 and Warrant Exercise Price

The actual offering price of the securities we are offering, and the exercise price of the Warrants and Pre-Funded Warrants included in the Units and Pre-Funded Units that we are offering, were negotiated between us, the placement agent and the investors in the offering based on the trading of our shares of Common Stock prior to the offering, among other things. Other factors considered in determining the public offering price of the securities we are offering, as well as the exercise price of the Warrants that we are offering include 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 have provided, and 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.

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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.

Advisory Agreement

On January 2, 2024, we entered into an advisory agreement (the "Advisory Agreement") with the placement agent for a term of twelve months (subject to early termination by either party after six months) to serve as our financial advisor to provide general financial advisory and investment banking services. On February 2, 2024, we terminated the Advisory Agreement and no compensation was paid to the placement agent under the Advisory Agreement.

December 2023 Warrant Inducement

On December 5, 2023, we entered into the Inducement Agreements with the Holders. Pursuant to the Inducement Agreements, the Holders agreed to a reduced exercise price of \$35.72 per share of Series B Preferred Stock, while maintaining the Conversion Price, upon the exercise of any Existing Warrants during the Inducement Period. We engaged Maxim as exclusive financial advisor in connection with the Inducement Agreements pursuant to a financial advisory agreement, dated December 5, 2023, by and between us and Maxim, and paid Maxim a cash financial advisory fee equal to 8% of the aggregate gross proceeds received from the Holders' exercise of their Existing Warrants and to reimburse Maxim up to \$10,000 for its accountable legal expenses in connection therewith.

October 2023 Offering

On October 17, 2023, we completed a public offering consisting of an aggregate of 87,000 units (each a "October 2023 Unit" and collectively, the "October 2023 Units"), with each October 2023 Unit consisting of (A) one (1) share of our Series B Preferred Stock, and (B) two Series B Preferred Stock purchase warrants (each, a "Preferred Warrant" and collectively, the "Preferred Warrants"), with each Preferred Warrant exercisable for one share of Series B Preferred Stock (the "Preferred Warrant Shares"), at the public offering price of \$55.00 per October 2023 Unit. The Preferred Warrants are immediately exercisable, each with an exercise price of \$55.00 and expire on October 17, 2025. Maxim acted as the exclusive placement agent for us in connection with the offering. Pursuant to that certain placement agency agreement, dated October 16, 2023, by and between us and Maxim, Maxim was paid a cash fee of 8.0% of the aggregate gross cash proceeds to us from the sale of the securities in the offering; provided, however, the cash fee was reduced to 5.0% from the sale of securities in the offering to those certain investors having a prior existing relationship with us.

May 2023 Warrant Inducements

On May 15, 2023, we entered into warrant exercise inducement offer letters ("Inducement Letters") with holders of (i) 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 of Common Stock (the "March Warrants") and (ii) 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 of Common Stock (the "April Warrants" and, together with the March Warrants, the "2023 Existing Warrants") the 2023 Existing Warrants (collectively, the "Exercising Holders") pursuant to which the Exercising Holders agreed to exercise for cash certain of the 2023 Existing Warrants to purchase up to 1,486,132 shares of Common Stock in exchange for our agreement to issue new warrants (the "Inducement Warrants") on substantially the same terms as the 2023 Existing Warrants, except as set forth herein. Maxim acted as financial advisor to the Company in connection with the offering and will receive financial advisory fees in connection therewith.

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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, 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, 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 (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 (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 (the “August 2022 Private Placement”), and we entered into a placement agency agreement with Maxim (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 (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 August 2022 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 include 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 (the “PA Resale Registration Statement”), and to ensure such PA 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 PA 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 2022 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 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 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 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 Warrants and Pre-Funded 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 Units, Pre-Funded Units, Warrants or the Pre-Funded Warrants, and we do not expect a market to develop. In addition, we do not intend to list the Warrants or the Pre-Funded Warrants on Nasdaq 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 Móbielarios 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.

PRINCIPAL STOCKHOLDERS

The following table sets forth, as of February 2, 2024, 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 this offering is based upon 34,562,545 shares of Common Stock outstanding as of February 2, 2024. The percentage ownership information shown in the table after this offering is based upon 134,562,545 shares of Common Stock outstanding as of such date, after giving effect to the sale of all 100,000,000 Units offered pursuant to this prospectus (based on the assumed public offering price of \$0.10 per Unit, the closing sale price of our Common Stock

on Nasdaq on January 29, 2024, and assuming no sale of any Pre-Funded Units and no exercise of any Warrants issued in connection with this offering).

Beneficial ownership is determined according to the rules of 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 February 2, 2024. 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 February 2, 2024 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.

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Name of Beneficial Owner	Shares Beneficially Owned Prior to this Offering					Shares Beneficially Owned After this Offering				
	Common Stock		Series B Preferred Stock		% Total Voting Power ⁽¹⁾	Common Stock		Series B Preferred Stock		% Total Voting Power ⁽¹⁾
	Shares	%	Shares	%		Shares	%	Shares	%	
Brett Moyer ⁽²⁾	74,509	*	-	-	*	74,509	*	-	-	*
Gary Williams ⁽³⁾	48,931	*	-	-	*	48,931	*	-	-	*
Lisa Cummins ⁽⁴⁾	11,364	*	-	-	*	11,364	*	-	-	*
Dr. Jeffrey M. Gilbert ⁽⁵⁾	11,376	*	-	-	*	11,376	*	-	-	*
David Howitt ⁽⁶⁾	11,129	*	-	-	*	11,129	*	-	-	*
Helge Kristensen ⁽⁷⁾	11,449	*	-	-	*	11,449	*	-	-	*
Sriram Peruvemba ⁽⁸⁾	11,336	*	-	-	*	11,336	*	-	-	*
Robert Tobias ⁽⁹⁾	11,364	*	-	-	*	11,364	*	-	-	*
Wendy Wilson ⁽¹⁰⁾	11,222	*	-	-	*	11,222	*	-	-	*
All directors and executive officers as a group (9 persons) ⁽¹¹⁾	202,680	0.1%	-	-	0.1%	202,680	[]%	-	-	[]%

* 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. The holders of our Common Stock are entitled to one vote per share. The holders of our Series B Preferred Stock have no voting rights.
- (2) The number of shares of Common Stock beneficially owned before the offering includes (i) 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; (ii) 1,165 RSAs granted under the LTIP, which are scheduled to vest quarterly in equal installments for the period from March 15, 2024 to September 15, 2025, on each March 15th, June 15th, September 15th and December 15th, so long as Mr. Moyer remains in the service of the Company on each such date; (iii) 333 RSAs granted under the Company's LTIP, which are scheduled to vest in equal installments on the second and third anniversaries of September 19, 2022, as long as Mr. Moyer remains in service of the Company on each such anniversary; and (iv) 62,475 RSAs granted under the 2018 LTIP, scheduled to vest in equal installments, commencing on May 15, 2024 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.
- (3) The number of shares of Common Stock beneficially owned before the offering includes (i) 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; (ii) 230 RSAs granted under the LTIP, which are scheduled to vest quarterly in equal installments for the period from March 15, 2024 to September 15, 2025, on each March 15th, June 15th, September 15th and December 15th, so long as Mr. Williams remains in the service of the Company on each such date; and (iii) 43,316 RSAs granted under the 2018 LTIP, scheduled to vest in equal installments, commencing on May 15, 2024 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.

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- (4) The number of shares of Common Stock beneficially owned before the offering includes (i) 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; (ii) 56 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; and (iii) 9,163 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.
- (5) The number of shares of Common Stock beneficially owned before the offering includes (i) 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; (ii) 56 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; and (iii) 9,163 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.

- (6) The number of shares of Common Stock beneficially owned before the offering includes (i) 56 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. Howitt remains in the service of the Company on each such date; and (ii) 9,163 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.
- (7) The number of shares of Common Stock beneficially owned before the offering includes (i) 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; (ii) 56 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; and (iii) 9,163 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.

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- (8) The number of shares of Common Stock beneficially owned before the offering includes (i) 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; (ii) 56 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; and (iii) 9,163 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.
- (9) The number of shares of Common Stock beneficially owned before the offering includes (i) 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; (ii) 56 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; and (iii) 9,163 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.
- (10) 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) 56 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. Wilson remains in the service of the Company on each such date; and (iii) 9,163 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. Wilson remains in the service of the Company on each such date.
- (11) See the information included in footnotes 2 through 10 above.

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DESCRIPTION OF CAPITAL STOCK

General

The following description of our capital stock, together with the additional information we include in any applicable prospectus supplement, summarizes the material terms and provisions of the capital stock that we may offer under this prospectus, but is not complete. For the complete terms of our capital stock, please refer to our certificate of incorporation, as amended from time to time, any certificate of designation for our preferred stock, and our bylaws, as amended from time to time. The General Corporation Law of the State of Delaware (the “DGCL”) may also affect the terms of our capital stock.

Authorized Capital Stock

The Company is authorized to issue 220,000,000 shares of its 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 the date of this prospectus, there are 375,000 shares designated as Series B Preferred Stock. As of February 2, 2024, there were 34,562,545 shares of our common stock issued and outstanding and 62,657 shares of Series B Preferred Stock issued and outstanding.

Common Stock

Voting Rights

Each holder of our Common Stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Under our bylaws, our stockholders will not have cumulative voting rights. Because of this, the holders of a majority of the Common Stock entitled to vote in any election of directors will be able elect all of the directors standing for election, if they should so choose.

Dividends

Subject to preferences that may be applicable to any then-outstanding preferred stock, holders of our Common Stock will be entitled to receive ratably those dividends, if any, as may be declared from time to time by the board of directors out of legally available funds. The right of holders of our Common Stock to receive dividends is subject to the rights of holders of our Series B Preferred Stock to receive dividends pursuant to the Series B COD to receive dividends pursuant to the Series B COD.

Liquidation

In the event of our liquidation, dissolution or winding up, holders of Common Stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding preferred stock, including, without limitation, the liquidation preference granted to holders of our Series B Preferred Stock pursuant to the Series B COD.

Rights and Preferences

Holders of Common Stock have no preemptive, conversion or subscription rights and there are no redemption or sinking fund provisions applicable to our Common Stock. The rights, preferences and privileges of the holders of Common Stock are subject to, and may be adversely affected by, the rights of the holders of any series of preferred stock that we may designate in the future, including, without limitation, the rights granted to holders of our Series B Preferred Stock pursuant to the Series B COD.

Preferred Stock

General

We are authorized to issue up to 20,000,000 shares of “blank check” preferred stock, par value \$0.0001 per share, of which 87,000 shares of Series B Preferred Stock are presently issued and outstanding. Our Board has the authority, without further action by our stockholders, to issue shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the rights, preferences and privileges of the shares of each wholly unissued series and any qualifications, limitations or restrictions thereon, and to increase or decrease the number of shares any such series, but not below the number of shares of such series then outstanding.

Our Board may authorize the issuance of shares of preferred stock with dividend, liquidation, voting, conversion or other rights that could adversely affect the voting power or other rights of the holders of our common stock. The purpose of authorizing our Board to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control of us and may adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock. It is not possible to state the actual effect of the issuance of any preferred stock on the rights of holders of common stock until the board of directors determines the specific rights attached to that class of preferred stock.

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 Series B COD, which are included as exhibits to the registration statement of which this prospectus forms 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 375,000 shares designated as Series B Preferred Stock, pursuant to the Series B COD and 38,335 shares of Series B Preferred Stock issued and outstanding.

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.

Transfer Agent and Register

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

Maturity

The Series B Preferred Stock matures on October 17, 2025.

Dividends

The Series B COD 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 October 17, 2024 (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) \$55.00, 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 Series B Preferred Stock 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 of \$0.4147, which Conversion Price is subject to adjustment. 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).

Series B Preferred Stock 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 Series B COD) (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.

Pursuant to the Inducement Agreements, the Holders agreed to a reduced exercise price of \$35.72 per share of Series B Preferred Stock, while maintaining the original fixed conversion price of \$0.4147, upon the exercise of any Existing Warrants during the Inducement Period.

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 Series B COD) 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 (as defined in the Series B COD) are delivered or Series B Preferred Stock holder rescinds such conversion.

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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 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.

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Beneficial Ownership Limitation

Notwithstanding anything herein to the contrary, we shall not effect any conversion of the Series B Preferred Stock, and a Series B Preferred Stock 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 Series B Preferred Stock holder (together with such Series B Preferred Stock holder's affiliates, and any persons acting as a group together with such Series B Preferred Stock holder or any of such Series B Preferred Stock 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 Series B Preferred Stock 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 Series B Preferred Stock 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 Series B Preferred Stock 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 Series B Preferred Stock 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 Series B Preferred Stock holder, and the submission of a Notice of Conversion shall be deemed to be such Series B Preferred Stock holder's determination of whether the shares of Series B Preferred Stock may be converted (in relation to other securities owned by such Series B Preferred Stock 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 Series B Preferred Stock 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 Series B Preferred Stock 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 Series B Preferred Stock holder, we within one (1) trading day confirm orally and in writing to such Series B Preferred Stock 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 Series B Preferred Stock 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 Series B Preferred Stock 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 Series B Preferred Stock holder. A Series B Preferred Stock 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 Series B Preferred Stock 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 Series B Preferred Stock holder and no other Series B Preferred Stock holder. The Beneficial Ownership Limitation shall not be waived by us or the Series B Preferred Stock holder and upon issuance of the Series B Preferred Stock by us, and the purchase thereof by the Series B Preferred Stock holder, each of us and the Series B Preferred Stock 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 Series B Preferred Stock holder of Series B Preferred Stock.

Subsequent Rights Offerings

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 Series B Preferred Stock holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Series B Preferred Stock holder could have acquired if the Series B Preferred Stock holder had held the number of shares of Common Stock acquirable upon complete conversion of such Series B Preferred Stock holder's (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 Series B Preferred Stock holder's right to participate in any such Purchase Right would result in the Series B Preferred Stock holder exceeding the Beneficial Ownership Limitation, then the Series B Preferred Stock 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 Series B Preferred Stock holder until such time, if ever, as its right thereto would not result in the Series B Preferred Stock 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 Series B Preferred Stock holder shall be entitled to participate in such Distribution to the same extent that the Series B Preferred Stock holder would have participated therein if the Series B Preferred Stock 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 Series B Preferred Stock holder's right to participate in any such Distribution would result in the Series B Preferred Stock holder exceeding the Beneficial Ownership Limitation, then the Series B Preferred Stock 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 Series B Preferred Stock holder until such time, if ever, as its right thereto would not result in the Series B Preferred Stock holder exceeding the Beneficial Ownership Limitation).

Fundamental Transactions

In the event of a Fundamental Transaction (as defined in the Series B COD), 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 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 Series B Preferred Stock holder commencing on the two-year anniversary of October 17, 2023 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 (as defined in the Series B COD), 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 Series B Preferred Stock 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

Series B Preferred Stock holders do 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 is 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 Series B CODs; (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.

Series B Preferred Stock holders do 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 Series B COD or in our Certificate of Incorporation.

Registration; Transfer

Pursuant to the terms of the Series B COD, 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 acts as securities depository for the Series B Preferred Stock. With respect to the Series B Preferred Stock, we have issued one fully registered global securities certificates in the name of DTC or DTC's nominee. These certificates represent the total aggregate number of shares of Series B Preferred Stock.

Title to book-entry interests in the Series B Preferred Stock 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.

Series B Preferred holder's beneficial ownership interests are recorded on the Direct Participants and Indirect Participants' records, but DTC has no knowledge of an individual's ownership. DTC's records reflect only the identity of the Direct Participants to whose accounts shares of Series B Preferred Stock are credited.

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 are to be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

In the event that we request any action of the holders, or an owner of a beneficial interest in a global security, 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.

Common Stock Purchase Warrants

As of February 2, 2024, we had common stock purchase warrants to purchase up to 43,258,183 shares of our Common Stock outstanding with a weighted average exercise price and remaining life in years of \$0.65 and 4.9, respectively. The exercise price of such warrants is subject to adjustment upon certain events, such as stock splits, combinations, dividends, distributions, reclassifications, mergers or other corporate change and dilutive issuances. The exercise price of each New Warrant and each 2024 Bridge Warrant will be reset on the sixth (6th) trading day following the date the next reverse stock split of shares of Common Stock is effected to the lower of (a) the exercise price of the New Warrants or the 2024 Bridge Warrants, as applicable, then in effect after giving effect to such Reverse Stock Split and (b) the lowest VWAP (as defined in the New Warrants or the 2024 Bridge Warrants, as applicable) of the Common Stock in the five (5) trading days immediately prior to such date.

Series B Preferred Warrants

As of February 2, 2024, we had 83,065 Series B Preferred Warrants outstanding, with each Series B Preferred Warrant exercisable for one share of Series B Preferred Stock. The Series B Preferred Warrants are immediately exercisable, each with an exercise price of \$55.00 and expire on October 17, 2025. Pursuant to the Inducement Agreements, if any Series B Preferred Warrant holder exercises Series B Preferred Warrants in accordance therewith, such Series B Preferred Warrants will be exercisable at a per share exercise price equal to \$35.72.

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
- 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 as well as for another party to obtain control of us by replacing our Board. Since our Board 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 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 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;

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- 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 with discretion to indemnify our officers and employees when determined appropriate by our Board. We have entered into agreements to indemnify our directors, executive officers and other employees as determined by the Board. 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.

Transfer Agent

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

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MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES

The following is a general discussion of the material U.S. federal income tax considerations applicable to the ownership and disposition of shares of our Common Stock, Pre-Funded Warrants and Warrants acquired in this offering. This discussion is for general information only and is not tax advice. Accordingly, all prospective holders of our Common Stock and Warrants should consult their own tax advisors with respect to the U.S. federal, state, local and non-U.S. tax consequences of the purchase, ownership and disposition of our Common Stock and Warrants. This discussion is based on current provisions of the U.S. Internal Revenue Code of 1986, as amended, which we refer to as the Code, existing and proposed U.S. Treasury Regulations promulgated thereunder, current administrative rulings and judicial decisions, all as in effect as of the date of this prospectus, all of which are subject to change or to differing interpretation, possibly with retroactive effect. Any change could alter the tax consequences described in this prospectus. We assume in this discussion that each holder holds shares of our Common Stock, Pre-Funded Warrants and Warrants as capital assets within the meaning of Section 1221 of the Code (generally property held for investment).

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular holder in light of that holder's individual circumstances, does not address the alternative minimum or Medicare contribution taxes, and does not address any aspects of U.S. state, local or non-U.S. taxes or any U.S. federal taxes other than income tax. This discussion also does not consider any specific facts or circumstances that may apply to a holder and does not address aspects of U.S. federal income taxation that may be applicable to holders that are subject to special tax rules, including without limitation:

- insurance companies;
- tax-exempt organizations;

- financial institutions;
- brokers or dealers in securities;
- regulated investment companies;
- real estate investment trusts;
- pension plans, individual retirement accounts and other tax deferred accounts;
- persons that mark their securities to market;
- controlled foreign corporations;
- passive foreign investment companies;
- “dual resident” corporations;
- persons that receive our Common Stock or Warrants as compensation for the performance of services;
- owners that hold our Common Stock or Warrants as part of a straddle, hedge, conversion transaction, synthetic security or other integrated investment;
- owners that own, or are deemed to own, more than 5% of our capital stock (except to the extent specifically set forth below);
- persons that have a functional currency other than the U.S. dollar; and
- certain U.S. expatriates.

In addition, this discussion does not address the tax treatment of partnerships or other pass-through entities for U.S. federal income tax purposes, or persons who hold our Common Stock, Pre-Funded Warrants or Warrants through partnerships or other pass-through entities for U.S. federal income tax purposes. A partner in a partnership or other pass-through entity that will hold our Common Stock, Pre-Funded Warrants or Warrants should consult his, her or its own tax advisor regarding the tax consequences of acquiring, holding and disposing of our Common Stock, Pre-Funded Warrants or Warrants through a partnership or other pass-through entity, as applicable.

As used in this prospectus, the term “U.S. holder” means a beneficial owner of Common Stock, Pre-Funded Warrants or Warrants that is for U.S. federal income tax purposes:

- a citizen or individual resident of the United States;
- a corporation (or other entity properly classified as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state within the United States, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust, if (i) a U.S. court is able to exercise primary supervision over the trust’s administration and one or more “United States persons” (as defined in the Code) have the authority to control all substantial decisions of the trust, or (ii) in the case of a trust that was treated as a domestic trust under the laws in effect before 1997, a valid election is in place under applicable U.S. Treasury regulations to treat such trust as a domestic trust.

The term “non-U.S. holder” means any beneficial owner of shares of Common Stock, Pre-Funded Warrants or Warrants that is not a U.S. holder and is not a partnership or other entity properly classified as a partnership for U.S. federal income tax purposes. For the purposes of this prospectus, U.S. holders and non-U.S. holders are referred to collectively as “holders.” There can be no assurance that the Internal Revenue Service, which we refer to as the IRS, will not challenge one or more of the tax consequences described herein. We have not obtained, nor do we intend to obtain, a ruling from the IRS with respect to the U.S. federal income tax consequences of the purchase, ownership or disposition of our Common Stock or Warrants.

Allocation of Purchase Price Between Each Share of Common Stock, Pre-Funded Warrant and Warrant

The purchase price for each Unit will be allocated between each share of Common Stock (or, in lieu of Common Stock, each Pre-Funded Warrant) and accompanying Warrant in proportion to their relative fair market values at the time the Unit is purchased by the holder. This allocation will establish a holder’s initial tax basis for U.S. federal income tax purposes in his, her or its share of Common Stock (or, in lieu of Common Stock, Pre-Funded Warrant) and Warrant included in each investment unit. We will not be providing holders with such allocation, and it is possible that different holders will reach different determinations regarding such allocation. A holder’s allocation of purchase price between each share of Common Stock (or, in lieu of Common Stock, each Pre-Funded Warrant) and the accompanying Warrant is not binding on the IRS or the courts, and no assurance can be given that the IRS or the courts will agree with a holder’s allocation.

Accordingly, each prospective holder should consult his, her or its own tax advisor with respect to the allocation, and the risks associated with such allocation, of the holder’s purchase price for the investment unit between our shares of Common Stock (or, in lieu of Common Stock, Pre-Funded Warrants) and Warrants.

Treatment of Pre-Funded Warrants

Although it is not entirely free from doubt, a Pre-Funded Warrant should be treated as a share of our Common Stock for U.S. federal income tax purposes and a holder of Pre-Funded Warrants should generally be taxed in the same manner as a holder of Common Stock, as described below.

Accordingly, no gain or loss should be recognized upon the exercise of a Pre-Funded Warrant and, upon exercise, the holding period of a Pre-Funded Warrant should carry over to the share of Common Stock received. Similarly, the tax basis of the Pre-Funded Warrant should carry over to the share of Common Stock received upon exercise, increased by the exercise price of \$0.0001 per share. Each holder should consult his, her or its own tax advisor regarding the risks associated with the acquisition of Pre-Funded Warrants

pursuant to this offering (including potential alternative characterizations). The balance of this discussion generally assumes that the characterization described above will be respected for U.S. federal income tax purposes.

Tax Consequences to U.S. Holders

Exercise or Expiration of Warrants

Subject to the discussion below with respect to the cashless exercise of a Warrant, a U.S. holder will not recognize income, gain or loss on the exercise of a Warrant. A U.S. holder's tax basis in the Common 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 above under "Allocation of Purchase Price Between Share of Common Stock or Pre-Funded Warrant and Accompanying Warrant") and (ii) the exercise price of the Warrant. The U.S. holder's holding period for the Common 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 registration statement registering the issuance of the Common Stock underlying the Warrants under the Securities Act is not effective or available the holder may, in its sole discretion, elect to exercise the Warrant through a cashless exercise. The tax consequences of a cashless exercise of a Warrant are not clear under current U.S. tax law. U.S. holders should consult their own tax advisors regarding the tax consequences of a cashless exercise.

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. The deductibility of capital losses is subject to significant limitations.

Distributions on Our Common Stock

We have never paid cash dividends on our Common Stock and we do not anticipate paying any cash dividends in the foreseeable future. See "Dividend Policy." If we do make distributions on our Common Stock to a U.S. holder, those distributions generally will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits as determined under U.S. federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, the excess will be treated as a tax-free return of the U.S. holder's investment, up to such U.S. holder's tax basis in the Common Stock. Any remaining excess will be treated as capital gain, subject to the tax treatment described below in "—Sale, Exchange or Other Taxable Disposition of Our Common Stock or Warrants." Dividends paid by us generally will be eligible for the reduced rates of tax for qualified dividend income allowed to individual U.S. holders and for the dividends received deduction allowed to corporate U.S. holders, in each case assuming that certain holding period and other requirements are satisfied.

Constructive Distributions on Our Warrants

Under Section 305 of the Code, an adjustment to the number of shares of Common Stock that will be issued on the exercise of our Warrants (whether Pre-Funded Warrants or Warrants), or an adjustment to the exercise price of such Warrants, may be treated as a constructive distribution to a U.S. Holder of the 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 constructive distribution. Any constructive distributions generally would be subject to the tax treatment described above under "—Distributions on our Common Stock".

Sale, Exchange or Other Taxable Disposition of Our Common Stock, Pre-Funded Warrants or Warrants

Upon the sale, exchange, or other taxable disposition of our Common Stock or Warrants (whether Pre-Funded Warrants or Warrants), a U.S. holder will recognize gain or loss equal to the difference between the amount realized upon the disposition and the U.S. holder's tax basis in the Common Stock or Warrants sold or exchanged.

Any gain or loss generally will be capital gain or loss, and will be long-term capital gain or loss if the U.S. holder's holding period for the Common Stock or Warrants exceeded one year at the time of the disposition. Certain U.S. holders (including individuals) are currently eligible for preferential rates of U.S. federal income taxation in respect of long-term capital gains. The deductibility of capital losses is subject to significant limitations.

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 Common Stock or Warrants, and to the proceeds of the sale, exchange or other disposition of our Common Stock and 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, 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.

Tax Consequences to Non-U.S. Holders

Exercise or Expiration of Warrants

In general, a non-U.S. holder will not be required to recognize income, gain or loss upon the exercise of a Warrant by payment of the exercise price. To the extent that a cashless exercise results in a taxable exchange, the consequences would be similar to those described below under "Sale, Exchange or Other Taxable Disposition of our Common Stock or Warrants".

The expiration 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.

Distributions on Our Common Stock

We have never paid cash dividends on our Common Stock and we do not anticipate paying any cash dividends in the foreseeable future. See "Dividend Policy." If we do make distributions to holders of our Common Stock or if we are treated as making a constructive distribution to holders of our Warrants or Pre-Funded Warrants, those distributions generally will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, the excess will be treated as a tax-free return of the non-U.S. holder's investment, up to such non-U.S. holder's tax basis in the Common Stock. Any remaining excess will be treated as capital gain, subject to the tax treatment described below in "—Sale, Exchange or Other Taxable Disposition of Our Common Stock or Warrants."

Distributions (including constructive distributions) made to a non-U.S. holder that are treated as dividends generally will be subject to withholding of U.S. federal income tax at a rate of 30% of the gross amount 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, unless such dividends are effectively connected with a trade or business conducted by a non U.S. holder within the United States (as discussed below). A non-U.S. holder of our Common Stock who claims the benefit of an applicable income tax treaty between the United States and such holder's country of residence generally will be required to provide a properly executed IRS Form W-8BEN or W- 8BEN-E (or successor form), as applicable, and satisfy applicable certification and other requirements. Non-U.S. holders are urged to consult their own tax advisors regarding their entitlement to benefits under a relevant income tax treaty. A non-U.S. holder that is eligible for a reduced rate of U.S. withholding tax under an income tax treaty may be able to obtain a refund or credit of any excess amounts withheld by timely filing the required information with the IRS.

Dividends that are treated as effectively connected with a trade or business conducted by a non-U.S. holder within the United States and, if an applicable income tax treaty so provides, that are attributable to a "permanent establishment" or a "fixed base" maintained by the non-U.S. holder within the United States, generally are exempt from the 30% withholding tax if the non-U.S. holder satisfies applicable certification and disclosure requirements.

U.S. effectively connected income, net of specified deductions and credits, is generally taxed at the same graduated U.S. federal income tax rates applicable to United States persons (as defined in the Code). Any U.S. effectively connected income received by a non-U.S. holder that is a corporation may also be subject to an additional "branch profits tax" at a 30% rate 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.

Constructive Distributions on Our Warrants

As described above under "—Tax Consequences to U.S. Holders—Constructive Distributions on our Warrants," an adjustment to the Warrants could result in a constructive distribution to a non-U.S. holder, which would be treated as described under "—Distributions on Our Common Stock" 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 proper treatment of any adjustments to the Warrants.

In addition, regulations governing "dividend equivalents" under Section 871(m) of the Code may apply to the Pre-Funded Warrants. Under those regulations, an implicit or explicit payment made to the holder of Pre-Funded Warrants that references a distribution on our Common Stock would generally be taxable to a non-U.S. holder in the manner described under "Distributions on our Common Stock" above. Such dividend equivalent amount would be taxable and subject to withholding whether or not there is actual payment of cash or other property, and we may satisfy any withholding obligations by withholding from other amounts due to the non-U.S. holder.

Non-U.S. holders are encouraged to consult their own tax advisors regarding the application of Section 871(m) of the Code to the Pre-Funded Warrants.

Sale, Exchange or Other Taxable Disposition of Our Common Stock, Pre-Funded Warrants or Warrants

In general, a non-U.S. holder will not be subject to any U.S. federal income tax on any gain realized upon such holder's sale, exchange or other taxable disposition of shares of our Common Stock or Warrants (whether Pre-Funded Warrants or 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 United States persons (as defined in the Code) and, if the non-U.S. holder is a foreign corporation, the branch profits tax described above in "—Tax Consequences to Non-U.S. Holders—Distributions on Our Common Stock" 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," unless our Common Stock is regularly traded on an established securities market and the non-U.S. holder holds no more than 5% of our outstanding Common Stock, directly or indirectly, during the shorter of the 5-year period ending on the date of the taxable disposition or the period that the non-U.S. holder held our Common Stock. Generally, a corporation is a U.S. real property holding corporation only if the fair market value of its U.S. real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. Although there can be no assurance, we do not believe that we are, or have been, a U.S. real property holding corporation, or that we are likely to become one in the future. No assurance can be provided that our Common Stock will be regularly traded on an established securities market for purposes of the rules described above.

Information Reporting and Backup Withholding

We must report annually to the IRS and to each non-U.S. holder the gross amount of the distributions paid on our Common Stock (and constructive distributions on our Warrants) to such holder and the tax withheld, if any, with respect to such distributions. Non-U.S. holders may have to comply with specific certification procedures to establish that the holder is not a United States person (as defined in the Code) in order to avoid backup withholding at the applicable rate with respect to dividends on our Common Stock or Warrants. Dividends paid to non-U.S. holders subject to the U.S. withholding tax, as described above in "Non-U.S. Holders—Distributions on Our Common Stock," generally will be exempt from U.S. backup withholding.

Information reporting and backup withholding generally will apply to the proceeds of a disposition of our Common Stock and Warrants by a non-U.S. holder effected by or through the U.S. office of any broker, U.S. or foreign, unless the holder certifies its status as a non-U.S. holder and satisfies certain other requirements, or otherwise establishes an exemption. Generally, information reporting and backup withholding will not apply to a payment of disposition proceeds to a non-U.S. holder where the transaction is effected outside the United States through a non-U.S. office of a broker. However, for information reporting purposes, dispositions effected through a non-U.S. office of a broker with substantial U.S. ownership or operations generally will be treated in a manner similar to dispositions effected through a U.S. office of a broker. Non-U.S. holders should consult their own tax advisors regarding the application of the information reporting and backup withholding rules to them.

Copies of information returns may be made available to the tax authorities of the country in which the non-U.S. holder resides or is incorporated under the provisions of a specific treaty or agreement.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a non-U.S. holder can be refunded or credited against the non-U.S. holder's U.S. federal income tax liability, if any, provided that an appropriate claim is filed with the IRS.

Foreign Accounts

The Foreign Account Tax Compliance Act, or FATCA, generally imposes a 30% withholding tax on dividends (including constructive dividends) on, and gross proceeds from the sale or other disposition of, our Common Stock and Warrants if paid to a non-U.S. entity unless (i) if the non-U.S. entity is a “foreign financial institution,” the non-U.S. entity undertakes certain due diligence, reporting, withholding, and certification obligations, (ii) if the non-U.S. entity is not a “foreign financial institution,” the non-U.S. entity identifies certain of its U.S. investors, if any, or (iii) the non-U.S. entity is otherwise exempt under FATCA.

Withholding under FATCA generally will apply to payments of dividends (including constructive dividends) on our Common Stock and Warrants.

An intergovernmental agreement between the United States and an applicable foreign country may modify the requirements described in this section. Under certain circumstances, a holder may be eligible for refunds or credits of the tax. Non-U.S. holders should consult their own tax advisors regarding the possible implications of FATCA on their investment in our Common Stock or Warrants.

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The preceding discussion of material U.S. federal income tax considerations 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 Common Stock or Warrants, including the consequences of any proposed changes in applicable laws.

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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

Sullivan & Worcester LLP will pass upon the validity of the securities being registered by the registration statement of which this prospectus is a part. Blank Rome LLP is acting as counsel to 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, appearing in this Registration Statement on Form S-1 have been audited by BPM LLP, an independent registered public accounting firm, as stated in their report thereon, are included in reliance upon such 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) and upon the authority of such firm as experts in accounting and auditing.

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.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
WiSA Technologies, Inc.

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of WiSA Technologies, Inc. (a Delaware corporation) and its subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations, convertible preferred stock and stockholders' equity (deficit), and cash flows for each of the two years in the period ended December 31, 2022, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

Going Concern Uncertainty

The accompanying consolidated financial statements have been prepared assuming that WiSA Technologies, Inc. and its subsidiaries will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company's recurring losses from operations, a net capital deficiency, available cash and cash used in operations raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

We have served as the Company's auditor since 2016.

/s/ BPM LLP
San Jose, California
March 16, 2023

WISA TECHNOLOGIES, INC.
CONSOLIDATED BALANCE SHEETS
December 31, 2022 and 2021
(in thousands, except share and per share data)

	Year Ended December 31,	
	2022	2021
Assets		
Current Assets:		
Cash and cash equivalents	\$ 2,897	\$ 13,108
Accounts receivable	273	214
Inventories	7,070	4,780
Prepaid expenses and other current assets	890	1,086
Total current assets	11,130	19,188
Property and equipment, net	174	162
Other assets	148	41

Total assets	\$ 11,452	\$ 19,391
Liabilities, Convertible Preferred Stock and Stockholders' Equity (Deficit)		
Current Liabilities:		
Accounts payable	\$ 2,042	\$ 1,549
Accrued liabilities	1,632	1,416
Total current liabilities	3,674	2,965
Convertible note payable	457	—
Warrant liabilities	8,945	8
Derivative liability	333	—
Other liabilities	39	41
Total liabilities	13,448	3,014
Commitments and contingencies (Note 8)		
Series A 8% Senior Convertible Preferred stock, par value \$0.0001; 0 shares authorized and outstanding as of December 31, 2022; 1,250,000 shares authorized; 0 shares outstanding as of December 31, 2021, (liquidation preference of \$0)		
	—	—
Stockholders' Equity (Deficit):		
Common stock, par value \$0.0001; 200,000,000 shares authorized; 712,564 and 158,310 shares issued and outstanding as of December 31, 2022 and 2021, respectively		
	7	2
Additional paid-in capital	226,318	228,578
Accumulated deficit	(228,321)	(212,203)
Total stockholders' equity (deficit)	(1,996)	16,377
Total liabilities, convertible preferred stock and stockholders' equity (deficit)	\$ 11,452	\$ 19,391

Note: Share and per share amounts have been retroactively adjusted to reflect the impact of a 1-for-100 reverse stock split effected in January 2023, as discussed in Note 1.

The accompanying notes are an integral part of these consolidated financial statements.

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WISA TECHNOLOGIES, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
For the years ended December 31, 2022 and 2021
(in thousands, except share and per share data)

	Year Ended December 31,	
	2022	2021
Revenue, net	\$ 3,365	\$ 6,541
Cost of revenue	2,970	4,677
Gross profit	395	1,864
Operating Expenses:		
Research and development	7,144	5,236
Sales and marketing	6,140	4,123
General and administrative	5,155	4,016
Total operating expenses	18,439	13,375
Loss from operations	(18,044)	(11,511)
Interest expense, net	(898)	(9)
Change in fair value of warrant liability	2,852	—
Change in fair value of derivative liability	(47)	—
Gain on forgiveness of Paycheck Protection Program loan	—	859
Other expense, net	(12)	(11)
Warrant inducement expense	—	(1,146)
Loss before provision for income taxes	(16,149)	(11,818)
Provision for income taxes	2	2
Net loss	(16,151)	(11,820)
Convertible preferred stock dividend	—	(34)
Deemed dividend on exchange of convertible preferred stock for common stock	—	(1,192)
Net loss attributable to common stockholders	\$ (16,151)	\$ (13,046)
Net loss per common share - basic and diluted	\$ (82.89)	\$ (105.20)
Weighted average number of common shares used in computing net loss per common share	194,852	124,016

Note: Share and per share amounts have been retroactively adjusted to reflect the impact of a 1-for-100 reverse stock split effected in January 2023, as discussed in Note 1.

The accompanying notes are an integral part of these consolidated financial statements.

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WISA TECHNOLOGIES, INC.
CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)
For the years ended December 31, 2022 and 2021

(in thousands, except share data)

	Convertible Preferred Stock		Common Shares		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2020	250,000	\$ 597	84,142	\$ 1	\$ 207,698	\$ (200,383)	\$ 7,316
Issuance of common stock upon warrant exercise	—	—	34,655	—	8,303	—	8,303
Warrants issued in connection with warrant exercise	—	—	—	—	1,146	—	1,146
Convertible preferred stock dividend	—	34	—	—	(34)	—	(34)
Exchange of convertible preferred stock for common stock	(250,000)	(631)	2,500	—	1,640	—	1,640
Warrants issued upon exchange of preferred stock for common stock	—	—	—	—	570	—	570
Deemed dividend on exchange of convertible preferred stock	—	—	—	—	(1,192)	—	(1,192)
Stock-based compensation	—	—	9,745	—	1,346	—	1,346
Issuance of common stock to vendor	—	—	100	—	34	—	34
Release of vested restricted common stock	—	—	2,168	—	—	—	—
Registered direct offering, net of issuance costs	—	—	25,000	1	9,025	—	9,026
Issuance of warrants in exchange for services	—	—	—	—	42	—	42
Net loss	—	—	—	—	—	(11,820)	(11,820)
Balance as of December 31, 2021	—	—	158,310	2	228,578	(212,203)	16,377
ASC 842 adoption adjustment	—	—	—	—	—	33	33
Stock-based compensation	—	—	12,749	—	2,027	—	2,027
Release of vested restricted common stock	—	—	2,108	—	—	—	—
Restricted stock awards cancelled	—	—	(603)	—	—	—	—
Issuance of warrants in connection with convertible promissory note	—	—	—	—	91	—	91
Issuance of common stock and warrants, net of offering costs	—	—	540,000	5	6,426	—	6,431
Issuance of warrants in connection with December 2022 offering	—	—	—	—	(10,804)	—	(10,804)
Net loss	—	—	—	—	—	(16,151)	(16,151)
Balance as of December 31, 2022	—	—	712,564	7	226,318	(228,321)	(1,996)

Note: Share amounts have been retroactively adjusted to reflect the impact of a 1-for-100 reverse stock split effected in January 2023, as discussed in Note 1.

The accompanying notes are an integral part of these consolidated financial statements.

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WISA TECHNOLOGIES, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the years ended December 31, 2022 and 2021
(in thousands, except share and per share data)

	Year Ended December 31,	
	2022	2021
Cash flows from operating activities:		
Net loss	\$ (16,151)	\$ (11,820)
Adjustments to reconcile net loss to net cash used in operating activities:		
Warrant inducement expense	—	1,146
Forgiveness of Paycheck Protection Program loan	—	(859)
Stock-based compensation	2,027	1,346
Depreciation and amortization	122	79
Expense for issuance of common stock for services	—	34
Issuance of warrants in exchange for services	—	42
Amortization of debt discounts	879	—
Change in fair value of derivative liability	47	—
Change in fair value of warrant liability	(2,852)	—
Changes in operating assets and liabilities:		
Accounts receivable	(59)	(129)
Inventories	(2,290)	(2,072)
Prepaid expenses and other assets	196	(178)
Other assets	105	—
Accounts payable	493	877
Accrued liabilities	104	26
Other liabilities	(135)	—
Net cash used in operating activities	(17,514)	(11,508)
Cash flows from investing activities:		
Purchases of property and equipment	(43)	(99)
Net cash used in investing activities	(43)	(99)

Cash flows from financing activities:		
Proceeds from issuance of common stock upon warrant exercises, net of issuance costs	—	8,303
Repayment of finance lease	(25)	(29)
Proceeds from issuance of common stock, prefunded warrants and warrants, net of issuance costs	6,418	9,026
Proceeds from issuance of convertible note payable, net of issuance costs	2,465	—
Repayment of convertible note payable	(1,512)	—
Net cash provided by financing activities	<u>7,346</u>	<u>17,300</u>
Net increase (decrease) in cash and cash equivalents	(10,211)	5,693
Cash and cash equivalents as of beginning of period	13,108	7,415
Cash and cash equivalents as of end of period	<u>\$ 2,897</u>	<u>\$ 13,108</u>
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 19	\$ 3
Cash paid for income taxes	<u>\$ 2</u>	<u>\$ 2</u>

Noncash Investing and Financing Activities:

Issuance of warrants in connection with December 2022 offering	\$ 10,804	\$ —
Issuance of warrants in connection with convertible note payable	\$ 1,076	\$ —
Derivative liability recorded in connection with issuance of convertible note payable	\$ 286	\$ —
Exchange of convertible preferred stock for common stock	\$ —	\$ 1,640
Deemed dividend on exchange of convertible preferred stock for common stock	\$ —	\$ (1,192)
Issuance of warrants in connection with exchange of preferred stock	\$ —	\$ 570
Convertible preferred stock dividend	\$ —	\$ 34
Deferred issuance costs for public offering of common stock in accounts payable	\$ —	\$ 83

The accompanying notes are an integral part of these consolidated financial statements.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

1. Business and Summary of Significant Accounting Policies

WiSA Technologies, Inc formerly known as Summit Wireless Technologies, Inc. (together with its subsidiaries also referred to herein as “we”, “us”, “our”, or the “Company”) was originally formed as a limited liability company in Delaware on July 23, 2010. Our business is to deliver the best-in-class immersive wireless sound technology for intelligent devices and next generation home entertainment systems through the sale of module components to audio companies as well as audio products to resellers and consumers.

NASDAQ Notifications

On June 23, 2022, the Company received a written notification (the “Notice”) from the Listing Qualifications Department of the Nasdaq Stock Market LLC (“Nasdaq”) notifying the Company that it was not in compliance with the minimum bid price requirement for continued listing on the Nasdaq Capital Market, as set forth under Nasdaq Listing Rule 5550(a)(2) (the “Minimum Bid Price Requirement”), because the closing bid price of the Company’s common stock was below \$1.00 per share for the previous thirty (30) consecutive business days.

Pursuant to Nasdaq Listing Rule 5810(c)(3)(A), the Company was granted 180 calendar days from the date of the Notice, or until December 20, 2022 (the “Compliance Period”), to regain compliance with the Minimum Bid Price Requirement.

The Company’s Common Stock failed to regain compliance with the Minimum Bid Price Requirement as of December 20, 2022. On December 19, 2022, the Company requested an extension of an additional 180 days in which to regain compliance with the Minimum Bid Price Requirement.

On December 21, 2022, the Company received notice (the “Second Notice”) from Nasdaq indicating that, while the Company has not regained compliance with the Minimum Bid Price Requirement, Staff has determined that the Company is eligible for an additional 180-day period, or until June 20, 2023 (the “Second Compliance Period”), to regain compliance.

On January 18, 2023, the Company received notice (the “January 18 Letter”) from the Nasdaq that it had determined that as of January 18, 2023, the Company’s Common Stock had a closing bid price of \$0.10 or less for ten consecutive trading days triggering application of Listing Rule 5810(c)(3)(A)(iii) (the “Low Priced Stocks Rule”).

On February 13, 2023, the Company received notice (the “February 13 Letter”) from Nasdaq that it had determined that the Company had cured its bid price deficiency and now complies with the Minimum Bid Price Requirement, as the closing bid price of the Company’s common stock was at least \$1.00 per share for at least a minimum of 10 consecutive business days. The Company also believes that it is also in compliance with the Low Priced Stocks Rule.

On December 21, 2022, the Company received a letter from Nasdaq notifying the Company that it had determined that the Company did not comply with Listing Rule 5635(d) because the Company’s December 2022 public offering did not meet Nasdaq’s definition of a public offering under Listing Rule IM-5635-3. Nasdaq’s determination was based on the significant discount to the “Minimum Price,” as defined in Nasdaq rules.

The Company had requested a hearing before a Nasdaq panel to appeal the January 18 Letter and to address all outstanding matters, including compliance with the Minimum Bid Price Requirement, the Low Priced Stocks Rule and Nasdaq Listing Rule 5635(d), which hearing is scheduled for March 9, 2023. As a result of the February 13 Letter, the Company only need to address its compliance with the Nasdaq Listing Rule 5635(d) in the hearing. While the appeal process is pending, the suspension of trading of the Company’s Common Stock will be stayed and our Common Stock will continue to trade on Nasdaq until the hearing process concludes and the Panel issues a written decision.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

1. Business and Summary of Significant Accounting Policies, continued

Strategic Advisor

During the third quarter of 2022, the Company retained a strategic advisor to explore strategic opportunities specifically involving the Company's intellectual property. Potential strategic opportunities 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 the Company's assets, merger, business combination, partnership, joint venture, licensing and/or another strategic alternative. Despite the Company's 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.

Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") and include all adjustments necessary for the fair presentation of the Company's financial position, results of operations and cash flows for the periods presented. The consolidated financial statements reflect the accounts of WISA Technologies, Inc. and its wholly-owned subsidiaries, WISA Technologies Korea, LTD, a Korean limited company, which was established in September 2022, and WiSA, LLC, a Delaware limited liability company. All intercompany balances and transactions are eliminated.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Reclassification

Certain reclassifications have been made to prior periods' consolidated financial statements to conform to the current period presentation. These reclassifications did not result in any change in previously reported net loss, total assets or stockholders' equity.

Concentration of Credit Risk and Other Risks and Uncertainties

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. Cash and cash equivalents are deposited in demand and money market accounts at one financial institution. At times, such deposits may be in excess of insured limits. The Company has not experienced any losses on its deposits of cash and cash equivalents.

The Company's accounts receivable are derived from revenue earned from customers located throughout the world. The Company performs credit evaluations of its customers' financial condition and may, in certain circumstances, require full or partial payment in advance of shipping. As of December 31, 2022 and December 31, 2021, there was no allowance for doubtful accounts. As of December 31, 2022, the Company had two customers accounting for 62% and 12% of accounts receivable. As of December 31, 2021, the Company had two customers accounting for 35% and 27% of accounts receivable. The Company had four customers accounting for 19%, 18%, 11% and 10% of its net revenue for the year ended December 31, 2022. The Company had three customers accounting for 27%, 17% and 14% of its net revenue for the year ended December 31, 2021.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

1. Business and Summary of Significant Accounting Policies, continued

The Company's future results of operations involve a number of risks and uncertainties. Factors that could affect the Company's future operating results and cause actual results to vary materially from expectations include, but are not limited to, rapid technological change, continued acceptance of the Company's products, competition from substitute products and larger companies, protection of proprietary technology, strategic relationships and dependence on key individuals.

The Company relies on sole-source suppliers to manufacture some of the components used in its product. The Company's manufacturers and suppliers may encounter problems during manufacturing due to a variety of reasons, any of which could delay or impede their ability to meet demand. The Company is heavily dependent on a single contractor in China for assembly and testing of its products, a single contractor in Japan for the production of its transmit semiconductor chip and a single contractor in China for the production of its receive semiconductor chip.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are recorded at the invoice amount and are generally not interest bearing. The Company reviews its trade receivables aging to identify specific customers with known disputes or collection issues. The Company exercises judgment when determining the adequacy of these reserves as it evaluates historical bad debt trends and changes to customers' financial conditions. Uncollectible receivables are recorded as bad debt expense when all efforts to collect have been exhausted and recoveries are recognized when they are received. As of December 31, 2022 and 2021, there was no allowance for doubtful accounts.

Fair Value of Financial Instruments

Carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, accounts payable and accrued liabilities approximate fair value due to their relatively short maturities. The carrying value of the Company's borrowings and capital lease liabilities approximates fair value based upon borrowing rates currently available to the Company for loans and capital leases with similar terms. The Company's Warrant liability and Derivative liability are the only financial instruments that are adjusted to fair value on a recurring basis.

Inventories

Inventories, principally purchased components, are stated at the lower of cost or net realizable value. Cost is determined using an average cost, which approximates actual cost on a first-in, first-out basis. Inventory in excess of salable amounts and inventory which is considered obsolete based upon changes in existing technology is written off. At the point of loss recognition, a new lower cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration or increase in the new cost basis.

Deferred Offering Costs

Deferred offering costs, consisting of legal, accounting and filing fees relating to public offerings, are capitalized. The deferred offering costs will be offset against public offering proceeds upon the effectiveness of an offering. In the event that an offering is terminated, deferred offering costs will be expensed. As of December 31, 2022 and 2021, the Company had capitalized \$206,000 and \$83,000, respectively, of deferred offering costs in prepaid expenses and other current assets on the consolidated balance sheet.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

1. Business and Summary of Significant Accounting Policies, continued

Property and Equipment, Net

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation of property and equipment is computed using the straight-line method over their estimated useful lives of two to five years. Leasehold improvements and assets acquired under capital lease are amortized on a straight-line basis over the shorter of the useful life or term of the lease. Upon retirement or sale, the cost and related accumulated depreciation are removed from the balance sheet and the resulting gain or loss is reflected in operations. Maintenance and repairs are charged to operations as incurred.

Intangible Assets

Intangible assets consisted of trademarks and are presented at cost, net of accumulated amortization. The intangible assets are amortized using the straight-line method over their estimated useful lives of three years, which approximates the economic benefit. If our underlying assumptions regarding the estimated useful life of an intangible asset change, then the amortization period, amortization expense and the carrying value for such asset would be adjusted accordingly.

Impairment of Long-Lived Assets

The Company evaluates its long-lived assets for indicators of possible impairment by comparison of the carrying amounts to future net undiscounted cash flows expected to be generated by such assets when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Should an impairment exist, the impairment loss would be measured based on the excess carrying value of the asset over the asset's fair value or discounted estimates of future cash flows. The Company has not identified any such impairment losses to date.

Convertible Financial Instruments

The Company bifurcates conversion options and warrants from their host instruments and accounts for them as freestanding derivative financial instruments if certain criteria are met. The criteria include circumstances in which (a) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (b) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (c) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument. An exception to this rule is when the host instrument is deemed to be conventional, as that term is described under applicable U.S. GAAP.

When the Company has determined that the embedded conversion options and warrants should be bifurcated from their host instruments, discounts are recorded for the intrinsic value of conversion options embedded in the instruments based upon the differences between the fair value of the underlying common stock at the commitment date of the transaction and the effective conversion price embedded in the instrument.

Debt discounts under these arrangements are amortized to interest expense using the interest method over the earlier of the term of the related debt or their earliest date of redemption.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

1. Business and Summary of Significant Accounting Policies, continued

Warrants for Common Shares and Derivative Financial Instruments

Warrants for our shares of common stock and other derivative financial instruments are classified as equity if the contracts (1) require physical settlement or net-share settlement or (2) give the Company a choice of net-cash settlement or settlement in its own shares (physical settlement or net-share settlement). Contracts which (1) require net-cash settlement (including a requirement to net cash settle the contract if an event occurs and if that event is outside the control of the Company), (2) give the counterparty a choice of net-cash settlement or settlement in shares (physical settlement or net-share settlement), or (3) that contain reset provisions that do not qualify for the scope exception are classified as equity or liabilities. The Company assesses classification of its warrants for shares of common stock and other derivatives at each reporting date to determine whether a change in classification between equity and liabilities is required.

In an equity-classified freestanding financial instrument, as of the date that a down round feature is triggered, the Company measures the fair value of the instrument without the down round feature (that is, before the strike price is reduced) and the fair value of the financial instrument with a strike price that reflects the adjustment from the down round. The incremental difference in the fair value is recorded as a deemed dividend. As the Company has an accumulated deficit, the deemed dividend is recorded as a reduction of additional paid-in capital in the consolidated balance sheet. The Company increases the net loss available to common stockholders by the amount of the

deemed dividend.

Product Warranty

The Company's products are generally subject to a one year warranty, which provides for the repair, rework, or replacement of products (at the Company's option) that fail to perform within the stated specification. The Company has assessed its historical claims and, to date, product warranty claims have not been significant. The Company will continue to assess if there should be a warranty accrual going forward.

Revenue Recognition

The Company generates revenue primarily from two product categories which include the sale of Consumer Audio Products as well as the sale of Components. The Company applies the following five steps: (1) identify the contract with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract, and (5) recognize revenue when a performance obligation is satisfied. The Company considers customer purchase orders to be the contracts with a customer. Revenues, net of expected discounts, are recognized when the performance obligations of the contract with the customer are satisfied and when control of the promised goods are transferred to the customer, typically when products, which have been determined to be the only distinct performance obligations, are shipped to the customer. Expected costs of assurance warranties and claims are recognized as expense.

Taxes assessed by a governmental authority that are both imposed on and concurrent with a specific revenue-producing transaction, that are collected by us from a customer and deposited with the relevant government authority, are excluded from revenue. Our revenue arrangements do not contain significant financing components.

Sales to certain distributors are made under arrangements which provide the distributors with price adjustments, price protection, stock rotation and other allowances under certain circumstances. The Company does not provide its customers with a contractual right of return. However, the Company accepts limited returns on a case-by-case basis. These returns, adjustments and other allowances are accounted for as variable consideration. We estimate these amounts based on the expected amount to be provided to customers and reduce revenue recognized. We believe that there will not be significant changes to our estimates of variable consideration.

If a customer pays consideration, or the Company has a right to an amount of consideration that is unconditional before we transfer a good or service to the customer, those amounts are classified as contract liabilities which are included in other current liabilities when the payment is made or it is due, whichever is earlier.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

1. Business and Summary of Significant Accounting Policies, continued

During the years ended December 31, 2022 and 2021, net revenue consisted of the following:

(in thousands)	For The Year Ended December 31,	
	2022	2021
Components	\$ 2,315	\$ 5,504
Consumer Audio Products	1,050	1,037
Total	\$ 3,365	\$ 6,541

Contract Balances

We receive payments from customers based on a billing schedule as established in our contracts to partially offset prepayments required by our vendors on long lead time materials. Amounts collected prior to the fulfillment of the performance obligation are considered contract liabilities and classified as customer advances within accrued liabilities on the consolidated balance sheets. Contract assets are recorded when we have a conditional right to consideration for our completed performance under the contracts. Accounts receivables are recorded when the right to this consideration becomes unconditional. We do not have any material contract assets as of December 31, 2022 and 2021.

(in thousands)	December 31,	December 31,
	2022	2021
Contract liabilities	\$ 44	\$ —

Revenue by Geographic Area

In general, revenue disaggregated by geography (See Note 10) is aligned according to the nature and economic characteristics of our business and provides meaningful disaggregation of our results of operations. Since we operate in one segment, all financial segment and product line information can be found in the consolidated financial statements.

Practical Expedients and Exemptions

As part of our adoption of Accounting Standards Codification Topic 606, Revenue from Contracts with Customers, we elected to use the following practical expedients: (i) not to adjust the promised amount of consideration for the effects of a significant financing component when we expect, at contract inception, that the period between our transfer of a promised product or service to a customer and when the customer pays for that product or service will be one year or less; (ii) to expense costs as incurred for costs to obtain a contract when the amortization period would have been one year or less; (iii) not to assess whether promised goods or services are performance obligations if they are immaterial in the context of the contract with the customer.

In addition, we do not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

1. Business and Summary of Significant Accounting Policies, continued

Stock-Based Compensation

The Company measures and recognizes the compensation expense for restricted stock units and restricted stock awards granted to employees and directors based on the fair value of the award on the grant date.

Restricted stock units give an employee an interest in Company stock but they have no tangible value until vesting is complete. Restricted stock units and restricted stock awards are equity classified and measured at the fair market value of the underlying stock at the grant date and recognized as expense over the related service or performance period. The Company elected to account for forfeitures as they occur. The fair value of stock awards is based on the quoted price of our common stock on the grant date. Compensation cost for restricted stock units and restricted stock awards is recognized using the straight-line method over the requisite service period.

Research and Development

Research and development costs are charged to operations as incurred and includes salaries, consulting expenses and an allocation of facility costs.

Advertising Costs

Advertising costs are charged to sales and marketing expenses as incurred. Advertising costs for the years ended December 31, 2022 and 2021 are \$1,440,000 and \$688,000, respectively.

Comprehensive Loss

Comprehensive loss represents the changes in equity of an enterprise, other than those resulting from stockholder transactions. Accordingly, comprehensive loss may include certain changes in equity that are excluded from net loss. For the years ended December 31, 2022 and 2021, the Company's comprehensive loss is the same as its net loss.

Foreign Currency

The financial position and results of operations of the Company's foreign operations are measured using currencies other than the U.S. dollar as their functional currencies. Accordingly, for these operations all assets and liabilities are translated into U.S. dollars at the current exchange rates as of the respective balance sheet date. Expense items are translated using the weighted average exchange rates prevailing during the period. Cumulative gains and losses from the translation of these operations' financial statements are reported as a separate component of stockholders' equity, while foreign currency transaction gains or losses, resulting from re-measuring local currency to the U.S. dollar are recorded in the consolidated statements of operations in other expense, net and were not material for the years ended December 31, 2022 and 2021.

Reverse Stock Split

On January 26, 2023 the Company announced that its Board of Directors had approved a 1-for-100 reverse split (the "Reverse Stock Split") of its common stock that became effective that date. The common stock began trading on a split-adjusted basis on January 27, 2023 under the new CUSIP number 86633R302. All common stock share numbers, warrants to purchase common stock, prices and exercise prices have been retroactively adjusted to reflect the Reverse Stock Split. The par value of the common stock was not adjusted for the Reverse Stock Split.

Net Loss per Common Share

Basic and diluted net loss per common share is presented in conformity with the two-class method required for participating securities. The Company considers all series of convertible preferred stock to be participating securities. Under the two-class method, the net loss attributable to common stockholders is not allocated to the convertible preferred stock as the holders of the convertible preferred stock do not have a contractual obligation to share in the losses of the Company. Under the two-class method, net income would be attributed to common stockholders and participating securities based on their participation rights.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

1. Business and Summary of Significant Accounting Policies, continued

Basic net loss per common share is calculated by dividing the net loss attributable to common stockholders by the weighted average number of shares of common stock outstanding during the period, without consideration for potentially dilutive securities. Diluted net loss per common share is computed by dividing the net loss attributable to common stockholders by the weighted average number of common shares and potentially dilutive common share equivalents outstanding for the period determined using the treasury-stock and if-converted methods. For purposes of the diluted net loss per common share calculation, Series A 8% Senior Convertible Preferred Stock, ("Series A Preferred Stock"), warrants exercisable for common stock, restricted stock units and shares issuable upon the conversion of convertible notes payable are considered to be potentially dilutive securities.

For the year ended December 31, 2022, warrants to purchase 1,253,115 shares of common stock, 14,107 shares of restricted stock, 2,778 shares of restricted stock issued under an inducement grant and 5,861 shares underlying restricted stock units have been excluded from the calculation of net loss per common share because the inclusion would be antidilutive.

Income Taxes

Deferred taxes are provided on the liability method whereby deferred tax assets are recognized for deductible temporary differences, and operating loss and tax credit carryforwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is "more-likely-than-not" that some portion or all of the deferred tax assets will not be realized. The Company has recognized valuation allowances against its deferred tax assets as of December 31, 2022 and 2021. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

The Company uses a comprehensive model for recognizing, measuring, presenting, and disclosing in the consolidated financial statements tax positions taken or expected to be taken on a tax return. A tax position is recognized as a benefit only if it is "more-likely-than-not" that the tax position would be sustained in a tax examination, with a tax examination being presumed to occur. The amount recognized is the largest amount of tax benefit that is greater than 50% likely of being realized on examination. For tax positions not meeting the "more-likely-than-not" test, no tax benefit is recorded. The Company recognizes interest accrued and penalties related to unrecognized tax benefits in tax expense. During the years ended December 31, 2022 and 2021, the Company recognized no interest and penalties.

Recently Adopted Accounting Pronouncements

Adoption of Accounting Standards Codification ("ASC") 842

The Company adopted Financial Accounting Standards Board's ("FASB") Accounting Standards Update ("ASU") No. 2016-02, Leases ("Topic 842"), as of January 1, 2022, using the modified retrospective approach. The modified retrospective approach provides a method for recording existing leases at the beginning of the period of adoption. In addition, the Company elected the package of practical expedients permitted under the transition guidance within the new standard, which among other things, allowed us to carry forward the historical lease classification and the Company elected the hindsight practical expedient to determine the lease term for existing leases. Adoption of the new standard resulted in the recording of operating lease right-of-use assets of \$212,000 and lease liabilities of \$327,000, as of January 1, 2022. In addition, the new standard resulted in the recording of an additional \$90,000 of property and equipment and the reversal of \$58,000 of deferred rent and lease incentive and an increase in shareholders' equity of \$33,000 as required under the new standard. The standard did not have an impact on our consolidated results of operations or cash flows. The comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

1. Business and Summary of Significant Accounting Policies, continued

The effect of the changes made to our consolidated January 1, 2022 balance sheet for the adoption of the new lease standard was as follows (in thousands):

	Balance as of December 31, 2021	Adjustments Due to ASC 842	Balance as of January 1, 2022
Operating lease right-of-use assets	\$ —	\$ 212	\$ 212
Property and equipment, net	162	90	252
Total assets	\$ 19,391	\$ 302	\$ 19,693
Operating lease liabilities, current	\$ —	\$ 148	\$ 148
Operating lease liabilities, non-current	\$ —	\$ 179	\$ 179
Deferred rent and lease incentive	\$ 58	\$ (58)	\$ —
Total liabilities	\$ 3,014	\$ 269	\$ 3,283
Accumulated deficit	\$ (212,203)	\$ 33	\$ (212,170)
Total stockholders' equity	\$ 16,377	\$ 33	\$ 16,410
Total liabilities and stockholders' equity	\$ 19,391	\$ 302	\$ 19,693

Recently Issued and Not Yet Adopted Accounting Pronouncements

In August 2020, the FASB issued ASU 2020-06 "Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity". This ASU simplifies accounting for convertible instruments by removing major separation models required under current U.S. GAAP. Consequently, more convertible debt instruments will be reported as a single liability instrument and more convertible preferred stock as a single equity instrument with no separate accounting for embedded conversion features. The ASU removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, which will permit more equity contracts to qualify for the exception. The ASU also simplifies the diluted earnings per share (EPS) calculation in certain areas. As an emerging growth company, the Company is allowed to adopt the accounting pronouncement at the same time as non-public business entities. As a result, the Company will adopt the update for its fiscal year beginning after December 15, 2023. The Company is evaluating the impact of this standard on its consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, as amended, which requires the early recognition of credit losses on financing receivables and other financial assets in scope. ASU 2016-13 requires the use of a transition model that will result in the earlier recognition of allowances for losses. The new standard is effective for fiscal years beginning after December 15, 2022. Management is currently evaluating the new standard and its possible impact on the Company's consolidated financial statements.

We have reviewed other recent accounting pronouncements and concluded they are either not applicable to the business, or no material effect is expected on the consolidated financial statements as a result of future adoption.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

2. Going Concern

The consolidated financial statements of the Company 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. The Company has incurred net operating losses each year since inception. As of December 31, 2022, the Company had cash and cash equivalents of \$2.9 million and reported net cash used in operations of \$17.5 million during the year ended December 31, 2022. The Company expects operating losses to continue in the foreseeable future because of additional costs and expenses related to research and development activities, plans to expand its product portfolio, and increase its market share. The Company's ability to transition to attaining profitable operations is dependent upon achieving a level of revenues adequate to support its cost structure.

Based on current operating levels, the Company will need to raise additional funds in the next 12 months by selling additional equity or incurring debt. To date, the Company has funded its operations primarily through sales of its securities in public markets, proceeds from the exercise of warrants to purchase common stock and the sale of convertible notes. Additionally, future capital requirements will depend on many factors, including the rate of revenue growth, the selling price of the Company's 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 the Company's products. These factors raise substantial doubt about the Company's ability to continue as a going concern for the twelve months from the date of this report.

Management of the Company intends to raise additional funds through the issuance of equity securities or debt. There can be no assurance that, in the event the Company

requires additional financing, such financing will be available at terms acceptable to the Company, if at all. Failure to generate sufficient cash flows from operations, raise additional capital and reduce discretionary spending could have a material adverse effect on the Company's ability to achieve its intended business objectives. As a result, the substantial doubt about the Company's ability to continue as a going concern has not been alleviated. The accompanying consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

3. Balance Sheet Components

Inventories (in thousands):

	December 31,	
	2022	2021
Raw materials	\$ 3,043	\$ 2,057
Work in progress	13	1,403
Finished goods	4,014	1,320
Total inventories	<u>\$ 7,070</u>	<u>\$ 4,780</u>

Property and equipment, net (in thousands):

	December 31,	
	2022	2021
Machinery and equipment	\$ 691	\$ 965
Leasehold improvements	127	40
Tooling	11	11
Computer software	—	89
Furniture and fixtures	—	15
	<u>829</u>	<u>1,120</u>
Less: Accumulated depreciation and amortization	(655)	(958)
Property and equipment, net	<u>\$ 174</u>	<u>\$ 162</u>

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

3. Balance Sheet Components, continued

Depreciation and amortization expense for the years ended December 31, 2022 and 2021 was \$122,000 and \$79,000, respectively. The cost and accumulated depreciation of assets acquired under capital lease included in machinery and equipment in the above table as of December 31, 2022 were \$72,000 and \$56,000, respectively. The cost and accumulated depreciation of assets acquired under capital lease included in machinery and equipment in the above table as of December 31, 2021 were \$72,000 and \$32,000, respectively.

Accrued liabilities (in thousands):

	December 31,	
	2022	2021
Accrued vacation	\$ 422	\$ 385
Accrued rebate	215	356
Accrued audit fees	179	191
Accrued lease liability, current portion	169	—
Accrued compensation	136	231
Customer advance	44	—
Accrued legal fees	43	—
Accrued other	424	253
Total accrued liabilities	<u>\$ 1,632</u>	<u>\$ 1,416</u>

4. Borrowings

Convertible Promissory Note

On August 15, 2022, the Company entered into a Securities Purchase Agreement (the "August Purchase Agreement"), by and between the Company and an institutional investor (the "Investor"), pursuant to which the Company agreed to issue to the Investor a senior secured convertible note in the principal amount of \$3,600,000 (the "Convertible Note") and a warrant (the "August Warrant") to purchase up to 20,970 shares of the Company's common stock, at an exercise price of \$99.70 per share (the "Exercise Price"), in consideration for \$3,000,000. Pursuant to the August Purchase Agreement, upon the closing of the private placement, pursuant to which Maxim Group LLC ("Maxim") acted as placement agent (the "Private Placement"), the Company received gross proceeds of \$3,000,000. After the deduction of banker fees, commitment fees and other expenses associated with the transaction, the Company received net proceeds of \$2,483,000. The Company used the net proceeds primarily for working capital and general corporate purposes.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

4. Borrowings, continued

The Convertible Note matures on August 15, 2024, does not bear interest and ranks senior to the Company's existing and future indebtedness and is secured to the extent

and as provided in the Security Agreements. The Convertible Note is convertible in whole or in part at the option of the Convertible Note Investor into shares of Common stock (the “Conversion Shares”) at the Conversion Price (as defined below) at any time following the date of issuance of the Convertible Note. The Convertible Note defines “Conversion Price” as equal to the lesser of (a) 90% of the average of the five lowest daily VWAPs (as defined in the Convertible Note) during the previous twenty trading days prior to delivery to the Company of the Convertible Note Investor’s applicable notice of conversion (the “Conversion Notice”) and (b) \$92.60 (the “Base Conversion Price”). The Base Conversion Price is subject to full ratchet antidilution protection, subject to a floor conversion price of \$0.50 per share (the “Floor Price”), a limitation required by the rules and regulations of Nasdaq, and certain exceptions upon any subsequent transaction at a price lower than the Base Conversion Price then in effect and standard adjustments in the event of stock dividends, stock splits, combinations or similar events; provided that in the event the Conversion Price equals the Floor Price, the Company is required to pay the Convertible Note Investor a cash amount determined pursuant to a formula in the Convertible Note, and provided further that the Floor Price will not apply in the event that the Company obtains Stockholder Approval (as defined in the August Purchase Agreement) in accordance with Nasdaq rules. At any time after the closing date of the Private Placement, in the event that the Company issues or sells any shares of common stock or common stock Equivalents (as defined in the Convertible Note), subject to certain exceptions, at an effective price per share lower than the Base Conversion Price then in effect or without consideration, then the Base Conversion Price shall be reduced to the price per share paid for such shares of common stock or common stock Equivalents. Additionally, upon three days’ written notice to the holder after receipt of a Conversion Notice, in lieu of delivering Conversion Shares, the Company has the right to pay the Convertible Note Investor in cash an amount equal to 105% of the portion of the outstanding principal amount stated in such Conversion Notice. Further, at the Convertible Note Investor’s option, the Convertible Note is convertible into shares of common stock or redeemable for 103% of the portion of the outstanding principal amount to be converted in the event that any transaction causes the Conversion Price to be lower than the Floor Price. Subject to certain exceptions, commencing on the Conversion Trigger Date and for a nine-month period after such date, the Convertible Note Investor may convert only up to an aggregate of \$250,000 in outstanding principal amount during any calendar month, provided, that if Stockholder Approval has been obtained, the Convertible Note is in default at the time or the Company meets certain capitalization conditions, such conversion limitation would not apply.

The obligations and performance of the Company under the Convertible Note and the August Purchase Agreement are secured by: (a) a senior lien granted pursuant to security agreements between the Convertible Note Investor and the Company, on (a) all of the assets of the Company (b) a senior lien granted pursuant to trademark security agreements between the Convertible Note Investor and the Company; (c) a senior lien granted pursuant to a patent security agreement between the Convertible Note Investor and the Company on all of the patent assets of the Company; and (d) a pledge of certain securities pursuant to a pledge agreement between the Convertible Note Investor, the Company (such agreements listed in (a)-(d) above, collectively, the “Security Agreements”). The payment and performance obligations of the Company under the Convertible Note and the August Purchase Agreement are guaranteed pursuant to a guaranty by the Company in favor of the Convertible Note Investor.

In connection with the Private Placement, the Company issued warrants to the Convertible Note Investor and Maxim to purchase common shares of 20,970 and 1,944, respectively (see Note 6 – Fair Value Measurements). The sum of the fair value of the warrants, the original issue discount for interest, issuance costs and the derivative liability for the embedded conversion feature for the August 2022 Notes were recorded as debt discounts totaling \$2,509,000 to be amortized to interest expense over the respective term using the effective interest method. During the year ended December 31, 2022, the Company recognized \$879,000 of interest expense from the amortization of debt discounts. As of December 31, 2022 the net unamortized debt discounts totaled \$1,630,000, and the net carrying value of the convertible note payable was \$457,000.

In connection with the Private Placement, the Company entered into a placement agency agreement with Maxim (the “Placement Agency Agreement”), and agreed to issue to Maxim, a warrant to purchase up to an aggregate of 1,944 shares of Common Stock (the “Maxim Warrant”) at an exercise price of \$99.70 per share, which is exercisable at any time on or after the six-month anniversary of the closing date of the Private Placement and will expire on the fifth (5th) anniversary of its date of issuance.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the years ended December 31, 2022 and 2021

4. Borrowings, continued

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

On November 21, 2022, the Company and Maxim entered into an agreement to amend the Maxim Warrant (the “Maxim Warrant Amendment”). Specifically, the Maxim Warrant Amendment sets forth certain circumstances in which the lock up restrictions to which the Maxim Warrant is subject would not apply. The Maxim Warrant Amendment also clarifies certain limitations with respect to demand registration rights, and provides that Maxim’s piggy-back registration rights expire on the fifth (5th) anniversary of the Maxim Warrant’s date of issuance.

	Convertible Promissory Note	
	December 31, 2022	December 31, 2021
Convertible note payable	\$ 2,089	\$ —
Debt discount	(1,632)	—
Net total	\$ 457	\$ —

The August 2022 Note contains several embedded conversion features. The Company concluded that those conversion features require bifurcation from the Convertible Note and subsequent accounting in the same manner as a freestanding derivative. The Company recognized a derivative liability of \$286,000 upon execution of the note agreement and such amount was included in the \$2,509,000 of debt discounts noted above. Subsequent changes in the fair value of these conversion features are measured at each reporting period and recognized in the consolidated statement of operations. The Company recognized expense of \$47,000 as the change in the fair value of the derivative liability during the year ended December 31, 2022, and the balance of the derivative liability as of December 31, 2022 is \$333,000.

On November 28, 2022, the Company entered into a waiver of rights (the “Waiver”) with the Convertible Note Investor, pursuant to which the Convertible Note Investor agreed to waive certain prohibitions under the August Purchase Agreement with respect to the offering of units in December 2022 in exchange for the issuance by the Company, on the closing date of such offering, of an additional number of Series A Warrants and an additional number of Series B Warrants equal to the quotient obtained by dividing \$750,000 by the public offering price for the units sold in the offering (such Warrants, the “Waiver Warrants”).

In connection with the public offering the Company consummated on December 1, 2022 (“December 2022 Offering”), the Company issued 53,572 Series A Warrants and 53,572 Series B Warrants to the Convertible Note Investor (See Note 6). The Company’s obligation to issue shares of common stock underlying the Waiver Warrants is expressly conditioned upon stockholder approval of all of the transactions contemplated by the August Purchase Agreement (See Note 11 – Subsequent Events for additional information.)

Additionally, as a result of the December 2022 Offering, the Base Conversion Price was adjusted to the Floor Price.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the years ended December 31, 2022 and 2021

4. Borrowings, continued

Payroll Protection Program Note Agreement

On May 3, 2020, we received a loan (the “PPP Loan”) from Wells Fargo Bank, National Association in the aggregate amount of \$847,000, pursuant to the Paycheck Protection Program (the “PPP”) under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act, which was enacted on March 27, 2020. The PPP Loan was funded on May 7, 2020. The PPP Loan, which is in the form of a PPP promissory note and agreement, dated May 3, 2020 (the “PPP Note Agreement”), had a maturity date of May 3, 2022 and bore interest at a rate of 1.00% per annum. Pursuant to a change in guidance by the U.S. Small Business Administration, the initial monthly payment date of the PPP Note Agreement was deferred from November 1, 2020 to August 18, 2021. The PPP Loan could be prepaid by us at any time prior to maturity with no prepayment penalties. During the third quarter of 2021, the Company received full loan forgiveness for obligations related to the PPP Loan. The Company accounted for the PPP Loan as debt, and the loan forgiveness was accounted for as a debt extinguishment. The amount of loan and interest forgiven totaling \$859,000, was recognized as a gain upon debt extinguishment and was reported in the accompanying consolidated statements of operations for the year ended December 31, 2021.

5. Fair Value Measurements

The Company measures the fair value of financial instruments using a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. Each level of input has different levels of subjectivity and difficulty involved in determining fair value.

- Level 1 – Inputs used to measure fair value are unadjusted quoted prices that are available in active markets for the identical assets or liabilities as of the reporting date. Therefore, determining fair value for Level 1 investments generally does not require significant judgment, and the estimation is not difficult.
- Level 2 – Pricing is provided by third-party sources of market information obtained through investment advisors. The Company does not adjust for or apply any additional assumptions or estimates to the pricing information received from its advisors.
- Level 3 – Inputs used to measure fair value are unobservable inputs that are supported by little or no market activity and reflect the use of significant management judgment. These values are generally determined using pricing models for which the assumptions utilize management’s estimates of market participant assumptions. The determination of fair value for Level 3 instruments involves the most management judgment and subjectivity.

The Company’s financial assets and liabilities that are measured at fair value on a recurring basis as of December 31, 2022 and 2021 by level within the fair value hierarchy, are as follows:

(in thousands)	December 31, 2022		
	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Liabilities:			
Derivative liability	\$ —	\$ —	\$ 333
Warrant liabilities	\$ —	\$ —	\$ 8,945

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the years ended December 31, 2022 and 2021

5. Fair Value Measurements, continued

(in thousands)	December 31, 2021		
	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Liabilities:			
Warrant liability	\$ —	\$ —	\$ 8

There were no transfers between Level 1, 2 or 3 during the years ended December 31, 2022 or 2021.

Derivative Liability

As described previously in Note 4, the conversion provisions embedded in the Convertible Note require bifurcation and measurement at fair value as a derivative. The fair value was calculated using a Monte Carlo simulation to create a distribution of potential market capitalizations and share prices for the Company on a weekly basis over the assumed period, given the various scenarios. The average value of the Convertible Note was discounted to the valuation date to determine a calibrated discount rate so that the fair value of the Convertible Note was \$3 million. The value of the Convertible Note was compared with the value of a hypothetical note with no conversion rights in order to determine the fair value of the conversion feature.

As of December 31, 2021, the Company did not have a derivative liability. The Series A Preferred Stock was exchanged for common stock and warrants during the year ended December 31, 2021, thereby eliminating the conversion feature which gave rise to the derivative. Prior to the exchange, the Company had measured the fair value of

the derivative by estimating the fair value of the Series A Preferred Stock as if conversion occurred at the end of the reporting period. The Company calculated the value of the conversion feature using the Fixed Conversion Price of the Series A Preferred Stock, as adjusted to 95% of the volume weighted average price of the common stock for the previous ten trading days constrained by the specified floor price of \$30.00. The changes in the fair value of the derivative liability for the years ended December 31, 2022 and 2021 were as follows:

(in thousands)	For the year ended December 31,	
	2022	2021
Beginning balance	\$ —	\$ 387
Additions	286	—
Change in fair value	47	(387)
Ending balance	\$ 333	\$ —

The changes in fair value of the derivative liability are recorded in change in fair value of derivative liability in the consolidated statements of operations.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the years ended December 31, 2022 and 2021

5. Fair Value Measurements, continued

Warrant Liabilities

The following table includes a summary of changes in fair value of the Company's warrant liabilities measured at fair value using significant unobservable inputs (Level 3) for the years ended December 31, 2022 and 2021:

(in thousands)	For The Year Ended December 31,	
	2022	2021
Beginning balance	\$ 8	\$ 8
Additions	11,789	—
Change in fair value	(2,852)	—
Ending balance	\$ 8,945	\$ 8

The changes in fair value of the warrant liabilities are recorded in change in fair value of warrant liability in the consolidated statements of operations.

6. Convertible Preferred Stock and Stockholders' Equity

Series A 8% Senior Convertible Preferred Stock

On April 18, 2019, we entered into a Securities Purchase Agreement, dated as of April 18, 2019, with an investor (the "Preferred Investor") (the "Preferred SPA"), pursuant to which we issued 250,000 shares of our Series A 8% Senior Convertible Preferred Stock, par value \$0.0001 per share (the "Series A Preferred Stock"). In connection with the Preferred SPA, the Company also issued to the Preferred Investor a warrant to purchase 128 shares of our common stock.

On June 4, 2021, the Company and the Preferred Investor entered into an exchange agreement pursuant to which the Company exchanged with the Preferred Investor, all outstanding shares of Series A Preferred Stock, for 250,000 shares of common stock and warrants to purchase up to 1,875 shares of common stock. In connection with exchange agreement the Company recorded a deemed dividend of \$1,192,000. Immediately following the exchange, the Company no longer had a derivative liability or any preferred stock outstanding.

On August 31, 2022, the Company filed an Elimination of Certificate of Designations of the Preferences, Rights and Limitations of the Series A 8% Senior Convertible Preferred Stock (the "Series A Elimination Certificate") in order to eliminate and cancel all designations, rights, preferences and limitations of the shares of the Series A 8% Preferred Stock. Prior to the filing of the Series A Elimination Certificate, none of the 1,250,000 authorized shares of Series A Preferred Stock were issued and outstanding, and no shares of Series A Preferred Stock were to be issued subject to the Series A Certificate of Designations. The Series A Elimination Certificate became effective upon its filing with the Secretary of State of the State of Delaware.

As of December 31, 2022, there are no shares of preferred stock issued or outstanding.

Common Stock

Carve-Out Plan

For the three months ended March 31, 2021, 352 shares of restricted stock issued under the Carve-Out Plan (the "Carve-Out Plan"), were released with an intrinsic value of approximately \$2,000. No shares were subsequently issued under the Plan.

2018 Long Term Stock Incentive Plan

On January 30, 2018, the Company's board of directors approved the establishment of the Company's 2018 Long-Term Stock Incentive Plan (the "LTIP") and termination of its Carve-Out Plan. Under the LTIP, the aggregate maximum number of shares of common stock (including shares underlying options) that may be issued under the LTIP pursuant to awards of Restricted Shares or Options will be limited to 15% of the outstanding shares of common stock, which calculation shall be made on the first trading day of each new fiscal year; provided that, in any year no more than 8% of the common stock or derivative securitization with common stock underlying 8% of the common stock may be issued in any fiscal year. Thereafter, the 15% evergreen provision governs the LTIP. For fiscal year 2023, up to 108,373 shares of common stock are available for participants under the LTIP as of January 1, 2023. (See Note 11 regarding the amendments to the LTIP.)

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6. Convertible Preferred Stock and Stockholders' Equity, continued

For the year ended December 31, 2022, 5,404 shares of restricted stock issued under the LTIP, were released with an intrinsic value of approximately \$324,000. For the year ended December 31, 2021, 330 shares of restricted stock were released with an intrinsic value of approximately \$97,000.

A summary of activity related to restricted stock awards (excluding the deferred shares) for the years ended December 31, 2022 and 2021 is presented below:

Stock Awards	Shares	Weighted-Average Grant Date Fair Value
Non-vested as of January 1, 2021	900	\$ 226.00
Granted	6,807	\$ 353.00
Vested	(330)	\$ 231.00
Forfeited	(49)	\$ 308.00
Non-vested as of December 31, 2021	7,328	\$ 343.36
Granted	12,784	\$ 118.30
Vested	(5,404)	\$ 227.96
Forfeited	(601)	\$ 206.26
Non-vested as of December 31, 2022	14,107	\$ 189.45

As of December 31, 2022, the unamortized compensation costs related to the unvested restricted stock awards was approximately \$2,033,000 which is to be amortized on a straight-line basis over a weighted-average period of approximately 2.0 years.

2020 Stock Incentive Plan

On July 27, 2020, the board of directors adopted the Company's 2020 Stock Incentive Plan (the "2020 Stock Plan") and the reservation of an aggregate of 6,500 shares of the Company's common stock authorized for issuance under the 2020 Stock Plan, subject to stockholder approval. The 2020 Stock Plan authorizes the grant of equity-based compensation to the Company's senior managers, employees, directors, consultants, professionals and service providers in the form of stock options, restricted stock and restricted stock units. On July 27, 2020, the Company also granted, subject to stockholder approval, an aggregate of 6,148 restricted stock units to senior managers, employees, directors, consultants. Each of the awards are scheduled to vest on the first, second, and third anniversaries of August 15, 2020, so long as such award recipient remains in service of the Company on each such anniversary. Each restricted stock unit represents the right to receive one share of the Company's common stock under the 2020 Stock Plan. On October 20, 2020, the Company held the 2020 Annual Meeting of Stockholders and approved the adoption of the 2020 Stock Plan and the reservation of an aggregate of 6,500 shares of the Company's common stock. In connection with the approval, the Company issued 6,148 restricted stock units to employees, directors and consultants.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

6. Convertible Preferred Stock and Stockholders' Equity, continued

A summary of activity related to restricted stock units under the Company's 2020 Stock Plan for the years ended December 31, 2022 and 2021 is presented below:

Stock Units	Shares	Weighted-Average Grant Date Fair Value
Non-vested as of January 1, 2021	6,309	\$ 229.00
Granted	208	\$ 381.00
Vested	(2,114)	\$ 244.00
Forfeited	—	\$ —
Non-vested as of December 31, 2021	4,403	\$ 235.74
Granted	—	\$ —
Vested	(2,104)	\$ 233.65
Forfeited	(138)	\$ 227.00
Non-vested as of December 31, 2022	2,161	\$ 238.33

As of December 31, 2022, the unamortized compensation costs related to the unvested restricted stock units under the Company's 2020 Stock Plan was approximately \$321,000 which is to be amortized on a straight-line basis over a weighted-average period of approximately 0.7 years.

For the year ended December 31, 2022, 2,104 shares of restricted stock units were released under the 2020 Stock Plan with an intrinsic value of approximately \$68,000. For the year ended December 31, 2021, 2,114 shares of restricted stock units were released under the 2020 Stock Plan with an intrinsic value of approximately \$661,000.

Inducement Grant

On September 13, 2021, the Company issued 3,100 shares of restricted common stock to Eric Almgren, the Company's Chief Strategist, as an inducement grant ("September 2021 Inducement Grant"). Such shares were issued outside the Company's LTIP and the 2020 Stock Plan. In accordance with the September 2021 Inducement Grant, 775 shares will vest monthly over a period of 36 months and the remaining 2,325 will vest in 775 increments, upon the achievement of certain company milestones related to the volume weighted average closing price per share of the Company's common stock, as reported on NASDAQ, for the ten (10) consecutive days in which thresholds of the Company's market capitalization of \$75 million, \$100 million and \$150 million are achieved. The September 2021 Inducement Grant was valued with an approximate value of \$772,000 and is being amortized over 36 months.

On August 24, 2022, the September 2021 Inducement Grant's vesting milestones related to the Company's market capitalization were revised to \$50 million, \$75 million and \$100 million. This revision was treated as a modification of the original award and the incremental value recorded was not significant. As of December 31, 2022, the unamortized compensation cost related to the unvested September 2021 Inducement Grant was approximately \$440,000 which is being amortized on a straight-line basis over a period of approximately 1.7 years. The Company recorded stock-based compensation of \$256,000, related to this grant for the year ended December 31, 2022. As of December 31, 2022, 2,778 shares are unvested. For the year ended December 31, 2022, 258 shares of restricted stock were released under the September 2021 Inducement Grant with an intrinsic value of approximately \$14,000.

2022 Plan

On June 21, 2022, the Board of Directors adopted the Company’s Technical Team Retention Plan of 2022 (the “2022 Plan”) and the reservation of an aggregate of 5,000 shares of the Company’s common stock authorized for issuance under the 2022 Plan, subject to stockholder approval. The 2022 Plan authorizes the grant of equity-based compensation, to the Company’s key managers, employees, consultants who provide technical and engineering and related services to the Company, in the form of restricted stock and restricted stock units. On August 19, 2022, the Company held the 2022 Annual Meeting of Stockholders and approved the adoption of the 2022 Plan and the reservation of an aggregate of 5,000 shares of the Company’s common stock. On September 19, 2022, the Company granted, an aggregate of 3,700 restricted stock units to managers, employees, consultants. Each restricted stock unit represents the right to receive one share of the Company’s common stock under the 2022 Plan.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the years ended December 31, 2022 and 2021

6. Convertible Preferred Stock and Stockholders’ Equity, continued

A summary of activity related to restricted stock units under the Company’s 2022 Plan for the year ended December 31, 2022 is presented below:

Stock Units	Shares	Weighted-Average Grant Date Fair Value
Non-vested as of January 1, 2022	—	\$ —
Granted	3,700	\$ 52.00
Vested	—	\$ —
Forfeited	—	\$ —
Non-vested as of December 31, 2022	<u>3,700</u>	<u>\$ 52.00</u>

As of December 31, 2022, the unamortized compensation cost related to the unvested restricted stock units was approximately \$178,000 which is to be amortized on a straight-line basis over a weighted-average period of approximately 3.5 years.

July 2021 Registered Direct Offering

On July 22, 2021, the Company entered into a securities purchase agreement (the “July 22nd Purchase Agreement”) with several accredited investors providing for the issuance of 25,000 shares of the Company’s common stock. Pursuant to the July 22nd Purchase Agreement, the investors purchased all of the securities sold thereby for an aggregate purchase price of \$10,000,000. The offering of the securities pursuant to the July 22nd Purchase Agreement was closed on July 27, 2021, with the Company receiving net proceeds of \$9,026,000. Maxim acted as the placement agent. The Company paid Maxim Group LLC (“Maxim”) a fee of approximately \$800,000, which was equal to 8% of the aggregate purchase price paid by investors placed by Maxim and certain expenses. The July 22nd Purchase Agreement contains customary representations, warranties and agreements of the Company and the investors and customary indemnification rights and obligations of the parties thereto.

ATM Agreements

On December 30, 2021, the Company entered into a Sales Agreement with Maxim (the “2021 Sales Agreement”), pursuant to which the Company may issue and sell shares of its common stock having an aggregate offering price of up to \$4,500,000 from time to time through Maxim. The Company terminated the 2021 Sales Agreement on September 13, 2022. No shares of common stock were sold under the 2021 Sales Agreement.

On September 13, 2022, the Company entered into a 2022 Sales Agreement (the “2022 Sales Agreement”) with Maxim, pursuant to which the Company may issue and sell shares of its common stock having an aggregate offering price of up to \$4,000,000 from time to time through Maxim (the “ATM Program”). On January 30, 2023, the Company and Maxim agreed to terminate the 2022 Sales Agreement, effective that day. As of the termination of the 2022 Sales Agreement, the Company had not sold any shares of common stock under the ATM Program.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the years ended December 31, 2022 and 2021

6. Convertible Preferred Stock and Stockholders’ Equity, continued

December 2022 Best-Efforts Offering

In connection with the consummation of the December 2022 Offering, the Company issued an aggregate of 504,000 units (the “Units”) and 36,000 pre-funded units (the “Pre-Funded Units”) at an effective public offering price of \$14.00 per Unit, resulting in net proceeds of approximately \$6.4 million. Each Unit consists of (i) one share (the “Shares”) of common stock, par value \$0.0001 per share (“Common Stock”), (ii) one Series A Warrant (the “Series A Warrants”), and (iii) one Series B Warrant (the “Series B Warrants” and, together with the Series A Warrants, the “Warrants”), each such Warrant being exercisable from time to time for one Share of the Company’s common stock at an exercise price of \$14.00 per share. Each Pre-Funded Unit consists of (i) one pre-funded warrant (the “Pre-Funded Warrants”), each such Pre-Funded Warrant being exercisable from time to time for one Share of the Company’s common stock, (ii) one Series A Warrant and (iii) one Series B Warrant. The Warrants are immediately exercisable for one Share at an exercise price of \$14.00 per share, and will expire five (5) years after the date of issuance. The Pre-Funded Warrants were immediately exercisable for one Share at an exercise price of \$0.10 per share. The Pre-Funded Warrants were exercised immediately upon the closing of the December 2022 Offering, resulting in the issuance of 36,000 shares of common stock and additional proceeds of \$3,600 to the Company.

The Share and accompanying Warrants included in each Unit were issued separately, and the Pre-Funded Warrant and the accompanying Warrants included in each Pre-Funded Unit were issued separately. The Units and Pre-Funded Units have no stand-alone rights and were not issued or certificated.

Subject to certain exemptions outlined in the Warrants, if the Company sells, enters into an agreement to sell, or grants any option to purchase, or sells, enters into an agreement to sell, or grants any right to reprice, or otherwise disposes of or issues (or announces any offer, sale, grant or any option to purchase or other disposition) any shares of Common Stock or any other securities that are at any time convertible into, or exercisable or exchangeable for, or otherwise entitle the holder thereof to receive, Common Stock, at an effective price per share less than the exercise price of the Warrant then in effect, the exercise price of the Warrants will be reduced to equal the effective price per share in such dilutive issuance. The Warrants contain a one-time reset of the exercise price to a price equal to the lesser of (i) the then exercise price and (ii) 100% of the five- day volume weighted average prices for the five (5) trading days immediately preceding the date that is sixty days after issuance of such Warrants. The Warrants are subject to certain call features and, in certain circumstances, may be exercised on a cashless basis.

In connection with the December 2022 Offering, on November 29, 2022, the Company entered into a securities purchase agreement (the “December Purchase Agreement”) with certain institutional investors. Under the December Purchase Agreement, subject to certain exemptions, the Company is prohibited, until ninety (90) days after the closing of the offering, from issuing, entering into any agreement to issue or announcing the issuance or proposed issuance of any shares of common stock or common stock equivalents (as defined in the December Purchase Agreement) or (ii) filing any registration statement or amendment or supplement thereto under the Securities Act of 1933, as amended (the “Securities Act”).

Also in connection with the December 2022 Offering, on November 29, 2022, the Company entered into a placement agency agreement (the “Placement Agency Agreement”) with Maxim Group LLC (the “Placement Agent”), pursuant to which the Placement Agent agreed to act as placement agent on a “best efforts” basis in connection with the offering. The Company paid the Placement Agent an aggregate fee equal to 8.0% of the gross proceeds raised in the December 2022 Offering, and a non-accountable expense allowance equal to 1.0% of such gross proceeds. The Company reimbursed the Placement Agent \$100,000 for expenses in connection with the December 2022 Offering.

A registration statement on Form S-1 (the “Registration Statement”) relating to the Offering (File No. 333-268085) was initially filed with U.S. Securities and Exchange Commission (the “SEC”) on November 1, 2022, and was declared effective by the SEC on November 29, 2022. The December 2022 Offering was made by means of a prospectus forming a part of the effective Registration Statement.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

6. Convertible Preferred Stock and Stockholders’ Equity, continued

Warrants for Common Shares

The Company has issued warrants to purchase common shares to employees and consultants as compensation for services rendered, as well as, in conjunction with the purchase of common shares in equity and debt transactions. A summary of the warrant activity and related information for the years ended December 31, 2022 and 2021 is provided as follows.

In January 2021, pursuant to the Company’s solicitation of certain warrant holders, such warrant holders agreed to exercise warrants to purchase an aggregate of 12,217 shares of common stock for net proceeds of approximately \$2.9 million. In consideration for their exercise of these warrants, for cash, the exercising holders were issued new warrants to purchase up to an aggregate of 385 shares of common stock, at an exercise price of \$420.00 per share, which are exercisable for a period of five years. The grant date fair value of those warrants was \$567,000, which was recorded as warrant inducement expense and an increase to additional paid-in capital on the accompanying consolidated balance sheet. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common stock price on date of grant of \$385.00; expected dividend yield of 0.0%; expected volatility of 60.1%; risk-free interest rate of 0.45% and expected life of 5.0 years.

On April 18, 2019, the Company entered into a Securities Purchase Agreement with the Preferred Investor, pursuant to which the Company issued 250,000 shares of our Series A 8% Convertible Preferred Stock (the “Original Securities”). On June 4, 2021, the Company and the Preferred Investor entered into that an exchange agreement pursuant to which the Company exchanged with the Preferred Investor the Original Securities held by the investor for: (i) 2,500 shares of common stock and (ii) warrants to purchase up to 1,875 shares of Common Stock. The warrants will be exercisable for a period of five (5) years and four (4) months. The exercise price with respect to the warrants is \$300.00 per share. 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 grant date fair value of those warrants was \$570,000, which was recorded as loss on exchange of preferred stock and an increase to additional paid-in capital on the accompanying consolidated balance sheets. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common stock price on date of grant of \$477.00; expected dividend yield of 0.0%; expected volatility of 60.7%; risk-free interest rate of 0.78% and expected life of 5.4 years.

In June 2021, pursuant to the Company’s solicitation of certain warrant holders, such warrant holders agreed to exercise warrants to purchase an aggregate of 10,000 shares of common stock for net proceeds of approximately \$2.3 million. In consideration for their exercise of these warrants, for cash, the exercising holders were issued new warrants to purchase up to an aggregate of 2,500 shares of common stock, at an exercise price of \$446.00 per share, which are exercisable for a period of five years. The grant date fair value of those warrants was \$579,000, which was recorded as warrant inducement expense and an increase to additional paid-in capital on the accompanying consolidated balance sheet. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common stock price on date of grant of \$450.00; expected dividend yield of 0.0%; expected volatility of 60.7%; risk-free interest rate of 0.77% and expected life of 5.0 years.

In December 2021, the Company granted a warrant to purchase up to 250 shares of common stock to Lippert/Heilshorn Associates Inc. The warrant has an exercise price of \$152.00 per share and are fully vested. The fair value of the warrant at issuance was \$21,000. The fair value of the warrant was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$149.00, expected dividend yield 0%, expected volatility 67%, risk-free interest rate 1.19% and expected life of 5.0 years. The fair value was recorded as professional services with the offset to additional paid-in capital.

In December 2021, the Company granted a warrant to purchase up to 150 shares of common stock to Marketing by Design LLC. The warrant has an exercise price of \$152.00 per share and are fully vested. The fair value of the warrant at issuance was \$12,000. The fair value of the warrant was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$149.00, expected dividend yield 0%, expected volatility 67%, risk-free interest rate 1.19% and expected life of 5.0 years. The fair value was recorded as professional services with the offset to additional paid-in capital.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

6. Convertible Preferred Stock and Stockholders’ Equity, continued

In connection with the issuance of the Convertible Note, the Company issued a warrant (“Convertible Note Warrant”) to the investor to purchase up to 20,970 shares of the Company’s common stock, at an exercise price of \$99.70 per share (see Note 4 – Borrowings). The Warrant is exercisable immediately and will expire on the fifth (5th) anniversary of its date of issuance and may be exercised on a cashless basis in the event of a fundamental transaction involving the Company or if the resale of the shares of common stock underlying the Warrant is not covered by a registration statement. The Exercise Price is subject to full ratchet antidilution protection, subject to certain price limitations required by Nasdaq rules and regulations and certain exceptions, upon any subsequent transaction at a price lower than the Exercise Price then in effect and standard adjustments in the event of certain events, such as stock splits, combinations, dividends, distributions, reclassifications, mergers or other corporate changes.

The grant date fair value of the Convertible Note Warrant was \$985,000, which was recorded as debt discount with the offset recorded to warrant liability on the consolidated balance sheets. The Convertible Note Warrant was recorded as a liability due to the potential variability of its exercise price. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common stock price on date of grant of \$77.00; expected dividend yield of 0.0%; expected volatility of 80.3%; risk-free interest rate of 2.91% and expected life of 5 years.

In connection with the December 2022 Offering, under which warrants to purchase common stock were issued with an exercise price of \$14.00 per share, the exercise price of the Convertible Note Warrant was reduced from \$99.70 per share to the Floor Price of \$50.00 per share as a result of the full ratchet antidilution protection clause in the Convertible Note Warrant.

At December 31, 2022, the fair value of the Convertible Note Warrant was \$151,000. The Company determined the fair value of the warrant using the Black-Scholes Model based on the following weighted average assumptions: common stock price on revaluation date of \$11.00 ; expected dividend yield of 0.0%; expected volatility of 89%; risk-free interest rate of 3.99% and expected life of 4.7 years. The change in the fair value of the warrant liability was recorded to other income on the consolidated statements of operations.

In connection with the Convertible Note, the Company issued a warrant to Maxim to purchase up to 1,944 shares of the Company's common stock, at an exercise price of \$99.70 per share (see Note 4 – Borrowings). The grant date fair value of such warrants was \$91,000, which was recorded as debt discount with the offset recorded to additional paid-in capital on the consolidated balance sheets. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common stock price on date of grant of 77.00; expected dividend yield of 0.0%; expected volatility of 80.3%; risk-free interest rate of 2.91% and expected life of 5 years. The Warrant is exercisable at any time on or after the six-month anniversary of the closing date of the Private Placement and will expire on the fifth (5th) anniversary of its date of issuance and may be exercised on a cashless basis in the event that the shares of common stock underlying the warrant are not covered by a registration statement. In addition, the warrant includes a registration rights provision granting Maxim the same registration rights granted to the Convertible Note investor pursuant to the August Purchase Agreement. The exercise price is subject to adjustment upon certain events, such as stock splits, combinations, dividends, distributions, reclassifications, mergers or other corporate changes.

In connection with the December 2022 Offering, the Company issued Series A warrants to the December 2022 investors to purchase up to 540,000 shares of the Company's common stock, at an exercise price of \$14.00 per share. The grant date fair value of such warrants was \$4,914,000, which was recorded as a liability with the offset recorded to additional paid-in capital on the consolidated balance sheets. The fair value of such warrants at issuance was determined using the Black-Scholes Model based on the following weighted average assumption: common stock price on date of grant of \$11.00; expected dividend yield of 0.0%; expected volatility of 89%; risk-free interest rate of 3.68% and expected life of 5 years.

In connection with the December 2022 Offering, the Company issued Series B warrants to the December 2022 investors to purchase up to 540,000 shares of the Company's common stock, at an exercise price of \$14.00 per share. The grant date fair value of such warrants was \$4,914,000, which was recorded as a liability with the offset recorded to additional paid-in capital on the consolidated balance sheets. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumption: common stock price on date of grant of \$11.00; expected dividend yield of 0.0%; expected volatility of 89%; risk-free interest rate of 3.68% and expected life of 5 years.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the years ended December 31, 2022 and 2021

6. Convertible Preferred Stock and Stockholders' Equity, continued

In December 2022, the Company issued a Series A Warrant to the Convertible Note Investor to purchase up to 53,572 shares of the Company's common stock, at an exercise price of \$14.00 per share (see Note 4 – Borrowings). The grant date fair value of such warrants was \$488,000, which was recorded as a liability with the offset recorded to additional paid-in capital on the consolidated balance sheets. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumption: common stock price on date of grant of \$11.00; expected dividend yield of 0.0%; expected volatility of 89%; risk-free interest rate of 3.68% and expected life of 5 years.

In December 2022, the Company issued a Series B Warrant to the Convertible Note Investor to purchase up to 53,572 shares of the Company's common stock, at an exercise price of \$14.00 per share (see Note 4 – Borrowings). The grant date fair value of such warrants was \$488,000, which was recorded as a liability with the offset recorded to additional paid-in capital on the consolidated balance sheets. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumption: common stock price on date of grant of \$11.00; expected dividend yield of 0.0%; expected volatility of 89%; risk-free interest rate of 3.68% and expected life of 5 years.

Information regarding warrants for common stock outstanding and exercisable as of December 31, 2022 is as follows:

Exercise Price	Warrants Outstanding as of December 31, 2022	Weighted Average Remaining Life (years)	Warrants Exercisable as of December 31, 2022
\$14.00	1,187,145	4.92	1,080,001
\$50.00	20,971	4.62	20,971
\$99.70 - \$261.00	18,434	2.64	16,390
\$300.00 - \$980.00	24,799	2.60	24,799
\$1,580.00 - \$12,500.00	1,766	0.29	1,766
\$31.55	<u>1,253,115</u>	4.83	<u>1,143,927</u>

*Weighted Average

During the year ended December 31, 2022, other than the exercise of the Pre-Funded Warrants described Note 6 – December 2022 Offering, warrant holders did not exercise any warrants to purchase common stock.

Warrants exercisable as of December 31, 2022 exclude warrants to purchase 100 shares of common stock issued to a marketing firm, which vest upon the achievement of certain milestones, warrants to purchase 1,944 shares of common stock issued to Maxim which will become exercisable on February 15, 2023, and warrants to purchase 107,144 shares of common stock issued to a Convertible Note Investor that require shareholder approval prior to being exercisable (see Note 11 - Approval of Transactions Related to August 2022 Purchase Agreement). Additionally, warrants to purchase 207 shares of common stock which are shown above with a price of \$1,580.00 are pre-funded warrants under which the holder must only pay \$20.00 per share to complete the exercise.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

6. Convertible Preferred Stock and Stockholders' Equity, continued

Information regarding warrants for common stock outstanding and exercisable as of December 31, 2021 is as follows:

Exercise Price	Warrants Outstanding as of December 31, 2021	Weighted Average Remaining Life (years)	Warrants Exercisable as of December 31, 2021
\$152.00 - \$390.00	35,397	3.56	35,297
\$420.00 - \$980.00	5,891	4.01	5,891
\$1,580.00 - \$1,750.00	956	1.06	956
\$2,480.00 - \$9,900.00	2,251	1.13	2,251
\$10,800.00 - \$12,500.00	504	0.90	504
\$735.58	<u>44,999</u>	3.44	<u>44,899</u>

*Weighted Average

Warrants exercisable as of December 31, 2021 exclude a warrant to purchase 100 shares of common stock issued to a marketing consulting firm. Such warrant will vest in two tranches upon the achievement of certain milestones. Additionally, warrants to purchase 207 shares of common stock which are shown above with a price of \$1,580.00 are Pre-Funded Warrants under which the holder must only pay \$20.00 per share to complete the exercise.

7. Income Taxes

The domestic and foreign components of loss before provision for income taxes for the years ended December 31, 2022 and 2021 were as follows:

(in thousands)	2022	2021
Domestic	\$ (16,149)	\$ (11,818)
Foreign	—	—
Total	<u>\$ (16,149)</u>	<u>\$ (11,818)</u>

The following represent components of the income tax expense for the years ended December 31, 2022 and 2021:

(in thousands)	Year Ended December 31, 2022	Year Ended December 31, 2021
Current:		
Federal	\$ —	\$ —
State	2	2
Foreign	—	—
Total current provision for income taxes	<u>\$ 2</u>	<u>\$ 2</u>
Deferred:		
Federal	—	—
State	—	—
Foreign	—	—
Total deferred provision for income taxes	<u>—</u>	<u>—</u>
Total	<u>\$ 2</u>	<u>\$ 2</u>

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

7. Income Taxes, continued

Tax effects of temporary differences that give rise to significant portions of the Company's deferred tax assets at December 31, 2022 and 2021 are presented below:

	Year Ended December 31, 2022	Year Ended December 31, 2021
Deferred tax assets:		
Net operating loss	\$ 17,664	\$ 13,846
Accruals and reserves	201	142
Amortization of intangible assets	2,196	1,283
Stock based compensation	758	—
Lease liability	53	—
Other	—	355
Gross deferred tax assets	<u>20,872</u>	<u>15,626</u>
Valuation allowance	<u>(20,762)</u>	<u>(15,564)</u>
Total deferred tax assets	<u>110</u>	<u>62</u>
Deferred tax liabilities:		

Prepaid expenses	(62)	(62)
Right-of-use assets	(33)	—
Other	(15)	—
Total deferred tax liabilities	(110)	(62)
Net deferred tax assets	\$ —	\$ —

The Company's accounting for deferred taxes involves the evaluation of a number of factors concerning the realizability of the Company's net deferred tax assets. The Company primarily considered such factors as the Company's history of operating losses; the nature of the Company's deferred tax assets and the timing, likelihood and amount, if any, of future taxable income during the periods in which those temporary differences and carryforwards become deductible. At present, the Company does not believe that it is "more-likely-than-not" that the deferred tax assets will be realized; accordingly, a full valuation allowance was maintained, and no deferred tax assets were shown in the accompanying consolidated balance sheets. The valuation allowance increased by \$5,198,000 and \$3,115,000 during the years ended December 31, 2022 and 2021, respectively.

On March 27, 2020, the U.S. enacted the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The CARES Act includes provisions relating to refundable payroll tax credits, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to the tax depreciation methods for qualified improvement property. On December 21, 2020, the U.S. Congress passed the Consolidation Appropriations Act, 2021 (the "CAA Act"). The tax provisions under the CARES Act and CAA Act, do not have a material impact on the consolidated financial statements given the existence of a full valuation allowance.

The CARES Act established the Paycheck Protection Program (the "PPP Loan"). Under the terms of the CARES Act, PPP loan recipients can apply for and be granted forgiveness for all or a portion of the loan granted under the PPP Loan. On May 3, 2020, the Company received the PPP loan from Wells Fargo Bank. During the third quarter of 2021, the full amount of the PPP Loan was forgiven. The CARES Act specifically requires taxpayers to exclude canceled indebtedness from gross income, and, accordingly, the debt forgiveness amount was treated as nontaxable.

On June 29, 2020, California Assembly Bill 85 ("AB 85") was signed into law, which suspends the use of California net operating losses and limits the use of California research tax credits for tax years beginning in 2020 and before 2023. However, on February 9, 2022 California Senate Bill 113 ("SB 113") was signed into law and removed the limitation on the net operating losses and credits for the 2022 year and allows, after taxable years beginning on or after January 1, 2022, the ability to utilize net operating losses and credits. These changes did not have a significant impact on the consolidated financial statements.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

7. Income Taxes, continued

As of December 31, 2022, the Company had federal net operating loss carryforwards of \$61,968,000. The federal net operating loss carryforwards will carryforward indefinitely but are subject to the 80% taxable income limitation.

As of December 31, 2022, the Company had state net operating loss carryforwards of \$60,756,000 which will begin to expire in 2038.

Utilization of the Company's net operating losses and credit carryforwards may be subject to annual limitations in the event of a Section 382 ownership change. Such future limitations could result in the expiration of net operating losses and credit carryforwards before utilization as a result of such an ownership change.

Provision for income taxes for the years ended December 31, 2022 and 2021 differed from the amounts computed by applying the statutory federal income tax rate of 21% to the loss before provision for income taxes as a result of the following:

	Year Ended December 31,	
	2022	2021
Effective tax rate reconciliation:		
Income tax provision at statutory rate	21.0%	21.0%
State taxes, net of federal benefit	—	—
Other permanent differences	3.5	(8.0)
Change in valuation allowance	(24.5)	(20.2)
Provision for income taxes	—%	—%

Tax positions are evaluated in a two-step process. The Company first determines whether it is "more-likely-than-not" that a tax position will be sustained upon examination. If a tax position meets the "more-likely-than-not" recognition threshold it is then measured to determine the amount of benefit to recognize in the consolidated financial statements. The tax position is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. The aggregate changes in the balance of gross unrecognized tax benefits, which excludes interest and penalties, for the years ended December 31, 2022 and 2021 is zero.

The Company has not incurred any material tax interest or penalties as of December 31, 2022. The Company does not anticipate any significant change within 12 months of this reporting date of its uncertain tax positions. The Company is subject to taxation in the United States and various state jurisdictions. There are no ongoing examinations by taxing authorities at this time. The Company's various tax years 2018 through 2022 remain open for examination by the federal and state authorities for three and four years, respectively, from the date of utilization of any net operating loss carryforwards.

The Company recognizes interest and penalties related to uncertain tax positions in the provision for income taxes. As of December 31, 2022 and 2021, the Company has not accrued any penalties or interest related to uncertain tax positions.

8. Commitments and Contingencies

Operating Leases

The Company leases office space under a non-cancellable operating lease that expires in January 2024 and has an option to renew this lease, with renewal rates to be negotiated. Operating lease rentals are expensed on a straight-line basis over the life of the lease beginning on the date we take possession of the property. At lease inception, we determine the lease term by assuming the exercise of those renewal options that are reasonably assured. The exercise of lease renewal options is at our sole discretion. The lease term is used to determine whether a lease is financing or operating and is used to calculate straight-line rent expense. Additionally, the depreciable life of leasehold improvements is limited by the expected lease term. Leases with an initial term of 12 months or less are not recorded on the consolidated balance sheets; we recognize lease expense for these leases on a straight-line basis over the lease term.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

8. Commitments and Contingencies, continued

The following table reflects our lease assets and our lease liabilities at December 31, 2022 (in thousands):

	December 31, 2022	January 1, 2022
Assets:		
Operating lease right-of-use assets	\$ 120	\$ 212
Liabilities:		
Operating lease liabilities, current	\$ 154	\$ 148
Operating lease liabilities, non-current	\$ 39	\$ 179

Operating lease right-of-use assets are included in other assets. Operating lease liabilities, current, are included in accrued liabilities and Operating lease liabilities, non-current, are include in other liabilities on the consolidated balance sheets.

Lease Costs:

The components of lease costs were as follows (in thousands):

	Year Ended December 31, 2022
Operating lease cost	\$ 100
Short term lease cost	43
Total lease cost	\$ 143

As of December 31, 2022, the maturity of operating lease liabilities was as follows (in thousands):

2023	173
2024	29
Total lease payments	202
Less: Interest	(9)
Present value of lease liabilities	\$ 193

Lease Term and Discount Rate:

	December 31, 2022
Weighted-average remaining lease term (in years)	1.1
Weighted-average discount rate	8.0%

Other Information:

Supplemental cash flow information related to leases was as follows (in thousands):

	Year Ended December 31, 2022
Operating cash outflows from operating leases	\$ 153

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

8. Commitments and Contingencies, continued

Finance Lease

During August 2020, the Company entered into a lease agreement for equipment under a finance lease with a term of 36 months. The equipment under the lease is collateral for the agreement and is included within property and equipment, net on the consolidated balance sheets.

Future minimum lease commitments for the finance lease as of December 31, 2022 are as follows (in thousands):

Payments due in:	
Year ending December 31, 2023	\$ 15
Total minimum lease payments	15
Less: Amounts representing interest	—
Present value of capital lease obligations	15
Other liabilities	\$ —

Obligations under the finance lease are included in accrued liabilities and other liabilities on the consolidated balance sheets.

Management Team Retention Bonus

On September 1, 2022, the “Company adopted its Management Team Retention Bonus Plan (the “Retention Plan”), to incentivize certain management level employees (the “Managers”) to remain intact through and shortly following a potential “Change of Control” (as defined in the Retention Plan). The aggregate Retention Plan bonus amounts for all Managers is \$1,250,000.

The Retention Plan provides that each Manager is eligible to receive a lump sum cash amount under the Retention Plan, on the earlier of the six-month anniversary of the date of a Change of Control or at the time of such Manager’s involuntary termination other than for “Cause” (as defined in the Retention Plan) or termination for “Good Reason” (as defined in the Retention Plan). The Retention Plan will terminate upon the earlier of June 30, 2023 if a Change of Control has not occurred by such date or upon the payment of all Retention Bonus Amounts. As of December 31, 2022, no accrual has been made under the Retention Plan.

Contingencies

In the normal course of business, the Company may become involved in legal proceedings. The Company will accrue a liability for such matters when it is probable that a liability has been incurred and the amount can be reasonably estimated. When only a range of a possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. The accrual for a litigation loss contingency might include, for example, estimates of potential damages, outside legal fees and other directly related costs expected to be incurred.

The Company’s management does not believe that any such matters, individually or in the aggregate, will have a materially adverse effect on the Company’s consolidated financial statements.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

9. Related Parties

Helge Kristensen

Mr. Kristensen has served as a member of the Company’s board of directors since 2010. Mr. Kristensen serves as vice president of Hansong Technology, an original device manufacturer of audio products based in China, president of Platin Gate Technology (Nanjing) Co. Ltd, a company with focus on service-branding in lifestyle products as well as pro line products based in China and co-founder and director of Inizio Capital, an investment company based in the Cayman Islands.

For the years ended December 31, 2022 and 2021, Hansong Technology purchased modules from the Company of approximately \$361,000 and \$497,000, respectively, and made payments to the Company of approximately \$191,000 and \$510,000, respectively. At December 31, 2022 and 2021, Hansong Technology owed the Company approximately \$170,000 and \$0, respectively.

For the years ended December 31, 2022 and 2021, Hansong Technology sold speaker products to the Company of approximately \$1,891,000 and \$1,645,000, respectively, and the Company made payments to Hansong Technology of approximately \$1,831,000 and \$1,060,000, respectively. At December 31, 2022 and 2021, the Company owed Hansong Technology approximately \$874,000 and \$790,000, respectively.

As of December 31, 2022 and 2021, Mr. Kristensen owned less than 1.0% of the outstanding shares of the Company’s common stock.

David Howitt

Mr. Howitt has served as a member of the Company's board of directors since December 2021. Mr. Howitt is founder and CEO of Meriwether Group LLC, (“Meriwether”), a strategic consulting firm that works with disruptive consumer brands. Meriwether is the manager of Meriwether Accelerators LLC (“Meriwether Accelerators”).

The Company is a party to a professional services agreement with Meriwether Accelerators, dated as of January 15, 2022, pursuant to which, the Company has agreed to pay Meriwether Accelerators (i) \$7,500 per month for a period of six months; and (ii) issue 100 shares of common stock for each partnership brought to fruition as a result of Meriwether Accelerators’ services and introduction, for up to 400 shares of common stock, which shares will have piggyback registration rights, in consideration for certain licensing services and strategic partnership collaborations to be provided by Meriwether Accelerators as set forth in such agreement. For the year ended December 31, 2022, the Company paid Meriwether Accelerators \$45,000. As of December 31, 2022, the Company has not issued any shares of common stock to Meriwether Accelerators under this agreement nor has it recorded any compensation expense related to the issuance of common stock.

As of December 31, 2022 and December 31, 2021, Mr. Howitt owned less than 1.0% of the outstanding shares of the Company's common stock.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

10. Segment Information

The Company operates in one business segment. Our chief decision-maker, the President and Chief Executive Officer, evaluates our performance based on company-wide consolidated results.

Net revenue from customers is designated based on the geographic region to which the product is delivered. Net revenue by geographic region for the years ended December 31, 2022 and 2021 was as follows:

(in thousands)	For the year ended December 31,	
	2022	2021
Asia Pacific	\$ 1,762	\$ 4,829

North America	515	1,157
Europe	1,088	555
Total	<u>\$ 3,365</u>	<u>\$ 6,541</u>

Substantially all of our long-lived assets are located in the United States.

11. Subsequent Events

NASDAQ Notifications

On January 18, 2023, the Company received notice (the “January 18 Letter”) that Nasdaq had determined that as of January 18, 2023, the Company’s securities had a closing bid price of \$0.10 or less for ten consecutive trading days triggering application of Listing Rule 5810(c)(3)(A)(iii) which states in part: if during any compliance period specified in Rule 5810(c)(3)(A), a company’s security has a closing bid price of \$0.10 or less for ten consecutive trading days, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810 with respect to that security (the “Low Priced Stocks Rule”). As a result, the Staff determined to delist the Company’s securities from Nasdaq, unless the Company timely requests an appeal of the Staff’s determination to a Hearings Panel (the “Panel”), pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series.

The Company requested a hearing before the Panel to appeal the January 18 Letter and to address all outstanding matters, including compliance with the Rule, the Low Priced Stocks Rule and Nasdaq Listing Rule 5635(d). While the appeal process is pending, the suspension of trading of the Company’s common stock will be stayed.

On February 13, 2023, the Company received notice (the “February 13 Letter”) from Nasdaq that it had determined that the Company had cured its bid price deficiency and now complies with the Minimum Bid Price Requirement, as the closing bid price of the Company’s common stock was at least \$1.00 per share for at least a minimum of 10 consecutive business days. The Company also believes that it is also in compliance with the Low Priced Stocks Rule.

As a result of the February 13 Letter, the Company now only needs to address the matter concerning the December 2022 Offering and Nasdaq Listing Rule 5635(d) at a hearing before the Panel.

The Company attended a hearing before the Nasdaq panel on March 9, 2023 and is currently waiting for Nasdaq to render a decision.

Approval of Reverse Stock Split

On January 24, 2023, the Company’s stockholders approved an amendment to the Company’s certificate of incorporation, as amended, to effect a reverse stock split of all outstanding shares of common stock by a ratio in the range of one-for-five to one-for-one hundred, to be determined in the sole discretion of the Board of Directors of the Company. On January 24, 2023, the Company’s Board of Directors approved a one-for-one hundred reverse stock split of all outstanding shares of common stock.

On January 26, 2023, the Company announced that its Board of Directors had approved the Reverse Stock Split and it became effective on that date. The common stock began trading on a split-adjusted basis on January 27, 2023.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

For the years ended December 31, 2022 and 2021

11. Subsequent Events, continued

Amendments to 2018 Long-Term Stock Incentive Plan

On January 24, 2023, the Company’s stockholders approved certain amendments to the Company’s 2018 Long-Term Stock Incentive Plan (the “LTIP”) to: (i) increase the annual share limit of common stock that may be issued in any single fiscal year only for the 2023 fiscal year under the LTIP from 8% of the shares of common stock outstanding to 15% of the shares of Common Stock outstanding (which amount equates to the maximum amount that may be issued in the aggregate under the LTIP); and (ii) permit immediately quarterly calculations based on the number of shares of common stock outstanding as of the first trading day of each fiscal quarter, rather than solely as of the first trading day of the fiscal year.

Approval of Transactions Related to August 2022 Purchase Agreement

On January 24, 2023, the Company’s stockholders approved the transactions related to the August Purchase Agreement which included the issuance of 20% or more of the outstanding shares of common stock upon (i) conversion of the Convertible Note, as amended by the New Convertible Note, (ii) exercise of the August Warrant, and (iii) exercise of the Waiver Warrant.

January 2023 Registered Direct Offering and Concurrent Private Placement

On January 31, 2023, the Company entered into a securities purchase agreement (the “January Purchase Agreement”) with certain institutional investors. Under the January Purchase Agreement, the Company agreed to issue and sell to such investors (i) in a registered direct offering, 201,544 shares of common stock and pre-funded warrants to purchase up to 381,762 shares of Common Stock, at an exercise price of \$0.0001 per share of Common Stock, and (ii) in a concurrent private placement, common stock purchase warrants (the “Private Placement Warrants”), exercisable for an aggregate of up to 874,959 shares of common stock, at an exercise price of \$10.49 per share of common stock.

The Company received gross proceeds of approximately \$6.2 million before deducting placement agent fees and other offering expenses payable by the Company.

In connection with the offering, the Company entered into an amendment (the “Amendment”) to the securities purchase agreement, dated as of November 29, 2022, by and between the Company and certain institutional investors (the “November Purchase Agreement”) approved by a certain investor (the “November Investor”) who purchased at least 50.1% in interest of the shares of Common Stock and the pre-funded warrants to purchase shares of Common Stock, if any, based on the initial subscription amounts under the November Purchase Agreement, pursuant to Section 5.5 of the November Purchase Agreement. Pursuant to the Amendment, Section 4.11 of the November Purchase Agreement, which prohibits the Company’s ability to issue shares of Common Stock or Common Stock Equivalents (as defined in the November Purchase Agreement) or filing any registration statement or amendment or supplement thereto under the Securities Act, until ninety (90) days after the closing date of the transactions contemplated by the November Purchase Agreement, was amended to permit the offering discussed above and the issuance and sale of the securities offered and sold in such offering.

Termination of ATM Program

On January 30, 2023, the Company and Maxim agreed to terminate the 2022 Sales Agreement, effective that day. As of the termination of the 2022 Sales Agreement, the

Company had not sold any shares of common stock under the ATM Program.

August 2022 Note Conversions

On February 1, 2023, the holder of the August 2022 Note converted a total principal amount of approximately \$708,075 for shares of the Company's common stock.

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WISA TECHNOLOGIES, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	September 30, 2023 (unaudited)	December 31, 2022 (1)
Assets		
Current Assets:		
Cash and cash equivalents	\$ 212	\$ 2,897
Accounts receivable	433	273
Inventories	3,169	7,070
Prepaid expenses and other current assets	942	890
Total current assets	4,756	11,130
Property and equipment, net	109	174
Other assets	668	148
Total assets	\$ 5,533	\$ 11,452
Liabilities, Convertible Preferred Stock and Stockholders' Equity/(Deficit)		
Current Liabilities:		
Accounts payable	\$ 1,958	\$ 2,042
Accrued liabilities	1,205	1,632
Short-term loan	629	-
Total current liabilities	3,792	3,674
Convertible note payable	-	457
Warrant liabilities	221	8,945
Derivative liability	-	333
Other liabilities	635	39
Total liabilities	4,648	13,448
Commitments and contingencies (Note 8)		
Stockholders' Equity/(Deficit):		
Common stock, par value \$0.0001; 200,000,000 shares authorized; 6,579,957 and 712,564 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	7	7
Additional paid-in capital	241,557	226,318
Accumulated deficit	(240,679)	(228,321)
Total stockholders' equity/(deficit)	885	(1,996)
Total liabilities and stockholders' equity (deficit)	\$ 5,533	\$ 11,452

(1) The condensed consolidated balance sheet as of December 31, 2022 was derived from the audited consolidated balance sheet as of that date.

Note: Share and per share amounts have been retroactively adjusted to reflect the impact of a 1-for-100 reverse stock split effected in January 2023, as discussed in Note 1.

The accompanying notes are an integral part of these condensed consolidated financial statements.

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WISA TECHNOLOGIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
For the three and nine months ended September 30, 2023 and 2022
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue, net	\$ 769	\$ 937	\$ 1,663	\$ 2,449
Cost of revenue	2,438	807	4,786	2,069
Gross profit (deficit)	(1,669)	130	(3,123)	380
Operating Expenses:				
Research and development	1,838	1,939	5,664	5,359
Sales and marketing	1,404	1,539	3,787	4,165
General and administrative	1,428	1,400	4,260	3,608
Total operating expenses	4,670	4,878	13,711	13,132
Loss from operations	(6,339)	(4,748)	(16,834)	(12,752)
Interest expense, net	(52)	(173)	(812)	(174)
Change in fair value of warrant liabilities	284	274	6,134	274

Loss on debt extinguishment	—	—	(837)	—
Other expense, net	(4)	(2)	(7)	(7)
Loss before provision for income taxes	(6,111)	(4,649)	(12,356)	(12,659)
Provision for income taxes	—	—	2	2
Net loss	\$ (6,111)	\$ (4,649)	\$ (12,358)	\$ (12,661)
Net loss - basic and diluted	\$ (0.97)	\$ (30.85)	\$ (2.96)	\$ (84.55)
Weighted average number of common shares used in computing net loss	6,322,464	150,705	4,179,089	149,751

Note: Share and per share amounts have been retroactively adjusted to reflect the impact of a 1-for-100 reverse stock split effected in January 2023, as discussed in Note 1.

The accompanying notes are an integral part of these condensed consolidated financial statements.

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WISA TECHNOLOGIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)

For the three and nine months ended September 30, 2023 and 2022
(in thousands, except share and per share data)
(unaudited)

	Common Shares		Additional Paid-in Capital	Accumulated Deficit	Stockholders' Equity (Deficit)
	Shares	Amount			
Balance as of December 31, 2022	712,564	\$ 7	\$ 226,318	\$ (228,321)	\$ (1,996)
Stock-based compensation	—	—	499	—	499
Restricted stock awards cancelled	(43)	—	—	—	—
Issuance of common stock in connection with convertible promissory note	67,500	—	708	—	708
Issuance of common stock in connection with warrant exercise	858,353	—	8,202	—	8,202
Issuance of common stock and warrants, net of offering costs	1,420,513	—	1,271	—	1,271
Net loss	—	—	—	(921)	(921)
Balance as of March 31, 2023	3,058,887	7	236,998	(229,242)	7,763
Stock-based compensation	—	—	481	—	481
Release of vested restricted common stock	71	—	—	—	—
Restricted stock awards cancelled	(96)	—	—	—	—
Issuance of common stock and warrants, net of offering costs	755,922	—	1,048	—	1,048
Issuance of common stock in connection with warrant exercise	1,486,132	—	1,895	—	1,895
Net loss	—	—	—	(5,326)	(5,326)
Balance as of June 30, 2023	5,300,916	7	240,422	(234,568)	5,861
Stock-based compensation	769,041	—	518	—	518
Issuance of common stock in connection with warrant exercise	510,000	—	617	—	617
Net loss	—	—	—	(6,111)	(6,111)
Balance as of September 30, 2023	6,579,957	\$ 7	\$ 241,557	\$ (240,679)	\$ 885

	Common Shares		Additional Paid-in Capital	Accumulated Deficit	Stockholders' Equity (Deficit)
	Shares	Amount			
Balance as of December 31, 2021	158,191	\$ 2	\$ 228,578	\$ (212,203)	\$ 16,377
ASC842 adoption adjustment	—	—	—	33	33
Stock-based compensation	10,674	—	480	—	480
Release of vested restricted common stock	57	—	—	—	—
Restricted stock awards cancelled	(87)	—	—	—	—
Net loss	—	—	—	(3,904)	(3,904)
Balance as of March 31, 2022	168,835	2	229,058	(216,074)	12,986
Stock-based compensation	300	—	506	—	506
Release of vested restricted common stock	12	—	—	—	—
Restricted stock awards cancelled	(148)	—	—	—	—
Net loss	—	—	—	(4,108)	(4,108)
Balance as of June 30, 2022	168,999	2	229,564	(220,182)	9,384
Stock-based compensation	1,775	—	526	—	526
Release of vested restricted common stock	599	—	—	—	—
Restricted stock awards cancelled	(179)	—	—	—	—
Issuance of warrants in connection with convertible promissory note	—	—	91	—	91
Net loss	—	—	—	(4,649)	(4,649)
Balance as of September 30, 2022	171,194	\$ 2	\$ 230,181	\$ (224,831)	\$ 5,352

Note: Share amounts have been retroactively adjusted to reflect the impact of a 1-for-100 reverse stock split effected in January 2023, as discussed in Note 1.

The accompanying notes are an integral part of these condensed consolidated financial statements.

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WISA TECHNOLOGIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

For the nine months ended September 30, 2023 and 2022
(in thousands)

(unaudited)

	Nine Months Ended September 30,	
	2023	2022
Cash flows from operating activities:		
Net loss	\$ (12,358)	\$ (12,661)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	1,498	1,512
Depreciation and amortization	82	91
Amortization of debt discounts	779	156
Change in fair value of warrant liabilities	(6,134)	(274)
Loss on extinguishment of convertible note payable	837	—
Changes in operating assets and liabilities:		
Accounts receivable	(160)	(23)
Inventories	3,901	(2,504)
Prepaid expenses and other assets	(149)	53
Other assets	67	79
Accounts payable	(84)	1,074
Accrued liabilities	(319)	(288)
Other liabilities	(61)	(111)
Net cash used in operating activities	<u>(12,101)</u>	<u>(12,896)</u>
Cash flows from investing activities:		
Purchases of property and equipment	(50)	(36)
Net cash used in investing activities	<u>(50)</u>	<u>(36)</u>
Cash flows from financing activities:		
Repayment of convertible note payable, net of issuance costs	(1,657)	2,483
Repayment of finance lease	(15)	(15)
Proceeds from issuance of common stock and prefunded warrants, net of issuance costs	7,995	—
Proceeds from exercise of warrants	2,545	—
Proceeds from issuance of short-term loan, net of issuance costs	598	—
Net cash provided by financing activities	<u>9,466</u>	<u>2,468</u>
Net decrease in cash and cash equivalents	(2,685)	(10,464)
Cash and cash equivalents as of beginning of period	2,897	13,108
Cash and cash equivalents as of end of period	<u>\$ 212</u>	<u>\$ 2,644</u>
Supplemental disclosure of cash flow information:		
Cash paid for interest	<u>\$ 24</u>	<u>\$ 17</u>
Cash paid for income taxes	<u>\$ 2</u>	<u>\$ 2</u>
Noncash Investing and Financing Activities:		
Cashless exercise of warrants	<u>\$ 8,191</u>	<u>\$ —</u>
Issuance of warrants in connection with February 2023 offering	<u>\$ 5,601</u>	<u>\$ —</u>
Issuance of common stock in connection with convertible promissory note	<u>\$ 708</u>	<u>\$ —</u>
Record Right-of-Use Assets obtained in exchange for modified operating lease liabilities	<u>\$ 554</u>	<u>\$ —</u>
Deferred offering costs reclassified from prepaid expenses	<u>\$ 97</u>	<u>\$ —</u>
Accrual of legal fees for the short-term loan	<u>\$ 10</u>	<u>\$ —</u>
Issuance of warrants in connection with convertible notes payable	<u>\$ —</u>	<u>\$ 1,076</u>
Derivative liability recorded in connection with issuance of convertible notes payable	<u>\$ —</u>	<u>\$ 286</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

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WISA TECHNOLOGIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
For the Nine Months Ended September 30, 2023 and 2022
(unaudited)

1. Business and Summary of Significant Accounting Policies

WISA Technologies, Inc., formerly known as Summit Wireless Technologies, Inc. (together with its subsidiaries also referred to herein as “we”, “us”, “our”, or the “Company”), was originally formed as a limited liability company in Delaware on July 23, 2010. Our business is to deliver the best-in-class immersive wireless sound technology for intelligent devices and next generation home entertainment systems through the sale of module components to audio companies as well as audio products to resellers and consumers.

NASDAQ Notification

On June 23, 2022, the Company received a written notification (the “Notice”) from the Listing Qualifications Department of the Nasdaq Stock Market LLC (“Nasdaq”) notifying the Company that it was not in compliance with the minimum bid price requirement for continued listing on the Nasdaq Capital Market, as set forth under Nasdaq Listing Rule 5550(a)(2) (the “Minimum Bid Price Requirement”), because the closing bid price of the Company’s common stock was below \$1.00 per share for the previous thirty (30) consecutive business days. Pursuant to Nasdaq Listing Rule 5810(c)(3)(A), the Company was granted 180 calendar days from the date of the Notice, or until December 20, 2022, to regain compliance with the Minimum Bid Price Requirement. On December 21, 2022, Nasdaq granted the Company an additional 180-day period, or until June 20, 2023, to regain compliance with the Minimum Bid Price Requirement.

On January 18, 2023, the Company received notice (the “January 18 Letter”) that Nasdaq had determined that as of January 18, 2023, the Company’s securities had a closing

bid price of \$0.10 or less for ten consecutive trading days triggering application of Listing Rule 5810(c)(3)(A)(iii) which states in part: if during any compliance period specified in Rule 5810(c)(3)(A), a company's security has a closing bid price of \$0.10 or less for ten consecutive trading days, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810 with respect to that security (the "Low Priced Stocks Rule"). As a result, the Staff determined to delist the Company's securities from Nasdaq, unless the Company timely requests an appeal of the Staff's determination to a Hearings Panel (the "Panel"), pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series.

On February 13, 2023, the Company received notice (the "February 13 Letter") from Nasdaq that it had determined that the Company had cured its bid price deficiency and now complies with the Minimum Bid Price Requirement, as the closing bid price of the Company's common stock was at least \$1.00 per share for at least a minimum of 10 consecutive business days.

On March 20, 2023, the Staff orally notified us that we were not in compliance with Nasdaq Listing Rule 5550(b)(1), which requires companies listed on Nasdaq to maintain a minimum of \$2,500,000 in stockholders' equity for continued listing (the "Stockholders' Equity Requirement"). We reported stockholders' equity (deficit) of (\$1,996,000) in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, and, as a result, did not satisfy the Stockholders' Equity Requirement of \$2,500,000 pursuant to Listing Rule 5550(b)(1). As of March 31, 2023, we had stockholders' equity of \$7,763,000 and, accordingly, we believe that we had regained compliance with the Stockholders' Equity Requirement.

On October 5, 2023, we received a written notification from Nasdaq notifying the Company that it was not in compliance with the Minimum Bid Price Requirement, because the closing bid price of the Company's common stock was below \$1.00 per share for the previous thirty (30) consecutive business days. The notification has no immediate effect on the listing of the Common Stock, which will continue to trade uninterrupted on the Nasdaq Capital Market under the ticker "WISA." Pursuant to Nasdaq Listing Rule 5810(c)(3)(A), the Company has been granted 180 calendar days from the date of the Notice, or until April 2, 2024 (the "Compliance Period"), to regain compliance with the Minimum Bid Price Requirement. If at any time during the Compliance Period, the bid price of the Common Stock closes at or above \$1.00 per share for a minimum of ten (10) consecutive business days, Nasdaq will provide the Company with written confirmation of compliance with the Minimum Bid Price Requirement and the matter will be closed.

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WISA TECHNOLOGIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
For the Nine Months Ended September 30, 2023 and 2022
(unaudited)

1. Business and Summary of Significant Accounting Policies, continued

Reverse Stock Split

On January 24, 2023, the Company held a special meeting of its stockholders, at which its stockholders approved an amendment to the Company's certificate of incorporation, as amended, to effect a reverse stock split of all of the outstanding shares of common stock at a specific ratio within a range from one-for-five to one-for-one hundred, and to grant authorization to the board of directors to determine, in its sole discretion, the specific ratio and timing of the reverse stock split. On January 24, 2023, the board approved a 1-for-100 reverse stock split (the "Reverse Stock Split") of our outstanding shares of common stock and authorized the filing of a certificate of amendment to our certificate of incorporation, as amended, with the Secretary of State of the State of Delaware (the "Certificate of Amendment") to affect the Reverse Stock Split. On January 26, 2023, the Reverse Stock Split was effected and the condensed consolidated financial statements have been retroactively adjusted. All common stock share numbers, warrants to purchase common stock, prices and exercise prices have been retroactively adjusted to reflect the Reverse Stock Split. The common stock began trading on a split-adjusted basis at the start of trading on January 27, 2023. Unless otherwise indicated, the information presented in this Quarterly Report on Form 10-Q for the three and nine months ended September 30, 2023 (the "Report") gives effect to the Reverse Stock Split.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim financial information and pursuant to Article 10 of Regulation S-X of the Securities Act of 1933, as amended (the "Securities Act"). Accordingly, they do not include all of the information and notes required by U.S. GAAP for complete financial statements. These unaudited condensed consolidated financial statements include all normal and recurring adjustments that the Company believes are necessary to fairly state the Company's financial position and the results of operations and cash flows. Interim period results are not necessarily indicative of results of operations or cash flows for a full year or any subsequent interim period. The condensed consolidated balance sheet as of December 31, 2022 has been derived from audited consolidated financial statements at that date, but does not include all disclosures required by U.S. GAAP for complete financial statements.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Reclassification

Certain reclassifications have been made to prior periods' condensed consolidated financial statements to conform to the current period presentation. These reclassifications did not result in any change in previously reported net loss, total assets or stockholders' equity.

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WISA TECHNOLOGIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
For the Nine Months Ended September 30, 2023 and 2022
(unaudited)

1. Business and Summary of Significant Accounting Policies, continued

Concentration of Credit Risk and Other Risks and Uncertainties

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable.

Cash and cash equivalents are deposited in demand and money market accounts at one financial institution. At times, such deposits may be in excess of insured limits. The Company has not experienced any losses on its deposits of cash and cash equivalents.

The Company's accounts receivable are derived from revenue earned from customers located throughout the world. The Company performs credit evaluations of its customers' financial condition as necessary, and sometimes requires partial payment in advance of shipping. As of September 30, 2023 and December 31, 2022, there was no allowance for doubtful accounts. As of September 30, 2023, the Company had two customers accounting for 78% and 11% of accounts receivable. As of December 31, 2022, the Company had two customers accounting for 62% and 12% of accounts receivable.

The Company had three customers accounting for 40%, 28% and 21% of its net revenue for the three months ended September 30, 2023. The Company had four customers accounting for 22%, 17%, 16% and 15% of its net revenue for the nine months ended September 30, 2023. The Company had three customers accounting for 42%, 16%, and 12% of its net revenue for the three months ended September 30, 2022. The Company had three customers accounting for 20%, 18%, and 16% of its net revenue for the nine months ended September 30, 2022.

The Company's future results of operations involve a number of risks and uncertainties. Factors that could affect the Company's future operating results and cause actual results to vary materially from expectations include, but are not limited to, rapid technological change, continued acceptance of the Company's products, competition from substitute products and larger companies, protection of proprietary technology, strategic relationships and dependence on key individuals.

The Company relies on sole-source suppliers to manufacture some of the components used in its product. The Company's manufacturers and suppliers may encounter problems during manufacturing due to a variety of reasons, any of which could delay or impede their ability to meet demand. The Company is heavily dependent on a single contractor in China for assembly and testing of its products, a single contractor in Japan for the production of its transmit semiconductor chip and a single contractor in China for the production of its receive semiconductor chip.

Deferred Offering Costs

Deferred offering costs, consisting of legal, accounting and filing fees relating to public offerings, are capitalized. The deferred offering costs will be offset against public offering proceeds upon the effectiveness of an offering. In the event that an offering is terminated, deferred offering costs will be expensed. As of September 30, 2023 and December 31, 2022, the Company had capitalized \$210,000 and \$206,000, respectively, of deferred offering costs in prepaid expenses and other current assets on the condensed consolidated balance sheet.

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WISA TECHNOLOGIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
For the Nine Months Ended September 30, 2023 and 2022
(unaudited)

1. Business and Summary of Significant Accounting Policies, continued

Convertible Financial Instruments

The Company bifurcates conversion options and warrants from their host instruments and accounts for them as freestanding derivative financial instruments if certain criteria are met. The criteria include circumstances in which (a) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (b) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (c) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument. An exception to this rule is when the host instrument is deemed to be conventional, as that term is described under applicable U.S. GAAP.

When the Company has determined that the embedded conversion options and warrants should be bifurcated from their host instruments, discounts are recorded for the intrinsic value of conversion options embedded in the instruments based upon the differences between the fair value of the underlying common stock at the commitment date of the transaction and the effective conversion price embedded in the instrument.

Debt discounts under these arrangements are amortized to interest expense using the interest method over the earlier of the term of the related debt or their earliest date of redemption.

Warrants for Shares of Common Stock and Derivative Financial Instruments

Warrants for shares of common stock and other derivative financial instruments are classified as equity if the contracts (1) require physical settlement or net-share settlement or (2) give the Company a choice of net-cash settlement or settlement in its own shares (physical settlement or net-share settlement). Contracts which (1) require net-cash settlement (including a requirement to net cash settle the contract if an event occurs and if that event is outside the control of the Company), (2) give the counterparty a choice of net-cash settlement or settlement in shares (physical settlement or net-share settlement), or (3) that contain reset provisions that do not qualify for the scope exception are classified as liabilities. The Company assesses classification of its warrants for shares of common stock and other derivatives at each reporting date to determine whether a change in classification between equity and liabilities is required.

In an equity-classified freestanding financial instrument, as of the date that a down round feature is triggered, the Company measures the fair value of the instrument without the down round feature (that is, before the strike price is reduced) and the fair value of the financial instrument with a strike price that reflects the adjustment from the down round. The incremental difference in the fair value is recorded a deemed dividend. As the Company has an accumulated deficit, the deemed dividend is recorded as a reduction of additional paid-in capital in the condensed consolidated balance sheet. The Company increases the net loss available to common stockholders by the amount of the deemed dividend. For the three and nine month periods ended September 30, 2023 and 2022, there were no deemed dividends.

Product Warranty

The Company's products are generally subject to a one-year warranty, which provides for the repair, rework, or replacement of products (at the Company's option) that fail to perform within the stated specification. The Company has assessed its historical claims and, to date, product warranty claims have not been significant. The Company will continue to assess if there should be a warranty accrual going forward.

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WISA TECHNOLOGIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
For the Nine Months Ended September 30, 2023 and 2022
(unaudited)

1. Business and Summary of Significant Accounting Policies, continued

Revenue Recognition

The Company generates revenue primarily from two product categories which include the sale of Consumer Audio Products as well as the sale of Components. The Company applies the following five steps: (1) identify the contract with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract, and (5) recognize revenue when a performance obligation is satisfied. The Company considers customer purchase orders to be the contracts with a customer. Revenues, net of expected discounts, are recognized when the performance obligations of the contract with the customer are satisfied and when control of the promised goods are transferred to the customer, typically when products, which have been determined to be the only distinct performance obligations, are shipped to the customer. Expected costs of assurance warranties and claims are recognized as expense.

Taxes assessed by a governmental authority that are both imposed on and concurrent with a specific revenue-producing transaction, that are collected by us from a customer and deposited with the relevant government authority, are excluded from revenue. Our revenue arrangements do not contain significant financing components.

Sales to certain distributors are made under arrangements which provide the distributors with price adjustments, price protection, stock rotation and other allowances under certain circumstances. The Company does not provide its customers with a contractual right of return. However, the Company accepts limited returns on a case-by-case basis. These returns, adjustments and other allowances are accounted for as variable consideration. We estimate these amounts based on the expected amount to be provided to customers and reduce revenue recognized. We believe that there will not be significant changes to our estimates of variable consideration.

If a customer pays consideration, or the Company has a right to an amount of consideration that is unconditional before we transfer a good or service to the customer, those amounts are classified as contract liabilities which are included in other current liabilities when the payment is made or it is due, whichever is earlier.

During the three and nine months ended September 30, 2023 and 2022, net revenue consisted of the following:

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Components	\$ 258	\$ 696	\$ 899	\$ 1,769
Consumer Audio Products	511	241	764	680
Total	\$ 769	\$ 937	\$ 1,663	\$ 2,449

Contract Balances

We receive payments from customers based on a billing schedule as established in our contracts to partially offset prepayments required by our vendors on long lead time materials. Amounts collected prior to the fulfillment of the performance obligation are considered contract liabilities and classified as customer advances within accrued liabilities on the condensed consolidated balance sheets. Contract assets are recorded when we have a conditional right to consideration for our completed performance under the contracts. Accounts receivables are recorded when the right to this consideration becomes unconditional. We do not have any material contract assets as of September 30, 2023 and December 31, 2022.

	September 30, 2023	December 31, 2022
Contract Liabilities	\$ 12	\$ 44

During the nine months ended September 30, 2023, the Company recognized \$44,000 of revenue that was included in the contract balances as of December 31, 2022.

WISA TECHNOLOGIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
For the Nine Months Ended September 30, 2023 and 2022
(unaudited)

1. Business and Summary of Significant Accounting Policies, continued

Revenue by Geographic Area

In general, revenue disaggregated by geography (See Note 10) is aligned according to the nature and economic characteristics of our business and provides meaningful disaggregation of our results of operations. Since we operate in one segment, all financial segment and product line information can be found in the condensed consolidated financial statements.

Practical Expedients and Exemptions

As part of our adoption of Accounting Standards Codification Topic 606, Revenue from Contracts with Customers, we use the following practical expedients: (i) not to adjust the promised amount of consideration for the effects of a significant financing component when we expect, at contract inception, that the period between our transfer of a promised product or service to a customer and when the customer pays for that product or service will be one year or less; (ii) to expense costs as incurred for costs to obtain a contract when the amortization period would have been one year or less; (iii) not to assess whether promised goods or services are performance obligations if they are immaterial in the context of the contract with the customer. In addition, we do not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less.

Stock-Based Compensation

The Company measures and recognizes the compensation expense for restricted stock units and restricted stock awards granted to employees and directors based on the fair value of the award on the grant date.

Restricted stock units give an employee an interest in Company stock but they have no tangible value until vesting is complete. Restricted stock units and restricted stock awards are equity classified and measured at the fair market value of the underlying stock at the grant date and recognized as expense over the related service or performance

period. The Company elected to account for forfeitures as they occur. The fair value of stock awards is based on the quoted price of our common stock on the grant date. Compensation cost for restricted stock units and restricted stock awards is recognized using the straight-line method over the requisite service period.

Advertising Costs

Advertising costs are charged to sales and marketing expenses as incurred. Advertising costs for the three and nine months ended September 30, 2023 were \$238,000 and \$511,000, respectively. Advertising costs for the three and nine months ended September 30, 2022 were \$300,000 and \$704,000, respectively.

Comprehensive Loss

Comprehensive loss represents the changes in equity of an enterprise, other than those resulting from stockholder transactions. Accordingly, comprehensive loss may include certain changes in equity that are excluded from net loss. For the three and nine months ended September 30, 2023 and 2022, the Company's comprehensive loss is the same as its net loss.

Foreign Currency

The financial position and results of operations of the Company's foreign operations are measured using currencies other than the U.S. dollar as their functional currencies. Accordingly, for these operations all assets and liabilities are translated into U.S. dollars at the current exchange rates as of the respective balance sheet date. Expense items are translated using the weighted average exchange rates prevailing during the period. Cumulative gains and losses from the translation of these operations' financial statements are reported as a separate component of stockholders' equity, while foreign currency transaction gains or losses, resulting from re-measuring local currency to the U.S. dollar are recorded in the condensed consolidated statement of operations in other income (expense), net and were not material for the three and nine months ended September 30, 2023 and 2022.

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WISA TECHNOLOGIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
For the Nine Months Ended September 30, 2023 and 2022
(unaudited)

1. Business and Summary of Significant Accounting Policies, continued

Net Loss per Common Share

Basic net loss per common share is calculated by dividing the net loss attributable to common stockholders by the weighted average number of shares of common stock outstanding during the period, without consideration for potentially dilutive securities. Diluted net loss per common share is computed by dividing the net loss attributable to common stockholders by the weighted average number of shares of common stock and potentially dilutive common share equivalents outstanding for the period determined using the treasury-stock and if-converted methods. For purposes of the diluted net loss per common share calculation, warrants exercisable for common stock, restricted stock units and shares issuable upon the conversion of convertible notes payable are considered to be potentially dilutive securities.

As of September 30, 2023, warrants to purchase 5,635,290 shares of common stock, 10,386 shares of restricted stock, 2,667 shares of restricted stock issued under an inducement grant and 5,466 shares underlying restricted stock units have been excluded from the calculation of net loss per common share because the inclusion would be antidilutive.

As of September 30, 2022, warrants to purchase 67,028 shares of common stock, 16,775 shares of restricted stock and 2,906 shares of restricted stock issued under an inducement grant and 7,316 shares underlying restricted stock units have been excluded from the calculation of net loss per common share because the inclusion would be antidilutive.

Recently Adopted Accounting Pronouncements.

In June 2016, Financial Accounting Standards Board's ("FASB") issued Accounting Standards Update ("ASU") 2016-13, Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, as amended, which requires the early recognition of credit losses on financing receivables and other financial assets in scope. ASU 2016-13 requires the use of a transition model that will result in the earlier recognition of allowances for losses. The new standard is effective for fiscal years beginning after December 15, 2022. The Company adopted this standard on January 1, 2023, and the adoption did not have any impact on the condensed consolidated financial statements.

Recently Issued and Not Yet Adopted Accounting Pronouncements

In August 2020, the FASB issued ASU 2020-06 "Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity". This ASU simplifies accounting for convertible instruments by removing major separation models required under current U.S. GAAP. Consequently, more convertible debt instruments will be reported as a single liability instrument and more convertible preferred stock as a single equity instrument with no separate accounting for embedded conversion features. The ASU removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, which will permit more equity contracts to qualify for the exception. The ASU also simplifies the diluted earnings per share (EPS) calculation in certain areas. As an emerging growth company, the Company is allowed to adopt the accounting pronouncement at the same time as non-public business entities. As a result, the Company will adopt the update for its fiscal year beginning after December 15, 2023. The Company is evaluating the impact of this standard on its condensed consolidated financial statements.

We have reviewed other recent accounting pronouncements and concluded they are either not applicable to the business, or no material effect is expected on the condensed consolidated financial statements as a result of future adoption.

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WISA TECHNOLOGIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
For the Nine Months Ended September 30, 2023 and 2022
(unaudited)

2. Going Concern

The condensed consolidated financial statements of the Company 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. The Company has incurred net operating losses each year since inception. As of September 30, 2023, the Company had cash and cash equivalents of \$0.2 million and reported net cash used in operations of \$12.1 million during the nine months ended September 30, 2023. The Company expects operating losses to continue in the foreseeable future because of additional costs and expenses related to research and development activities, plans to expand its product portfolio, and increase its market share. The Company's ability to attain profitable operations is dependent upon achieving a level of revenues adequate to support its cost structure.

Based on current operating levels, the Company will need to raise additional funds by selling additional equity or incurring debt. To date, the Company has funded its operations primarily through issuance of equity securities and proceeds from the exercise of warrants to purchase common stock and the sale of debt instruments. Additionally, future capital requirements will depend on many factors, including the rate of revenue growth, the selling price of the Company's 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 the Company's products. These factors raise substantial doubt about the Company's ability to continue as a going concern for the twelve months from the date of this Report.

Management of the Company intends to raise additional funds through the issuance of equity securities or debt. There can be no assurance that, in the event the Company requires additional financing, such financing will be available at terms acceptable to the Company, if at all. Failure to generate sufficient cash flows from operations, raise additional capital and reduce discretionary spending could have a material adverse effect on the Company's ability to achieve its intended business objectives. As a result, the substantial doubt about the Company's ability to continue as a going concern has not been alleviated. The accompanying condensed consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

3. Balance Sheet Components

Inventories (in thousands):

	September 30, 2023	December 31, 2022
Raw materials	\$ 656	\$ 3,043
Work in progress	—	13
Finished goods	2,513	4,014
Total inventories	<u>\$ 3,169</u>	<u>\$ 7,070</u>

Property and equipment, net (in thousands):

	September 30, 2023	December 31, 2022
Machinery and equipment	\$ 741	\$ 691
Leasehold improvements	—	127
Tooling	11	11
	752	829
Less: Accumulated depreciation and amortization	(643)	(655)
Property and equipment, net	<u>\$ 109</u>	<u>\$ 174</u>

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WISA TECHNOLOGIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
For the Nine Months Ended September 30, 2023 and 2022
(unaudited)

3. Balance Sheet Components, continued

Depreciation and amortization expense for the three months ended September 30, 2023 and 2022 was \$18,000 and \$31,000, respectively. Depreciation and amortization expense for the nine months ended September 30, 2023 and 2022 was \$82,000 and \$91,000, respectively.

The cost and accumulated depreciation of assets acquired under finance lease included in machinery and equipment in the above table as of September 30, 2023 were \$72,000 and \$72,000 respectively.

Accrued liabilities (in thousands):

	September 30, 2023	December 31, 2022
Accrued vacation	\$ 427	\$ 422
Accrued audit fees	168	179
Accrued rebate	107	215
Accrued legal fees	96	43
Customer advance	12	44
Accrued other	395	424
Accrued compensation	—	136
Accrued lease liability, current portion	—	169
Total accrued liabilities	<u>\$ 1,205</u>	<u>\$ 1,632</u>

4. Borrowings

Convertible Promissory Note

On August 15, 2022, the Company entered into a Securities Purchase Agreement (the "August Purchase Agreement"), by and between the Company and an institutional investor (the "Convertible Note Investor"), pursuant to which the Company agreed to issue to the Investor a senior secured convertible note in the principal amount of \$3,600,000 (the "Convertible Note") and a warrant (the "August Warrant") to purchase up to 20,970 shares of the Company's common stock, at an exercise price of

\$99.70 per share (the “Exercise Price”), in consideration for \$3,000,000. Pursuant to the August Purchase Agreement, upon the closing of the private placement, pursuant to which Maxim Group LLC (“Maxim”) acted as placement agent (the “Private Placement”), the Company received gross proceeds of \$3,000,000. After the deduction of banker fees, commitment fees and other expenses associated with the transaction, the Company received net proceeds of \$2,483,000. The Company used the net proceeds primarily for working capital and general corporate purposes.

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4. Borrowings, continued

The Convertible Note matures on August 15, 2024, does not bear interest and ranks senior to the Company’s existing and future indebtedness and is secured to the extent and as provided in the Security Agreements. The Convertible Note is convertible in whole or in part at the option of the Convertible Note Investor into shares of Common stock (the “Conversion Shares”) at the Conversion Price (as defined below) at any time following the date of issuance of the Convertible Note. The Convertible Note defines “Conversion Price” as equal to the lesser of (a) 90% of the average of the five lowest daily VWAPs (as defined in the Convertible Note) during the previous twenty trading days prior to delivery to the Company of the Convertible Note Investor’s applicable notice of conversion (the “Conversion Notice”) and (b) \$92.60 (the “Base Conversion Price”). The Base Conversion Price is subject to full ratchet antidilution protection, subject to a floor conversion price of \$0.50 per share (the “Floor Price”), a limitation required by the rules and regulations of Nasdaq, and certain exceptions upon any subsequent transaction at a price lower than the Base Conversion Price then in effect and standard adjustments in the event of stock dividends, stock splits, combinations or similar events; provided that in the event the Conversion Price equals the Floor Price, the Company is required to pay the Convertible Note Investor a cash amount determined pursuant to a formula in the Convertible Note, and provided further that the Floor Price will not apply in the event that the Company obtains Stockholder Approval (as defined in the August Purchase Agreement) in accordance with Nasdaq rules. At any time after the closing date of the Private Placement, in the event that the Company issues or sells any shares of common stock or common stock Equivalents (as defined in the Convertible Note), subject to certain exceptions, at an effective price per share lower than the Base Conversion Price then in effect or without consideration, then the Base Conversion Price shall be reduced to the price per share paid for such shares of common stock or common stock Equivalents. Additionally, upon three days’ written notice to the holder after receipt of a Conversion Notice, in lieu of delivering Conversion Shares, the Company has the right to pay the Convertible Note Investor in cash an amount equal to 105% of the portion of the outstanding principal amount stated in such Conversion Notice. Further, at the Convertible Note Investor’s option, the Convertible Note is convertible into shares of common stock or redeemable for 103% of the portion of the outstanding principal amount to be converted in the event that any transaction causes the Conversion Price to be lower than the Floor Price. Subject to certain exceptions, commencing on the Conversion Trigger Date and for a nine-month period after such date, the Convertible Note Investor may convert only up to an aggregate of \$250,000 in outstanding principal amount during any calendar month, provided, that if Stockholder Approval has been obtained, the Convertible Note is in default at the time or the Company meets certain capitalization conditions, such conversion limitation would not apply.

The obligations and performance of the Company under the Convertible Note and the August Purchase Agreement are secured by a senior lien granted pursuant to security agreements between the Convertible Note Investor and the Company, on (a) all of the assets of the Company; (b) a senior lien granted pursuant to trademark security agreements between the Convertible Note Investor and the Company; (c) a senior lien granted pursuant to a patent security agreement between the Convertible Note Investor and the Company on all of the patent assets of the Company; and (d) a pledge of certain securities pursuant to a pledge agreement between the Convertible Note Investor, the Company (such agreements listed in (a)-(d) above, collectively, the “Security Agreements”). The payment and performance obligations of the Company under the Convertible Note and the August Purchase Agreement are guaranteed pursuant to a guaranty by the Company in favor of the Convertible Note Investor.

In connection with the Private Placement, the Company issued warrants to the Convertible Note Investor and Maxim to purchase common shares of 20,970 and 1,944, respectively (see Note 5 – Fair Value Measurements). The sum of the fair value of the warrants, the original issue discount for interest, issuance costs and the derivative liability for the embedded conversion feature for the Convertible Note were recorded as debt discounts totaling \$2,509,000 to be amortized to interest expense over the respective term using the effective interest method. During the three and nine months ended September 30, 2023, the Company recognized \$0 and \$738,000, respectively, of interest expense from the amortization of debt discounts related to the Convertible Note.

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4. Borrowings, continued

In connection with the Private Placement, the Company entered into a placement agency agreement with Maxim (the “Placement Agency Agreement”), and agreed to issue to Maxim, a warrant to purchase up to an aggregate of 1,944 shares of Common Stock (the “Maxim Warrant”) at an exercise price of \$99.70 per share, which is exercisable at any time on or after the six-month anniversary of the closing date of the Private Placement and will expire on the fifth (5th) anniversary of its date of issuance.

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

On November 21, 2022, the Company and Maxim entered into an agreement to amend the Maxim Warrant (the “Maxim Warrant Amendment”). Specifically, the Maxim Warrant Amendment sets forth certain circumstances in which the lock up restrictions to which the Maxim Warrant is subject would not apply. The Maxim Warrant Amendment also clarifies certain limitations with respect to demand registration rights, and provides that Maxim’s piggy-back registration rights expire on the fifth (5th) anniversary of the Maxim Warrant’s date of issuance.

Convertible promissory note (in thousands):

	September 30, 2023	December 31, 2022
Convertible note payable	\$ —	\$ 2,089

Debt discount	—	(1,632)
Net total	<u>\$ —</u>	<u>\$ 457</u>

The New Convertible Note contains several embedded conversion features. The Company concluded that those conversion features require bifurcation from the New Convertible Note and subsequent accounting in the same manner as a freestanding derivative. The Company recognized a derivative liability of \$286,000 upon execution of the note agreement and such amount was included in the \$2,509,000 of debt discounts noted above. Subsequent changes in the fair value of these conversion features are measured at each reporting period and recognized in the consolidated statement of operations. The Company recorded no balance of the derivative liability as of September 30, 2023 after the convertible note payoff in April 2023.

On November 28, 2022, the Company entered into a waiver of rights (the “Waiver”) with the Convertible Note Investor, pursuant to which the Convertible Note Investor agreed to waive certain prohibitions under the August Purchase Agreement with respect to the offering of units in December 2022 in exchange for the issuance by the Company, on the closing date of such offering, of an additional number of Series A warrants to purchase shares of Common Stock (the “Series A Warrants”) and an additional number of Series B warrants to purchase shares of Common Stock (the “Series B Warrants”) equal to the quotient obtained by dividing \$750,000 by the public offering price for the units sold in the offering (such Warrants, the “Waiver Warrants”).

In connection with the public offering the Company consummated on December 1, 2022 (the “December 2022 Offering”), the Company issued 53,572 Series A Warrants and 53,572 Series B Warrants to the Convertible Note Investor (See Note 6). The Company’s obligation to issue shares of common stock underlying the Waiver Warrants is expressly conditioned upon stockholder approval of all of the transactions contemplated by the August Purchase Agreement. At a Special Meeting of Stockholders held on January 24, 2023, the Company received stockholder approval of the transactions contemplated by the August Purchase Agreement.

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4. Borrowings, continued

On February 1, 2023, the holder of the Convertible Note converted approximately \$708,000, a portion of the outstanding principal amount into 67,500 shares of the Company’s common stock.

On April 11, 2023, the Company paid \$1,656,744 to the holder of the Convertible Note which repaid the entirety of the outstanding balance and included the unpaid principal, interest through the payoff date, and a pre-payment premium of \$276,000 which was recorded as a component of loss on debt extinguishment.

Short-Term Loan

On September 8, 2023, the Company entered into a Loan and Security Agreement with Meriwether Group Capital Hero Fund LP (“Meriwether”). Pursuant to the Loan and Security Agreement, Meriwether provided the Company with a term loan in the principal amount of \$650,000 that is scheduled to mature on November 7, 2023, subject to further extension (“Meriwether Loan”). In addition, the Company has the right to request additional funding under the Meriwether Loan.

Borrowings under the Meriwether Loan will bear interest at a rate per annum equal to 18%. On the maturity date, subject to any extension, the Company is obligated to make a payment equal to all unpaid principal and accrued interest. Pursuant to the Meriwether Loan, the Company shall pay to Meriwether a fully earned, non-refundable, origination fee in the amount of \$50,000. The Company shall also pay to Meriwether a fully earned, non-refundable, exit fee in the amount of \$50,000 due and payable on the maturity date. The origination fee, the exit fee and the issuance costs associated with the Meriwether Loan were recorded as debt discounts totaling \$113,000 to be amortized to interest expense over the respective term using the effective interest method. During the three and nine months ended September 30, 2023, the Company recognized \$41,000, of interest expense from the amortization of debt discounts related to the Meriwether Loan.

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

The Meriwether Loan contains customary representations, warranties and affirmative and negative covenants. In addition, the Meriwether Loan contains customary events of default that entitle Meriwether to cause the Company’s indebtedness under the Loan and Security Agreement to become immediately due and payable, and to exercise remedies against the Company and the collateral securing the term loan. Under the Meriwether Loan, an event of default will occur if, among other things, the Company fails to make payments under the Meriwether Loan, the Company breaches any of the covenants under the Meriwether Loan, a material adverse change occurs, the Company, or its 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 Meriwether Loan.

On October 10, 2023, Meriwether agreed to extend the maturity date of the Meriwether Loan to December 7, 2023. See Note 11 - Subsequent Events.

Short-term loan (in thousands):

	<u>September 30,</u> <u>2023</u>	<u>December 31,</u> <u>2022</u>
Short-term loan	\$ 700	\$ —
Debt discount	(71)	—
Net total	<u>\$ 629</u>	<u>\$ —</u>

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5. Fair Value Measurements

The Company measures the fair value of financial instruments using a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. Each level of input has different levels of subjectivity and difficulty involved in determining fair value.

- Level 1 – Inputs used to measure fair value are unadjusted quoted prices that are available in active markets for the identical assets or liabilities as of the reporting date. Therefore, determining fair value for Level 1 investments generally does not require significant judgment, and the estimation is not difficult.
- Level 2 – Pricing is provided by third-party sources of market information obtained through investment advisors. The Company does not adjust for or apply any additional assumptions or estimates to the pricing information received from its advisors.
- Level 3 – Inputs used to measure fair value are unobservable inputs that are supported by little or no market activity and reflect the use of significant management judgment. These values are generally determined using pricing models for which the assumptions utilize management’s estimates of market participant assumptions. The determination of fair value for Level 3 instruments involves the most management judgment and subjectivity.

The Company’s financial assets and liabilities that are measured at fair value on a recurring basis as of September 30, 2023 and December 31, 2022 by level within the fair value hierarchy, are as follows:

(in thousands)	September 30, 2023		
	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Liabilities:			
Warrant liabilities	\$ —	\$ —	\$ 221
(in thousands)			
	December 31, 2022		
	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Liabilities:			
Derivative liability	\$ —	\$ —	\$ 333
Warrant liabilities	\$ —	\$ —	\$ 8,945

There were no transfers between Level 1, 2 or 3 during the three and nine months ended September 30, 2023 or September 30, 2022.

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5. Fair Value Measurements, continued

Derivative Liability

As described previously in Note 4, the conversion provisions embedded in the New Convertible Note require bifurcation and measurement at fair value as a derivative. The fair value was calculated using a Monte Carlo simulation to create a distribution of potential market capitalizations and share prices for the Company on a weekly basis over the assumed period, given the various scenarios. The average value of the New Convertible Note was discounted to the valuation date to determine a calibrated discount rate so that the fair value of the New Convertible Note was \$3 million. The value of the New Convertible Note was compared with the value of a hypothetical note with no conversion rights in order to determine the fair value of the conversion feature. The derivative liability was written off upon the repayment of the New Convertible Note.

(in thousands)	September 30,	
	2023	2022
Beginning balance	\$ 333	\$ —
Additions	—	286
Change in fair value	—	—
Write off in connection with extinguishment of debt	(333)	—
Ending balance	\$ —	\$ 286

Warrant Liabilities

The following table includes a summary of changes in fair value of the Company’s warrant liabilities measured at fair value using significant unobservable inputs (Level 3) for the nine months ended September 30, 2023 and 2022. For September 30, 2023, the fair value of such warrants was determined using the Black-Scholes Model based on the following key inputs and assumptions: common stock price of \$0.59; exercise prices of \$1.29 – \$10.49; expected yield of 0.0%; expected volatility of 115.7%; risk-free interest rate of 4.6% and expected life between 3.9 and 4.4 years.

(in thousands)	September 30,	
	2023	2022
Beginning balance	\$ 8,945	\$ 8
Additions	5,601	985
Change in fair value	(6,134)	(274)
Cashless Exercise of warrant liabilities	(8,191)	—

Ending balance	\$ 221	\$ 719
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The changes in fair value of the warrant liabilities are recorded in change in fair value of warrant liabilities in the condensed consolidated statements of operations.

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6. Stockholders' Equity

Common Stock

2018 Long Term Stock Incentive Plan

On January 30, 2018, the Company's board of directors approved the establishment of the Company's 2018 Long-Term Stock Incentive Plan (the "LTIP") and termination of its Carve-Out Plan. Under the LTIP, the aggregate maximum number of shares of common stock (including shares underlying options) that may be issued under the LTIP pursuant to awards of Restricted Shares or Options will be limited to 15% of the outstanding shares of common stock, which calculation shall be made on the first trading day of each new fiscal year; provided that, in any year no more than 8% of the common stock or derivative securitization with common stock underlying 8% of the common stock may be issued in any fiscal year. At a Special Meeting of Stockholders on January 24, 2023, the Stockholders approved certain amendments to the LTIP to: (i) increase the annual share limit of Common Stock that may be issued in any single fiscal year only for the 2023 fiscal year under the LTIP from 8% of the shares of Common Stock outstanding to 15% of the shares of Common Stock outstanding (which amount equates to the maximum amount that may be issued in the aggregate under the LTIP), and (ii) permit immediately quarterly calculations based on the number of shares of Common Stock outstanding as of the first trading day of each fiscal quarter, rather than solely as of the first trading day of the fiscal year.

As of September 30, 2023, up to 207,567 shares of common stock are available for participants under the LTIP. For the three and nine months ended September 30, 2023, 3,585 shares of restricted stock issued under the LTIP were released with an intrinsic value of approximately \$5,000. For the three and nine months ended September 30, 2022, 613 and 2,843 shares of restricted stock, respectively, issued under the LTIP, were released with an intrinsic value of approximately \$37,000 and \$294,000, respectively.

A summary of activity related to restricted stock awards (excluding the deferred shares) for the nine months ended September 30, 2023 is presented below:

Stock Awards	Shares	Weighted-Average Grant Date Fair Value
Non-vested as of January 1, 2023	14,107	\$ 189.45
Granted	769,041	\$ 1.20
Vested	(3,585)	\$ 262.04
Forfeited	(136)	\$ 206.13
Non-vested as of September 30, 2023	<u>779,427</u>	<u>\$ 3.35</u>

As of September 30, 2023, the unamortized compensation costs related to the unvested restricted stock awards was approximately \$1,947,000 which is to be amortized on a straight-line basis over a weighted-average period of approximately 2.0 years.

Inducement Grant

On September 13, 2021, the Company issued 3,100 shares of restricted common stock to Eric Almgren, the Company's Chief Strategist, as an inducement grant ("September 2021 Inducement Grant"). As of September 30, 2023, the unamortized compensation cost related to the unvested September 2021 Inducement Grant was approximately \$249,000 which is being amortized on a straight-line basis over a period of approximately 1.0 years. The Company recorded stock-based compensation of \$191,000, related to this grant for the nine months ended September 30, 2023. As of September 30, 2023, 2,667 shares are unvested. For the nine months ended September 30, 2023, 111 shares of restricted stock were released under the September 2021 Inducement Grant with an intrinsic value of less than \$1,000.

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6. Stockholders' Equity, continued

2020 Stock Incentive Plan

A summary of activity related to restricted stock units under the Company's 2020 Stock Incentive Plan for the nine months ended September 30, 2023 is presented below:

Stock Units	Shares	Weighted-Average Grant Date Fair Value
Non-vested as of January 1, 2023	2,161	\$ 238.33
Granted	—	\$ —
Vested	(71)	\$ 375.49
Forfeited	(74)	\$ 255.09
Non-vested as of September 30, 2023	<u>2,016</u>	<u>\$ 231.14</u>

As of September 30, 2023, the unamortized compensation costs related to the unvested restricted stock units was approximately \$14,000 which is to be amortized on a straight-line basis over a weighted-average period of approximately 0.5 years.

For the three and nine months ended September 30, 2023, 71 shares of restricted stock issued under the 2020 Stock Plan, were released with an intrinsic value of approximately \$92.00. For the three and nine months ended September 30, 2022, 599 and 668 shares of restricted stock issued under the 2020 Stock Plan, were released with an intrinsic value of approximately \$430 and \$500, respectively.

2022 Plan

A summary of activity related to restricted stock units under the Company's Technical Team Retention Plan of 2022 (the "2022 Plan") for the nine months ended September 30, 2023 is presented below:

Stock Units	Shares	Weighted-Average Grant Date Fair Value
Non-vested as of January 1, 2023	3,700	\$ 52.00
Granted	—	\$ —
Vested	—	\$ —
Forfeited	(250)	\$ 52.00
Non-vested as of September 30, 2023	<u>3,450</u>	<u>\$ 52.00</u>

As of September 30, 2023, the unamortized compensation cost related to the unvested restricted stock units was approximately \$130,000 which is to be amortized on a straight-line basis over a weighted-average period of approximately 2.3 years. For the three and nine months ended September 30, 2023 and 2022, no shares of restricted stock issued under the 2022 Plan were released.

February 2023 Offering

On January 31, 2023, the Company entered into a securities purchase agreement with certain institutional investors, pursuant to which the Company agreed to issue and sell to such investors (i) in a registered direct offering, 201,544 shares of common stock and pre-funded warrants (the "February 2023 Pre-Funded Warrants") to purchase up to 381,762 shares of common stock, at an exercise price of \$0.0001 per share of common stock, and (ii) in a concurrent private placement, 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 of common stock (the "February 2023 Offering"). In February and March of 2023, all the February 2023 Pre-Funded Warrants were exercised for cash.

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6. Stockholders' Equity, continued

On February 3, 2023, the Company closed the February 2023 Offering, and received net proceeds of approximately \$5.3 million after deducting placement agent fees and other offering expenses payable by the Company.

Also, in connection with the February 2023 Offering, on January 31, 2023, the Company entered into a placement agency agreement with Maxim, pursuant to which Maxim agreed to act as placement agent on a "best efforts" basis in connection with the offering and (ii) the Company agreed to pay Maxim an aggregate fee equal to 8.0% of the gross proceeds raised in the offering.

Also in connection with the offering, the Company entered into an amendment (the "Amendment") to the securities purchase agreement, dated as of November 29, 2022, by and between the Company and certain institutional investors (the "November Purchase Agreement") approved by a certain investor (the "November Investor") who purchased at least 50.1% in interest of the shares of Common Stock and the pre-funded warrants to purchase shares of Common Stock, if any, based on the initial subscription amounts under the November Purchase Agreement, pursuant to Section 5.5 of the November Purchase Agreement. Pursuant to the Amendment, Section 4.11 of the November Purchase Agreement, which prohibits the Company's ability to issue shares of Common Stock or Common Stock Equivalents (as defined in the November Purchase Agreement) or filing any registration statement or amendment or supplement thereto under the Securities Act, until ninety (90) days after the closing date of the transactions contemplated by the November Purchase Agreement, was amended to permit the offering discussed above and the issuance and sale of the securities offered and sold in such offering.

March 2023 Offering

On March 27, 2023, the Company entered into a securities purchase agreement with certain institutional investors, pursuant to which the Company agreed to issue and sell to such investors (i) in a registered direct offering, 837,207 shares of common stock of the Company and (ii) in a concurrent private placement, 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 (the "March 2023 Offering").

On March 29, 2023, the Company closed the March 2023 Offering and received net proceeds of approximately \$1.6 million, after deducting fees payable to the financial advisor and other offering expenses.

April 2023 Offering

On April 7, 2023, the Company entered into a securities purchase agreement with certain institutional investors, pursuant to which the Company issued and sold to such investors (i) in a registered direct offering, 743,066 shares of common stock of the Company and (ii) in a concurrent private placement, 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 of Common Stock (the "April 2023 Offering").

On April 12, 2023, the Company closed the April 2023 Offering and received net proceeds of approximately \$1.0 million, after deducting fees payable to the financial advisor and other offering expenses.

Warrants for Shares of Common Stock

A summary of the warrant activity and related information for the nine months ended September 30, 2023 and 2022 is provided as follows.

In connection with February 2023 Offering, the Company issued Common Stock Purchase Warrants to investors to purchase up to 874,959 shares of the Company's common stock, at an exercise price of \$10.49 per share. The grant date fair value of such warrants was \$5,600,000, which was recorded as a liability with the offset recorded to additional paid-in capital on the condensed consolidated balance sheets. The fair value of such warrants was determined using the Black-Scholes Model based on the

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6. Stockholders' Equity, continued

In connection with March 2023 Offering, the Company issued Common Stock Purchase Warrants to investors to purchase up to 1,674,414 shares of the Company's common stock, at an exercise price of \$1.91 per share. The grant date fair value of such warrant was \$2,113,000, which was recorded as equity. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumption: common stock price on the date of grant of \$1.66; expected yield of 0.0%; expected volatility of 104%; risk-free interest rate of 3.67% and expected life of 5 years.

In connection with April 2023 Offering, the Company issued Common Stock Purchase Warrants to investors to purchase up to 1,486,132 shares of the Company's common stock, at an exercise price of \$1.41 per share. The grant date fair value of such warrant was \$1,596,000, which was recorded as equity. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumption: common stock price on the date of grant of \$1.32; expected yield of 0%; expected volatility of 115.6%; risk-free interest rate of 3.46% and expected life of 5 years.

During the three months ended September 30, 2023, 510,000 warrants to purchase common stock were exercised for cash, resulting in net proceeds of approximately \$617,000. There were no exercises of warrants to purchase common stock in the three months ended September 30, 2022.

Warrant Inducement - May 2023

On May 15, 2023, the Company entered into warrant exercise inducement offer letters (the "May Inducement Letters") with the holders of 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 issued on April 12, 2023 (the "April Warrants"). The April Warrant holders agreed to exercise for cash April Warrants to purchase up to 1,486,132 shares of common stock in exchange for the Company's agreement to issue 2,972,264 new warrants (the "May Inducement Warrants") on substantially the same terms as the April Warrants. The Company received net proceeds of approximately \$1.9 million from the exercise of the April Warrants. Each May Inducement Warrant is exercisable at a price per share of common stock of \$1.33, which was equal to the Minimum Price (as defined by the Nasdaq Listing Rules).

Each May Inducement Warrant is immediately exercisable upon issuance and will expire on the fifth anniversary of its issuance. The exercise price of the May 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 May Inducement Warrants are callable by the Company at a redemption price of \$0.50 per Inducement Warrant, provided that the resale of the shares of common stock underlying the May Inducement Warrants are then registered or may be resold under Rule 144 under the Securities Act.

Warrant Inducement - July 2023

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 holders exercised 510,000 of the May Inducement Warrants pursuant to certain of the July Inducement Letters, and the Company received net proceeds of approximately \$617,000 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.

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6. Stockholders' Equity, continued

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.

Information regarding warrants for common stock outstanding and exercisable as of September 30, 2023 is as follows:

Exercise Price	Warrants Outstanding as of September 30, 2023	Weighted Average Remaining Life (years)	Warrants Exercisable as of September 30, 2023
\$1.29 - \$1.91	4,716,784	4.6	4,716,784
\$10.49	874,959	4.3	874,959
\$99.70	1,944	3.9	1,944
\$152.00	400	3.2	400
\$200.00 - \$12,500.00	41,203	1.9	41,103
\$5.45*	5,635,290	4.5	5,635,190

* Weighted average

Information regarding warrants for common stock outstanding and exercisable as of December 31, 2022 is as follows:

Exercise Price	Warrants Outstanding as of December 31, 2022	Weighted Average Remaining Life (years)	Warrants Exercisable as of December 31, 2022
\$14.00	1,187,145	4.9	1,080,001
\$50.00	20,971	4.6	20,971
\$99.70 - \$261.00	18,434	2.6	16,390
\$300.00 - \$980.00	24,799	2.6	24,799
\$1,580.00 - \$12,500.00	1,766	0.2	1,766
\$31.55*	1,253,115	4.8	1,143,927

* Weighted Average

Warrants exercisable as of December 31, 2022 exclude warrants to purchase 100 shares of common stock issued to a marketing firm, which vest upon the achievement of certain milestones, warrants to purchase 1,944 shares of common stock issued to Maxim which became exercisable on February 15, 2023, and warrants to purchase 107,144 shares of common stock issued to a Convertible Note Investor that require shareholder approval prior to being exercisable, which was received at a special meeting of our stockholders held on January 24, 2023. Additionally, warrants to purchase 207 shares of common stock which are shown above with a price of \$1,580.00 are pre-funded warrants under which the holder shall pay \$20.00 per share to complete the exercise.

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7. Income Taxes

The Company recorded a provision for income taxes of \$0 and \$2,000 for the three and nine months ended September 30, 2023, respectively, and \$0 and \$2,000 for the three and nine months ended September 30, 2022, respectively.

The Company's effective tax rate was (0.02)% for the nine months ended September 30, 2023 and 2022. The difference between the effective tax rate and the federal statutory tax rate for the nine months ended September 30, 2023 and 2022 primarily relates to the valuation allowance on the Company's deferred tax assets.

For interim periods, the Company estimates its annual effective income tax rate and applies the estimated rate to the year-to-date income or loss before income taxes. The Company also computes the tax provision or benefit related to items reported separately and recognizes the items net of their related tax effect in the interim periods in which they occur. The Company also recognizes the effect of changes in enacted tax laws or rates in the interim periods in which the changes occur.

As of September 30, 2023 and December 31, 2022, the Company retains a full valuation allowance on its deferred tax assets. The realization of the Company's deferred tax assets depends primarily on its ability to generate taxable income in future periods. The amount of deferred tax assets considered realizable in future periods may change as management continues to reassess the underlying factors it uses in estimating future taxable income.

The provision for income taxes for the three and nine months ended September 30, 2023 and 2022 was calculated on a jurisdiction basis.

8. Commitments and Contingencies

Operating Leases

The Company leases office space under a non-cancellable operating lease that was set to expire in January 2024. In May 2023, the Company signed a lease amendment that extended the lease expiration date to June 30, 2029, and agreed to new monthly rates. The lease amendment was considered a lease modification and the Company adjusted its right-of-use asset and operating lease liabilities accordingly as shown in the table below.

Operating lease rentals are expensed on a straight-line basis over the life of the lease beginning on the date we take possession of the property. At lease inception, we determine the lease term by assuming the exercise of those renewal options that are reasonably assured. The exercise of lease renewal options is at our sole discretion. The lease term is used to determine whether a lease is financing or operating and is used to calculate straight-line rent expense. Additionally, the depreciable life of leasehold improvements is limited by the expected lease term. Leases with an initial term of 12 months or less are not recorded on the condensed consolidated balance sheet; we recognize lease expense for these leases on a straight-line basis over the lease term.

The following table reflects our lease assets and our lease liabilities at September 30, 2023 and December 31, 2022 (in thousands).

	September 30, 2023	December 31, 2022
Assets:		
Operating lease right-of-use assets	\$ 637	\$ 120
Liabilities:		
Operating lease liabilities, current	\$ —	\$ 154
Operating lease liabilities, non-current	\$ 635	\$ 39

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8. Commitments and Contingencies, continued

Operating lease right-of-use assets are included in other assets. Operating lease liabilities, current, are included in accrued liabilities and operating lease liabilities, non-current, are include in other liabilities.

Lease Costs:

The components of lease costs were as follows (in thousands):

	Three Months Ended September 30, 2023	Nine Months Ended September 30, 2023
Operating lease cost	\$ 42	\$ 97
Short term lease cost	13	41
Total lease cost	<u>\$ 55</u>	<u>\$ 138</u>

As of September 30, 2023, the maturity of operating lease liabilities was as follows:

(in thousands)	
Payments due in:	
Year ending December 31, 2023 (remaining 3 months)	\$ 21
Year ending December 31, 2024	62
Year ending December 31, 2025	183
Year ending December 31, 2026	189
Year ending December 31, 2027	194
Thereafter	303
Total minimum lease payments	952
Less: Amounts representing interest	(317)
Present value of capital lease obligations	<u>\$ 635</u>

Lease Term and Discount Rate:

	September 30, 2023
Weighted-average remaining lease term (in years)	5.75
Weighted-average discount rate	13.0%

Other Information:

Supplemental cash flow information related to leases was as follows (in thousands):

	Three Months Ended September 30, 2023	Nine Months Ended September 30, 2023
Operating cash outflows from operating leases	<u>\$ 43</u>	<u>\$ 129</u>

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8. Commitments and Contingencies, continued

Finance Lease

During August 2020, the Company entered into a lease agreement for equipment under a capital lease with a term of 36 months. The equipment under the lease is collateral for the agreement and is included within property and equipment, net on the condensed consolidated balance sheets. The lease expired in August 2023.

Management Team Retention Bonus

On September 1, 2022, the Company adopted its Management Team Retention Bonus Plan (the "Retention Plan"), to incentivize certain management level employees (the "Managers") to remain intact through and shortly following a potential "Change of Control" (as defined in the Retention Plan). The aggregate Retention Plan bonus amounts for all Managers was \$1,250,000.

The Retention Plan provided that each Manager is eligible to receive a lump sum cash amount under the Retention Plan, on the earlier of the six-month anniversary of the date of a Change of Control or at the time of such Manager's involuntary termination other than for "Cause" (as defined in the Retention Plan) or termination for "Good Reason" (as defined in the Retention Plan). The Retention Plan expired on June 30, 2023 unused, and no accruals were made.

Contingencies

In the normal course of business, the Company may become involved in legal proceedings. The Company will accrue a liability for such matters when it is probable that a liability has been incurred and the amount can be reasonably estimated. When only a range of a possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. The accrual for a litigation loss contingency might include, for example, estimates of potential damages, outside legal fees and other directly related costs expected to be incurred.

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9. Related Parties

Helge Kristensen

Mr. Kristensen has served as a member of the Company’s board of directors since 2010. Mr. Kristensen serves as vice president of Hansong Technology, an original device manufacturer of audio products based in China, president of Platin Gate Aps, a company with focus on service-branding in lifestyle products as well as pro line products based in Denmark and co-founder and director of Inizio Capital, an investment company based in the Cayman Islands.

For the three months ended September 30, 2023 and 2022, Hansong Technology purchased modules from the Company of approximately \$20,000 and \$146,000, respectively, and made payments to the Company of approximately \$0 and \$191,000, respectively. For the three months ended September 30, 2023 and 2022, Hansong Technology sold speaker products to the Company of approximately \$24,000 and \$908,000, respectively, and the Company made payments to Hansong Technology of approximately \$50,000 and \$516,000, respectively.

For the nine months ended September 30, 2023 and 2022, Hansong Technology purchased modules from the Company of approximately \$69,000 and \$337,000, respectively, and made payments to the Company of approximately \$189,000 and \$191,000, respectively. For the nine months ended September 30, 2023 and 2022, Hansong Technology sold speaker products to the Company of approximately \$83,000 and \$1,367,000, respectively, and the Company made payments to Hansong Technology of approximately \$1,103,000 and \$1,306,000, respectively.

At September 30, 2023 and 2022, the Company owed Hansong Technology approximately \$324,000 and \$851,000, respectively. At September 30, 2023 and 2022, Hansong Technology owed the Company approximately \$49,000 and \$146,000, respectively.

As of September 30, 2023 and December 31, 2022, Mr. Kristensen owned less than 1.0% of the outstanding shares of the Company’s common stock.

David Howitt

Mr. Howitt has served as a member of the Company’s board of directors since December 2021. Since March 2004, Mr. Howitt has served as the founder and CEO of Meriwether Group LLC (“MWG”), a strategic consulting firm that works with disruptive consumer brands by integrating their visions, developing growth strategies, scaling their brands, and increasing revenue in order to build enterprise value. MWG, which is also majority-owned by Mr. Howitt, owns a 25% general partner interest in Meriwether Group Capital Hero Fund LP (“Meriwether”).

On September 8, 2023, the Company entered into a Loan and Security Agreement with Meriwether. Pursuant to the Loan and Security Agreement, Meriwether provided the Company with a term loan in the principal amount of \$650,000 that is scheduled to mature on November 7, 2023, subject to further extension. See Note 4 Short-Term Loan for additional information.

WISA TECHNOLOGIES, INC.
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10. Segment Information

The Company operates in one business segment. Our chief decision-maker, the President and Chief Executive Officer, evaluates our performance based on company-wide consolidated results.

Net revenue from customers is designated based on the geographic region to which the product is delivered. Net revenue by geographic region for the three and nine months ended September 30, 2023 and 2022 was as follows:

(in thousands)	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2023	2022	2023	2022
Asia Pacific	\$ 252	\$ 631	\$ 850	\$ 1,357
North America	504	244	769	681
Europe	8	62	39	411
Other	5	—	5	—
Total	\$ 769	\$ 937	\$ 1,663	\$ 2,449

Substantially all of our long-lived assets are located in the United States.

11. Subsequent Event

October 2023 Public Offering

On October 17, 2023, the Company completed a public offering consisting of an aggregate of 87,000 units (each a “Unit” and collectively, the “Units”), with each Unit consisting of (A) one (1) share of the Company’s series B convertible preferred stock, par value \$0.0001 per share (the “Series B Preferred Stock”), and (B) two series B preferred stock purchase warrants (each, a “Preferred Warrant” and collectively, the “Preferred Warrants”), with each Preferred Warrant exercisable for one share of Series B

Preferred Stock (the “Preferred Warrant Shares”), at the public offering price of \$55.00 per Unit. The Preferred Warrants are immediately exercisable, each with an exercise price of \$55.00 and expire on October 17, 2025. The offering price of \$55.00 per Unit reflects the issuance of the Series B Preferred Stock with an original issue discount of 45%.

The gross proceeds to the Company from the offering were approximately \$4.8 million, prior to underwriting discounts, commissions, and offering expenses. Subsequent to the pricing of the offering, the Company entered into letter agreements with certain holders of outstanding common stock purchase warrants, pursuant to which the Company agreed to purchase from the holders an aggregate of 1,674,414 warrants with an exercise price of \$1.91, 2,462,264 warrants with an exercise price of \$1.33 and 510,000 warrants with an exercise price of \$1.29 (collectively, the “Existing Warrants”), for \$0.50 per Existing Warrant. The Company used \$2.3 million of the \$4.8 million gross proceeds discussed above to repurchase the Existing Warrants on October 17, 2023, and expects to use the remainder of the proceeds from the offering for working capital and general corporate purposes and to potentially repay outstanding indebtedness.

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11. Subsequent Event, continued

Certificate of Designation of Series B Preferred Stock

On October 16, 2023, the Company filed a Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock (the “Certificate of Designation”) with the Secretary of State of the State of Delaware designating 375,000 shares of the Company’s authorized preferred stock as Series B Preferred Stock, with a liquidation preference of \$100.00 per share, and further establishing the powers, preferences and rights of the shares of Series B Preferred Stock and the qualifications, limitations or restrictions thereof. The Series B Preferred Stock does 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 the dividend rate of 20.0% per annum (the “Dividend Rate”). The PIK dividends will be paid to holders of the Series B Preferred Stock of record at the close of business on the one-year anniversary of the closing of the offering (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) \$55.00, the 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 Common Stock at a conversion price of \$0.4147, which is subject to adjustment. If any shares of Series B Preferred Stock are outstanding at the end of the two (2) year term, then the Company will 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 October 17, 2025, in cash at a price per share of Series B Preferred Stock equal to the sum of (x) 100% of the stated value plus (y) all accrued and unpaid dividends and (z) all other amounts due in respect of the Series B Preferred Stock. If, on October 17, 2025, the Company is unable to redeem such outstanding Series B Preferred Stock in cash due to prohibitions under Delaware law, then the Company shall, provided there is no prohibition under Delaware law, redeem the Series B Preferred Stock by paying to the holders 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 Nasdaq Capital Market on October 17, 2025.

Short-Term Loan Extension

On October 10, 2023, Meriwether extended the maturity date of the Meriwether Loan to December 7, 2023 for a fee of \$20,000.

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Up to 100,000,000 Units
(Each Unit Consisting of One Share of Common Stock and
One Warrant Exercisable for One Share of Common Stock)

Up to 100,000,000 Pre-Funded Units
(Each Pre-Funded Unit Consisting of One Pre-Funded Warrant Exercisable for One Share of Common Stock and One Warrant Exercisable for One Share of
Common Stock)

100,000,000 Shares of Common Stock Underlying the Warrants
100,000,000 Shares of Common Stock Underlying the Pre-Funded Warrants



WISA TECHNOLOGIES, INC.

PROSPECTUS

Maxim Group LLC

The date of this prospectus is _____, 2024

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the costs and expenses, other than the placement agent fees and expenses, payable by the registrant in connection with the sale of securities being registered hereby. All amounts are estimates except for the SEC registration fee and the Financial Industry Regulatory Authority, or FINRA, filing fee.

	Amount to be paid
SEC registration fee	\$ 2,952.00
FINRA filing fee	3,500.00
Legal fees and expenses	100,000.00
Accounting fees and expenses	60,000.00
Printing and engraving expenses	15,000.00
Transfer agent and registrar fees	5,000.00
Miscellaneous fees and expenses	5,000.00
Total	<u>\$ 191,452.00</u>

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.

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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. 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 Nasdaq, on a split-adjusted basis at the start of trading on January 27, 2023:

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.

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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 “January 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 the January 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.

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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.

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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.

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December 2023 Warrant Inducements

On December 5, 2023, the Company entered into warrant inducement letter agreements (collectively the “Inducement Agreements”) with certain holders (“Holders”) of the Company’s Series B Convertible Preferred Stock purchase warrants (the “Existing Warrants”) pursuant to which, the holders of the Existing Warrants agreed to a reduced exercise price of \$35.72 per share of Series B Convertible Preferred Stock, while maintaining the original fixed conversion price of \$0.4147, upon the exercise of any Existing Warrants during the period from the date of the Inducement Agreements until the later of (i) the day immediately preceding the Stockholder Approval Date (as defined in the New Warrant referenced below), or (ii) January 15, 2024. As of February 2, 2024, the Inducement Period is still ongoing.

The aggregate gross proceeds to be received by the Company will depend on the number of Existing Warrants actually exercised by the Holders. If all of the Existing Warrants

are exercised in accordance with the Inducement Agreements, the Company anticipates receiving aggregate gross proceeds of up to approximately \$6.0 million from the exercise of the Existing Warrants before deducting financial advisory fees and other expenses payable by the Company. There is no guarantee that all of the Existing Warrants will be exercised by the Holders in accordance with the Inducement Agreements. As of February 2, 2024, the Holders have exercised Existing Warrants to purchase 87,657 shares of Series B Preferred Stock, and we have received approximately \$3.1 million in gross proceeds from such exercises.

In consideration of each Holders' agreement to exercise the Existing Warrants in accordance with the applicable Inducement Agreement, the Company agreed to issue each such Holder the New Warrants, to purchase New Warrant Shares at a per share exercise price equal to \$0.1482, which New Warrants will contain 4.99/9.99% beneficial ownership limitations, be exercisable at any time on or after the Stockholder Approval Date and expire five years from the Stockholder Approval Date.

2024 Bridge Note and Warrant

On January 22, 2024, the Company entered into securities purchase agreements (the "2024 Bridge Purchase Agreements"), with the Holders, pursuant to which the Company agreed to issue to the Holders promissory notes in the aggregate principal amount of \$1,000,000 (the "2024 Bridge Promissory Notes") and common stock purchase warrants (the "2024 Bridge Warrants") to purchase up to an aggregate of 10,000,000 shares of the Company's Common Stock, in consideration for \$600,000 (the "2024 Bridge Private Placement").

Each of the 2024 Bridge Promissory Notes matures on the earlier to occur of: (i) July 17, 2024 and (ii) the full or partial exercise of certain Series B Preferred Stock purchase warrants currently held by the Holders, issuable for at least 9,322 shares of the Series B Preferred Stock upon such full or partial exercise. The 2024 Bridge Promissory Notes do not bear interest except upon the occurrence of an event of default. The 2024 Bridge Promissory Notes are not convertible into shares of Common Stock or Series B Preferred Stock.

The 2024 Bridge Warrants are not exercisable until after the date that stockholder approval is obtained to approve each of (i) the issuance of the 2024 Bridge Warrant Shares issuable upon the exercise of the 2024 Bridge Warrants, as may be required by the applicable rules and regulations of The Nasdaq Stock Market LLC and (ii) if necessary, a proposal to amend the Certificate of Incorporation to increase the authorized share capital of the Company to an amount sufficient to cover the 2024 Bridge Warrant Shares or to effectuate a reverse stock split whereby the authorized share capital is not split and is sufficient to cover the 2024 Bridge Warrant Shares (and such reverse split is effectuated) ("Bridge Warrant Stockholder Approval"), and will expire on the fifth (5th) anniversary of the date on which Bridge Warrant Stockholder Approval is received and deemed effective under Delaware law. The exercise price of the 2024 Bridge Warrants is subject to downward adjustment, upon any subsequent transaction at a price lower than the exercise price then in effect and standard adjustments in the event of certain events, such as stock splits, combinations, dividends, distributions, reclassifications, mergers or other corporate changes.

The exercise of the 2024 Bridge Warrants is subject to beneficial ownership limitations such that each Holder may not exercise the 2024 Bridge Warrant to the extent that such exercise would result in the Holder being the beneficial owner in excess of 4.99% (or, upon election of the Holder, 9.99%) of the outstanding shares of Common Stock, which beneficial ownership limitation may be increased up to 9.99% upon notice to the Company, provided that any increase in such limitation will not be effective until 61 days following notice to the Company.

The closing of the 2024 Bridge Private Placement occurred on January 23, 2024, pursuant to which, the Company issued the 2024 Bridge Promissory Notes and the 2024 Bridge Warrants to the Holders in accordance with the 2024 Bridge Purchase Agreements.

Unless otherwise stated, the sale and the issuance of the foregoing securities 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 and Financial Statement Schedules.

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 under the Securities Act of 1933 to any purchaser, each prospectus filed pursuant to Rule 424(b)(3) shall be deemed to be part of a registration statement relating to an offering and shall be deemed to be part of and included in the registration statement. Each prospectus filed pursuant to Rule 424(b)(3) or (b)(7), as part of a registration statement in reliance on Rule 430(b) relating to an offering pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933, shall be deemed to be part of and included in the registration statement as of the earlier of the date it is first used after effectiveness or the date of the first Contract of Sale of such securities in the Offering described in this prospectus. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) 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.

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(6) 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.

(7) 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.

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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 February 5, 2024.

WISA TECHNOLOGIES, INC.

By: /s/ Brett Moyer

Brett Moyer
President and Chief Executive Officer

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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>)	February 5, 2024
<u>/s/ *</u> Gary Williams	Chief Accounting Officer (<i>principal financial officer and principal accounting officer</i>)	February 5, 2024
<u>/s/ *</u> Lisa Cummins	Director	February 5, 2024
<u>/s/ *</u> Dr. Jeffrey M. Gilbert	Director	February 5, 2024
<u>/s/ *</u> David Howitt	Director	February 5, 2024

/s/ *	Director	February 5, 2024
Helge Kristensen		
/s/ *	Director	February 5, 2024
Sriram Peruvemba		
/s/ *	Director	February 5, 2024
Robert Tobias		
/s/ *	Director	February 5, 2024
Wendy Wilson		

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

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EXHIBIT INDEX

Exhibit No.	Description
1.1*	Form of Placement Agent Agreement by and between WiSA Technologies Inc. and Maxim Group LLC, as exclusive placement agent thereunder
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)	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)(e)	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)(f)	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)(g)	Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock (Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on October 19, 2023)
3.1(i)(h)	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)
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 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).
4.3	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).
4.4	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).
4.5	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).
4.7	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).
4.8	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).
4.9	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).
4.10	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).
4.11	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).
4.12	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).
4.13	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).
4.14	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).

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4.15	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).
4.16	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).
4.17	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).
4.18	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).
4.19	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).
4.20	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).
4.21	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).

4.22	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).
4.23	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).
4.24	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).
4.25	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).
4.26	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).
4.27	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).
4.28	Form of Pre-Funded Warrant (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on February 3, 2023).
4.29	Form of Private Placement Warrant (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on February 3, 2023).
4.30	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).
4.31	Form of Private Placement Warrant (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on April 7, 2023).
4.32	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).
4.33	Form of Inducement Warrant for March Warrants (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on May 17, 2023).
4.34	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).
4.35	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)
4.36	Form of Warrant to Purchase Shares of Series B Convertible Preferred Stock (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on October 19, 2023)
4.37	Form of Common Stock Purchase Warrant (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 6, 2023)
4.38	Form of Promissory Note (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 23, 2024)
4.39	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 23, 2024)
4.40*	Form of Warrant
4.41*	Form of Pre-Funded Warrant
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-8 (File No. 333-274154) filed with the SEC on August 22, 2023).
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-8 (File No. 333-274154) filed with the SEC on August 22, 2023).
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	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).
10.6	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).
10.7	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).
10.8	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).
10.9	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).
10.10	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).
10.11	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).
10.12	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).
10.13	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).
10.14	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).
10.15	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).
10.16	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).
10.17	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).
10.18	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).
10.19	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).
10.20	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).

- [10.21](#) [Form of Security Agreement, dated March 2020, by and between the Company and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.22](#) [Form of Security Agreement, dated March 2020, by and between WiSA and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.23](#) [Form of Trademark Security Agreement, dated March 2020, by and between the Company and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.24](#) [Form of Trademark Security Agreement, dated March 2020, by and between WiSA and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.25](#) [Form of Patent Security Agreement, dated March 2020, between the Company and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.26](#) [Form of Pledge Agreement, dated March 2020, between the Company, WiSA and the investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.27](#) [Form of Guaranty, dated March 2020 \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2020\).](#)
- [10.28](#) [Paycheck Protection Program Promissory Note and Agreement, dated May 3, 2020, by and between Wells Fargo Bank, National Association and Summit Wireless Technologies, Inc. \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on May 7, 2020\).](#)
- [10.29](#) [Leak-Out Agreement, dated May 14, 2020, by and between the Company and Alexander Capital, L.P. \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on May 27, 2020\).](#)
- [10.30](#) [Placement Agency Agreement, dated June 4, 2020, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 5, 2020\).](#)
- [10.31](#) [Form of Securities Purchase Agreement, dated as of June 4, 2020, by and between the Company and the investors \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 5, 2020\).](#)
- [10.32](#) [Placement Agency Agreement, dated June 9, 2020, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 10, 2020\).](#)
- [10.33](#) [Form of Securities Purchase Agreement, dated as of June 9, 2020, by and between the Company and the investors \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 10, 2020\).](#)
- [10.34](#) [Form of Settlement and Release Agreement, dated November 9, 2020, by and among the Company and each holder \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)
- [10.35](#) [Form of Registration Rights Agreement, dated November 9, 2020, by and among the Company and the holders \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)
- [10.36](#) [Form of Leak-Out Agreement, dated November 9, 2020, by and between the Company and each holder \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)
- [10.37](#) [Lease Agreement by and between Portland 2 LLC and the Company, dated August 18, 2020 \(incorporated by reference to the Company's Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020\).](#)
- [10.38](#) [Summit Wireless Technologies, Inc. 2020 Stock Incentive Plan \(incorporated by reference to the Company's Proxy Statement on Form DEF 14A filed with the SEC on September 11, 2020\).](#)
- [10.39](#) [Amendment to WiSA Technologies, Inc. 2018 Long-Term Stock Incentive Plan \(incorporated by reference to Appendix B to the Company's Definitive Proxy Statement on Schedule 14A, filed with the Commission on January 4, 2023\).](#)

- [10.40](#) [Form of Inducement Agreement, dated January 18, 2021, by and between the Company and certain holders \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 19, 2021\).](#)
- [10.41](#) [Solicitation Agreement, dated January 15, 2021, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 19, 2021\).](#)
- [10.42](#) [Form of Inducement Agreement, dated January 19, 2021, by and between the Company and certain holders \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 20, 2021\).](#)
- [10.43](#) [Form of Exchange Agreement \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 7, 2021\).](#)
- [10.44](#) [Form of Inducement Agreement, dated as of June 7, 2021, by and between the Company and certain holders \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 8, 2021\).](#)
- [10.45](#) [Solicitation Agreement, dated June 7, 2021, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on June 8, 2021\).](#)
- [10.46](#) [Placement Agency Agreement, dated as of July 22, 2021, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on July 26, 2021\).](#)
- [10.47](#) [Form of Securities Purchase Agreement, dated as of July 22, 2021, by and between the Company and the investors \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on July 26, 2021\).](#)
- [10.48](#) [Equity Distribution Agreement, dated December 30, 2021, by and between the Company and Maxim Group LLC \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 30, 2021\).](#)
- [10.49](#) [Form of Securities Purchase Agreement by and between the Company and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.50](#) [Form of Security Agreement by and between the Company and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.51](#) [Form of Security Agreement by and between WiSA and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.52](#) [Form of Trademark Security Agreement by and between the Company and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.53](#) [Form of Trademark Security Agreement by and between WiSA and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.54](#) [Form of Patent Security Agreement between the Company and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.55](#) [Form of Pledge Agreement between the Company, WiSA and the Investor \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.56](#) [Form of Guaranty \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 19, 2022\).](#)
- [10.57+](#) [Executive Employment Agreement, effective as of August 24, 2022, by and between the Company and Brett Moyer \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 26, 2022\).](#)
- [10.58+](#) [Executive Employment Agreement, effective as of August 24, 2022, by and between the Company and Gary Williams \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 26, 2022\).](#)
- [10.59](#) [WiSA Technologies, Inc. Management Team Retention Bonus Plan, effective September 1, 2022 \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on September 1, 2022\).](#)
- [10.60](#) [Form of Securities Purchase Agreement \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 2, 2022\).](#)
- [10.61](#) [Form of Warrant Agency Agreement \(incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 2, 2022\).](#)

10.62	Placement Agency Agreement by and between the Company and the Placement Agent dated January 31, 2023 (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on February 3, 2023)
10.63	Form of Securities Purchase Agreement by and between the Company and the certain institutional investors dated January 31, 2023 (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on February 3, 2023)
10.64	Termination Agreement by and between the Company and the Placement Agent dated as of January 30, 2023 (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on February 3, 2023)
10.65	Form of Securities Purchase Agreement by and between the Company and certain institutional investors dated March 27, 2023 (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 29, 2023)
10.66	Form of Side Letter by and between the Company and certain institutional investors dated April 7, 2023 (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on April 7, 2023)
10.67	Form of Securities Purchase Agreement by and between the Company and certain institutional investors dated April 7, 2023 (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on April 7, 2023)
10.68	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 May 17, 2023)
10.69	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)
10.70	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)
10.71	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)
10.72	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)
10.73	Form of Waiver Agreement (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on September 1, 2023)
10.74	Warrant Agency Agreement, dated October 17, 2023, by and between WiSA Technologies, Inc., and VStock Transfer, LLC (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on October 19, 2023)
10.75	Placement Agency Agreement, dated October 16, 2023, by and between WiSA Technologies, Inc. and Maxim Group LLC, as sole placement agent (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on October 19, 2023)
10.76	Form of Securities Purchase Agreement, dated October 16, 2023, by and between WiSA Technologies, Inc. and the purchasers signatory thereto (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on October 19, 2023)
10.77	Form of Inducement Agreement by and between the Company and each Holder (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 6, 2023)
10.78	Form of Securities Purchase Agreement, dated January 18, 2024 by and between WiSA Technologies, Inc. and the purchasers signatory thereto (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on January 23, 2024)
10.79*	Form of Securities Purchase Agreement
10.80*	Form of Warrant Agency Agreement
10.81*	Form of Voting Agreement
10.82*	Form of Side Letter Agreement, by and between WiSA Technologies, Inc. and the signatories thereto
10.83*	Form of Warrant Amendment Agreement, by and between WiSA Technologies, Inc. and the signatories thereto
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)
107*	Filing Fee Table

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

PLACEMENT AGENCY AGREEMENT

[], 2024

WiSA Technologies, Inc.
15268 NW Greenbrier Pkwy
Beverton, Oregon 97006

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 (i) [] common units (each a "Common Unit" and collectively, the "Common Units"), with each Common Unit consisting of (A) one share (each a "Share" and collectively, the "Shares") of the Company's common stock, par value \$0.0001 per share (the "Common Stock"), and (B) one common stock purchase warrant (the "Warrant") to purchase one share of Common Stock (the "Warrant Shares"), which are not exercisable until after the Stockholder Approval Date (as defined in the Warrant) and expiring on the fifth (5th) anniversary of the date on which Stockholder Approval is received and deemed effective under Delaware law, at an exercise price of \$[] per share of Common Stock, and (ii) [] pre-funded units (each a "Pre-Funded Unit" and collectively, the "Pre-Funded Units"), with each Pre-Funded Unit consisting of (A) one pre-funded warrant (each a "Pre-Funded Warrant" and collectively, the "Pre-Funded Warrants"), with each Pre-Funded Warrant exercisable to purchase one share of Common Stock (the "Pre-Funded Warrant Shares") at an exercise price of \$0.001 per share, and (B) one Warrant. The Common Units, the Pre-Funded Units and the securities included therein (i.e., the Shares, the Pre-Funded Warrants, the Pre-Funded Warrant Shares, the Warrants and the 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 Common Unit is \$[] and the purchase price to the Purchasers for each Pre-Funded 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 (File No. 333-276631) (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 its "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 Securities shall be made at one or more closings (each a "Closing" and the date on which each Closing occurs, a "Closing Date"). The Closing shall occur via "Delivery Versus Payment" ("DVP"), i.e., on the Closing Date, the Company shall issue the Shares directly to the account designated by the Placement Agent and, upon receipt of such Shares, the Placement Agent shall electronically deliver such Shares to the applicable Purchaser and payment shall be made by the Placement Agent (or its clearing firm) by wire transfer to the Company, and delivery of the Pre-Funded Warrants and the 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:

- (i) a cash fee equal to 7.0% of the gross proceeds received by the Company from the sale of the Securities at the applicable Closing; and

- (ii) reimbursement of the Placement Agent's accountable expenses, including the Placement Agent's legal counsel's legal fees, up to \$75,000.

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) June 30, 2024; provided, however, that a party hereto may terminate the engagement with respect to itself at any time upon 10 days written notice to the other parties, provided that such early termination right shall only apply during the period after the Registration Statement has been approved by the Securities and Exchange Commission (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 January 19, 2024, as amended, and declared effective on [], 2024 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 priceings 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.

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(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.

(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.

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(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. Each 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 each 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 a Closing shall be deemed to have occurred simultaneously.

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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.

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(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 last 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.

(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 final 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 last 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 last 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 final 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.

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(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.

(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 final 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 final Closing Date. The Company will retain a financial public relations firm reasonably acceptable to Maxim for a period of two years after the final 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 sixty (60) days after the Closing Date, neither the Company nor any Subsidiary shall (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 amendment or supplement thereto, other than the Prospectus or filing a registration statement on Form S-8 in connection with any employee benefit plan. Notwithstanding the foregoing, this Section 4(q) shall not apply in respect of an Exempt Issuance. As used herein, an “Exempt Issuance” means the issuance of (a) shares of Common Stock, options, restricted stock units or other equity-based awards to employees, officers or directors of the Company or its subsidiaries pursuant to any compensation 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, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and/or other 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 (c) securities issued pursuant to acquisitions or strategic transactions (including, without limitation, joint venture, co-marketing, co-development or other collaboration agreements) 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 prohibition period set forth above, and provided that any such issuance shall only be to a Person (or to the equity holders 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.

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, in each case as of the date hereof and as of each 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:

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(a) Accountants’ Comfort Letter. On the date of execution of this Agreement (the “Initial Closing”), the Placement Agent shall have received, and the Company shall have caused to be delivered to the Placement Agent, a cold “comfort letter” from BPM LLP, the current independent registered public accounting firm of the Company (“BPM”), addressed to the Placement Agent, dated as of the Initial Closing, in form and substance satisfactory to the Placement Agent and a bring down comfort letter on the Closing Date. 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 Initial 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 Chief 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:

(j) 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;

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(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) [RESERVED].

(h) 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.

(i) Lock-Up Agreements. At the Initial Closing, the Placement Agent shall have received the executed lock-up agreement, in the form attached hereto as Exhibit A, from each of the directors, officers, and any holder of 10% or more of the outstanding Common Stock.

(j) Warrant Agency Agreement. At the Initial Closing, 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.

(k) Warrants and Pre-Funded Warrants. On each Closing Date, the Company shall deliver or shall cause to be delivered the Pre-Funded Warrants and the 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.

(l) 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 a 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.

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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.

(b) **Placement Agent Introductions.** For a period of 12 months from the final Closing Date, the Company will pay the Placement Agent a cash fee equal to 7.0% of the gross proceeds of any equity, equity-linked, or debt financing, or any other capital raising activity received by the Company from investors introduced to the Company by the Placement Agent.

(c) **Right of First Refusal.** For a period of twelve (12) months from the 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) 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. The Company shall not offer to retain any entity or person in connection with any such 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. Such right of first refusal shall not have a duration of more than three (3) years from commencement of sales.

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.

(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.

(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.

(c)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.

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, NY 10022
Attention: Clifford A. Teller, Co-President
Email: ecteller@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
Email: bmoyer@wisatechnologies.com

With a copy to:

Sullivan & Worcester LLP
1633 Broadway
New York, New York 10019
Attention: David E. Danovitch, Esq.
Email: ddanovitch@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.

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.

(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.]

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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:

Title:

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]

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Exhibit A

Form of Lock-Up Agreement

Lock-Up Agreement

_____, 2024

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 units comprised of shares of the Company’s common stock, par value \$0.0001 per share (the “**Common Stock**”) and warrants to purchase shares of Common Stock and pre-funded units comprised of pre-funded warrants to purchase shares of Common Stock and warrants to purchase shares of Common Stock (the “**Securities**”) pursuant to a registration statement on Form S-1, as amended (File No. 333-276631), 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.

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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 sixty (60) 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,
- (iv) if the undersigned is a trust, to the beneficiary of such trust,
- (v) by testate or intestate succession,

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- (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.

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 Lock-Up 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]

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):

COMMON STOCK PURCHASE WARRANT

WISA TECHNOLOGIES, INC.

Warrant Shares: _____

Issuance Date: _____, 2024

THIS COMMON STOCK PURCHASE WARRANT (the “Warrant”) certifies that, for value 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 the Stockholder Approval Date (as defined below) (the “Initial Exercise Date”) and on or prior to 5:00 p.m. (New York City time) on the fifth anniversary of the Stockholder Approval Date (the “Termination Date”) but not thereafter, to subscribe for from WISA Technologies, Inc., a Delaware corporation (the “Company”), up to _____ shares of Common Stock (as subject to adjustment hereunder, the “Warrant Shares”). The subscription price of one share of Common 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.

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.

“**Bid Price**” 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 bid price of the Common Stock for the time in question (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 on 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 holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by 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 are generally are open for use by customers on such day.

“**Certificate of Incorporation**” means the Company’s certificate of incorporation, as amended, filed with the Secretary of State of the State of Delaware.

“**Convertible Securities**” means any shares 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 shares of Common Stock.

“**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 of securities into which such securities may hereafter be reclassified or changed.

“**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time shares of Common 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 Common Stock.

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

“**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 Agreement**” means the Securities Purchase Agreement, dated as of _____, 2024 among the Company and certain purchasers signatory thereto, as amended, modified or supplemented from time to time in accordance with its terms.

“**Registration Statement**” means the Company’s registration statement on Form S-1 (File No. 333-276631).

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

“**Stockholder Approval**” means such approval as may be required by the applicable rules and regulations of The Nasdaq Stock Market LLC (or any successor entity) from the stockholders of the Company with respect to each of (i) the issuance of the Warrants and all Warrant Shares issuable upon the exercise thereof and (ii) if necessary, a proposal to amend the Certificate of Incorporation to increase the authorized share capital of the Company to an amount sufficient to cover the Warrant Shares or to effectuate a reverse stock split whereby the authorized shares capital is not split and is sufficient to cover the Warrant Shares (and such reverse split is effectuated)(the “**Capital Event**”).

“**Stockholder Approval Date**” means the date on which Stockholder Approval is received and deemed effective under Delaware law.

“**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.

“**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 with a mailing address of 8 Lafayette Place, Woodmere, New York 11598, a phone number of (212) 828-8436 and an email address of shay@vstock.com, and any successor transfer agent of the Company.

“**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 is then reported on 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 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 holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“**Warrant Agency Agreement**” means that certain warrant agency agreement, dated on or about the Issuance Date, between the Company and the Warrant Agent.

“**Warrant Agent**” means the Transfer Agent and any successor warrant agent of the Company.

“**Warrants**” means this Warrant and other Common Stock purchase warrants issued by the Company pursuant to the Registration Statement.

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Section 2. Exercise.

a) Exercise of Warrant. Subject to the provisions of Section 2(e) hereof, exercise of the subscription 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 on or before the Termination Date by delivery to 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 Common Stock specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink original Notice of Exercise shall be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has subscribed for all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation as soon as reasonably practicable 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 Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares issuable hereunder in an amount equal to the applicable number of Warrant Shares subscribed for. The Holder and the Company shall maintain records showing the number of Warrant Shares subscribed for and the date of such subscriptions. The Company shall deliver 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 subscription for a portion of the Warrant Shares hereunder, the number of Warrant Shares available for subscription 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 Common Stock under this Warrant shall be \$____, subject to adjustment hereunder (the “Exercise Price”).

c) Cashless Exercise. If at the time of exercise hereof, there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a “cashless exercise” in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. (“Bloomberg”) as of the time of the Holder’s execution of the applicable Notice of Exercise if such Notice of Exercise is executed during “regular trading hours” on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of “regular trading hours” on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of “regular trading hours” on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrant being exercised. The Company agrees not to take any position contrary to this Section 2(c).

Notwithstanding anything to the contrary herein, the Holder may also effect an “alternative cashless exercise” on or after the thirty (30) day anniversary of the Initial Exercise Date. In such event, the aggregate number of Warrant Shares issuable in such alternative cashless exercise pursuant to any given Notice of Exercise electing to effect an alternative cashless exercise shall equal the product of (x) the aggregate number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise and (y) 0.65.

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d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares subscribed for 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 either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) this Warrant is being exercised via cashless exercise, 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 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 of the Notice of Exercise, provided that payment of the aggregate Exercise Price (other than in the instance of a cashless exercise) 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 of the Notice of Exercise, provided that payment of the aggregate Exercise Price (other than in the instance of a cashless exercise) 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"). 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 Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) 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 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 Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the third Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. 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 with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

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

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the 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.

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iv. Compensation for Buy-In on Failure to Timely Deliver 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 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 (other than as a result of failure of the Holder to timely deliver the aggregate Exercise Price, unless the Warrant is validly exercised by means of a cashless 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 Common Stock to deliver in satisfaction of a sale by the Holder of the 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 Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of 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 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 Common 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 Common 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 Common 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 Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to subscribe for upon such exercise, the Company 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 Exercise Price or round down to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of 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 Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such 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 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 Warrant Shares to the Holder ("Relevant Taxes"). The Holder agrees to cooperate with the Company and provide all necessary 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 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 Warrant Shares.

vii. 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.

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e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the 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 the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination, and a submission of a Notice of Exercise shall be deemed a representation and warranty by the Holder of the foregoing 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 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the 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 the Holder prior to the issuance of any Warrants, 9.99%) of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder may, upon notice to the Company, increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

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 Common Stock or any other equity or equity equivalent securities payable in Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse share split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of Common 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 Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common 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 shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

b) Adjustment Upon Issuance of Shares of Common Stock. If, at any time while this Warrant is outstanding (such period, the "Adjustment Period"), the Company issues, sells, enters into an agreement to sell, or grants any option to purchase, or sells, enters into an agreement to sell, or grants any right to reprice, or otherwise disposes of or issues (or announces any offer, sale, grant or any option to purchase or other disposition), or, in accordance with this Section 3(b), is deemed to have issued or sold, any shares of Common Stock or Common Stock Equivalents (excluding any Excluded Securities (as defined below) issued or sold or deemed to have been issued or sold) for a consideration per share less than a price equal to the Exercise Price in effect immediately prior to such issue or sale or deemed issuance or sale (such lower price, the "Base Share Price," and such Exercise Price then in effect is referred to as the "Applicable Price") (the foregoing a "Dilutive Issuance"), then simultaneously with the consummation (or, if earlier, the announcement) of such Dilutive Issuance, the Exercise Price then in effect shall be reduced to an amount equal to the Base Share Price, provided that, the Exercise Price will not be less than 51% of the Minimum Price (as defined under Nasdaq Listing Rule 5635(d)) (subject to adjustment for reverse and forward stock splits, recapitalizations and similar transactions following the Issue Date). If the Company enters into a Variable Rate Transaction (as defined below), the Company shall be deemed to have issued shares of Common Stock or shares of Common Stock Equivalents at the lowest possible price, conversion price or exercise price at which such securities may be issued, converted or exercised. "Excluded Securities" means any issuance of shares of Common Stock, restricted share units, Options, warrants and/or Convertible Securities (i) under the Company's current or future equity incentive plans or issued to employees, directors, consultants or officers as compensation or consideration in the ordinary course of business, including any issuance of Options (and the underlying shares of Common Stock) in exchange for Options issued under the Company's equity incentive plans; provided, that with respect to consultants only, such issuances do not exceed 1 million shares of Common Stock (as adjusted for stock splits, reverse stock splits, stock dividends, stock combinations and similar events) in any 12 month period, (ii) issued pursuant to agreements, Options, restricted share units, Convertible Securities or Adjustment Rights (as defined below) existing as of the date hereof, (iii) issued pursuant to acquisitions (whether by merger, consolidation, purchase of equity, purchase of assets, reorganization or otherwise), mergers, consolidations, reorganizations or strategic transactions approved by a majority of the disinterested directors of the Company, 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 complementary 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, 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 or (iv) to which a majority-in-interest of Holders of the Warrants consent in writing. "Adjustment Right" means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with this Section 3(b)) of shares of Common Stock (other than rights of the type described in Sections 3(a) through (e)) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights). "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 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 shares of Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, but excluding an “at-the-market offering”, whereby the Company may issue securities at a future determined price. For all purposes of the foregoing, the following shall be applicable:

(i) Issuance of Options. If the Company in any manner grants, issues or sells any Options (or enters into any agreement to grant, issue or sell) and the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 3(b)(i), the “lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) upon the granting, issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such shares of Common Stock or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms of or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Company in any manner issues or sells (or enters into any agreement to issue or sell) any Convertible Securities and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale (or the time of execution of such agreement to issue or sell, as applicable) of such Convertible Securities for such price per share. For the purposes of this Section 3(b)(ii), the “lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale (or pursuant to the agreement to issue or sell, as applicable) of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) upon the issuance or sale (or pursuant to the agreement to issue or sell, as applicable) of such Convertible Security plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issuance or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of this Warrant has been or is to be made pursuant to other provisions of this Section 3(b), except as contemplated below, no further adjustment of the Exercise Price shall be made by reason of such issuance or sale.

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(iii) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time (other than proportional changes in conversion or exercise prices, as applicable, in connection with an event referred to in Section 3(a)), the Exercise Price in effect at the time of such increase or decrease shall be adjusted to the Exercise Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 3(b)(iii), if the terms of any Option or Convertible Security (including, without limitation, any Option or Convertible Security that was outstanding as of the Issuance Date) are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 3(b) shall be made if such adjustment would result in an increase of the Exercise Price then in effect.

(iv) Calculation of Consideration Received. If any Option and/or Convertible Security and/or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company (as determined by the Holder, the “Primary Security”, and such Option and/or Convertible Security and/or Adjustment Right, the “Secondary Securities” and together with the Primary Security, each a “Unit”), together comprising one integrated transaction, the aggregate consideration per share of Common Stock with respect to such Primary Security shall be deemed to be the lower of (x) the purchase price of such Unit, (y) if such Primary Security is an Option and/or Convertible Security, the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise or conversion of the Primary Security in accordance with Sections 3(b)(i) or 3(b)(ii) above and (z) the lowest VWAP of the Common Stock on any Trading Day during the five (5) Trading Day period (the “Adjustment Period”) immediately following the public announcement of such Dilutive Issuance (for the avoidance of doubt, if such public announcement is released prior to the opening of the principal Trading Market of the Common Stock on a Trading Day, such Trading Day shall be the first Trading Day in such five Trading Day period and if this Warrant is exercised, on any given Exercise Date during any such Adjustment Period, solely with respect to such portion of this Warrant converted on such applicable Exercise Date, such applicable Adjustment Period shall be deemed to have ended on, and included, the Trading Day immediately prior to such Exercise Date). If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount of consideration received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the VWAPs of such security for each of the five (5) Trading Days immediately preceding the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the “Valuation Event”), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10th) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

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c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common

Stock Equivalents or rights to purchase shares, warrants, securities or other property pro rata to the record holders of any class of Common 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 Common 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 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).

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 Common 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 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 exercise of this Warrant (without regard to any limitations on exercise 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 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).

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e) Fundamental Transaction. If, at any time while this Warrant is outstanding, (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, except to the extent subject to an adjustment pursuant to Section 3(a), (b), (c), or (d), (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (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 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, 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 (each a “Fundamental Transaction”), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, 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 this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise 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 Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of shares 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 exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder’s option, exercisable at any time concurrently with, or within 30 days after, the consummation of the Fundamental Transaction (or, if later, the date of the public announcement of the applicable Fundamental Transaction), purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value (as defined below) of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction; provided, however, that, if the Fundamental Transaction is not within the Company’s control, including not approved by the Company’s Board of Directors, the Holder shall only be entitled to receive from the Company or any Successor Entity the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of shares of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, shares or any combination thereof, or whether the holders of shares of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction; provided, further, that if holders of shares of Common Stock of the Company are not offered or paid any consideration in such Fundamental Transaction, such holders of shares of Common Stock will be deemed to have received shares of common stock of the Successor Entity (which Entity may be the Company following such Fundamental Transaction) in such Fundamental Transaction. “Black Scholes Value” means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the “OV” function on Bloomberg determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the public announcement of the applicable contemplated Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (ii) the highest VWAP during the period beginning on the Trading Day immediately preceding the public announcement of the applicable contemplated Fundamental Transaction (or the consummation of the applicable Fundamental Transaction, if earlier) and ending on the Trading Day of the Holder’s request pursuant to this Section 3(e) and (D) a remaining option time equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction and the Termination Date and (E) a zero cost of borrow. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds (or such other consideration) within the later of (i) five Business Days of the Holder’s election and (ii) the date of consummation of the Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(e) pursuant to written agreements in 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 this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding amount of share capital of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such share capital (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such share capital, such amount of share capital 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), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall be added to the term “Company” under this Warrant (so that from and after the occurrence or consummation of such Fundamental Transaction, each and every provision of this Warrant and the other Transaction Documents referring to the “Company” shall refer instead to each of the Company and the Successor Entity or Successor Entities, jointly and severally), and the Successor Entity or Successor Entities, jointly and severally with the Company, may exercise every right and power of the Company prior thereto and the Successor Entity or Successor Entities shall assume all of the obligations of the Company prior thereto under this Warrant and the other Transaction Documents with the same effect as if the Company and such Successor Entity or Successor Entities, jointly and severally, had been named as the Company herein.

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 corporation or transferee 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) Share Combination Event Adjustment. In addition to the adjustments set forth in this Section 3, if at any time on or after the Issue Date there occurs any share split, reverse share split, share dividend, share combination recapitalization or other similar transaction involving the shares of Common Stock (each, a “Share Combination Event”, and such date thereof, the “Share Combination Event Date”) and the lowest VWAP during the period commencing five (5) consecutive Trading Days immediately preceding and through the five (5) consecutive Trading Days immediately following the Share Combination Event Date (the “Event Market Price”) (provided if the Share Combination Event is effective after close of Trading on the primary Trading Market, then commencing on the next Trading Day which period shall be the “Share Combination Adjustment Period”) is less than the Exercise Price then in effect (after giving effect to the adjustment in clause 3(a) above), then at the close of trading on the primary Trading Market on the last day of the Share Combination Adjustment Period, the Exercise Price then in effect on such 5th Trading Day shall be reduced (but in no event increased) to the Event Market Price.

g) Calculations. All calculations under this Section 3 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 3, 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 treasury shares, if any) issued and outstanding.

h) 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 by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, except for any recurring cash dividend (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common 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 Common Stock, 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 Common 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 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 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 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 principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto 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. 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 subscription for 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), 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 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.

Section 5. 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. Without limiting any rights of a Holder to receive Warrant Shares on a “cashless exercise” pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of an affidavit of loss reasonably satisfactory to the Company evidencing the loss, theft, destruction or mutilation of this Warrant or any share certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it, 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, following the occurrence of a Capital Event and thereafter during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any subscription rights under this Warrant. 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 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 Warrant Shares 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 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 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 Warrant Shares underlying such Warrants), the Company shall not by any action, including, without limitation, amending its articles 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 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 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 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 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.

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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 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. 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 Warrant Shares acquired upon the exercise of this Warrant, if not registered and the Holder does not utilize cashless exercise, 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 or sent by a nationally recognized overnight courier service, addressed to:

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

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 Company. 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 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 Common 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 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 Holder or the beneficial owner of this Warrant, on the other hand.

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. If this Warrant is held in global form through DTC (or any successor depositary), 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.

(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: Chief Executive Officer

NOTICE OF EXERCISE

TO: **WISA TECHNOLOGIES, INC.**

(1) The undersigned hereby elects to subscribe for _____ 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 (check applicable box):

- in lawful money of the United States; or
- if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares issuable pursuant to the cashless exercise procedure set forth in subsection 2(c).

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

The 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: _____

PRE-FUNDED COMMON STOCK PURCHASE WARRANT

WISA TECHNOLOGIES, INC.

Warrant Shares: _____

Initial Exercise Date:
_____, 2024

THIS PRE-FUNDED COMMON STOCK PURCHASE WARRANT (this “Warrant”) certifies that, for value received, _____, 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 the date hereof (the “Initial Exercise Date”), and until this Warrant is exercised in full (the “Termination Date”) but not thereafter, to subscribe for from WiSA Technologies, Inc., a Delaware corporation (the “Company”), up to _____ shares of Common Stock (as subject to adjustment hereunder, the “Warrant Shares”). The subscription price of one share of Common 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.

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.

“**Bid Price**” 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 bid price of the Common Stock for the time in question (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 on 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 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 holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by 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 are generally open for use by customers on such day.

“**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 of securities into which such securities may hereafter be reclassified or changed.

“**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common 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, Common Stock.

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

“**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 Agreement**” means the Securities Purchase Agreement, dated as of _____, 2024 among the Company and certain purchasers signatory thereto, as amended, modified or supplemented from time to time in accordance with its terms.

“**Registration Statement**” means the Company’s registration statement on Form S-1 (File No. 333-276631).

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

“**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.

“**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 with a mailing address of 8 Lafayette Place, Woodmere, New York 11598, a phone number of (212) 828-8436 and an email address of shay@vstock.com, and any successor transfer agent of the Company.

“**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 on 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 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 holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Warrant Agency Agreement” means that certain warrant agency agreement, dated on or about the Initial Exercise Date, between the Company and the Warrant Agent.

“Warrant Agent” means the Transfer Agent and any successor warrant agent of the Company.

“Warrants” means this Warrant and other pre-funded Common Stock purchase warrants issued by the Company pursuant to the Registration Statement.

Section 2. Exercise.

a) Exercise of Warrant. Subject to the provisions of Section 2(c) hereof, exercise of the subscription 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 on or before the Termination Date by delivery to 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 shares specified in the applicable Notice of Exercise by wire transfer unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink original Notice of Exercise shall be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has subscribed for all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within five (5) Trading Days of 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 Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares issuable hereunder in an amount equal to the applicable number of Warrant Shares subscribed for. The Holder and the Company shall maintain records showing the number of Warrant Shares subscribed for and the date of such subscriptions. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading 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 subscription for a portion of the Warrant Shares hereunder, the number of Warrant Shares available for subscription 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 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 aggregate exercise price of this Warrant, except for a nominal exercise price of \$0.001 per Warrant Share, was pre-funded to the Company on or prior to the Initial Exercise Date and, consequently, no additional consideration (other than the nominal exercise price of \$0.001 per Warrant Share) shall be required to be paid by the Holder to any Person to effect any exercise of this Warrant. The Holder shall not be entitled to the return or refund of all, or any portion, of such pre-paid aggregate exercise price under any circumstance or for any reason whatsoever. The remaining unpaid exercise price per shares of Common Stock under this Warrant shall be \$0.001, subject to adjustment hereunder (the “Exercise Price”).

c) Cashless Exercise. This Warrant may also be exercised, in whole or in part, at such time by means of a “cashless exercise” in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder’s execution of the applicable Notice of Exercise if such Notice of Exercise is executed during “regular trading hours” on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of “regular trading hours” on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of “regular trading hours” on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares subscribed for 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 The DTC through its Deposit or Withdrawal at Custodian system (“DWAC”) if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) this Warrant is being exercised via cashless exercise, 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 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 of the Notice of Exercise, provided that payment of the aggregate Exercise Price (other than in the instance of a cashless exercise) 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 of the Notice of Exercise, provided that payment of the aggregate Exercise Price (other than in the instance of a cashless exercise) 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”). 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 Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) 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 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 Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the third Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. 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 with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 12:00 p.m. (New York City time) on the Initial Exercise Date, which may be delivered at any time after the time of execution of the Purchase Agreement, the Company agrees to deliver the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date and the Initial Exercise Date shall be the Warrant Share Delivery Date for purposes hereunder. Notwithstanding anything to the contrary contained herein, the Company shall not be required to deliver any shares of Common Stock upon a cash exercise of a Warrant unless or until the aggregate Exercise Price with respect to such exercise has been delivered to the Company.

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

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the 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.

iv. Compensation for Buy-In on Failure to Timely Deliver 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 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 (other than as a result of failure of the Holder to timely deliver the aggregate Exercise Price, unless the Warrant is validly exercised by means of a cashless 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 Common Stock to deliver in satisfaction of a sale by the Holder of the 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 Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of 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 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 Common 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 Common 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 Common 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 Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

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v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to subscribe for upon such exercise, the Company 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 Exercise Price or round down to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such 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, (i) in the event that 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 Warrant Shares to the Holder ("Relevant Taxes"). The Holder agrees to cooperate with the Company and provide all necessary 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 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 the Depository Trust Company (or another established clearing corporation performing similar functions) required for electronic delivery of the Warrant Shares.

vii. 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.

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e) **Holder's Exercise Limitations.** The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the 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 the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination, and a submission of a Notice of Exercise shall be deemed a representation and warranty by the Holder of the foregoing determination. In addition, a determination by the Holder 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 2(e), in determining the total number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written request of a Holder, the Company shall within one Trading Day confirm in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the 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 Warrants, 9.99%) of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation shall in no event exceed 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in ownership of shares of Common Stock in excess of the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) in order to correct this paragraph (or any portion hereof), if necessary, which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

a) **Stock Dividends and Splits.** If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on its Common Stock or any other common equity equivalent securities payable in Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of Common Stock any shares of capital stock 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 Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common 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 shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

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b) **Subsequent Rights Offerings.** In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company 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 any class of Common 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 Common 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 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) **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 Common 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 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 exercise of this Warrant (without regard to any limitations on exercise 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 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).

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d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (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, except to the extent subject to an adjustment pursuant to Section 3(a), (b) or (c), (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (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, (iv) the Company, 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 Company, 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, merger, or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, 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 this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise 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 Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of shares 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 exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(d) pursuant to written agreements in 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 this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable 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 exercise of this Warrant (without regard to any limitations on the 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 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 exercise price being for the purpose of protecting the economic value of this Warrant 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 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.

e) Calculations. All calculations under this Section 3 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 3, 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 treasury shares, if any) issued and outstanding.

f) 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 by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

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ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, except for any recurring cash dividend (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the shares of Common 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 Common Stock, any consolidation or merger to which the Company 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 Common 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 ten (10) trading 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 shares of 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 shares of Common Stock of record shall be entitled to exchange their shares of 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 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 principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto 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. 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 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 five (5) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. This Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the subscription for Warrant Shares without having a new Warrant issued.

b) New Warrants. 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), 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 initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company 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.

Section 5. 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. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

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b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock 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 from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any subscription rights under this Warrant. 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 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 Warrant Shares 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 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 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 Warrant Shares underlying such Warrants), the Company shall not by any action, including, without limitation, amending its articles 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 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 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 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 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.

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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 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. 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 Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, 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 it is finally adjudicated (without possibility

of appeal) that the Company has willfully and knowingly failed to comply with any provision of this Warrant, which has resulted 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 or sent by a nationally recognized overnight courier service, addressed to:

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

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 Company. 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 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 Common 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 seek 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 and the terms hereof, 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 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 Holder, on the other hand.

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. If this Warrant is held in global form through DTC (or any successor depository), 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.

(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: Chief Executive Officer

NOTICE OF EXERCISE

TO: **WISA TECHNOLOGIES, INC.**

(1) The undersigned hereby elects to subscribe for _____ 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 (check applicable box):

in lawful money of the United States by wire transfer; or

if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares issuable pursuant to the cashless exercise procedure set forth in subsection 2(c).

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

The Warrant Shares shall be delivered to the following DWAC 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: _____

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply the 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: _____



Sullivan & Worcester LLP
1633 Broadway
New York, NY 10019

212 660 3000
sullivanlaw.com

February 5, 2024

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. 333-276631) (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 January 19, 2024 and amended on the date hereof, relating to the proposed public offering of: (A) up to 100,000,000 units (the “Units”), each Unit consisting of (i) one share of common stock of the Company, par value \$0.0001 per share (the “Shares”) and (ii) one common stock purchase warrant (the “Warrants”), each such Warrant being exercisable from time to time for one Share (the “Warrant Shares”); and (B) up to 100,000,000 pre-funded units (the “Pre-Funded Units”), each Pre-Funded Unit consisting of (i) one pre-funded warrant (the “Pre-Funded Warrants”), each such Pre-Funded Warrant being exercisable from time to time for one Share (the “Pre-Funded Warrant Shares”) and (ii) one Warrant. The Units, Shares, Warrants, Warrant Shares, Pre-Funded Units, Pre-Funded Warrants and Pre-Funded Warrant Shares are collectively referred to herein as the “Securities”. The Securities will be sold pursuant to the Registration Statement and one or more securities purchase agreements (the “Agreements”) by and among the Company and certain accredited investors or qualified institutional buyers identified on the signature pages thereto (collectively, the “Investors”). As noted in the Registration Statement, for each Pre-Funded Unit sold, the number of Units sold will be decreased on a one-for-one basis. 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 of the Company relating to the sale of the Securities (the “Resolutions”); (iii) the form of Agreement; (iv) the Registration Statement; and (v) 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.

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 Agreements, (ii) effectiveness of the Registration Statement, (iii) issuance of the Securities pursuant to the terms of the Agreements, and (iv) receipt by the Company of the consideration for the Securities specified in the Resolutions:

BOSTON LONDON NEW YORK TEL AVIV WASHINGTON, DC

(a) The Units and Pre-Funded Units will be duly authorized for issuance and, when issued, delivered and paid for in accordance with the terms of the Agreements and in accordance with and in the manner described in the Registration Statement, the Units and Pre-Funded Units will be validly issued, fully paid and non-assessable;

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

(c) The Warrants and Pre-Funded Warrants will be duly authorized for issuance and, when issued and sold in accordance with the Agreements, the Warrants and the Warrant Agency Agreement and in accordance with and in the manner described in the Registration Statement, and duly executed and delivered by the Company to the Investors against payment therefor, will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their respective terms; and

(d) The Warrant Shares and Pre-Funded Warrant Shares will be duly authorized for issuance and, when issued and paid for and delivered by the Company and upon valid exercise of the Warrants or Pre-Funded Warrants, as applicable, and against receipt of the exercise price therefor, in accordance with the provisions of the Agreements, Warrants or Pre-Funded Warrants, as applicable, and the Warrant Agency Agreement, and in accordance with and in the manner described in the Registration Statement, will be validly issued, fully paid and nonassessable.

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 _____, 2024, 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 (as defined below), 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.

“Amendment” shall have the meaning ascribed to such term in Section 4.9.

“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, New York 10022.

“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 are generally open for use by customers on such day.

“Capital Event” shall have the meaning ascribed to such term in Section 4.9(B).

“Closing” means the closing of the purchase and sale of the Securities pursuant to Section 2.1.

“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 Securities, in each case, have been satisfied or waived, but in no event later than the second (2nd) Trading Day following the date hereof.

“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 of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which 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.

“Common Unit” means a fixed combination of one Share and one Warrant to purchase one share of Common Stock.

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

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

“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.

“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.

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

“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.

“Lock-Up Agreement” means the Lock-Up Agreement, dated on or prior to the date hereof, by and among the Company and the directors and officers of the Company, in the form of Exhibit C attached hereto.

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

“Per Common Unit Purchase Price” equals \$[], subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

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“Per Pre-Funded Unit Purchase Price” equals \$[], subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

“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 that certain placement agency agreement, dated as of February [], 2024, by and between the Company and the Placement Agent.

“Placement Agent” means Maxim Group LLC.

“Pre-Funded Unit” means a fixed combination of one Pre-Funded Warrant to purchase one Pre-Funded Warrant Share and one Warrant to purchase one share of Common Stock.

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

“Pre-Funded Warrants” means, collectively, the pre-funded common stock purchase warrants delivered to the Purchasers at the Closing in accordance with Section 2.2(a) hereof, in the form of Exhibit A attached hereto.

“Pre-Funded Warrant Shares” means the shares of Common Stock issuable upon exercise of the Pre-Funded Warrants.

“Preliminary Prospectus” means any preliminary prospectus included in the Registration Statement, as originally filed or as part of any amendment thereto, or filed with the Commission pursuant to Rule 424(a) of the rules and regulations of the Commission under the Securities Act.

“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 filed with the Commission (File No. 333-276631) which registers the sale of the Units, the Shares, the Pre-Funded Warrants, the Pre-Funded Warrant Shares, the Warrants and the Warrant Shares to the Purchasers, and includes any Rule 462(b) Registration Statement.

“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.

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“Rule 462(b) Registration Statement” means any registration statement prepared by the Company registering additional Securities, which was filed with the Commission on or prior to the date hereof and became automatically effective pursuant to Rule 462(b) promulgated by the Commission pursuant to the Securities Act, if applicable.

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

“Securities” means, collectively, the Shares, the Pre-Funded Warrants, the Pre-Funded Warrant Shares, the Warrants and the Warrant Shares.

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

“Series B Repurchase and Cancellation Transaction” means the transactions contemplated by the Side Letter Agreements.

“Shares” means the shares of Common 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).

“Side Letter Agreements” means certain side letter agreements, dated on or about February 2, 2024, by and among the Company and certain holders of the Company’s Series B Convertible Preferred Stock, par value \$0.0001 per share.

“Stockholder’s Meeting” shall have the meaning ascribed to such term in Section 4.9(B).

“Stockholder Approval” shall have the meaning ascribed to such term in Section 4.9(B).

“Stockholder Approval Date” shall have the meaning ascribed to such term in Section 4.9(B).

“Subscription Amount” means, as to each Purchaser, the aggregate amount to be paid for Common Units and Pre-Funded 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.

“Subsidiary” means any subsidiary of the Company as set forth in the SEC Reports, 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 Lock-Up Agreements, the Pre-Funded Warrants, the Warrants, the Warrant Agency Agreement, the Voting 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, New York 11598 and any successor transfer agent of the Company.

“Units” means, collectively, the Common Units and Pre-Funded Units.

“Warrant Agency Agreement” means that certain warrant agency agreement, dated as of February [], 2024, by and between the Company and the Transfer Agent.

“Warrants” means the common stock purchase warrants to purchase shares of Common Stock delivered to the Purchasers at the Closing in accordance with Section 2.2(a) hereof, in the form of Exhibit B attached hereto.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants.

ARTICLE II.

PURCHASE AND SALE

2.1 Closing. On the 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 \$[] of Units. 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”) settlement with the Company or its designee. The Company shall deliver to each Purchaser its respective Shares, Pre-Funded Warrants, if any, and Warrants, and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur at the offices of Blank Rome or such other location as the parties shall mutually agree, which shall include a remote closing by electronic transmission in accordance with the provisions of this Agreement. Unless otherwise directed by the Placement Agent, settlement of the Shares, the Pre-Funded Warrants and the Warrants shall occur via DVP (i.e., on the 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 its clearing firm) by wire transfer to the Company), and delivery of the Pre-Funded Warrants and the Warrants shall be made via The Depository Trust Company Deposit or Withdrawal at Custodian system (“DWAC”) for the account of the applicable Purchaser. Notwithstanding anything to the contrary hereunder, to the extent that a Purchaser determines, in its sole discretion, that such Purchaser (together with such Purchaser’s Affiliates, and any Person acting as a group together with such purchaser or any of such Purchaser’s Affiliates) would beneficially own in excess of 4.99% (or, at the election of the Purchaser at the Closing, 9.99%) of the number of shares of Common Stock outstanding immediately prior to giving effect to the issuance of the Common Stock on the Closing Date (“Beneficial Ownership Maximum”), such Purchaser may elect to receive only the Beneficial Ownership Maximum at the Closing with the balance of any Shares purchased hereunder, if any, held in abeyance for such Purchaser and issued immediately following the Closing provided in no event shall such Purchaser’s beneficial ownership ever exceed the Beneficial Ownership Maximum. The determination pursuant to the provisions of the previous sentence of whether any Purchaser’s beneficial ownership exceeds the Beneficial Ownership Maximum shall be in the sole discretion of such Purchaser and the Company shall have no obligation to verify or confirm the accuracy of such determination.

2.2 Deliveries.

(a) On or prior to the Closing Date (except as indicated below), 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) a cold comfort letter, addressed to the Placement Agent, in form and substance reasonably acceptable to the Placement Agent and the Purchasers, from the Company’s independent registered public accounting firm on the date of execution of this Agreement and a bring down comfort letter on the Closing Date;

(iv) a duly executed Officers’ Certificate in customary form reasonably acceptable to the Placement Agent;

- (v) a duly executed Secretary's Certificate in customary form reasonably acceptable to the Placement Agent;
- (vi) if applicable, a duly executed Chief Financial Officer Certificate in customary form reasonably acceptable to the Placement Agent;

(vii) the Company shall have provided each Purchaser with the Company's wire instructions, on Company letterhead and executed by the Chief Executive Officer or Chief Financial Officer;

(viii) 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 Common Unit Subscription Amount divided by the Per Common Unit Purchase Price, registered in the name of such Purchaser;

(ix) if applicable, a Pre-Funded Warrant registered in the name of such Purchaser to purchase up to a number of Pre-Funded Warrant Shares equal to such Purchaser's Pre-Funded Unit Subscription Amount divided by the sum of the Per Pre-Funded Unit Purchase Price plus the exercise price equal to \$0.001, subject to adjustment therein via DWAC for the account of such Purchaser;

(x) Warrants registered in the name of such Purchaser, each such Warrant to purchase up to a number of shares of Common Stock equal to 100% of such Purchaser's Shares and Pre-Funded Warrant Shares, as applicable, with an exercise price equal to \$[] per share, subject to adjustment therein via DWAC for the account of such Purchaser;

- (xi) the duly executed Lock-Up Agreements; and
- (xii) the Preliminary Prospectus and the Prospectus (which may be delivered in accordance with Rule 172 under the Securities Act)

(b) On or before the Closing Date, the Placement Agent and Blank Rome shall have received such information, documents and opinions 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.

- (c) On or prior to the Closing Date, each Purchaser shall deliver or cause to be delivered to the Company the following:
 - (i) this Agreement duly executed by such Purchaser;
 - (ii) such Purchaser's Subscription Amount, which shall be made available for DVP settlement with the Company or its designee;
 - (iii) a Voting Agreement, duly executed by such Purchaser, in substantially the form attached hereto as Exhibit D.

2.3 Closing Conditions.

- (a) The obligations of the Company hereunder in connection with the 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 the 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 the Closing Date shall have been performed; and
- (iii) the delivery by each Purchaser of the items set forth in Section 2.2(c) of this Agreement.

- (b) The respective obligations of the Purchasers hereunder in connection with the 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 the 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 the 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 hereof;

(v) the Registration Statement shall be effective on the date of this Agreement and at the 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 the 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 the 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 Securities at the Closing.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES

- 3.1 Representations and Warranties of the Company. Except as set forth in the SEC Reports, which shall qualify any representation or otherwise made herein to

the extent of the disclosure contained therein, the Company hereby makes the following representations and warranties to each Purchaser:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company are set forth in the SEC Reports. 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.

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(b) Organization and Qualification. The Company and each of the 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 memorandum of association, articles of association, certificate or articles of incorporation, bylaws, operating agreement 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 have or 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, to the Company's knowledge, 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, the Stockholder Approval and if applicable, the Series B Repurchase and Cancellation Transaction. This Agreement and each other Transaction Document to which the Company 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 obligations 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 memorandum of association, articles of association, certificate or articles of incorporation, bylaws, operating agreement 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 (other than in respect of anti-dilution and price reset features contained in securities disclosed in the SEC Reports), or (iii) subject to the Required Approvals and if applicable, the Series B Repurchase and Cancellation Transaction, 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.

(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 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 Prospectus, (iv) applicable approvals by the Financial Industry Regulatory Authority ("FINRA"), (v) application(s) to each applicable Trading Market for the listing of the Shares and Warrant Shares for trading thereon, (vi) such filings as are required to be made under applicable state securities laws (collectively, the "Required Approvals") and (vii) such as those that, if not obtained, given or made, would not reasonably be expected to result in a Material Adverse Effect.

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(f) Issuance of the Securities; Registration. The Shares are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Pre-Funded Warrant Shares, when issued in accordance with the terms of the Pre-Funded Warrants, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. 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 Pre-Funded Warrants and Warrants have been duly authorized by the Company and, when executed and delivered by the Company against payment therefor pursuant to this Agreement, will be valid and binding agreements of the Company enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles. The Company has prepared and filed the Registration Statement in conformity with the requirements of the Securities Act, which became effective on [____], 2024 (the "Effective Date"), including the Preliminary 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 Preliminary Prospectus or 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 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 the 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 Preliminary Prospectus and the Prospectus and any amendments or supplements thereto, at the time the Preliminary Prospectus or the Prospectus, as applicable, or any amendment or supplement thereto was issued and at the 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. The Securities conform in all material respects to all statements with respect thereto contained in the Registration Statement and the Prospectus.

(g) Capitalization. The capitalization of the Company as of the date hereof is as set forth in the SEC Reports. Except as disclosed in the Registration Statement

and Prospectus, 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. Except as disclosed in the Registration Statement and Prospectus, 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 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 or Common Stock Equivalents or capital stock of any Subsidiary. Except as disclosed in the Registration Statement and Prospectus, the issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Purchasers). Except as set forth in the Registration Statement and Prospectus, there are no outstanding securities or instruments of the Company or any Subsidiary 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 or any Subsidiary. Except as set forth in the Registration Statement and Prospectus, there are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. 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. Except for Stockholder Approval and if applicable, the Series B Repurchase and Cancellation Transaction, 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 the 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, the Preliminary Prospectus and the 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 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, the Prospectus 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 and is material to the Company's business (each, a "Material Agreement"), 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. No Material Agreement 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 the Material Agreements 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.

(i) Material Changes: Undisclosed Events, Liabilities or Developments. Except as disclosed in the SEC Reports, since the date of the most recent financial statements of the Company included or incorporated by reference in the Registration Statement and the Prospectus, (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, (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 and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company equity plans disclosed in the Registration Statement. 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, 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 one Trading Day prior to the date that this representation is made. Unless otherwise disclosed in an SEC Report 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. Except as disclosed in the Registration Statement and Prospectus, 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 as disclosed in the Registration Statement and Prospectus (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 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. There has not been, and to the knowledge of the Company, 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. 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, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, 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 of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are 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, except in each case as would not reasonably be expected to result in a Material Adverse Effect.

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(m) Environmental Laws. The Company and its Subsidiaries (i) are 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) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are 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.

(n) Regulatory Permits. The Company and the Subsidiaries possess all certificates, licenses, authorizations approvals, clearances, consents, registration and permits issued by the appropriate federal, state, local or foreign regulatory authorities applicable to the Company ("Applicable Laws") necessary to conduct their respective businesses as described in the SEC Reports, 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 nor any Subsidiary has received any 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 received notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any governmental authority or body or third party alleging that any product, operation or activity is in violation of any Applicable Laws or Authorizations or has any knowledge that any such entity or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding, nor, to the Company's knowledge, has there been any material noncompliance with or violation of any Applicable Laws by the Company that could reasonably be expected to require the issuance of any such communication or result in an investigation, corrective action, or enforcement action by any governmental body or entity.

(o) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to, or have valid and marketable rights to lease or otherwise use, all real property and all personal property owned or used by them that is material to the business of the Company and the Subsidiaries, in each case 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 and the Subsidiaries are 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. The Company and the Subsidiaries have, or have 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 nor 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 nor 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 operation 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. The Company and its Subsidiaries have 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.

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(q) Insurance. The Company and the Subsidiaries are 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 at least equal to the aggregate Subscription Amount. 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. Except as disclosed in the Registration Statement and Prospectus, 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 US\$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 stock option plan or equity incentive plans of the Company.

(s) Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance in all material respects with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended (“SOX”), 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 each of its Subsidiaries maintains 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 and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 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. Neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness in any part of the internal controls over financial reporting of the Company or any of its Subsidiaries. The Company’s certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries 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 and its Subsidiaries that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

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(t) Certain Fees. No brokerage or finder’s fees or commissions are or will be payable by the Company or any Subsidiary 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. Except as set forth in the SEC Reports, 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.

(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. Except as disclosed in the SEC Reports, 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 Common Stock is 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 and prior to the Closing Date, the Warrants will be eligible for electronic transfer through the Depository Trust Company or another established clearing corporation.

(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 Preliminary Prospectus or the 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 and its Subsidiaries, their respective businesses 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 light of the circumstances under which they were 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 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. 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.

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(z) No Integrated Offering. Assuming the accuracy of the Purchasers’ representations and warranties set forth in Section 3.2, 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 the Securities Act or 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 Units and Pre-Funded Units 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.

(bb) Tax Status. Except for matters that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed, or secured all extensions for the 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.

(cc) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, 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 any Subsidiary (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.

(dd) Illegal or Unauthorized Payments: Political Contributions. Neither the Company nor any of its Subsidiaries nor any of the officers, directors, employees, agents or other representatives of the Company or any of its Subsidiaries or any other business entity or enterprise with which the Company or any Subsidiary 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 of its Subsidiaries.

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(ee) Accountants. The Company's independent registered public accounting firm is BPM LLP. To the knowledge and belief of the Company, such accounting firm (i) is a registered public accounting firm as required by the Exchange Act and (ii) 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 Section 3.2(f)), it is understood and acknowledged by the Company that: (i) in this Agreement, 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 Pre-Funded Warrant Shares and 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 and its 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 its 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 business. The Company and its Subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data (including 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, and the Company and its Subsidiaries are 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.

(jj) [Reserved.]

(kk) Compliance with Data Privacy Laws. The Company and its Subsidiaries are, and at all prior times were, 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, the Company and its Subsidiaries have 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”). The Company and its Subsidiaries have at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements, 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 neither it nor any Subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law, 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) Shell Company Status. The Company is not, and during the past three years was not, a shell company defined in Rule 405.

(oo) Money Laundering. The operations 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 Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada), and the U.S. Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder, and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (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 or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(pp) FINRA Affiliation. No officer, director or any beneficial owner of 5% 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(mm) 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.

(qq) 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.

(rr) 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.

(ss) Employee Plans. The SEC Reports disclose, to the extent required by applicable securities laws, each plan for retirement, bonus, stock purchase, profit sharing, stock option, deferred compensation, severance or termination pay, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, unemployment benefits, vacation, incentive or otherwise contributed to, or required to be contributed to, by the Company for the benefit of any current or former director, officer, employee or consultant of the Company (the “Employee Plans”), each of which has been maintained in all material respects with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations that are applicable to such Employee Plans.

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 hereof and as of the 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 to which such Purchaser is a party 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 as principal for 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 (this representation and warranty not limiting such Purchaser's right to sell the Securities pursuant to the Registration Statement or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) [Reserved].

(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 neither the Placement Agent nor 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. Neither the Placement Agent nor 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, neither the Placement Agent nor any of its Affiliates has acted as a financial advisor or fiduciary to such Purchaser.

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(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 such Purchaser first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material pricing terms of the transactions contemplated hereunder and ending immediately prior to the execution hereof. 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 Pre-Funded Warrant Shares and Warrant Shares. If all or any portion of a Pre-Funded Warrant or a Warrant is exercised at a time when there is an effective registration statement to cover the issuance or resale of the Pre-Funded Warrant Shares or the Warrant Shares, as applicable, or if the Pre-Funded Warrant or the Warrant is exercised via cashless exercise, the Pre-Funded Warrant Shares or Warrant Shares, as applicable, issued pursuant to any such exercise shall be issued free of all legends. If at any time following the date hereof the Registration Statement (or any subsequent registration statement registering the sale or resale of the Pre-Funded Warrant Shares or the Warrant Shares, as applicable) is not effective or is not otherwise available for the sale or resale of the Pre-Funded Warrant Shares or the Warrant Shares, as applicable, the Company shall immediately notify the holders of the Pre-Funded Warrants or the Warrants, as applicable, in writing that such registration statement is not then effective and thereafter shall promptly notify such holders when the registration statement is effective again and available for the sale or resale of the Pre-Funded Warrant Shares or the Warrant Shares, as applicable (it being understood and agreed that the foregoing shall not limit the ability of the Company to issue, or any Purchaser to sell, any of the Pre-Funded Warrant Shares or the Warrant Shares, as applicable, in compliance with applicable federal and state securities laws). The Company shall use reasonable best efforts to keep a registration statement (including the Registration Statement) registering the issuance or resale of the Pre-Funded Warrant Shares and the Warrant Shares, as applicable, effective during the term of the Pre-Funded Warrants and the Warrants, as applicable.

4.2 Furnishing of Information. Until the earlier of the time that (i) no Purchaser owns Securities or (ii) the Pre-Funded Warrants and 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 for purposes of the rules and regulations of any Trading Market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

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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 its Subsidiaries, 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, any of its Subsidiaries 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 (i) the Placement Agent, with respect to any press release of the Company and (ii) 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, any of its Subsidiaries, 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, any of its Subsidiaries, or any of their respective officers, directors, employees, controlled Affiliates or agents, including, without limitation, the Placement Agent, or a duty to the Company, any of its Subsidiaries 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 or any Subsidiaries, 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 Securities hereunder as set forth in the Preliminary Prospectus and the Prospectus and shall not use such proceeds in violation of FCPA or OFAC regulations.

4.8 Indemnification of Purchasers. Subject to the provisions of this Section 4.8, the Company will indemnify (to the fullest extent permitted by applicable law) and hold each Purchaser and its directors, officers, shareholders, members, managers, 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. 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 Common Stock; Authorized Shares

(A) Subject to the Series B Repurchase and Cancellation Transaction, if applicable, as of the date hereof, the Company has reserved and will reserve, as applicable, 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 pursuant to this Agreement and Pre-Funded Warrant Shares pursuant to any exercise of the Pre-Funded Warrants, and after the Stockholder Approval Date, the Company will reserve and the Company shall continue to reserve and keep available during the period the Warrants are outstanding, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Warrant Shares pursuant to any exercise of the Warrants.

(B)The Company covenants that, promptly following the Closing Date, the Company shall take all corporate action necessary to call a meeting of its stockholders (the “Stockholders Meeting”), which shall occur not later than 90 days from the Closing Date, for the purpose of seeking approval of the Company’s stockholders (“Stockholder Approval”) with respect to each of (i) the issuance of the Warrants and all Warrant Shares issuable upon the exercise thereof and (ii) if necessary, a proposal to amend the Certificate of Incorporation to increase the authorized share capital of the Company to an amount sufficient to cover the Warrant Shares or to effectuate a reverse stock split whereby the authorized shares capital is not split and is sufficient to cover the Warrant Shares (and such reverse split is effectuated) (a “Capital Event”). In connection therewith, the Company will as soon as reasonably practicable after the Closing Date file with the Commission proxy materials (including a proxy statement and form of proxy) for use at the Stockholders Meeting and, after receiving and promptly responding to any comments of the Commission thereon, shall as soon as reasonably practicable mail such proxy materials to the stockholders of the Company. The Company will comply with Section 14(a) of the Exchange Act and the rules promulgated thereunder in relation to any proxy statement (as amended or supplemented, the “Proxy Statement”) and any form of proxy to be sent to the Stockholders of the Company in connection with the Stockholders Meeting, and the Proxy Statement shall not, on the date that the Proxy Statement (or any amendment thereof or supplement thereto) is first mailed to Stockholders or at the time of the Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein not false or misleading, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of proxies or the Stockholders Meeting which has become false or misleading. If the Company should discover at any time prior to the Stockholders Meeting, any event relating to the Company or the Subsidiary or any of their respective affiliates, officers or directors that is required to be set forth in a supplement or amendment to the Proxy Statement, in addition to the Company’s obligations under the Exchange Act, the Company will promptly inform the Placement Agent. The Company’s Board of Directors shall recommend to the Company’s stockholders that the stockholders vote in favor of the proposals for Stockholder Approval at the Stockholders Meeting and take all commercially reasonable action (including, without limitation, the hiring of a proxy solicitation firm of nationally recognized standing) to solicit the Stockholder Approval. If the Company does not obtain Stockholder Approval at the Stockholders Meeting, the Company shall call a meeting every three (3) months thereafter to seek shareholder approval until the date that stockholder approval is obtained (the “Stockholder Approval Date”). No later than two (2) business days following the Stockholder Approval of the Capital Event, the Company shall file with the Secretary of State of the State of Delaware a certificate of amendment to the Company’s Certificate of Incorporation to effect the Capital Event (the “Amendment”), which Amendment shall provide that it shall become immediately effective upon filing with the Secretary of State of the State of Delaware, which date shall be the Stockholder Approval Date. The Company shall issue a press release announcing the effectiveness of the Stockholder Approval of the Capital Event no later than one (1) business day after such filing.

4.10 Listing of Common Stock. The Company hereby agrees to use best efforts to maintain the listing or quotation of the Common Stock on the Trading Market on which it is currently listed, and concurrently with the Closing, the Company shall have applied to list or quote all of the Shares, the Pre-Funded Warrant Shares and the Warrant Shares on such Trading Market and promptly secure the listing of all of the Shares, the Pre-Funded Warrant Shares and the Warrant Shares on such Trading Market. The Company further agrees, if the Company applies to have the Common Stock traded on any other Trading Market, it will then include in such application all of the Shares, the Pre-Funded Warrant Shares and the Warrant Shares, and will take such other action as is necessary to cause all of the Shares, the Pre-Funded Warrant Shares and the Warrant Shares to be listed or quoted on such other Trading Market as promptly as possible. The Company will then take all action reasonably necessary to continue the listing and trading of its Common Stock on a Trading Market and will comply in all respects with the Company’s reporting, filing and other obligations under the bylaws or rules of the Trading Market. The Company agrees to take all reasonable action to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.11 [RESERVED].

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 (other than as disclosed to its legal and other representatives). 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, any of its Subsidiaries, 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.

4.14 Exercise Procedures. The form of Notice of Exercise included in the Pre-Funded Warrants and the Warrants, respectively, set forth the totality of the procedures required of the Purchasers in order to exercise the Pre-Funded Warrants and the Warrants, respectively. No additional legal opinion, other information or instructions shall be required of the Purchasers to exercise their Pre-Funded Warrants and/or 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 by the Company in order to exercise the Pre-Funded Warrants or Warrants. The Company shall honor exercises of the Pre-Funded Warrants and Warrants and shall deliver Pre-Funded Warrant Shares and the Warrant Shares, as the case may be, in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.15 Lock-Up Agreements. Subject to the discretion of the Placement Agent, the Company shall not amend, modify, waive or terminate any provision of any of the Lock-Up Agreements except to extend the term of the lock-up period and shall enforce the provisions of each Lock-Up Agreement in accordance with its terms. If any party

to a Lock-Up Agreement breaches any provision of a Lock-Up Agreement, the Company shall promptly use its best efforts to seek specific performance of the terms of such 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 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).

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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 and any exercise notice delivered by a Purchaser), 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 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 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 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 or any of its Subsidiaries, 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 sum of (i) the Shares and (ii) the Pre-Funded Warrant Shares initially issuable upon exercise of the Pre-Funded Warrants, if any, based on the initial Subscription Amounts hereunder (or, prior to the Closing, the Company and each Purchaser) (unless any Purchaser has disposed of all their Securities, in which case that Purchaser's interest shall not count in such calculation), 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 the disproportionately impacted Purchaser (in the case of a single disproportionately impacted Purchaser) or at least 50.1% in interest of such disproportionately impacted Purchasers (in the case of a group of disproportionately impacted 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."

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5.8 Third-Party Beneficiary. The Placement Agent shall be the 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, this Section 5.8, and the Placement Agency Agreement, as applicable.

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 4.8, 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 the Closing and the delivery of the Securities.

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, 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.

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 Pre-Funded or Warrant, the applicable Purchaser shall be required to return any shares of 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 Pre-Funded Warrant or Warrant (including, issuance of a replacement warrant certificate evidencing such restored right).

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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 Purchaser 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.

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.

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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 Common 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 Common Stock that occur after the date of this Agreement.

5.21 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH 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)

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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.

Address for Notice:

15268 NW Greenbrier Pkwy
Beaverton, Oregon 97006
Attn: Brett Moyer
E-Mail: bmoyer@wisatechnologies.com

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

With copies to (which shall not constitute notice):

Sullivan & Worcester LLP
1633 Broadway
New York, NY 10019
Attention: David E. Danovitch, Esq. and Aaron M. Schleicher, Esq.
Facsimile: (212) 660-3001
E-mail: ddanovitch@sullivanlaw.com; aschleicher@sullivanlaw.com

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK SIGNATURE PAGE FOR PURCHASER FOLLOWS]

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[PURCHASER SIGNATURE PAGES TO WISA TECHNOLOGIES, INC. 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: _____

Address for Notice to Purchaser: _____

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Common Unit Subscription Amount: \$ _____

Common Units: _____

Pre-Funded Unit Subscription Amount: \$ _____

Pre-Funded Units: _____

Pre-Funded Warrant Shares: _____ Beneficial Ownership Blocker 4.99% or 9.99%

Warrant Shares: _____ 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, (ii) the Closing shall occur on the second (2nd) Trading Day following the date of this Agreement and (iii) any condition to Closing 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 Closing Date.

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Exhibit A

Form of Pre-Funded Warrant

Exhibit B

Form of Warrant

Exhibit C

Form of Lock-Up Agreement

Exhibit D

Form of Voting Agreement

WARRANT AGENCY AGREEMENT

WARRANT AGENCY AGREEMENT (this “Warrant Agreement”) dated as of February [*], 2024 (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 February [*], 2024, by and between the Company and Maxim Group LLC, as exclusive placement agent, the Company is engaged in a public offering (the “Offering”) of (x) up to 100,000,000 units (the “Units”), with each Unit consisting of (i) one share of common stock, par value \$0.0001 per share (the “Common Stock”), of the Company and (ii) one common stock purchase warrant (the “Common Warrants”) exercisable for one share of Common Stock; and (y) up to 100,000,000 pre-funded units (the “Pre-Funded Units”), with each Pre-Funded Unit consisting of (i) one pre-funded warrant exercisable for one share of Common Stock at an exercise price of \$0.001 per share (the “Pre-Funded Warrants”, together with the Common Warrants, the “Warrants”), (ii) one Common Warrant;

WHEREAS, the Company has filed with the Securities and Exchange Commission (the “Commission”) a Registration Statement on Form S-1 (File No. 333-276631) (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, Pre-Funded Units, shares of Common Stock, Pre-Funded Warrants, Warrants and shares of Common Stock issuable upon exercise of the Warrants and Pre-Funded Warrants included in the Units and Pre-Funded Units, as applicable (the “Warrant Shares”), and such Registration Statement was declared effective on [*], 2024;

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 Agreement in connection with the issuance, registration, transfer, exchange and exercise of the Warrants;

WHEREAS, the Company desires to provide for the provisions of the 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 Common Warrants and Pre-Funded Warrants, as applicable; and

WHEREAS, all acts and things have been done and performed which are necessary to make the Warrants the valid, binding and legal obligations of the Company, and to authorize the execution and delivery of this Warrant 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 Warrants, 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 Agreement (and no implied terms or conditions).

2. Warrants. The Warrants shall be registered securities and shall initially be evidenced by a global certificate in the form of Exhibit A (as it relates to the Common Warrants) or Exhibit A2 (as it relates to the Pre-Funded Warrants) (the “Global Certificate”) attached to this Warrant 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 Warrants, the Company shall instruct the Warrant Agent regarding making other arrangements for book-entry settlement. In the event that the Warrants are not eligible for, or it is no longer necessary to have the 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, “Warrant Certificates”) registered as requested through the DTC system. The Definitive Certificates, together with the form of election to purchase Common 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 B1 (as it relates to the Common Warrants) or Exhibit B2 (as it relates to the Pre-Funded Warrants) attached hereto.

2.1. Issuance and Registration of 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 Warrants.

2.1.2. Issuance of Warrants. Upon the initial issuance of the Warrants, the Warrant Agent shall issue the Global Certificates and deliver the Warrants in the DTC book-entry settlement system in accordance with written instructions delivered to the Warrant Agent by the Company. Ownership of security entitlements in the 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 Warrant Exchange (as defined below) pursuant to a 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 Warrants held in book entry form for a Definitive Certificate evidencing the same number of Warrants, which request shall be in the form attached hereto as Annex A1 (as it relates to the Common Warrants) or Annex A2 (as it relates to the Pre-Funded Warrants) (such notice, the “Warrant Certificate Request Notice” and the date of delivery of such Warrant Certificate Request Notice by the Holder, the “Warrant Certificate Request Notice Date” and the actual surrender upon delivery by the Holder of a number of Warrants in the DTC book-entry settlement system for the same number of Warrants evidenced by a Definitive Certificate, a “Warrant Exchange”), the Warrant Agent shall promptly effect the Warrant Exchange and shall promptly issue and deliver to the Holder a Definitive Certificate for such number of Warrants in the name set forth in the Warrant Certificate Request Notice. Such Definitive Certificate shall be dated the original issue date of the Warrants and shall be manually executed by an authorized signatory of the Company and shall be in the form attached hereto as Exhibit B1 (as it related to the Common Warrants) or Exhibit B2 (as it relates to the Pre-Funded Warrants). In connection with a Warrant Exchange, the Company agrees to deliver, or to direct the Warrant Agent to deliver, the Definitive Certificate to the Holder within two (2) Trading Days of the Warrant Certificate Request Notice pursuant to the delivery instructions in the Warrant Certificate Request Notice (“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 Warrant Certificate Request Notice by the 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 Warrant Shares evidenced by such Definitive Certificate (based on the VWAP (as defined in the Warrant) of the Common Stock on the Warrant Certificate Request Notice Date), \$10 per Trading Day (increasing to \$20 per Trading Day on the third Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Certificate Delivery Date until such Definitive Certificate is delivered or, prior to delivery of such Warrant Certificate, the Holder rescinds such 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 contemplated in connection with the Warrants. The Company covenants and agrees that, upon the date of delivery of the 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 Warrants evidenced by such Definitive Certificate and the terms of this Warrant Agreement. In the event a beneficial owner requests a Warrant Exchange, upon issuance of the paper Definitive Certificate, the Warrant Agent shall continue to act as warrant agent and the terms of the paper Definitive Certificate so issued shall exclusively govern in respect thereof.

2.1.3. Beneficial Owner: Holder. Prior to due presentment for registration of transfer of any Warrant, the Company and the Warrant Agent shall deem and treat the person in whose name that Warrant shall be registered on the Warrant Register (the “Holder”) as the absolute owner of such 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 Warrant. The rights of beneficial owners in a 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 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 Warrant Certificates, either manually or by facsimile signature. The Warrant Certificates shall be countersigned by an authorized signatory of the Warrant Agent, which need not be the same signatory for all of the Warrant Certificates, and no Warrant Certificate shall be valid for any purpose unless so countersigned. In case any Authorized Officer of the Company that signed any of the 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 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 Warrant Certificates had not ceased to be such officer of the Company; and any Warrant Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Warrant Certificate, shall be an Authorized Officer of the Company authorized to sign such Warrant Certificate, although at the date of the execution of this Warrant Agreement any such person was not such an Authorized Officer.

2.1.5. Registration of Transfer. Subject to the provisions of the Warrants, at any time at or prior to the Termination Date (as defined below), a transfer of any Warrants may be registered and any Warrant Certificate or Warrant Certificates may be split up, combined or exchanged for another Warrant Certificate or Warrant Certificates evidencing the same number of Warrants as the Warrant Certificate or Warrant Certificates surrendered. Any Holder desiring to register the transfer of Warrants or to split up, combine or exchange any Warrant Certificate shall make such request in writing delivered to the Warrant Agent, and shall surrender to the Warrant Agent the Warrant Certificate or Warrant Certificates evidencing the Warrants the transfer of which is to be registered or that is or are to be split up, combined or exchanged and, in the case of registration of transfer, shall provide a signature guarantee. Thereupon, the Warrant Agent shall countersign and deliver to the person entitled thereto a Warrant Certificate or 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 Warrants or a split-up, combination or exchange of a Warrant Certificate (but, for purposes of clarity, not upon the exercise of the Warrants and issuance of 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.

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 Warrant Certificate, and, in case of loss, theft or destruction, of indemnity or security in customary form and amount, 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 Warrant Certificate if mutilated, the Warrant Agent shall, on behalf of the Company, countersign and deliver a new Warrant Certificate of like tenor to the Holder in lieu of the 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 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 Agreement or the Warrants; provided, however, that at all times that 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.

3. Terms and Exercise of Warrants.

3.1. Exercise Price. Each Warrant shall entitle the Holder, subject to the provisions of the applicable Warrant Certificate and of this Warrant Agreement, to purchase from the Company the number of shares of Common Stock stated therein, at the exercise price provided in the applicable Warrant Certificate, subject to the subsequent adjustments provided by Section 3 of the Warrant Certificates. The term “Exercise Price” as used in this Warrant Agreement refers to the price per share at which shares of Common Stock may be purchased at the time a Warrant is exercised as provided in the applicable Warrant Certificate.

3.2. Duration of Warrants. The Warrants may be exercised only during the period (“Exercise Period”) commencing on the Initial Exercise Date as defined in the applicable Warrant Certificate and ending on the Termination Date. For purposes of this Warrant Agreement, the “Termination Date” shall have the meaning set forth in the applicable Warrant Certificate. Each Warrant not exercised on or before the Termination Date shall become void, and all rights thereunder and all rights in respect thereof under this Warrant Agreement shall cease at the close of business on the Termination Date.

3.3. Exercise of Warrants.

3.3.1. Exercise and Payment. (a) Subject to the provisions of this Warrant Agreement, a Holder (or a Participant or a designee of a Participant acting on behalf of a Holder) may exercise Warrants by delivering to the Warrant Agent, 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 Warrant Certificate. In the case of the Holder of a Global Certificate, the Holder shall deliver the executed Notice of Exercise and payment of the Exercise Price pursuant to Section 2(a) and Section 2(b) of the Warrant Certificates (other than in the case of a Cashless Exercise). Notwithstanding any other provision in this Warrant Agreement, a holder whose interest in a Warrant is a beneficial interest in a Global Certificate held in book-entry form through the DTC (or another established clearing corporation performing similar functions), shall effect exercises by delivering to the 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 the DTC (or such other clearing corporation, as applicable). The Company acknowledges that the bank accounts maintained by the Warrant Agent in connection with the services provided under this Warrant 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. The “Exercise Date” will be the date on which the materials in the foregoing sentence are received by the Warrant Agent (if by 5:00 P.M., New York City time), or the following Trading Day (if after 5:00 P.M., New York City time), regardless of any earlier date written on the materials. 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 Warrants. (b) The Common Warrants shall cease to be exercisable and shall terminate and become void and callable as set forth in the applicable Warrant Certificate.

3.3.2. Issuance of Warrant Shares.

(a) The Warrant Agent shall, by 11:00 a.m., New York City time, on the Trading Day following the date of exercise of any Warrant, advise the Company and the transfer agent and registrar for the Company’s Common Stock (the “Transfer Agent”), in respect of (i) the number of 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 Warrant Shares and the number of 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 Warrant Certificate, of the executed Notice of Exercise, accompanied by payment of the Exercise Price pursuant to Section 2(b) of the Warrant Certificate (other than in the case of a Cashless Exercise), the Warrant Agent shall cause the Warrant Shares underlying such Warrant to be delivered to or upon the order of the Holder of such Warrant, registered in such name or names as may be designated by such Holder, no later than the Warrant Share Delivery Date. If the Company is then a participant in the DWAC system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) the Warrant is being exercised via Cashless Exercise, then the certificates for Warrant Shares shall be transmitted by the Warrant Agent to the Holder.

3.3.3. Valid Issuance. All Warrant Shares issued by the Company upon the proper exercise of a Warrant in conformity with this Warrant Agreement shall be validly issued, fully paid and non-assessable.

3.3.4. No Fractional Shares or Scrip. No fractional Warrant Shares or scrip representing fractional shares shall be issued upon the exercise of the Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company 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 Exercise Price or round up to the next whole share.

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3.3.5. Charges, Taxes, and Expenses. Issuance of Warrant Shares shall be made without charge to a Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of a Holder or in such name or names as may be directed by a Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of a Holder, the Warrant, when surrendered for exercise, shall be accompanied by the Assignment Form attached to the Warrant 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. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to DTC (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

3.3.6. Date of Issuance. The Company will treat an exercising Holder as a beneficial owner of the Warrant Shares as of the date of exercise of any 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. Cashless Exercise Under Certain Circumstances The Company shall provide to the Warrant Agent and each Holder prompt written notice of any time that there is no effective registration statement covering the Warrants and the Warrant Shares thereunder.

Upon receipt of a Notice of Exercise for a cashless exercise, the Warrant Agent will promptly deliver a copy of the Notice of Exercise to the Company to confirm the number of Warrant Shares issuable in connection with the cashless exercise. The Company shall promptly calculate and transmit to the Warrant Agent in a written notice, and the Warrant Agent shall have no duty, responsibility or obligation under this section to calculate, the number of Warrant Shares issuable in connection with any cashless exercise. The Warrant Agent shall be entitled to rely conclusively on any such written notice provided by the Company, and the Warrant Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with such written instructions or pursuant to this Warrant Agreement.

3.3.8. Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the number of Warrant Shares issuable in connection with any exercise, the Company shall promptly deliver to the Holder the number of Warrant Shares that are not disputed.

3.3.9. Beneficial Ownership Limitation. A Holder shall not have the right to exercise any Warrants to the extent that after giving effect to the issuance of Warrant Shares after exercise as set forth on the applicable Notice of Exercise, such Holder or a person holding through such Holder, and any other persons acting as a group together with that Holder or person or any of that Holder's or person's Affiliates), would beneficially own in excess of the Beneficial Ownership Limitation (as that term is defined in the Warrant) pursuant to Section 2(e) of the Warrant Certificates.

4. Adjustments. The Exercise Price, the number of shares covered by each Warrant and the number of Warrants outstanding are subject to adjustment from time to time as provided in Section 3 of the Warrant Certificate. All 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 Common Stock purchasable from time to time hereunder upon exercise of the Warrants, all subject to further adjustment as provided herein. Whenever the Exercise Price or the number of shares of Common Stock issuable upon the exercise of each Warrant is adjusted as provided in this Section 4, the Company shall (a) promptly prepare a certificate setting forth the Exercise Price of each Warrant as so adjusted, 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 Warrant.

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5. Restrictive Legends; Fractional Warrants. In the event that a 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 Warrants must also bear a restrictive legend upon that transfer. The Company shall not issue fractions of 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 reflect a rounding of such fraction either up or down to the nearest whole Warrant. 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 Warrant Certificate for a fraction of a Warrant. The Company shall not issue fractions of shares of Common Stock upon exercise of Warrants or distribute stock certificates that evidence fractional shares of Common Stock. Whenever any fraction of a share of Common 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 Warrant Certificates.

6. Other Provisions Relating to Rights of Holders of Warrants.

6.1. No Rights as Shareholder. Except as otherwise specifically provided herein and in accordance with Section 5(a) of the Warrant Certificates, a Holder, solely in its capacity as a holder of 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 Agreement be construed to confer upon a Holder, solely in its capacity as the registered holder of 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 Warrant Shares which it is then entitled to receive upon the due exercise of Warrants.

6.2. Reservation of Common Stock. The Company shall at all times reserve and keep available a number of its authorized but unissued shares of Common Stock pursuant to Section 5(d) of the Warrant Certificates.

7. Concerning the Warrant Agent and Other Matters.

7.1. Any instructions given to the Warrant Agent orally, as permitted by any provision of this Warrant Agreement, shall be confirmed in writing by the Company as soon as practicable. The Warrant Agent shall not be liable or responsible and shall be fully authorized and protected for acting, or failing to act, in accordance with any oral instructions which do not conform with the written confirmation received in accordance with this Section 7.1.

7.2. (a) Whether or not any Warrants are exercised, for the Warrant Agent's services as agent for the Company hereunder, the Company shall pay to the Warrant Agent such fees as may be separately agreed between the Company and Warrant Agent and the Warrant Agent's out of pocket expenses in connection with this Warrant Agreement, including, without limitation, the reasonable fees and expenses of the Warrant Agent's counsel. While the Warrant Agent endeavors to maintain out-of-pocket charges (both internal and external) at competitive rates, these charges may not reflect actual out-of-pocket costs, and may include handling charges to cover internal processing and use of the Warrant Agent's billing systems. (b) All amounts owed by the Company to the Warrant Agent under this Warrant Agreement are due within 30 days of the invoice date. Delinquent payments are subject to a late payment charge of one and one-half percent (1.5%) per month commencing 45 days from the invoice date. The Company agrees to reimburse the Warrant Agent for any reasonable attorney's fees and any other costs associated with collecting delinquent payments. (c) No provision of this Warrant Agreement shall require Warrant Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Warrant Agreement or in the exercise of its rights.

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7.3. As agent for the Company hereunder the Warrant Agent: (a) shall have no duties or obligations other than those specifically set forth herein or as may subsequently be agreed to in writing by the Warrant Agent and the Company; (b) shall be regarded as making no representations and having no responsibilities as to the validity, sufficiency, value, or genuineness of the Warrants or any Warrant Shares; (c) shall not be obligated to take any legal action hereunder; if, however, the Warrant Agent determines to take any legal action hereunder, and where the taking of such action might, in its judgment, subject or expose it to any expense or liability it shall not be required to act unless it has been furnished with an indemnity reasonably satisfactory to it; (d) may rely on and shall be fully authorized and protected in acting or failing to act upon any certificate, instrument, opinion, notice, letter, telegram, telex, facsimile transmission or other document or security delivered to the Warrant Agent and believed by it to be genuine and to have been signed by the proper party or parties; (e) shall not be liable or responsible for any recital or statement contained in the Registration Statement or any other documents relating thereto; (f) shall not be liable or responsible for any failure on the part of the Company to comply with any of its covenants and obligations relating to the Warrants, including without limitation obligations under applicable securities laws; (g) may rely on and shall be fully authorized and protected in acting or failing to act upon the written, telephonic or oral instructions with respect to any matter relating to its duties as Warrant Agent covered by this Warrant Agreement (or supplementing or qualifying any such actions) of officers of the Company, and is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from the Company or counsel to the Company, and may apply to the Company, for advice or instructions in connection with the Warrant Agent's duties hereunder, and the Warrant Agent shall not be liable for any delay in acting while waiting for those instructions; any applications by the Warrant Agent for written instructions from the Company may, at the option of the Agent, set forth in writing any action proposed to be taken or omitted by the Warrant Agent under this Warrant Agreement and the date on or after which such action shall be taken or such omission shall be effective; the Warrant Agent shall not be liable for any action taken by, or omission of, the Warrant Agent in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than five (5) Business Days after the date such application is sent to the Company, unless the Company shall have consented in writing to any earlier date) unless prior to taking any such action, the Warrant Agent shall have received written instructions in response to such application specifying the action to be taken or omitted; (h) may consult with counsel satisfactory to the Warrant Agent, including its in-house counsel, and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered, or omitted by it hereunder in good faith and in accordance with the advice of such counsel; (i) may perform any of its duties hereunder either directly or by or through nominees, correspondents, designees, or subagents, and it shall not be liable or responsible for any misconduct or negligence on the part of any nominee, correspondent, designee, or subagent appointed with reasonable care by it in connection with this Warrant Agreement; (j) is not authorized, and shall have no obligation, to pay any brokers, dealers, or soliciting fees to any person; and (k) shall not be required hereunder to comply with the laws or regulations of any country other than the United States of America or any political subdivision thereof.

7.4. (a) In the absence of gross negligence or willful or illegal misconduct on its part, the Warrant Agent shall not be liable for any action taken, suffered, or omitted by it or for any error of judgment made by it in the performance of its duties under this Warrant Agreement. Anything in this Warrant Agreement to the contrary notwithstanding, in no event shall Warrant Agent be liable for special, indirect, incidental, consequential or punitive losses or damages of any kind whatsoever (including but not limited to lost profits), even if the Warrant Agent has been advised of the possibility of such losses or damages and regardless of the form of action. Any liability of the Warrant Agent will be limited in the aggregate to the amount of fees paid by the Company hereunder. The Warrant Agent shall not be liable for any failures, delays or losses, arising directly or indirectly out of conditions beyond its reasonable control including, but not limited to, acts of government, exchange or market ruling, suspension of trading, work stoppages or labor disputes, fires, civil disobedience, riots, rebellions, storms, electrical or mechanical failure, computer hardware or software failure, communications facilities failures including telephone failure, war, terrorism, insurrection, earthquakes, floods, acts of God or similar occurrences. (b) In the event any question or dispute arises with respect to the proper interpretation of the Warrants or the Warrant Agent's duties under this Warrant Agreement or the rights of the Company or of any Holder, the Warrant Agent shall not be required to act and shall not be held liable or responsible for its refusal to act until the question or dispute has been judicially settled (and, if appropriate, it may file a suit in interpleader or for a declaratory judgment for such purpose) by final judgment rendered by a court of competent jurisdiction, binding on all persons interested in the matter which is no longer subject to review or appeal, or settled by a written document in form and substance satisfactory to Warrant Agent and executed by the Company and each such Holder. In addition, the Warrant Agent may require for such purpose, but shall not be obligated to require, the execution of such written settlement by all the Holders and all other persons that may have an interest in the settlement.

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7.5. The Company covenants to indemnify the Warrant Agent and hold it harmless from and against any loss, liability, claim or expense ("Loss") arising out of or in connection with the Warrant Agent's duties under this Warrant Agreement, including the costs and expenses of defending itself against any Loss, unless such Loss shall have been determined by a court of competent jurisdiction to be a result of the Warrant Agent's gross negligence or willful misconduct.

7.6. Unless terminated earlier by the parties hereto, this Warrant Agreement shall terminate 90 days after the earlier of the Termination Date and the date on which no Warrants remain outstanding (the "Agreement Termination Date"). On the Business Day following the Termination Date, the Agent shall deliver to the Company any entitlements, if any, held by the Warrant Agent under this Warrant Agreement. The Agent's right to be reimbursed for fees, charges and out-of-pocket expenses as provided in this Section 7 shall survive the termination of this Warrant Agreement.

7.7. If any provision of this Warrant Agreement shall be held illegal, invalid, or unenforceable by any court, this Warrant Agreement shall be construed and enforced as if such provision had not been contained herein and shall be deemed an agreement among the parties to it to the full extent permitted by applicable law.

7.8. The Company represents and warrants that: (a) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation; (b) the offer and sale of the Warrants and the execution, delivery and performance of all transactions contemplated thereby (including this Warrant Agreement) have been duly authorized by all necessary corporate action and will not result in a breach of or constitute a default under the articles of association, bylaws or any similar document of the Company or any indenture, agreement or instrument to which it is a party or is bound; (c) this Warrant Agreement has been duly executed and delivered by the Company and constitutes the legal, valid, binding and enforceable obligation of the Company; (d) the Warrants will comply in all material respects with all applicable requirements of law; and (e) to the best

of its knowledge, there is no litigation pending or threatened as of the date hereof in connection with the offering of the Warrants.

7.9. In the event of inconsistency between this Warrant Agreement and the descriptions in the Registration Statement, as they may from time to time be amended, the terms of this Warrant Agreement shall control. Notwithstanding anything to the contrary contained in this Warrant Agreement, in the event of inconsistency between any provision in this Warrant Agreement and any provision in a Definitive Certificate, as it may from time to time be amended, the terms of such Definitive Certificate shall control.

7.10. Set forth in Exhibit C hereto is a list of the names and specimen signatures of the persons authorized to act for the Company under this Warrant Agreement (the “Authorized Representatives”). The Company shall, from time to time, certify to the Warrant Agent the names and signatures of any other persons authorized to act for the Company under this Warrant Agreement.

7.11. Except as expressly set forth elsewhere in this Warrant Agreement, all notices, instructions and communications under this Warrant Agreement shall be in writing, shall be effective upon receipt and shall be addressed, if to the Company, to its address set forth beneath its signature to this Warrant Agreement, or, if to the Warrant Agent, to VStock Transfer, LLC 18 Lafayette Place, Woodmere, New York 11598, or to such other address of which a party hereto has notified the other party.

7.12. (a) This Warrant Agreement shall be governed by and construed in accordance with the laws of the State of New York. All actions and proceedings relating to or arising from, directly or indirectly, this Warrant Agreement may be litigated in courts located within the Borough of Manhattan in the City and State of New York. The Company hereby submits to the personal jurisdiction of such courts and consents that any service of process may be made by certified or registered mail, return requested, directed to the Company at its address last specified for notices hereunder. Each of the parties hereto hereby waives the right to a trial by jury in any action or proceeding arising out of or relating to this Warrant Agreement. (b) This Warrant Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. This Warrant Agreement may not be assigned, or otherwise transferred, in whole or in part, by either party without the prior written consent of the other party, which the other party will not unreasonably withhold, condition or delay; except that (i) consent is not required for an assignment or delegation of duties by the Warrant Agent to any affiliate of Warrant Agent and (ii) any reorganization, merger, consolidation, sale of assets or other form of business combination by the Warrant Agent or the Company shall not be deemed to constitute an assignment of this Warrant Agreement. (c) No provision of this Warrant Agreement may be amended, modified or waived, except in a written document signed by both parties. The Company and the Warrant Agent may amend or supplement this Warrant Agreement without the consent of any Holder for the purpose of curing any ambiguity, or curing, correcting or supplementing any defective provision contained herein or adding or changing any other provisions with respect to matters or questions arising under this Warrant Agreement as the parties may deem necessary or desirable and that the parties determine, in good faith, shall not adversely affect the interest of the Holders. All other amendments and supplements shall require the vote or written consent of Holders of at least 50.1% of the then outstanding Warrants, provided that adjustments may be made to the Warrant terms and rights in accordance with Section 4 without the consent of the Holders.

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7.13. Payment of Taxes. The Company will from time to time promptly pay all taxes and charges that may be imposed upon the Company or the Warrant Agent in respect of the issuance or delivery of Warrant Shares upon the exercise of Warrants, but the Company may, pursuant to the terms of the Warrant, require the Holders to pay any transfer taxes in respect of the Warrants or such shares. The Warrant Agent may refrain from registering any transfer of Warrants or any delivery of any Warrant Shares unless or until the persons requesting the registration or issuance shall have paid to the Warrant Agent for the account of the Company the amount of such tax or charge, if any, or shall have established to the reasonable satisfaction of the Company and the Warrant Agent that such tax or charge, if any, has been paid.

7.14. Resignation of Warrant Agent.

7.14.1. Appointment of Successor Warrant Agent. The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder after giving thirty (30) days’ notice in writing to the Company and the Holders of the Warrants, or such shorter period of time agreed to by the Company. The Company may terminate the services of the Warrant Agent, or any successor Warrant Agent, after giving thirty (30) days’ notice in writing to the Warrant Agent or successor Warrant Agent and the Holders of the Warrants, or such shorter period of time as agreed. If the office of the Warrant Agent becomes vacant by resignation, termination or incapacity to act or otherwise, the Company shall appoint in writing a successor Warrant Agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of 30 days after it has been notified in writing of such resignation or incapacity by the Warrant Agent, then the Warrant Agent or any Holder may apply to any court of competent jurisdiction for the appointment of a successor Warrant Agent at the Company’s cost. Pending appointment of a successor to such Warrant Agent, either by the Company or by such a court, the duties of the Warrant Agent shall be carried out by the Company. Any successor Warrant Agent (but not including the initial Warrant Agent), whether appointed by the Company or by such court, shall be a person organized and existing under the laws of any state of the United States of America, in good standing, and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority. After appointment, any successor Warrant Agent shall be vested with all the authority, powers, rights, immunities, duties, and obligations of its predecessor Warrant Agent with like effect as if originally named as Warrant Agent hereunder, without any further act or deed, and except for executing and delivering documents as provided in the sentence that follows, the predecessor Warrant Agent shall have no further duties, obligations, responsibilities or liabilities hereunder, but shall be entitled to all rights that survive the termination of this Warrant Agreement and the resignation or removal of the Warrant Agent, including but not limited to its right to indemnity hereunder. If for any reason it becomes necessary or appropriate or at the request of the Company, the predecessor Warrant Agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor Warrant Agent all the authority, powers, and rights of such predecessor Warrant Agent hereunder; and upon request of any successor Warrant Agent the Company shall make, execute, acknowledge, and deliver any and all instruments in writing for more fully and effectually vesting in and confirming to such successor Warrant Agent all such authority, powers, rights, immunities, duties, and obligations.

7.14.2. Notice of Successor Warrant Agent. In the event a successor Warrant Agent shall be appointed, the Company shall give notice thereof to the predecessor Warrant Agent and the Transfer Agent not later than the effective date of any such appointment.

7.14.3. Merger or Consolidation of Warrant Agent. Any person into which the Warrant Agent may be merged or converted or with which it may be consolidated or any person resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party or any person succeeding to the shareowner services business of the Warrant Agent or any successor Warrant Agent shall be the successor Warrant Agent under this Warrant Agreement, without any further act or deed. For purposes of this Warrant Agreement, “person” shall mean any individual, firm, corporation, partnership, limited liability company, joint venture, association, trust or other entity, and shall include any successor (by merger or otherwise) thereof or thereto.

8. Miscellaneous Provisions.

8.1. Persons Having Rights under this Warrant Agreement. Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any person or corporation other than the parties hereto and the Holders any right, remedy, or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise, or agreement hereof.

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8.2. Examination of the Warrant Agreement. A copy of this Warrant 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

Warrants.

8.3. Counterparts. This Warrant 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.

8.4. Effect of Headings. The Section headings herein are for convenience only and are not part of this Warrant Agreement and shall not affect the interpretation thereof.

9. Certain Definitions. As used herein, the following terms shall have the following meanings:

(a) "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.

(b) "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.

(c) "Trading Day" means any day on which the Common Stock is traded on the Trading Market.

(d) "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).

(e) "Warrant Share Delivery Date" means the date that is the earliest of: (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, provided that payment of the aggregate Exercise Price (other than in the instance of a cashless exercise) 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 of the Notice of Exercise, provided that payment of the aggregate Exercise Price (other than in the instance of a cashless exercise) is received by the Company one (1) Trading Day prior to such second Trading Day after the delivery of the Notice of Exercise.

[Signature Page to Follow]

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: Chief Executive Officer

VSTOCK TRANSFER, LLC

By: _____
Name: _____
Title: _____

ANNEX A1

WARRANT CERTIFICATE REQUEST NOTICE

To: VStock Transfer, LLC, as Warrant Agent for WiSA Technologies, Inc. (the "Company")

The undersigned Holder of Common Stock Purchase Warrants ("Warrants") in the form of Global Certificates issued by the Company hereby elects to receive a Definitive Certificate evidencing the Warrants held by the Holder as specified below:

1. Name of Holder of Warrants in form of Global Certificates: _____
2. Name of Holder in Definitive Certificate (if different from name of Holder of Warrants in form of Global Certificates): _____
3. Number of Warrants in name of Holder in form of Global Certificates: _____
4. Number of Warrants for which Definitive Certificate shall be issued: _____
5. Number of 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 Warrant Exchange and the issuance of the Definitive Certificate, the Holder is deemed to have surrendered the number of Warrants in form of Global Certificates in the name of the Holder equal to the number of Warrants evidenced by the Definitive Certificate.

Name of Investing Entity:

Signature of Authorized Signatory of Investing Entity:

Name of Authorized Signatory:

Title of Authorized Signatory:

Date: _____

ANNEX A2

WARRANT CERTIFICATE REQUEST NOTICE

To: VStock Transfer, LLC, as Warrant Agent for WiSA Technologies, Inc. (the "Company")

The undersigned Holder of Pre-Funded Warrants ("Warrants") in the form of Global Certificates issued by the Company hereby elects to receive a Definitive Certificate evidencing the Warrants held by the Holder as specified below:

1. Name of Holder of Warrants in form of Global Certificates: _____
2. Name of Holder in Definitive Certificate (if different from name of Holder of Warrants in form of Global Certificates): _____
3. Number of Warrants in name of Holder in form of Global Certificates: _____
4. Number of Warrants for which Definitive Certificate shall be issued: _____
5. Number of 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 Warrant Exchange and the issuance of the Definitive Certificate, the Holder is deemed to have surrendered the number of Warrants in form of Global Certificates in the name of the Holder equal to the number of Warrants evidenced by the Definitive Certificate.

Name of Investing Entity:

Signature of Authorized Signatory of Investing Entity:

Name of Authorized Signatory:

Title of Authorized Signatory:

Date: _____

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EXHIBIT A1

[FORM OF GLOBAL WARRANT CERTIFICATE OF COMMON STOCK PURCHASE WARRANT]

[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.: 1
Number of Warrants: []

CUSIP No.: []
Issue Date: []

(ATTACHED)

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EXHIBIT A2

[FORM OF GLOBAL WARRANT CERTIFICATE OF PRE-FUNDED WARRANT]

[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.: 1
Number of Warrants: []

CUSIP No.: []
Issue Date: []

(ATTACHED)

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EXHIBIT B1

FORM OF COMMON STOCK PURCHASE WARRANT

(ATTACHED)

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EXHIBIT B2

FORM OF PRE-FUNDED WARRANT

(ATTACHED)

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EXHIBIT C

AUTHORIZED REPRESENTATIVES

Name
Brett Moyer

Title
Chief Executive Officer

Signature

VOTING AGREEMENT

This Voting Agreement (this “**Voting Agreement**”) is being delivered to you in connection with an understanding by and between WiSA Technologies, Inc. a Delaware corporation (the “**Company**”), and the person or persons named on the signature pages hereto.

Reference is hereby made to the public offering (the “**Offering**”) of securities of the Company, including units comprised, in part, of shares of common stock, par value \$0.0001 per share, of the Company (the “**Common Stock**”), pursuant to the registration statement on Form S-1, as amended (File No. 333-276631) (“**Registration Statement**”). The Company is requiring a voting agreement in substance the same as this Voting Agreement from all purchasers that purchase in excess of \$100,000 of securities in the Offering (each a “**Holder**” and collectively, the “**Holders**”).

The Holder agrees to vote all shares of Common Stock it beneficially owns on and after February [*], 2024, including shares of Common Stock, if any, purchased in the Offering, with respect to all of the proposals presented by the Company to the stockholders of the Company at the Company’s next meeting of its stockholders, including at every adjournment or postponement thereof, or any subsequent meeting of its stockholders duly called for the same or similar purposes. For clarity, the Holder’s agreement to vote its shares of Common Stock in accordance with the immediately preceding sentence, does not require the Holder to vote its shares for or against any particular proposal or proposals, whether or not such proposal or proposals are recommended by the Company’s board of directors.

No material, non-public information has been provided to the Holder by the Company or any of its subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated hereby. As of the date hereof, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, if any, whether written or oral, between the Company, any of its subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and the Holder or any of its affiliates, on the other hand, with respect to this Voting Agreement and the transactions contemplated hereby shall terminate. Notwithstanding anything contained in this Voting Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that the Holder shall not have (unless expressly agreed to by the Holder after the date hereof in a written definitive and binding agreement executed by the Company and the Holder), any duty of confidentiality with respect to, or a duty to the Company not to trade on the basis of, any material, non-public information regarding the Company or any of its Subsidiaries.

Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Voting Agreement must be in writing and shall be delivered to the Holder at the e-mail address or facsimile number on the signature page hereto.

This Voting Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, letters and understandings relating to the subject matter hereof and are fully binding on the parties hereto.

This Voting Agreement may be executed simultaneously in any number of counterparts. Each counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. This Voting Agreement may be executed and accepted by facsimile or PDF signature and any such signature shall be of the same force and effect as an original signature.

The terms of this Voting Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their respective successors and assigns.

This Voting Agreement may not be amended or modified except in writing signed by each of the parties hereto.

All questions concerning the construction, validity, enforcement and interpretation of this Voting Agreement 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 hereto acknowledges that, in view of the uniqueness of the transactions contemplated by this Voting Agreement, the other party or parties hereto will not have an adequate remedy at law for money damages in the event that this Voting Agreement has not been performed in accordance with its terms, and therefore agrees that such other party or parties shall be entitled to seek specific enforcement of the terms hereof in addition to any other remedy it may seek, at law or in equity.

The obligations of the Holder under this Voting Agreement are several and not joint with the obligations of any other holder of any of the securities issued under the Registration Statement (each, an “**Other Holder**”), and the Holder shall not be responsible in any way for the performance of the obligations of any Other Holder under any such other agreement. Nothing contained in this Voting Agreement, and no action taken by the Holder pursuant hereto, shall be deemed to constitute the Holder and Other Holders as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holder and the Other Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Voting Agreement and the Company acknowledges that the Holder and the Other Holders are not acting in concert or as a group with respect to such obligations or the transactions contemplated by this Voting Agreement or any other agreement. The Company and the Holder confirm that the Holder has independently participated in the negotiation of the transactions contemplated hereby with the advice of its own counsel and advisors. The Holder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Voting Agreement, and it shall not be necessary for any Other Holder to be joined as an additional party in any proceeding for such purpose.

[The remainder of the page is intentionally left blank]

The parties hereto have executed this Voting Agreement as of the date first set forth above.

WISA TECHNOLOGIES, INC.

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

The parties hereto have executed this Voting Agreement as of the date first set forth above.

HOLDER

By: _____

Name:

Title:

Email:

February [], 2024

[INVESTOR NAME]
[ADDRESS]
[ADDRESS]
Attn:[]

Re: WiSA Technologies, Inc.

Reference is made to that (i) certain Securities Purchase Agreement (the "Purchase Agreement"), dated as of October 16, 2023, by and between you and WiSA Technologies, Inc. (the "Company") entered into in connection with the offering by the Company pursuant to the Company's Registration Statement on Form S-1 (File No. 333- 274331), as amended, and (ii) certain warrant inducement letter agreement, dated as of December 5, 2023, by and between you and the Company (the "Inducement Agreement"). Capitalized terms not defined herein shall have the meanings ascribed to them in the Purchase Agreement and the Inducement Agreement, as applicable.

The Company is contemplating a best efforts public offering (the "Offering"), for gross proceeds of up to \$10,000,000, of certain securities of the Company, pursuant to a Registration Statement on Form S-1 (File No. 333-276631), and the related transaction documents thereto.

In connection with the intended Offering and pursuant to this Letter Agreement:

- (i) The Company hereby offers to repurchase all outstanding shares of Series B Preferred Stock of the Company held by you, as set forth on **Exhibit A** hereto at a price of \$100 per share of Series B Preferred Stock.
- (ii) You hereby agree to surrender all outstanding Preferred Stock Purchase Warrants currently held by you, as set forth on **Exhibit A** hereto, to the Warrant Agent for cancellation immediately prior to the closing of the Offering. Upon such cancellation, you will have no practical or legal right to the Preferred Stock Purchase Warrants as set forth on **Exhibit A** hereto.
- (iii) The Company and you hereby agree to amend and restate the second sentence in (e) in Annex A to the Inducement Agreement in its entirety as follows:
 "The Company covenants that, following the Stockholder Approval Date and thereafter, during the period the New Warrant is outstanding, it shall reserve from its duly authorized capital stock a number of shares of Common Stock for issuance of the New Warrant Shares in full."
- (iv) The Company and you hereby agree that any future issuance of New Warrants under the Inducement Agreement will conform with the form of New Warrant as amended on or about the same date hereof.

This Letter Agreement (a) shall be governed by and construed in accordance with the law of the State of New York, (b) is for the exclusive benefit of the parties hereto and constitutes the entire agreement of such parties, (c) may be modified, waived or assigned only in writing, and (d) is a negotiated document, entered into freely among the parties upon advice of their own counsel, and it should not be construed against any of its drafters. The fact that any term or provision of this Letter Agreement is held invalid, illegal or unenforceable as to any person in any situation in any jurisdiction shall not affect the validity, enforceability or legality of the remaining terms or provisions hereof or the validity, enforceability or legality of such offending term or provision in any other situation or jurisdiction or as applied to any person.

[Signature Page Follows]

If the foregoing is in accordance with your understanding, kindly confirm your acceptance and agreement by signing in the space indicated below and by returning a partially executed copy of this letter to the undersigned, which may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement.

Very truly yours,

WISA TECHNOLOGIES, INC.

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

AGREED AND ACCEPTED:

[HOLDER]

By: _____
Name:
Title:

EXHIBIT A

Name of Holder: _____

Aggregate Repurchase Price: _____

Number of shares of Series B Preferred Stock Currently Outstanding: _____

Number of shares of Series B Preferred Stock to be Repurchased: _____

Number of Warrants Currently Outstanding: _____

Number of Warrants to Cancel: _____

WARRANT AMENDMENT AGREEMENT

This Warrant Amendment Agreement (this "Agreement"), dated as of [____], 2024, is by and between WiSA Technologies, Inc., a Delaware corporation (the "Company"), and [____], the holder (the "Holder") of a certain common stock purchase warrant, dated [____], 20[____] (the "Original Warrant").

WHEREAS, the Holder is the beneficial owner of the Original Warrant, to purchase an aggregate of [____] shares of the Company's common stock, par value \$0.0001 per share ("Common Stock"), at an exercise price of \$0.1482 per share, which Original Warrant is attached as Annex A hereto.

WHEREAS, the Company and the Holders desire to amend Section 6(d) of the Original Warrant; and

WHEREAS, the Original Warrant may be modified or amended, or the provisions thereof waived with the written consent of the Company and the Holder.

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

1. Amendment and Restatement of Section 6(d) of the Original Warrant. The Company and the Holder hereby consent and agree that Section 6(d) of the Original Warrant shall be amended and restated in its entirety as follows:

d) Authorized Shares. The Company covenants that, following the Stockholder Approval Date and thereafter, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any subscription rights under this Warrant. 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 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 Warrant Shares 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 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 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 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 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 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 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.

3. Effect of Amendment. Except as expressly modified by this Agreement, the Original Warrant shall remain unmodified and in full force and effect.

4. Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Original Warrant.

5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

6. Electronic and Facsimile Signatures. Any signature page delivered electronically or by facsimile (including without limitation transmission by .pdf) shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment hereto.

7. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

COMPANY:

WISA TECHNOLOGIES, INC.

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

WARRANT HOLDER:

[____]

By: _____

Name:
Title:

Number of Warrant Shares Underlying
Original Warrant held: _____

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Annex A

Original Warrant

(attached)

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Consent of Independent Registered Public Accounting Firm

We hereby consent to the inclusion in this Amendment #1 to the 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. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ BPM LLP

San Jose, California
February 5, 2024

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 Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price (1)(2)	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: (3)	Rule 457(o)	—	—	\$10,000,000.00	\$0.0001476	\$1,476.00				
Fees to be Paid	Equity	(i) Common Stock, \$0.0001 par value per share (4)	—	—	—	—	—	—				
Fees to be Paid	Equity	(ii) Warrants to purchase shares of Common Stock (4)	—	—	—	—	—	—				
Fees to be Paid	Equity	Pre-Funded Units consisting of: (3)	Rule 457(o)	—	—	—	—	—				
Fees to be Paid	Equity	(i) Pre-Funded Warrants to purchase shares of Common Stock (4)	—	—	—	—	—	—				
Fees to be Paid	Equity	(ii) Warrants to purchase shares of Common Stock (4)	—	—	—	—	—	—				
Fees to be Paid	Equity	Common Stock, \$0.0001 par value per share, issuable upon the exercise of the Warrants	457(o)	—	—	\$10,000,000.00	\$0.0001476	\$1,476.00				
Fees to be Paid	Equity	Common Stock, \$0.0001 par value per share, issuable upon the exercise of the Pre-Funded Warrants included in the Pre-Funded Units	—	—	—	—	—	—				

Fees Previously Paid	—	—	—	—	—	—	—	—	—	—	—	—
Carry Forward Securities												
Carry Forward Securities	—	—	—	—	—	—	—	—	—	—	—	—
Total Offering Amounts						\$20,000,000.00		\$2,952.00				
Total Fees Previously Paid								\$885.60				
Total Fee Offset								—				
Net Fee Due								\$2,066.40				

- (1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended (the “Securities Act”).
 - (2) Pursuant to Rule 416(a) under the Securities Act of 1933, this registration statement shall also cover an indeterminate number of shares that may be issued and resold resulting from stock splits, stock dividends or similar transactions.
 - (3) The proposed maximum offering price of the units proposed to be sold in the offering will be reduced on a dollar-for-dollar basis based on the offering price of any pre-funded units offered and sold in the offering, and as such the proposed aggregate maximum offering price of the units together with the pre-funded units (including shares of common stock issuable upon exercise of the pre-funded warrants), if any, is \$10,000,000.
 - (4) No separate fee is required pursuant to Rule 457(g) under the Securities Act.
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