

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

FORM 8-K

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

Date of Report (Date of earliest event reported): March 16, 2025

DATAVAULT AI INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of Incorporation)

001-38608
(Commission
File Number)

30-1135279
(IRS Employer
Identification Number)

15268 NW Greenbrier Pkwy
Beaverton, OR
(Address of registrant’s principal executive office)

97006
(Zip code)

(408) 627-4716
(Registrant’s telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	DVLT	The Nasdaq Capital Market

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

Share Exchange Agreement

On March 16, 2025, Datavault AI Inc., a Delaware corporation (the “Company”), entered into a share exchange agreement (the “Exchange Agreement”) with NYIAX, Inc., a Delaware corporation (“NYIAX”), pursuant to which NYIAX shall exchange 900,000 shares (the “Shares”) of NYIAX’s common stock, par value \$0.0001 per share (the “NYIAX Common Stock”), for aggregate consideration of up to 5,000,000 shares of common stock of the Company, par value \$0.0001 per share (the “Datavault Common Stock”) (collectively, the “Exchange”).

Pursuant to the Exchange Agreement, as full consideration for the sale, assignment, transfer and delivery of the Shares by NYIAX to Datavault, and upon the terms and subject to all of the conditions contained in the Exchange Agreement, Datavault shall issue to NYIAX (i) 3,000,000 newly issued, fully paid and nonassessable shares of Datavault Common Stock (such shares of Datavault Common Stock, the “Closing Shares”), and (ii) 2,000,000 newly issued, fully paid and nonassessable shares of Datavault Common Stock (such shares of Datavault Common Stock, the “Additional Shares”), upon the terms and subject to the conditions set forth in the Exchange Agreement. The Closing Shares shall be issued in four equal quarterly tranches starting from the closing.

The Additional Shares shall be issued only upon completion of a complete advertising cycle for a third party clientele, and upon the parties’ mutual written agreement that the Adio Platform (as defined in the Exchange Agreement) has been integrated into the NYIAX Platform (as defined in the Exchange Agreement) upon completion of the advertising cycle. The Additional Shares shall be issued within thirty (30) days from the completion of the integration.

The Exchange Agreement includes customary representations and warranties and various customary covenants and closing conditions that are subject to certain limitations, including, without limitation, certain agreements.

The securities to be issued in the Exchange will be issued in reliance upon exemptions from registration under Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Rule 506 promulgated under Regulation D of the Securities Act.

Intellectual Property Cross-License Agreement

In connection with the Exchange, on March 16, 2025, the Company, entered into a white label, co-marketing and intellectual property cross-license agreement (the “License Agreement”) with NYIAX, pursuant to which the Company received a non-exclusive license under certain of NYIAX’s jointly owned patent rights and know-how, and a non-exclusive license to white label NYIAX’s proprietary software-as-a-service advertising brokerage platform, all within the field of data, information and asset monetization and exchange. In exchange, the Company granted to NYIAX a non-exclusive license under certain of the Company’s wholly owned patent rights, know-how and trademarks, including with respect to the Company’s Adio Platform (as defined in the License Agreement), in the field of advertising buying, selling and brokerage.

Pursuant to the License Agreement, as consideration for the services provided by NYIAX pursuant to the License Agreement and the rights to access and use the NYIAX Platform (as defined in the License Agreement) granted to the Company, and upon the terms and subject to all of the conditions contained in the License Agreement, the Company shall issue to NYIAX 2,530,000 newly issued, fully paid and nonassessable shares (such shares, the “Consideration Shares”) of Datavault Common Stock.

Pursuant to the License Agreement, in consideration of the rights granted to NYIAX under the License Agreement, NYIAX shall pay to the Company a license fee in the form of a convertible promissory note in the aggregate amount \$2,500,000 (the “Convertible Note”). The Convertible Note is due on the first anniversary of the closing (the “Maturity Date”). NYIAX agreed to pay interest to the Company on the aggregate unconverted and then outstanding principal amount of the Convertible Note at the rate of four percent (4%) per annum, accruing from the closing. The Convertible Note may be prepaid in full at NYIAX’s election.

The Convertible Note will automatically convert at the earlier of (i) the Maturity Date, and (ii) the first underwritten public offering of NYIAX pursuant to an effective registration statement under the Securities Act, covering the offer and sale by NYIAX of its equity securities, as a result of or following which NYIAX shall be a reporting issuer under the Securities Exchange Act of 1934, as amended, and NYIAX Common Stock is listed on the Trading Market (as defined in the Convertible Note), at a conversion price of \$2.00 per share.

The License Agreement includes customary representations and warranties and various customary covenants and closing conditions that are subject to certain limitations, including, without limitation, certain agreements.

Software Development Agreement

In connection with the Exchange, on March 16, 2025, the Company, entered into a software development agreement (the “Software Development Agreement”) with NYIAX, pursuant to which NYIAX has engaged the Company to develop certain software and provide certain additional professional services as the parties will agree under one or more statements of work.

The Software Development Agreement includes customary representations and warranties and various customary covenants and closing conditions that are subject to certain limitations, including, without limitation, certain agreements.

Lock-Up Agreements

In connection with the Exchange, the Company intends to enter into a lock-up agreement in respect of the Shares, pursuant to which the Shares shall be subject to lock-up restrictions for four (4) years from the issuance. The parties also intend to enter into a lock-up agreement in respect of the Additional Shares, pursuant to which the Additional Shares shall be subject to lock-up restrictions for two (2) years from the issuance.

NYIAX intends to enter into (i) a lock-up agreement in respect of the Closing Shares, pursuant to which the Closing Shares shall be subject to lock-up restrictions for one (1) year from the issuance, and (ii) a lock-up agreement in respect of the Consideration Shares, pursuant to which the Consideration Shares shall be subject to lock-up restrictions for four (4) years from the issuance.

The foregoing summary of the Exchange Agreement, the License Agreement, the Software Development Agreement, and the Convertible Note does not purport to be complete and is qualified in its entirety by reference to the full text of such document, which is filed (without exhibits and schedules) as Exhibit 10.1, 10.2, 10.3, and 10.4 respectively, to this Current Report on Form 8-K (this “Form 8-K”) and incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure required by this Item and included in Item 1.01 of this Form 8-K is incorporated herein by reference. The securities have not been registered under the Securities Act, and may not be sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act.

Item 8.01 Other Events.

On March 17, 2025, the Company issued a press release (the “Press Release”) announcing the entry into the Exchange Agreement.

A copy of the Press Release is attached hereto as Exhibit 99.1 and incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
<u>10.1*</u>	<u>Share Exchange Agreement, dated March 16, 2025, by and between Datavault AI Inc. and NYIAX, Inc.</u>
<u>10.2*</u>	<u>White Label, Co-Marketing and Intellectual Property Cross-License Agreement, dated March 16, 2025, by and between Datavault AI Inc. and NYIAX, Inc.</u>
<u>10.3</u>	<u>Software Development Agreement, dated March 16, 2025, by and between Datavault AI Inc. and NYIAX, Inc.</u>
<u>10.4</u>	<u>Convertible Promissory Note, dated as of March 16, 2025, by NYIAX, Inc.</u>
<u>99.1</u>	<u>Press Release</u>

* Schedules and exhibits omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule to the Securities and Exchange Commission upon request.

SIGNATURES

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

Date: March 17, 2025

DATAVAULT AI INC.

By: /s/ Nathaniel Bradley

Name: Nathaniel Bradley

Title: Chief Executive Officer

SHARE EXCHANGE AGREEMENT

by and between

DATAVAULT AI INC.,

a Delaware corporation,

and

NYIAX, INC.,

a Delaware corporation

Dated as of March 16, 2025

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LIST OF EXHIBITS

Exhibit A	–	Form of Software Development Agreement
Exhibit B	–	Form of License Agreement
Exhibit C	–	Form of Datavault Lock-Up Agreement
Exhibit D	–	Form of NYIAX Lock-Up Agreement
Exhibit E	–	Form of NYIAX Additional Lock-Up Agreement

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SHARE EXCHANGE AGREEMENT

This SHARE EXCHANGE AGREEMENT is dated as of March 16, 2025 (the “Agreement”), by and between Datavault AI Inc., a Delaware corporation (“Datavault”) and NYIAX, Inc., a Delaware corporation (“NYIAX”). Datavault and NYIAX are referred to herein individually as a “Party” and collectively as the “Parties.”. Capitalized terms used in this Agreement shall have the meanings indicated in Section 1.1, or as otherwise defined in this Agreement.

RECITALS

A. The Parties have agreed to an exchange transaction (the “Exchange”) whereby, pursuant to the terms and subject to the conditions of this Agreement, NYIAX shall exchange 900,000 shares of NYIAX’s common stock, par value \$0.0001 per share (the “NYIAX Common Stock”), which resulting number of shares of NYIAX Common Stock when issued shall equal to twelve percent (12%) of the aggregate issued and outstanding NYIAX Common Stock at the time of the Closing (the “Shares”), including the Shares, for aggregate consideration of up to 5,000,000 shares of common stock of Datavault, par value \$0.0001 per share (the “Datavault Common Stock”), as more fully described in this Agreement.

B. The board of directors of Datavault and the board of directors of NYIAX have each approved and deemed it advisable and in the best interest of their respective stockholders for, as applicable, (i) NYIAX to sell, transfer and assign to Datavault, and Datavault to purchase from NYIAX, the NYIAX Shares, (ii) Datavault to sell, transfer and assign to NYIAX, and NYIAX to purchase from Datavault, the Closing Shares (as defined below) and the Additional Shares (as defined below), and (iii) Datavault and NYIAX to enter into this Agreement and consummate the transactions contemplated hereunder.

C. Concurrently with the execution and delivery of this Agreement, (i) the Parties shall have entered into the software development agreement, substantially in the form attached hereto as Exhibit A (the “Software Development Agreement”), and (ii) intellectual property cross license agreement, substantially in the form attached hereto as Exhibit B (the “License Agreement”), in each case, to be effective immediately upon the Closing.

D. Concurrently with the execution and delivery of this Agreement and as a condition and inducement to Datavault’s and NYIAX’s willingness to enter into this Agreement, (i) Datavault has entered into a lock-up agreement in substantially the form attached hereto as Exhibit C (the “Datavault Lock-Up Agreement”), in respect of the Shares, and (ii) NYIAX has entered into a lock-up agreement in substantially the form attached hereto as Exhibit D (the “NYIAX Lock-Up Agreement”) in respect of the

Closing Shares.

E. Subject to the terms and conditions set forth in this Agreement, the Exchange will be conducted in reliance upon Section 4(a)(2) of the Securities Act, and Rule 506(b) promulgated thereunder.

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

ARTICLE I.
DEFINITIONS AND RULES OF CONSTRUCTION

1.1. Definitions.

Unless otherwise provided herein, capitalized terms used in this Agreement shall have the following meanings:

“Adio Platform” shall mean Datavault’s proprietary advertising optimization platform for increasing engagement using embedded tones.

“Affiliate” of a Person shall mean a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person. For purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through ownership of voting securities or by contract or otherwise, and the terms “controlling” and “controlled by” have meanings correlative to the foregoing.

“Additional Shares” shall have the meaning set forth in Section 2.1.

“Agreement” shall have the meaning set forth in the Preamble.

“Assets” shall mean, with respect to any Person, all assets, properties, rights and claims of every nature, kind and description, tangible and intangible, owned or leased or licensed, wheresoever located and whether or not carried or reflected on the books or records of such Person.

“Bankruptcy and Equity Exception” means except as enforceability may be affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding in equity or at Law) and the implied covenant of good faith and fair dealing.

“Books and Records” shall have the meaning set forth in Section 5.4(c).

“Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banks in New York, New York, United States of America are permitted or required by Law to be closed.

“Closing” shall have the meaning set forth in Section 6.1.

“Closing Date” shall mean the date of this Agreement.

“Closing Shares” shall have the meaning set forth in Section 2.1.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Common Stock” shall have the meaning set forth in the Recitals.

“Consent” shall have the meaning set forth in Section 5.2.

“Contract” shall mean any agreement, contract, subcontract, license, sublicense, lease, indenture, or other legally binding commitment or undertaking of any nature (whether written or oral).

“Contracting Parties” shall have the meaning set forth in Section 8.12.

“Datavault” shall have the meaning set forth in the Preamble.

“Datavault Common Stock” shall have the meaning set forth in the Recitals.

“Datavault Lock-Up Agreement” shall have the meaning set forth in the Recitals.

“Disclosure Schedules” shall have the meaning set forth in the first sentence of ARTICLE III.

“Dollars” or “\$”, when used in this Agreement or any other Transaction Document, shall mean United States dollars unless otherwise stated.

“Effect” shall mean any change, effect, event, occurrence, state of facts or development.

“Effective Time” shall have the meaning set forth in Section 6.1.

“Exchange” shall have the meaning set forth in the Recitals.

“Exchange Act” shall mean the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Fraud” shall mean fraud as constituted under common law of the State of Delaware.

“GAAP” shall mean United States generally accepted accounting principles as promulgated by all relevant accounting authorities and as in effect on the date hereof.

“Governmental Authority” shall have the meaning set forth in Section 3.3(b).

“Indebtedness” shall mean, without duplication: (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services; (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) capital lease obligations; (e) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions; (f) guarantees made by the Company on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (e); and (g) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (f).

“Intellectual Property” shall mean any and all of the following rights arising under the laws of any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other governmental authority-issued indicia of invention ownership (including certificates of invention, petty patents, and utility models); (b) copyrights and works of authorship (whether or not copyrightable), and all registrations, applications for registration, and renewals of any of the foregoing; (c) trademarks, service marks, trade dress, trade names, domain names, social media accounts or usernames, URLs, IP addresses, IP address ranges, websites or other indicia of source or origin, together with all goodwill symbolized thereby and associated therewith; (d) trade secrets, know-how, technology, inventions (whether or not patentable), discoveries, ideas, processes, methods, designs, plans, instructions, specifications, formulas, testing and other protocols, settings, and procedures, and other confidential or proprietary technical, scientific, engineering, business, or financial information (“Trade Secrets”); and (e) other intellectual property and related proprietary rights.

“IRS” shall mean the United States Internal Revenue Service.

“Law” shall mean any law, treaty, statute, ordinance, rule, code or regulation or judgment, decree, order of any Governmental Authority.

“Liabilities” shall mean any liabilities, obligations, guarantees (including lease guarantees), commitments of any nature whether, known accrued, absolute or contingent, matured.

“License Agreement” shall have the meaning set forth in the Recitals.

“Lock-Up Agreements” shall mean the Datavault Lock-Up Agreement, the NYIAX Lock-Up Agreement, and the NYIAX Additional Lock-Up Agreement.

“Losses” shall mean any and all losses, damages, Taxes, Liabilities, costs (including reasonable out-of-pocket costs of investigation) and expenses, including interest, penalties, settlement costs, judgments, awards, fines, costs of mitigation, court costs and fees (including reasonable attorneys’ fees and expenses); provided, Losses shall not include punitive, treble, consequential or other similar damages.

“Material Adverse Effect” shall mean any effect that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on (a) NYIAX’s business, results of operations, assets or financial condition of NYIAX’s business, ; provided, that effects, alone or in combination, that arise out of or result from the following, individually or in the aggregate, shall not be considered when determining whether a Material Adverse Effect has occurred: (i) changes in economic conditions, financial, labor, credit or securities markets in general or the industries and markets in which NYIAX’s ’ business is operated or in which products of NYIAX’s ’ business are used or distributed; (ii) any change after the date hereof in Laws, GAAP or any other accounting standard applicable to NYIAX’s business, or the enforcement or interpretation thereof, applicable to NYIAX’s business; (iii) acts of God (including any hurricane, flood, tornado, earthquake, any epidemics or quarantine restrictions or other natural disaster or any other force majeure event), calamities, national or international political or social conditions, including acts of war, the engagement in hostilities, of any military attack or terrorist act in the jurisdictions in which NYIAX’s business is conducted or any escalation or worsening of any of the foregoing; or (iv) any action taken by or inaction of Datavault, including the announcement of the transactions contemplated by this Agreement and the other Transaction Documents

“Nonparty Affiliates” shall have the meaning set forth in Section 8.12.

“NYIAX” shall have the meaning set forth in the Preamble.

“NYIAX Common Stock” shall have the meaning set forth in the Recitals.

“NYIAX Additional Lock-Up Agreement” shall have the meaning set forth in Section 5.1(b).

“NYIAX Lock-Up Agreement” shall have the meaning set forth in the Recitals.

“NYIAX Platform” shall mean NYIAX’s proprietary software-as-a-service (SaaS) platform for advertising and creative management.

“ordinary course of business” shall mean in the ordinary course of the operation of Datavault or NYIAX, as the case may be, consistent with past practices of Datavault or NYIAX, as applicable.

“Owned Intellectual Property” shall mean any and all Intellectual Property that is owned or co-owned (or purported to be owned or co-owned) by NYIAX or any of its Affiliates and used or held for use in its business.

“Party” and “Parties” shall have the respective meanings set forth in the Recitals to this Agreement.

“Permits” shall mean any permit, franchise, authorization, license or other consent or approval, waiver, exemption or allowance issued or granted by any Governmental Authority.

“Person” shall mean an individual, corporation, partnership, limited liability company, association, trust, incorporated organization, other entity or group (as defined in Section 13(d)(3) of the Exchange Act).

“Preferred Stock” shall have the meaning set forth in Section 4.3(b).

“Proceeding” shall mean any claim, action, arbitration, audit, hearing, investigation, inquiry, examination, proceeding, litigation or suit (whether civil, criminal, or administrative) commenced, brought, conducted, or heard by or before, or otherwise involving any Governmental Authority.

“Representative” shall mean, with respect to any Person, any officer, director, principal, partner, manager, member, attorney, accountant, agent, employee, consultant, financial advisor or other authorized representative of such Person.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, as amended.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“SEC” shall mean the U.S. Securities and Exchange Commission.

“SEC Documents” shall mean all reports, schedules, forms, statements and other documents required to be filed by Datavault under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two (2) years preceding the date hereof (or such shorter period as the Datavault was required by law or regulation to file such material), including the exhibits thereto and documents incorporated by reference therein.

“Shares” shall have the meaning set forth in the Recitals.

“Software Development Agreement” shall have the meaning set forth in the Recitals.

“Subsidiary” or “Subsidiaries” of Datavault, NYIAX or any other Person shall mean any corporation, partnership or other legal entity of which Datavault, NYIAX or such other Person, as the case may be (either alone or through or together with any other Subsidiary), owns, directly or indirectly, more than 50% of the stock or other equity interests the holder of which is generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

“Tax” or “Taxes” shall mean all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“Tax Return” shall mean any return, declaration, report, election, claim for refund, statement or other document relating to Taxes, and filed with a Governmental Authority, including any schedule or attachment thereto, and including any amendment thereof.

“the knowledge of” a Party shall mean, with respect to NYIAX, the actual knowledge of the Company, and with respect to Datavault, the actual knowledge of Nathaniel Bradley after reasonable inquiry.

“Trading Market” means any of the following markets or exchanges on which the shares of Common Stock will, in accordance with the terms hereof, be 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” shall mean this Agreement, the Software Development Agreement, the License Agreement, the Lock-Up Agreements, and all other documents to be executed in connection with the transactions contemplated by this Agreement.

“Treasury Regulations” means the regulations promulgated under the Code.

ARTICLE II. SHARE EXCHANGE

2.1. Purchase Price.

As full consideration for the sale, assignment, transfer and delivery of the Shares by NYIAX to Datavault, and upon the terms and subject to all of the conditions contained herein, Datavault shall issue to NYIAX (i) 3,000,000 newly issued, fully paid and nonassessable shares of Datavault Common Stock (such shares of Datavault Common Stock, the “Closing Shares”), and (ii) 2,000,000 newly issued, fully paid and nonassessable shares of Datavault Common Stock (such shares of Datavault Common Stock, the “Additional Shares”), upon the terms and subject to the conditions set forth in this Agreement.

2.2. The Share Exchange.

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, (i) NYIAX hereby agrees to sell, transfer, convey, assign and deliver to Datavault, and Datavault shall acquire and accept from NYIAX, all of the Shares free and clear of all Liens and other encumbrances, other than restrictions arising from the Datavault Lock-Up Agreement and standard securities law restrictions, and (ii) Datavault shall issue the Closing Shares to NYIAX as set forth in Section 2.3(b), free and clear of all Liens and other encumbrances, other than restrictions arising from the NYIAX Lock-Up Agreement.

2.3. Mechanics of Exchange.

(a) At the Closing, NYIAX shall transfer the full legal and beneficial interest in the Shares to Datavault on the terms set out in this Agreement and deliver an irrevocable instruction letter to its transfer agent for the issuance of the Shares to Datavault.

(b) At the Closing, Datavault shall deliver an irrevocable instruction letter to its transfer agent for the issuance of the Closing Shares to NYIAX upon NYIAX’s transfer of the Shares to Datavault pursuant to Section 2.3(a) as follows:

- (i) 750,000 shares of Datavault Common Stock at the Closing;
- (ii) 750,000 shares of Datavault Common Stock on June 16, 2025;

- (iii) 750,000 shares of Datavault Common Stock on September 16, 2025; and
- (iv) 750,000 shares of Datavault Common Stock on December 16, 2025.

2.4. NYIAX Shares.

NYIAX shall cause its transfer agent to issue to Datavault 900,000 shares of NYIAX Common Stock within one month from the date of this Agreement.

2.5. Fractional Shares.

Notwithstanding any other provision of this Agreement, no fractional shares of Datavault Common Stock or NYIAX Common Stock shall be issued as part of the Exchange. The number of shares of Datavault Common Stock or NYIAX Common Stock to which the Parties are entitled under the terms hereof shall, be rounded to the nearest whole number of shares of common stock.

2.6. Lock-Up Agreements.

(a) Notwithstanding any other provision of this Agreement, as a condition to the issuance of any Shares or Closing Shares hereunder, Datavault shall be required to execute and deliver the Datavault Lock-Up Agreement in respect of the Shares issued to Datavault, and NYIAX shall be required to execute and deliver the NYIAX Lock-Up Agreement in respect of the Closing Shares issued to NYIAX, as part of the Exchange. The NYIAX Lock-Up Agreement shall provide, among other things, that the Closing Shares shall be subject to lock-up restrictions for one (1) year from the issuance, and the Datavault Lock-Up Agreement shall provide, among other things, that the Shares shall be subject to lock-up restrictions for four (4) years from the issuance. The Parties acknowledge that the Closing Shares and the Shares have not been registered under the Securities Act or any state securities Laws and therefore cannot be resold or transferred unless such shares are subsequently registered under the Securities Act and applicable state securities or “blue sky” laws or exemptions from such registration are available, and neither Datavault nor NYIAX is under any obligation to cause any of such shares to be so registered.

(b) Any Direct Registration System advice, share certificate, or other written notice delivered in connection with the Shares or the Closing Shares issued pursuant to this Agreement shall bear a legend or legends referencing restrictions applicable to such shares under applicable securities Laws and under this Agreement.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF NYIAX

NYIAX represents and warrants to Datavault, subject to the disclosures and exceptions set forth in the disclosure schedules delivered by NYIAX to Datavault concurrently herewith (the “Disclosure Schedules”), as of the Closing Date, as follows:

3.1. Corporate Existence.

NYIAX is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware. NYIAX has the requisite corporate power and authority to own, lease and operate its properties, rights and assets related to its business and to conduct the business as the same is now being conducted by it. NYIAX is duly qualified to do business as a foreign corporation under the Laws of all jurisdictions where the nature of the business requires such qualification and is in good standing in each jurisdiction where such qualification is necessary, in each case.

3.2. Corporate Authority; Binding Effect.

This Agreement and the other Transaction Documents to which NYIAX is a party and the consummation by NYIAX of the transactions contemplated hereby and thereby have been duly and validly authorized by NYIAX by all requisite corporate or similar action and no other proceedings on the part of NYIAX is necessary for NYIAX to authorize the execution or delivery of this Agreement or any of the other Transaction Documents to which NYIAX is a party or to perform any of its obligations hereunder or thereunder. NYIAX has full corporate or similar organizational (as applicable) power and authority to execute and deliver the other Transaction Documents to which it is a party and to perform its obligations hereunder or thereunder. This Agreement has been duly executed and delivered by NYIAX, and (assuming due authorization, execution and delivery by NYIAX) this Agreement constitutes a valid and legally binding obligation of NYIAX, enforceable against each of them in accordance with its terms. When each other Transaction Document to which NYIAX is, or will be, party has been duly executed and delivered by NYIAX (assuming due authorization, execution and delivery by NYIAX), such Transaction Document will constitute a valid and legally binding obligation of NYIAX, enforceable against it in accordance with its terms.

3.3. No Conflicts; Governmental Approvals and Consents.

(a) The execution and delivery of this Agreement and the other Transaction Documents by NYIAX to which it is a party, the performance by NYIAX of its obligations hereunder and thereunder and the consummation by NYIAX of the transactions contemplated hereby and thereby, do not (i) violate or conflict with any provision of the organizational documents of NYIAX or, (ii) result in any violation or breach or constitute any default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a material benefit under, under any material contract, indenture, mortgage, lease, note or other material agreement or instrument to which NYIAX is subject or is a party, or (iii) violate, conflict with or result in any material breach under any provision of any Law applicable to NYIAX (to the extent it relates to the transactions contemplated by this Agreement) except in the cases of clauses (ii) and (ii), where the violation, breach, conflict, default, acceleration or failure to give notice or obtain consent would not have a Material Adverse Effect.

(b) No Consent, order or license from, notice to or registration, declaration or filing with, any United States, supranational or foreign, federal, state, provincial, municipal or local government agency, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality (“Governmental Authority”) or any other Person, is required on the part of NYIAX in connection with the execution, delivery or performance of this Agreement or any of the other Transaction Documents to which NYIAX is a party or the consummation of the transactions contemplated hereby and thereby, except for such Consents, orders, licenses, filings or notices (i) that have been or will be obtained as of the Closing, or (ii) where the failure to obtain or make would not have a Material Adverse Effect.

3.4. Subsidiaries.

3.5. NYIAX has no direct or indirect subsidiaries. Capitalization.

(a) The authorized capital stock of NYIAX consists of (i) 125,000,000 shares of NYIAX Common Stock, of which 16,313,302 shares are outstanding, and (ii) 10,000,000 shares of preferred stock, par value \$0.0001 per share, of which no shares are outstanding. All of such issued and outstanding shares of NYIAX are fully paid and nonassessable.

(b) Except as set forth in the Disclosure Schedules or as filed with the SEC (A) no shares of NYIAX Common Stock are subject to preemptive rights or any other similar rights or any liens suffered or permitted by NYIAX; (B) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable or exercisable for, any NYIAX Common Stock, or contracts, commitments, understandings or arrangements by which NYIAX is or may become bound to issue additional NYIAX Common Stock, or options, warrants or scrip for rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable or exercisable for, any NYIAX Common Stock; (C) there are no agreements or arrangements under which NYIAX is obligated to register the sale of any of its securities under the Securities Act; (D) there are no outstanding securities or instruments of NYIAX that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which NYIAX is or may become bound to redeem a security of NYIAX and no other shareholder or similar agreement to which NYIAX is a party; and (E) there are no securities or instruments containing anti-dilution or similar provisions that will or may be triggered by the issuance of the Shares.

3.6. Financial Statements; Liabilities.

(a) NYIAX has made available to Datavault (i) the unaudited consolidated balance sheet of NYIAX as of December 31, 2024 (the “Balance Sheet Date”), and the related unaudited consolidated statement of operations of NYIAX for the year ended 2024 (together, the “Financial Statements”). The Financial Statements have been prepared from the books and records of NYIAX in accordance with GAAP in effect as of the applicable date or period, excluding the related disclosure of financial footnotes consistently applied throughout the periods covered thereby. The Financial Statements fairly present, in all material respects, the consolidated financial position of NYIAX, the consolidated net assets of NYIAX and the consolidated results of operations of NYIAX for the periods covered thereby, in each case, in conformity with GAAP, with only such deviations from such accounting principles and subject to normal immaterial year-end audit adjustments, and excluding the related disclosure of financial footnotes.

(b) Except as set forth in the Disclosure Schedules or as filed with the SEC, there are no Liabilities of NYIAX that would be required under GAAP to be disclosed on a balance sheet of NYIAX, except (i) Liabilities disclosed on the Financial Statements, (ii) immaterial Liabilities, (iii) transaction expenses incurred in connection with the negotiation of this Agreement and the Transaction Documents and (iv) Liabilities expressly set forth and excluding the related disclosure of financial footnotes.

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3.7. Indebtedness.

(a) (b) Except as set forth in the Disclosure Schedules or as filed with the SEC., sets forth a complete and correct list of each item of Indebtedness as of the date of this Agreement, identifying the creditor, or convertible note, to which such Indebtedness is owed, the title of the instrument under which such Indebtedness is owed, the amount of such Indebtedness as of the close of business on the date of this Agreement.

(b) NYIAX has not received any notice of a default, alleged failure to perform or any offset or counterclaim (in each case, that has not been waived or remains pending as of the date of this Agreement) with respect to any item of Indebtedness. Except as set forth in Section 3.7(b) of the Disclosure Schedules, neither the consummation of any of the transactions contemplated by this Agreement nor the execution, delivery or performance of this Agreement or any of the other agreements, documents or instruments referred to in this Agreement will result in a default or breach of the terms of, or accelerate the maturity of or performance under, any conditions, covenants or other terms of any such Indebtedness.

3.8. Good Title.

(a) NYIAX is the record and beneficial owner and has good and marketable title to the Shares, with the right and authority to sell and deliver such Shares. Upon delivery of assignments duly signed, representing the same as herein contemplated and/or upon registering of Datavault as the new owner of the Shares, Datavault will receive good title to the Shares, free and clear of all Liens and other encumbrances, other than restrictions arising from the Datavault Lock-Up Agreement and standard securities law restrictions.

(b) NYIAX holds all rights, assets and property reasonably necessary for the conduct of their respective businesses after the Closing, substantially in the same manner as conducted prior to the Closing.

(c) NYIAX has good and marketable title to all of the properties and assets (whether real, personal, movable, immovable or mixed and whether tangible or intangible) necessary to operate their respective businesses, including all the properties and assets reflected as being owned, as the case may be, by NYIAX on the balance sheet forming part of the most recent Financial Statements or otherwise in the applicable books and records of NYIAX. No other Person owns any assets which are being used in the businesses of NYIAX.

(d) Where any material assets are used, but not owned, by NYIAX or any of its Subsidiaries or any facilities or services which are material to the respective businesses of NYIAX or any of its Subsidiaries are provided to, as the case may be, NYIAX or any of its Subsidiaries by a third party, no event of default has occurred or is subsisting or has been alleged or is likely to arise which may entitle any third party to terminate any agreement or license in respect of the provision of such facilities or services.

3.9. [Reserved].

3.10. Litigation.

Except as set forth in the Disclosure Schedules or as filed with the SEC, NYIAX is not subject to any order, judgment, stipulation, injunction, decree or agreement with any party, including any Governmental Authority, that would prevent or reasonably be expected to interfere with or delay the consummation of the transactions contemplated by the Transaction Documents or would be material to the business of NYIAX. Except as set forth on Schedule 3.10, there are no Proceedings pending or, to the knowledge of NYIAX, threatened, against NYIAX or any of its Subsidiaries, or any of their respective officers or directors in the role as an officer or director of NYIAX.

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3.11. Compliance with Laws; Permits.

(a) Compliance with Laws. Except as set forth in the Disclosure Schedules or as filed with the SEC, (i) NYIAX is conducting its business in compliance, in all material respects, with all Laws applicable to its business, and (ii) in the past three years, NYIAX has not received any written notice of any material violation or alleged violation of any such applicable Law.

(b) Permits. (i) NYIAX has all Permits that are reasonably necessary to conduct its business as currently conducted, (ii) all such Permits are in full force and effect, except where the failure to obtain such Permits would not have a Material Adverse Effect (iii) NYIAX's business is not being conducted in violation or default of such Permits, (iv) NYIAX is not in receipt of any written notification that any Governmental Authority is threatening to revoke any such Permit, (v) all such Permits were lawfully obtained and (vi) all such Permits are transferable to NYIAX.

3.12. Intellectual Property.

(a) Registered Intellectual Property. Section 3.12(a) of the Disclosure Schedules sets forth a correct and complete list of all registrations and applications for Owned Intellectual Property, including:

- (i) patents owned or filed by, or on behalf of, NYIAX or any of its Subsidiaries, or under which NYIAX has exclusive rights in any field or territory, including the country of filing, owner, filing number, date of issue or filing, expiration date and title;
- (ii) registered trademarks and pending applications for registration of trademarks owned or filed by, or on behalf of, or used by NYIAX, including country of filing, description of goods or services, registration or application number and date of issue;
- (iii) registered copyrights and applications for registration of copyrights owned or filed by, or on behalf of, or used by NYIAX, including country of filing, owner, filing number, date of issue and expiration date; and
- (iv) domain names owned by NYIAX.

(b) Validity and Enforceability. All registrations and applications for Owned Intellectual Property are subsisting and unexpired, valid, enforceable and otherwise in good standing and none of such registrations and applications have been adjudged invalid or unenforceable in whole or in part. All fees that are due and payable in respect of the Owned Intellectual Property have been duly paid, and NYIAX has taken all actions required in the prosecution of the Owned Intellectual Property. No Owned Intellectual Property is involved in any cancellation, expungement, interference, opposition, reissue, reexamination, revocation, or equivalent proceeding, in which the scope, validity, enforceability or patentability of any such Owned Intellectual Property is being contested or challenged.

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(c) Ownership. NYIAX solely and exclusively own all Owned Intellectual Property, free and clear of any liens. Without limiting the generality of the foregoing, NYIAX has entered into written agreements with each of their current employees who are/were involved in the creation of any Owned Intellectual Property, whereby such employees (x) assign to NYIAX all ownership interest and right they may have in any Intellectual Property, including any Owned Intellectual Property, created or developed by such employees in connection with the performance of their services for NYIAX, (y) acknowledge NYIAX's sole and exclusive ownership of all such Owned Intellectual Property, and (z) agree to maintain the confidentiality of all Trade Secrets and other confidential information and use such information only for the benefit of NYIAX.

(d) Infringement. NYIAX's business, products and services as currently and formerly conducted do not infringe, misappropriate, violate or otherwise conflict with any Intellectual Property right of any other Person. NYIAX has not received any notice, demand, or indemnification request, or is subject to any claim, injunction, directive, order, or Proceeding (including any oppositions, interferences or reexaminations) whether pending or, to the knowledge of NYIAX, threatened (i) asserting or suggesting that any infringement, misappropriation, violation, dilution or unauthorized use of Intellectual Property is or may be occurring or has or may have occurred, or (ii) challenging the validity, enforceability or use of any Owned Intellectual Property. To NYIAX's knowledge, no Person is infringing, misappropriating, violating or otherwise conflicting with any Owned Intellectual Property.

(e) Protection and Confidentiality. NYIAX has implemented reasonable policies and procedures and have taken all reasonable steps and security measures necessary to maintain, enforce and protect their rights in the Owned Intellectual Property and at all times have maintained the confidentiality of all Trade Secrets included in, or otherwise used by NYIAX. None of the Trade Secrets used in the business of NYIAX have been disclosed to a third party and, to the knowledge of NYIAX, NYIAX has not experienced any loss or data breach related thereto.

3.13. Tax Matters.

(a) All Tax Returns required to be filed by NYIAX have been duly filed, all such Tax Returns are true, correct, and complete in all material respects, and all Taxes required to be paid by NYIAX (whether or not shown on any Tax Return) have been duly and timely paid. There is no power of attorney with respect to Taxes that could affect NYIAX after the Closing. As of the Balance Sheet Date, NYIAX had no Liability for unpaid Taxes relating to the business of NYIAX that have not been accrued or reserved on the Financial Statements, and NYIAX has not incurred any Liability for Taxes other than in the ordinary course of business since the Balance Sheet Date.

(b) NYIAX has duly and timely withheld or collected all Taxes required to be withheld or collected by it, duly and timely paid such withheld or collected amounts to the proper Governmental Authority, and fully complied with all information reporting requirements with respect to such withholding and payment.

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(c) There are no Liens for Taxes (other statutory Liens for Taxes not yet due and payable) on any of the assets of NYIAX.

(d) No claim has ever been made by any Governmental Authority in a jurisdiction where NYIAX does not file Tax Returns that NYIAX is or may be subject to taxation by such jurisdiction. NYIAX is not subject to any Tax payment obligation or Tax Return filing obligation in any jurisdiction outside the United States.

(e) NYIAX has not entered into, nor is NYIAX bound by, any Tax sharing, allocation, or indemnification agreement. NYIAX does not have any Liability for the Taxes of any other Person under Treasury Regulations Section 1.1502-6 (or any corresponding or similar provision of state, local, or non-U.S. Law), as a transferee or successor, by Contract, or otherwise. NYIAX has not participated in any "reportable transaction" within the meaning of Treasury Regulations Section 1.6011-4(b) (or any corresponding or similar provision of state, local, or non-U.S. Law).

(f) NYIAX is and always has been properly treated as a domestic corporation for U.S. federal and applicable state and local income Tax purposes.

3.14. Brokers and Other Advisors.

NYIAX has not retained any investment banker, finder or broker who would have a valid claim for a fee, brokerage, commission or similar compensation in connection with the negotiation, execution or delivery of this Agreement or any of the other Transaction Documents or the consummation of any of the transactions contemplated hereby or thereby.

3.15. Business Records.

All files, documents, ledgers, instruments, papers, books and records and similar information (whether in paper, digital or other tangible or intangible form) that are used or held for use by NYIAX and necessary for NYIAX's ' conduct of its business, including all technical information, quality control records, blueprints, research and development notebooks and files, customer credit data, mailing lists, warranty information, operating guides and manuals, studies and reports, catalogs, advertising and promotional materials, brochures, standard forms of documents, product testing reports, manuals, sales and promotional literature, drawings, technical plans, business plans, budget projections, price lists, customer and supplier lists and records (including correspondence), referral sources (the "Business Records"), but excluding any minute books, stock ledgers, financial records, Tax records and other materials that NYIAX is required by Law to retain have been kept in the ordinary course of business and are true, complete and correct in all material respects. Copies of such Business Records have been made available to Datavault.

3.16. Exclusivity of Representations; No other Representations or Warranties.

The representations and warranties made by NYIAX in this Agreement and the other Transaction Documents are the sole and exclusive representations and warranties made by NYIAX in connection with the transactions contemplated by this Agreement or the other Transaction Documents. NYIAX hereby disclaims any other express or implied representations or warranties.

ARTICLE IV.
REPRESENTATIONS OF DATAVAULT

Datavault represents and warrants to NYIAX, as of the Closing Date, as follows:

4.1. Corporate Existence.

Datavault is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware. Datavault has the requisite corporate power and authority to own, lease and operate its properties, rights and assets related to its business and to conduct its business as the same is now being conducted by it. Datavault is duly qualified to do business as a foreign corporation under the Laws of all jurisdictions where the nature of its business or location of its assets requires such qualification and is in good standing in each jurisdiction where such qualification is necessary.

4.2. Corporate Authority.

(a) This Agreement and the other Transaction Documents to which Datavault is a party and the consummation of the transactions contemplated hereby and thereby involving Datavault have been duly authorized by Datavault by all requisite corporate action. Datavault has all corporate power and authority to execute and deliver the Transaction Documents to which it is a party and to perform its obligations thereunder. This Agreement has been duly executed and delivered by Datavault, and the other Transaction Documents will be duly executed and delivered by Datavault, and this Agreement constitutes, and the other Transaction Documents when so executed and delivered will constitute, a valid and legally binding obligation of Datavault, enforceable against it in accordance with its terms.

(b) The execution and delivery of this Agreement and the other Transaction Documents by Datavault, the performance by Datavault of its obligations hereunder and thereunder and the consummation by Datavault of the transactions contemplated hereby and thereby do not and will not (i) violate or conflict with any provision of the respective certificate of incorporation or by-laws or similar organizational documents of Datavault, (ii) result in any violation or breach or constitute any default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a material benefit under, or result in the creation of any Lien under any contract, indenture, mortgage, lease, note or other agreement or instrument to which Datavault is subject or is a party, or (iii) violate, conflict with or result in any breach under any provision of any Law applicable to Datavault or any of its properties or assets, except, in the case of clauses (ii) and (iii), to the extent that any such default, violation, conflict, breach or loss would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Datavault's ability to consummate the transactions contemplated under this Agreement or to perform its obligations under this Agreement and the other Transaction Documents to which Datavault is a party.

4.3. Capitalization.

As of the date of this Agreement, the authorized capital of Datavault consists of:

(a) 300,000,000 authorized shares of Datavault Common Stock, 61,156,527 shares of which are issued and outstanding immediately prior to the date hereof. All of such outstanding shares of Datavault Common Stock have been duly authorized, are fully paid and nonassessable, and were issued in compliance with all applicable federal and state securities laws. The shares of Datavault Common Stock to be issued to NYIAX pursuant to this Agreement will be, at the time of issuance, duly authorized, fully paid and nonassessable and will be issued in compliance with all applicable federal and state securities laws.

(b) 20,000,000 authorized shares of preferred stock, par value \$0.0001 per share (the "Preferred Stock"), of which 375,000 shares have been designated Series B Preferred Stock, 0 of which are issued and outstanding immediately prior to the date hereof. All of the outstanding shares of Preferred Stock have been duly authorized, are fully paid and nonassessable and were issued in compliance with all applicable federal and state securities laws.

4.4. Solvency.

As of and immediately after the Closing, Datavault is and will be able to pay its debts as they become due in the ordinary course of business and will own assets having a present fair saleable value greater than its stated Liabilities and identified contingent Liabilities, including any contingent Liabilities. Datavault may have in respect of any actual or alleged violation or noncompliance of Law by Datavault. Immediately after the Closing, Datavault will have adequate capital to carry on its business and to perform its obligations under its Contracts. Datavault has not incurred, does not intend to incur, and does not reasonably believe it will incur debts beyond its ability to pay as such debts mature or become due. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereunder, delay or defraud either present or future creditors of Datavault or to prevent Datavault from performing its obligations under its Contracts.

4.5. Title to Assets.

(a) Datavault holds all rights, assets and property necessary for the conduct of its business after the Closing, substantially in the same manner as conducted prior to the Closing.

(b) Where any material assets are used, but not owned, by Datavault or any facilities or services which are material to the respective businesses of Datavault are provided to, as the case may be, Datavault by a third party, no event of default has occurred or is subsisting or has been alleged or is likely to arise which may entitle any third party to terminate any agreement or license in respect of the provision of such facilities or services.

4.6. SEC Filings; Financial Statements.

(a) Since December 31, 2023, all statements, reports, schedules, forms and other documents, including any exhibits thereto, required to have been filed by Datavault or its officers with the SEC have been so filed on a timely basis. As of the time it was filed with the SEC (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing), each of the SEC Documents complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act (as the case may be), and the rules and regulations thereunder, and, as of the time they were filed, or if amended or superseded by a filing prior to the date of this Agreement, on the date of the last such amendment or superseding filing prior to the date of this Agreement, none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The certifications and statements required by (i) Rule 13a-14 under the Exchange Act and (ii) 18 U.S.C. §1350 (Section 906 of the Sarbanes-Oxley Act) relating to the SEC Documents are accurate and complete and comply as to form and content with all applicable Laws, and no current or former executive officer of Datavault has failed to make the certifications required of him or her. As of the date of this Agreement, there are no outstanding unresolved comments in comment letters received from the SEC or the Trading Market with respect to SEC Documents. None of the SEC Documents is the subject of ongoing SEC review and there are no inquiries or investigations by the SEC or any internal investigations pending or threatened, including with regards to any accounting practices of Datavault.

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(b) The financial statements (including any related notes) contained or incorporated by reference in the SEC Documents: (i) complied as to form in all material respects with the published rules and regulations of the SEC applicable thereto; (ii) were prepared in accordance with GAAP (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, except as permitted by Quarterly Report filed on Form 10-Q with the SEC, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments) applied on a consistent basis unless otherwise noted therein throughout the periods indicated; and (iii) fairly present, in all material respects, the financial position of Datavault as of the respective dates thereof and the results of operations and cash flows of Datavault for the periods covered thereby. Other than as expressly disclosed in the SEC Documents filed prior to the date hereof, there has been no material change in Datavault's accounting methods or principles that would be required to be disclosed in Datavault's financial statements in accordance with GAAP.

4.7. Governmental Approvals and Consents.

No Consent, approval, order or authorization of, license or permit from, notice to or registration, declaration or filing with, any Governmental Authority, is required on the part of Datavault in connection with the execution, delivery or performance of this Agreement or any of the other Transaction Documents or the consummation of the transactions contemplated hereby and thereby except for such consents, approvals, orders or authorizations of, licenses or permits, filings or notices which have been obtained and remain in full force and effect and those with respect to which the failure to have obtained or to remain in full force and effect would not have or reasonably be expected to have, individually or in the aggregate, a material adverse effect on Datavault's ability to consummate the transactions contemplated under this Agreement or to perform its obligations under this Agreement and the other Transaction Documents to which Datavault is a party.

4.8. Litigation.

Datavault is not subject to any order, judgment, stipulation, injunction, decree or agreement with any party, including any Governmental Authority, that would prevent or reasonably be expected to interfere with or delay the consummation of the transactions contemplated by the Transaction Documents. There are no Proceedings pending or, to the knowledge of Datavault, threatened against Datavault or any of its Affiliates that would reasonably be expected to have a material impact on the business of Datavault following the consummation of the transactions contemplated by the Transaction Documents.

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4.9. Brokers and Other Advisors.

Neither Datavault nor any of its Affiliates has retained any financial advisor, investment banker, finder or broker who would have a valid claim for a fee, brokerage, commission or similar compensation from Datavault or its Affiliates in connection with the negotiation, execution or delivery of this Agreement or any of the other Transaction Documents or the consummation of any of the transactions contemplated hereby or thereby.

4.10. Not an Investment Company.

Datavault is not an investment company as described in Section 1.351-1(c)(1)(ii) of the Treasury Regulations.

4.11. Exclusivity of Representations; No Other Representations or Warranties.

The representations and warranties made by Datavault or any of its Affiliates in this Agreement and the other Transaction Documents are the sole and exclusive representations and warranties made by Datavault and its Affiliates in connection with the transactions contemplated by this Agreement or the other Transaction Documents. Each of Datavault and its Affiliates hereby disclaims any other express or implied representations or warranties.

ARTICLE V. AGREEMENTS OF DATAVAULT AND NYIAX

5.1. Issuance of Additional Shares.

(a) Upon completion of a complete advertising cycle for a third party clientele, and upon the Parties' mutual written agreement that the Adio Platform has been integrated into the NYIAX Platform upon completion of the advertising cycle, Datavault will issue the Additional Shares within ten (10) business days from the completion of the integration.

(b) Notwithstanding any other provision of this Agreement, as a condition to the issuance of any Additional Shares hereunder, NYIAX shall be required to execute and deliver a lock-up agreement in substantially the form attached hereto as Exhibit E (the "NYIAX Additional Lock-Up Agreement") in respect of the Additional

Shares. The NYIAX Additional Lock-Up Agreement shall provide, among other things, that (i) the Additional Shares shall be subject to lock-up restrictions for two (2) years from the issuance, and (ii) NYIAX is entitled to use the Additional Shares as a collateral for a loan; and/ or transfer in connection with any financing or capital raising transaction so long as such third party agrees to comply with the lock-up terms and any loan document provides for the ability of Datavault to purchase such loan and make repayment in full. . The Parties acknowledge that the Additional Shares will not be registered under the Securities Act or any state securities Laws and therefore cannot be resold or transferred unless such shares are subsequently registered under the Securities Act and applicable state securities or “blue sky” laws or exemptions from such registration are available, and Datavault is under any obligation to cause any of such shares to be so registered.

5.2. Necessary Efforts.

Subject to the other terms and conditions of this Agreement, NYIAX and Datavault agree to use their respective reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate and make effective the transactions contemplated by the Transaction Documents and to use their respective reasonable best efforts to cause the conditions to each Party’s obligation to close the transactions contemplated hereby to be satisfied, including all actions necessary to obtain (a) all licenses, certificates, permits, approvals, clearances, expirations, waivers or terminations of applicable waiting periods, authorizations, qualifications and orders (each a “Consent”) of any Governmental Authority required for the satisfaction of the conditions set forth in this Agreement, and (b) all other Consents of any Person, necessary or desirable in connection with the consummation of the transactions contemplated by the Transaction Documents, it being understood that neither Party nor any of their respective Subsidiaries shall be required to expend any money other than for filing fees or expenses or immaterial administrative or legal costs or expenses. The Parties shall cooperate fully with each other to the extent necessary in connection with the foregoing.

5.3. Public Disclosures.

A mutually agreed joint press release describing the terms of this Agreement shall be released promptly after execution of this Agreement and Datavault shall file a Current Report on Form 8-K with the SEC, which shall include that press release and this Agreement as exhibits. Thereafter, unless otherwise required by Law, no press release or other public announcement or comment pertaining to the transactions contemplated by this Agreement will be made by or on behalf of any Party or its Affiliates without the prior written approval of the other Party (which approval shall not be unreasonably withheld). If in the judgment of either Party upon the advice of outside counsel such a press release or public announcement is required by Law, the Party intending to make such release or announcement shall to the extent practicable use reasonable commercial efforts to provide prior written notice to the other Party of the contents of such release or announcement and to allow the other Party reasonable time to comment on such release or announcement in advance of such issuance.

5.4. Access to Records and Personnel.

(a) Exchange of Information. After the Closing, each Party agrees to provide, or cause to be provided, to each other, as soon as reasonably practicable after written request therefor, after five business days’ notice, and at the requesting Party’s sole expense, reasonable access, during regular business hours, to the other Party’s employees and to any books, records, documents, files and correspondence in the possession or under the control of the other Party or such other Party’s Subsidiaries that the requesting Party reasonably needs (i) to comply with reporting, disclosure, filing or other requirements imposed on the requesting Party or any of its Affiliates (including under applicable securities Laws) by a Governmental Authority having jurisdiction over the requesting Party or any of its Affiliates, (If the result of a subpoena the requesting Party to inform the other Party as soon as the subpoena is received and the other Party will have the right to fight such subpoena.) (ii) for use in any other judicial, regulatory, administrative or other proceeding or in order to satisfy Tax, audit, accounting, claims, regulatory, litigation or other similar requirements applicable to such requesting Party or any of its Affiliates, (iii) in connection with the preparation of the financial statements of such Party or its Affiliates or (iv) to comply with its obligations under this Agreement or any of the other Transaction Documents; provided, that such access shall not unreasonably interfere with the normal business operations of Datavault, NYIAX or their respective Affiliates, as applicable. Notwithstanding anything to the contrary set forth in this Section 5.4(a), no Party shall be required to provide access to or disclose information (x) where such access or disclosure would violate any Law (including any applicable data protection and privacy Laws) or agreement, or waive any attorney-client or other similar privilege, and each Party may redact information regarding itself or its Subsidiaries or otherwise not relating to the other Party and its Subsidiaries, and, in the event such provision of information could be commercially detrimental, violate any Law or agreement or waive any attorney-client or other similar privilege, the Parties shall take all commercially reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence, or (y) in the event of a dispute between Datavault or any of its Affiliates, on the one hand, and NYIAX or any of its Affiliates, on the other hand, except as would be required by applicable civil process or applicable discovery rules. To the extent that either Party is provided access to personal data by the other Party pursuant to this Section, the receiving Party shall (without prejudice to the foregoing obligations set forth in this Section 5.4(a)) comply with all applicable data protection and privacy laws with respect to such personal data.

(b) Ownership of Information. Any information owned by a Party that is provided to a requesting Party pursuant to this Section 5.4 shall be deemed to remain the property of the providing Party. Unless specifically set forth herein, nothing contained in this Agreement shall be construed as granting or conferring rights of license or otherwise in any such information.

(c) Record Retention. Except as otherwise provided herein, and to the extent permitted by applicable data protection and privacy Law, each Party agrees to retain the books, records, documents, instruments, accounts, correspondence, writings, evidence of title and other papers (the “Books and Records”) in their respective possession or control for a period of six (6) years, following the Closing Date. Notwithstanding the foregoing, any Party may destroy or otherwise dispose of any Books and Records in accordance with its record retention policies consistent with past practice and/or applicable data protection and privacy Laws, provided that, prior to such destruction or disposal (i) such Party shall provide no less than 30 days’ prior written notice to the other Party of any such proposed destruction or disposal (which notice shall specify in reasonable detail which of the Books and Records is proposed to be so destroyed or disposed of), and (ii) if a recipient of such notice shall request in writing prior to the scheduled date for such destruction or disposal that any of the information proposed to be destroyed or disposed of be delivered to such recipient, such Party proposing the destruction or disposal shall, as soon as reasonably practicable, arrange for the delivery of such of the Books and Records as was requested by the recipient (it being understood that all reasonable out of pocket costs associated with the delivery of the requested Books and Records shall be paid by such recipient).

(d) Other Agreements Providing for Exchange of Information. The rights and obligations granted under this Section 5.4 are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange or confidential treatment of information set forth in this Agreement.

(e) Confidential Information; Public Disclosure. The Parties shall ensure that, on and at all times after the Closing Date, each Party keeps strictly confidential and does not use or disclose to any other Person, any non-public document or other non-public information that relates directly or indirectly to Datavault, NYIAX or any their

ARTICLE VI.
CLOSING

6.1. Closing Date.

The closing of the Exchange and the other transactions hereunder (the “Closing”) shall take place remotely, and in such other places as are necessary to affect the transactions to be consummated at the Closing, by signing of this Agreement, or at such other time, date and place as shall be fixed by mutual agreement of the Parties. The effective time (“Effective Time”) of the Closing for tax, operational and all other matter matters shall be deemed to be 12:01 a.m. Eastern Time on the Closing Date.

6.2. Datavault Obligations.

At the Closing, Datavault shall (i) deliver to NYIAX the Closing Shares as set forth in Section 2.3(b), and (ii) deliver to NYIAX the following in such form and substance as are reasonably acceptable to NYIAX:

- (a) this Agreement duly executed;
- (b) the Software Development Agreement duly executed;
- (c) the License Agreement duly executed;
- (d) the Datavault Lock-Up Agreement duly executed;

(e) a certificate signed by an authorized executive officer of Datavault, dated the Closing Date, to the effect that (i) Datavault shall have performed and complied in all material respects with all covenants contained in this Agreement to be performed by it prior to the Closing, and (ii) the representations and warranties of Datavault contained in this Agreement shall be true and correct as of the date of this Agreement (except to the extent such representations and warranties by their terms speak as of an earlier date, in which case they shall be true and correct as of such date), in all material respects;

(f) a certificate of the secretary (or equivalent officer) of Datavault certifying that attached thereto are (i) true and complete copies of all resolutions adopted by the board of directors of Datavault authorizing the execution, delivery and performance of this Agreement and the consummation of the Exchange and other transactions contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and there, and (ii) true and complete copies of the certificate of incorporation and by-laws of Datavault if not already publicly filed with the SEC;

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- (g) transfer agent instructions to issue via book-entry the Closing Shares being issued to NYIAX; and

(h) such other documents and instruments (if any) as counsel for NYIAX and Datavault mutually agree to be reasonably necessary to consummate the transactions described herein.

6.3. NYIAX Obligations.

At the Closing, NYIAX shall (i) deliver to NYIAX the Shares as set forth in Section 2.3(a), and (ii) deliver to Datavault the following in such form and substance as are reasonably acceptable to Datavault:

- (a) this Agreement duly executed;
- (b) the Software Development Agreement duly executed;
- (c) the License Agreement duly executed;
- (d) the NYIAX Lock-Up Agreement duly executed;

(e) a certificate signed by an authorized executive officer of NYIAX, dated the Closing Date, to the effect that (i) NYIAX shall have performed and complied in all material respects with all covenants contained in this Agreement to be performed by it prior to the Closing, and (ii) the representations and warranties of NYIAX contained in this Agreement shall be true and correct as of the date of this Agreement (except to the extent such representations and warranties by their terms speak as of an earlier date, in which case they shall be true and correct as of such date), in all material respects;

(f) a certificate of the secretary (or equivalent officer) of NYIAX certifying that attached thereto are (i) true and complete copies of all resolutions adopted by the board of directors of NYIAX authorizing the execution, delivery and performance of this Agreement and the consummation of the Exchange and other transactions contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and there, and (ii) true and complete copies of the certificate of incorporation and by-laws of NYIAX;

- (g) transfer agent instructions to issue via book-entry the Shares being issued to Datavault; and

(h) such other documents and instruments (if any) as counsel for NYIAX and Datavault mutually agree to be reasonably necessary to consummate the transactions described herein.

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ARTICLE VII.
TERMINATION

7.1. Termination Events.

This Agreement may be terminated, and the transactions contemplated herein may be abandoned:

(a) by mutual written consent of the Parties;

(b) by Datavault (by delivery of a written notice to NYIAX in accordance with Section 8.1(b)) if (i) Datavault is not in breach of any of its representations, warranties, covenants or other obligations hereunder, and (ii) NYIAX is in material breach of any of its representations, warranties, covenants or other obligations hereunder, and such breach is either (A) not capable of being cured or (B) if curable, is not cured within forty-five (45) Business Days after the giving of written notice by Datavault to NYIAX; or

(c) by NYIAX (by delivery of a written notice to Datavault in accordance with Section 8.1(a)) if (i) NYIAX is not in breach of any of its representations, warranties, covenants or other obligations hereunder, and (ii) Datavault is in material breach of any of its representations, warranties, covenants or other obligations hereunder, and such breach is either (A) not capable of being cured or (B) if curable, is not cured within forty-five (45) Business Days after the giving of written notice by NYIAX to Datavault.

7.2. Termination Procedures.

If any Party wishes to terminate this Agreement pursuant to Section 7.1, such Party shall deliver to the other Party a written termination notification in accordance with Section 8.1 stating that such Party is terminating this Agreement and setting forth a brief statement of the basis on which such Party is terminating this Agreement.

7.3. Effect of Termination.

In the event of any termination of this Agreement as provided in Section 7.1, this Agreement shall forthwith become wholly void and of no further force and effect, all further obligations of the Parties under this Agreement shall terminate and there shall be no liability on the part of any Party (or any Affiliate or Representative of such Party) to any other Party (or such other Persons), except that the provisions of Section 5.3 and ARTICLE VIII of this Agreement shall remain in full force and effect and the Parties shall remain bound by and continue to be subject to the provisions thereof. Notwithstanding the foregoing, the provisions of this Section 7.3 shall not relieve either Party of any liability for Fraud, intentional misconduct or breach of any of its representations, warranties, covenants, or other agreements set forth in this Agreement occurring prior to its termination.

ARTICLE VIII. MISCELLANEOUS

8.1. Notices.

All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt, by other than automatic means, whether electronic or otherwise), (b) when sent by e-mail (with written confirmation of receipt) or (c) one (1) Business Day following the day sent by a nationally recognized overnight courier for next business Day delivery (with written confirmation of receipt), in each case, at the following addresses (or to such other address as a Party may have specified by written notice given to the other Party pursuant to this provision):

(a) If to Datavault:

Datavault AI Inc.
15268 NW Greenbrier Pkwy
Beaverton, OR 97006
Attention: Nathaniel Bradley

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

Sullivan & Worcester LLP
1251 Avenue of Americas
New York, NY 10020
Attention: Joseph E. Segilia

(b) If to NYIAX:

NYIAX, Inc.
900 Easton Ave. STE 26-1088
Somerset NJ 08873
Attention: Teri Gallo

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

Dickinson Wright PLLC
350 East Las Olas Blvd, Suite 1750
Fort Lauderdale, FL 33326
Attention: Joel D. Mayersohn

8.2. Severability.

If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement and the application of such provision to other persons or circumstances other than those which it is determined to be illegal, void or unenforceable, shall not be impaired or otherwise affected and shall remain in full force and effect to the fullest extent permitted by applicable Law, and Datavault and NYIAX shall negotiate in good faith to replace such illegal, void or unenforceable provision with a provision that corresponds as closely as possible to the intentions of the Parties as expressed by such illegal, void or unenforceable provision.

8.3. Further Assurances; Further Cooperation.

Subject to the terms and conditions hereof, each of the Parties agrees to use commercially reasonable efforts to execute and deliver, or cause to be executed and delivered, all documents and to take, or cause to be taken, all actions that may be reasonably necessary or appropriate to effectuate the provisions of this Agreement, provided that all such actions are in accordance with applicable Law.

8.4. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Copies of executed counterparts transmitted by electronic signature (including by means of e-mail in .pdf format) shall be considered original executed counterparts for purposes of this Section 8.4.

8.5. Expenses.

Except as otherwise expressly provided herein, Datavault and NYIAX shall each pay their respective expenses incurred in connection with the negotiation and execution of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

8.6. Assignment; Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective permitted successors, legal representative and permitted assigns; provided, however, that no Party to this Agreement may directly or indirectly assign any or all of its rights or delegate any or all of its obligations under this Agreement without the express prior written consent of the other Party to this Agreement. No assignment by a Party of any obligations hereunder shall relieve such Party of any such obligations. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and permitted assigns.

8.7. Amendment; Waiver.

This Agreement may be amended, supplemented or otherwise modified only by a written instrument executed by both Datavault and NYIAX. No waiver by either Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the Party so waiving. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, or a failure or delay by any Party in exercising any power, right or privilege under this Agreement shall be deemed to constitute a waiver by the Party taking such action of compliance with any representations, warranties, covenants, or agreements contained herein, and in any documents delivered or to be delivered pursuant to this Agreement and in connection with the Closing hereunder. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

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8.8. Third Parties; No Benefit to Third Parties.

This Agreement does not create any rights, claims or benefits inuring to any Person that is not a Party nor create or establish any third-party beneficiary hereto.

8.9. Governing Law.

This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of or related to this Agreement must be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the city of New York and County of New York, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

8.10. Disclosure Schedules.

The Disclosure Schedules are hereby incorporated and made a part hereof and is an integral part of this Agreement. The Disclosure Schedules have been arranged, for purposes of convenience only, as separate parts corresponding to the sections of ARTICLE III of this Agreement. The representations and warranties contained in ARTICLE III of this Agreement are subject to (a) the exceptions and disclosures set forth in the sections of the Disclosure Schedules corresponding to the particular section of ARTICLE III in which such representation and warranty appears and are a part of this Agreement as if fully set forth herein, (b) any exceptions or disclosures explicitly cross referenced in such section of the Disclosure Schedules by reference to another section of the Disclosure Schedules and (c) any exception or disclosure set forth in any other section of the Disclosure Schedules to the extent it is reasonably apparent on the face of such disclosure that such exception or disclosure is intended to qualify another section of the Disclosure Schedules. Nothing contained in the Disclosure Schedules should be construed as an admission of liability or responsibility of any Party to any third party in connection with any pending or threatened Proceeding or otherwise. Disclosures in the Disclosure Schedule shall not establish a standard of materiality for any purpose whatsoever. Any capitalized terms used in the Disclosure Schedules but not otherwise defined therein shall be defined as set forth in this Agreement.

8.11. Entire Agreement.

This Agreement, the other Transaction Documents, the Disclosure Schedules and the exhibits hereto and any other agreements between Datavault and NYIAX entered into on the date hereof set forth the entire understanding of the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations or warranties between the Parties or their respective Subsidiaries other than those set forth or referred to herein or therein. In the event of any inconsistency between the provisions of this Agreement and any other Transaction Document, the provisions of this Agreement shall prevail.

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8.12. Non-Recourse.

Except as expressly set forth in the other Transaction Documents, all claims, obligations, liabilities, or causes of action (whether in contract or in tort, at law or in equity, granted by statute or otherwise) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, or the negotiation, execution, or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement), may be made only against (and such representations and warranties are those solely of) the Persons that are expressly identified as parties in the preamble to this Agreement (the "Contracting Parties"). No Person who is not a Contracting Party, including any current, former or future equity holder, incorporator, controlling person, general or limited partner, member, Affiliate, or assignee or Representative of, and any financial advisor or lender to, any Contracting Party, or any current, former or future equity holder, incorporator, controlling person, general or limited partner, Affiliate, or assignee or Representative of, and any financial advisor or lender to, any of the foregoing or any of their

respective successors, predecessors or assigns (or any successors, predecessors or assigns of the foregoing) (collectively, the “Nonparty Affiliates”), shall have any Liability (whether in contract or in tort, at law or in equity, granted by statute or otherwise) for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach (other than as expressly set forth in the other Transaction Documents), and, to the maximum extent permitted by Law, each Contracting Party hereby waives and releases all such Liabilities, claims, causes of action, and obligations arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach (other than as expressly set forth in the other Transaction Documents) against any such Nonparty Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, except to the extent otherwise expressly set forth in the other Transaction Documents, (i) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available, whether in contract or in tort, at law or in equity, granted by statute or otherwise, to avoid or disregard the entity form of a Contracting Party or otherwise impose liability of a Contracting Party on any Nonparty Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise, in each case, arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach and (ii) each Contracting Party disclaims any reliance upon any Nonparty Affiliates with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement.

8.13. Waiver and Release of Claims.

(a) Subject to Section 8.13(b), in consideration of the covenants, agreements and undertaking each Party is entitled under the Agreement, effective as of the Closing, Datavault and NYIAX, respectively, on behalf of itself and each of its Affiliates, and its and their respective Representatives and successors and assigns, and each of their respective Affiliates, past and present direct and indirect equity holders, parents, subsidiaries, principals, directors, managers, partners, general partners, limited partners, officers, employees, trustees, joint ventures, predecessors, successors, assigns, beneficiaries, heirs, executors, personal or legal representatives, insurers, attorneys, agents and representatives in their capacities as such (“Releasing Parties”) hereby irrevocably and unconditionally releases, acquits and forever discharges Datavault and NYIAX, respectively, and each of its Affiliates, and their respective past and present successors, predecessors, assigns, employees, agents, partners, members, Subsidiaries, equity holders, parent companies, controlling persons, other Affiliates (corporate or otherwise) and legal representatives, including their respective past and present officers and directors, solely in their capacities as such, and any past and present successors, predecessors, assigns, employees, agents, partners, members, Subsidiaries, equity holders, parent companies, controlling persons, other Affiliates (corporate or otherwise) and legal representatives, including past and present officers and directors, solely in their capacity as such, of any of the foregoing (together, the “Released Parties”), from any and all claims, actions, causes of actions, Proceedings, Liens, Liabilities, Losses, suits, counterclaims, offsets, setoffs, of every kind, in connection with the transactions arising up to and including the Closing, whether in law, equity or otherwise, known or unknown, suspected or unsuspected (including any fiduciary duty claims against the Released Parties) that any Releasing Party now has, has had or could have asserted against any of the Released Parties prior to the Closing or on account of or arising out of any matter occurring on or prior to the Closing, including any rights to indemnification or reimbursement from any of the Released Parties (collectively, the “Released Claims”).

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(b) Notwithstanding the foregoing in this Section 8.13, the Released Claims shall not include, and nothing contained in this Agreement shall affect a Releasing Party’s rights pursuant to the terms of any Transaction Document. Each such Releasing Party hereby irrevocably agrees to refrain from, directly or indirectly, asserting any claim or demand or any Proceeding against any Released Party based upon any Released Claim.

8.14. Section Headings: Table of Contents.

The Section headings contained in this Agreement and the Table of Contents to this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

8.15. Specific Performance.

(a) The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at Law or in equity.

(b) Each Party further agrees that: (i) no such Party will oppose the granting of an injunction or specific performance as provided herein on the basis that another Party has an adequate remedy at Law or that an award of specific performance is not an appropriate remedy for any reason at Law or equity; (ii) no such party will oppose the specific performance of the terms and provisions of this Agreement; and (iii) no other Party or any other Person shall be required to obtain, furnish, or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 8.15, and each Party irrevocably waives any right it may have to require the obtaining, furnishing, or posting of any such bond or similar instrument.

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8.16. Non-survival of Representations and Warranties.

None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive Closing. This Section 8.16 shall not limit the survival of any covenant or agreement of the parties in the Agreement which by its terms contemplates performance after the Closing.

8.17. Fulfillment of Obligations.

Any obligation of any Party to any other Party under this Agreement or any of the Transaction Documents, which obligation is performed, satisfied, or fulfilled completely by an Affiliate of such Party, shall be deemed to have been performed, satisfied or fulfilled by such Party.

[signature page follows]

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IN WITNESS WHEREOF, the Parties have caused this Share Exchange Agreement to be duly executed as of the date first above written.

DATAVAULT AI INC.

By: /s/ Nathaniel Bradley
Name: Nathaniel Bradley
Title: Chief Executive Officer

NYIAX, INC.

By: /s/ Teri Gallo
Name: Teri Gallo
Title: Chief Executive Officer

[Signature Page to Share Exchange Agreement]

WHITE LABEL, CO-MARKETING AND INTELLECTUAL PROPERTY CROSS-LICENSE AGREEMENT

This WHITE LABEL, CO-MARKETING AND INTELLECTUAL PROPERTY CROSS-LICENSE AGREEMENT (this “Agreement”), dated as of March 16, 2025 (the “Effective Date”), is made by and between Datavault AI Inc., a Delaware corporation with a principal place of business at 15268 NW Greenbrier Pkwy, Beaverton, Oregon 97006 (“Datavault”), and NYIAX, Inc., a Delaware corporation with a principal place of business at 244 Fifth Avenue, New York, NY 10001 (“NYIAX”) (each a “Party” and together the “Parties”).

WHEREAS, Datavault is the owner of various Patents set forth on Exhibit A attached hereto and made a part hereof and certain related Know-How, together with certain additional Intellectual Property Rights relating to Datavault’s Adio Platform set forth on Exhibit B attached hereto and made a part hereof, all as further defined herein;

WHEREAS, NYIAX is the owner, or a joint owner, of various Patents set forth on Exhibit C attached hereto and made a part hereof and certain related Know-How, all as further defined herein; and

WHEREAS, in connection with that certain Share Exchange Agreement, dated as of March 16, 2025, by and between Datavault and NYIAX (the “Share Exchange Agreement”) and that certain Software Development Agreement, dated as of March 16, 2025, by and between Datavault and NYIAX (the “Development Agreement,” together with the Share Exchange Agreement and this Agreement, the “Transaction Agreements”), Datavault wishes to grant to NYIAX, and NYIAX wishes to accept, certain licenses under the Datavault Licensed IP (as defined below), and NYIAX wishes to grant to Datavault, and Datavault wishes to accept, certain licenses under the NYIAX Licensed IP (as defined below), all in accordance with and subject to the terms and conditions of this Agreement.

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

1. Definitions.

Capitalized terms used but not defined elsewhere in this Agreement have the following meanings:

1.1 “Adio Licensed Marks” means those certain Marks set forth on Exhibit B hereto, together with any registrations or applications for registration of any of the foregoing throughout the world.

1.2 “Adio Licensed Patents” (a) the Patents set forth on Exhibit B hereto (the “Adio Scheduled Patents”); (b) any Patent issuing after the Effective Date that claims priority to any Adio Scheduled Patent (excluding those claims in any continuation-in-part patent application that are not supported by the disclosure in any Adio Scheduled Patent); and (c) all foreign equivalents of any of the foregoing.

1.3 “Adio Platform” means Datavault’s proprietary advertising optimization platform for increasing engagement using embedded tones.

1.4 “Affiliate” means, with respect to a Party or Third Party, a corporation, company or other entity, directly or through one or more intermediaries, controlling, controlled by, or under common control with such Party or Third Party. For purposes of this Section 1.2, “control,” “controlled” and “controlling” mean direct or indirect ownership or control of more than fifty percent (50%) of the outstanding shares or securities having the right to vote for the election of directors or other managing authority of the controlled entity.

1.5 “Change of Control” means, with respect to a Party, the occurrence after the Effective Date of any of the following: (a) an acquisition, reorganization, merger, or consolidation of such Party by or with a Third Party in which the holders of the voting securities of such Party outstanding immediately before such transaction cease to beneficially own at least fifty percent (50%) of the combined voting power of the surviving entity, directly or indirectly, immediately after such transaction; (b) a transaction or series of related transactions in which a Third Party becomes the beneficial owner of fifty percent (50%) or more of the combined voting power of the outstanding securities of such Party; or (c) the sale or other transfer to a Third Party of all or substantially all of such Party’s assets.

1.6 “Datavault Field” means the field of data, information and asset monetization and exchange.

1.7 “Datavault Licensed IP” means, collectively, the Datavault Licensed Patents, Datavault Licensed Know-How, Adio Licensed Patents, and Adio Licensed Marks.

1.8 “Datavault Licensed Know-How” means any and all Know-How owned by Datavault relating to the NYIAX Field.

1.9 “Datavault Licensed Patents” means (a) the Patents set forth on Exhibit A hereto (the “Datavault Scheduled Patents”); (b) any Patent issuing after the Effective Date that claims priority to any Datavault Scheduled Patent (excluding those claims in any continuation-in-part patent application that are not supported by the disclosure in any Datavault Scheduled Patent); and (c) all foreign equivalents of any of the foregoing.

1.10 “Datavault Licensed Products” means any products, systems, equipment or services, (a) the manufacture, use, offer for sale, sale, or importation of which by Datavault would, in the absence of a license granted under, or ownership of, the relevant NYIAX Licensed Patent, infringe a Valid Claim; or (b) that incorporates or embodies any NYIAX Licensed Know-How or the NYIAX Platform.

1.11 “Improvement” means, with respect to any Licensed IP, any improvement, enhancement, derivative work, modification, adaptation, or new application of such Licensed IP.

1.12 “Intellectual Property Rights” means any and all of the following arising under the laws of any jurisdiction throughout the world: (a) patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other governmental authority-issued indicia of invention ownership (including certificates of invention, petty patents, and utility models) (“Patents”); (b) copyrights and works of authorship (whether or not copyrightable), and all registrations, applications for registration, and renewals of any of the foregoing; (c) trademarks, service marks, trade dress, trade names, domain names, social media accounts or usernames, URLs, IP addresses, IP address ranges, websites or other indicia of source or origin, together with all goodwill symbolized thereby and associated therewith (“Marks”); (d) trade secrets, know-how, technology, inventions (whether or

not patentable), discoveries, ideas, processes, methods, designs, plans, instructions, specifications, formulas, testing and other protocols, settings, and procedures, and other confidential or proprietary technical, scientific, engineering, business, or financial information (“Know-How”); and (e) other intellectual property and related proprietary rights.

1.13 “Licensed IP” means, collectively, the Datavault Licensed IP and the NYIAX Licensed IP. A Party’s Licensed IP is, for Datavault, the Datavault Licensed IP, and for NYIAX, the NYIAX Licensed IP.

1.14 “Licensed Patents” means, collectively, the Datavault Licensed Patents and the NYIAX Licensed Patents.

1.15 “Licensed Products” means, collectively, the Datavault Licensed Products and NYIAX Licensed Products.

1.16 “Licensee” means (a) NYIAX, in its capacity as licensee of the Datavault Licensed IP pursuant to Section 2.1, and (b) Datavault, in its capacity as licensee of the NYIAX Licensed IP pursuant to Section 2.2.

1.17 “Licensor” means (a) Datavault, in its capacity as licensor of the Datavault Licensed IP pursuant to Section 2.1, and (b) NYIAX, in its capacity as licensor of the NYIAX Licensed IP pursuant to Section 2.2.

1.18 “NYIAX Field” means the field of advertising buying, selling and brokerage.

1.19 “NYIAX Licensed IP” means, collectively, the NYIAX Licensed Patents and NYIAX Licensed Know-How.

1.20 “NYIAX Licensed Know-How” any and all Know-How owned by NYIAX relating to the Datavault Field.

1.21 “NYIAX Licensed Patents” means (a) those certain Patents (i) solely owned by NYIAX, which NYIAX acquired from Network Foundation Technologies, LLC pursuant to that certain Asset Purchase Agreement, dated as of July 8, 2023, and (ii) jointly owned by Nasdaq Technology AB (“Nasdaq”) and NYIAX (the “Jointly Owned NYIAX Licensed Patents”), as set forth on Exhibit C hereto (the “NYIAX Scheduled Patents”); (b) any Patent issuing after the Effective Date that claims priority to any NYIAX Scheduled Patent (excluding those claims in any continuation-in-part patent application that are not supported by the disclosure in any NYIAX Scheduled Patent); and (c) all foreign equivalents of any of the foregoing; the foregoing being subject to certain prior Third Party obligations to Nasdaq.

1.22 “NYIAX Licensed Products” means any products, systems, equipment or services, (a) the manufacture, use, offer for sale, sale, or importation of which by NYIAX would, in the absence of a license granted under, or ownership of, the relevant Datavault Licensed Patent or Adio Licensed Patent, infringe a Valid Claim; or (b) that incorporates or embodies any Datavault Licensed Know-How or Adio Licensed Mark.

1.23 “NYIAX Platform” means NYIAX’s proprietary software-as-a-service (SaaS) platform for advertising and creative management and brokerage.

1.24 “NYIAX White Label” means the NYIAX Platform developed by, and/or for, NYIAX that can be utilized by a Third Party.

1.25 “Restricted Business” means: (a) with respect to Datavault, any product or service that is competitive with NYIAX or its NYIAX Platform; and (b) with respect to NYIAX, any product or service that is competitive with Datavault or its Adio Platform.

1.26 “Territory” means everywhere in the world.

1.27 “Third Party” or “Third Parties” means any entity other than a Party to this Agreement or an Affiliate.

1.28 “Valid Claim” means a claim of an unexpired issued Licensed Patent that has not been admitted or otherwise caused by the Party that owns such Licensed Patent to be invalid or unenforceable through reissue, disclaimer, or otherwise, or held invalid or unenforceable by an unappealed or unappealable judgment of a governmental authority of competent jurisdiction.

2. License Grants; Certain Restrictions.

2.1 Datavault License Grant. Subject to the terms and conditions of this Agreement, Datavault hereby grants to NYIAX a non-exclusive, non-transferable (except in accordance with Section 13), sublicensable (to the extent permitted in Section 2.3), royalty-free license in the Territory during the Term:

(a) under the Datavault Licensed Patents to make, have made, import, use, offer to sell, sell, and otherwise commercialize NYIAX Licensed Products, and to use the Datavault Licensed Know-How in connection therewith, in each case solely in the NYIAX Field; and

(b) under the Adio Licensed Patents to make, have made, import, use, offer to sell, sell, and otherwise commercialize the NYIAX Platform, and to use the Adio Licensed Marks solely in connection therewith, in each case solely in the NYIAX Field.

Without limiting the foregoing, NYIAX shall not, and shall ensure that its Affiliates and sublicensees do not, directly or indirectly, use, practice, or otherwise exploit any Datavault Licensed IP outside of the NYIAX Field.

2.2 NYIAX License Grant. Subject to the terms and conditions of this Agreement, NYIAX hereby grants to Datavault a non-exclusive, non-transferable (except in accordance with Section 13), sublicensable (to the extent permitted in Section 2.3), royalty-free right and license in the Territory during the Term:

(a) under the NYIAX Licensed Patents to make, have made, import, use, offer to sell, sell, and otherwise commercialize Datavault Licensed Products, and to use the NYIAX Licensed Know-How in connection therewith, in each case solely in the Datavault Field and solely where the NYIAX White Label product is a component of a Datavault Licensed Product; and

(b)(i) to use, modify, and distribute the NYIAX Platform and any Work Product (as that term is defined in the Development Agreement) as a NYIAX White Label product as a component of a Datavault Licensed Product in the Datavault Field; and (ii) for Datavault and its employees, independent contractors and agents acting on its behalf to access and use the NYIAX Platform for all of Datavault’s advertising buying, selling and brokerage purposes where the NYIAX White Label product is a component of a Datavault Licensed Product.

Without limiting the foregoing, Datavault shall not, and shall ensure that its Affiliates and sublicensees do not, directly or indirectly, use, practice, or otherwise exploit any NYIAX Licensed IP outside of the Datavault Field or for any Datavault Licensed Products that do not include the NYIAX White Label product as a component thereof.

2.3 **Sublicensing.** Neither Party may grant sublicenses under the rights and licenses granted to it under Section 2.1 or Section 2.2, as applicable, to its Affiliates or any Third Party except upon the other Party's prior written consent. Notwithstanding the foregoing, each Party shall have the right to offer Licensed Products to end users. All sublicenses must be in writing, be subject to and consistent with the applicable terms and conditions of this Agreement, and name the other Party as an intended third-party beneficiary with the right to enforce such sublicense's terms and conditions. The Party granting the sublicense shall deliver to the other Party a true, complete, and correct copy of each such sublicense agreement and any amendment thereto promptly following its execution. The Party granting the sublicense shall ensure that each sublicensee complies with the applicable terms and conditions of this Agreement. Any act or omission of a sublicensee that would be a material breach of this Agreement if performed by the Party granting the sublicense will be deemed to be a material breach by such Party. Any sublicense granted to a Third Party must prohibit such third-party sublicensee from further sublicensing without the other Party's prior written consent.

2.4 **Rights of Affiliates.** All sublicenses granted to any Affiliate of a Party pursuant to Section 2.3 shall continue only for so long as such sublicensee is an Affiliate of such Party and shall automatically and immediately terminate with respect to such sublicensee as of the date it ceases to be an Affiliate of such Party.

2.5 **Reservation of Rights.** Except as expressly set forth in this Section 2, this Agreement grants no right or license, whether by implication, estoppel or otherwise, under any Intellectual Property Rights that either Party may own or control now or in the future. All rights not expressly granted by a Party hereunder are reserved by such Party. Nothing contained herein will be construed as an obligation to disclose or deliver any technical information or embodiment of any Intellectual Property Rights or to provide any technical assistance or other services or deliverables to the other Party. The rights and licenses granted in Section 2.1 and Section 2.2 are subject to, and limited by, any and all licenses, rights, limitations, and restrictions with respect to Intellectual Property Rights previously granted to or otherwise obtained by any Third Party that are in effect as of the Effective Date.

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2.6 **Intellectual Property Rights under Bankruptcy Code.** All rights and licenses granted in the Licensed IP under this Agreement and any sublicense are and will be deemed to be rights and licenses to "intellectual property" as such term is used in, and interpreted under, Section 365(n) of the United States Bankruptcy Code (the "**Bankruptcy Code**") (11 U.S.C. § 365(n)). Each Party acknowledges that the other Party has all rights, elections, and protections under the Bankruptcy Code and all other bankruptcy, insolvency, and similar laws with respect to the Agreement, and the subject matter hereof. Without limiting the generality of the foregoing, the Parties agree that if either Party, as the licensor of the Licensed IP, or its estate shall become subject to any bankruptcy or similar proceeding, subject to the other Party's rights of election under Section 365(n), all rights, licenses, and privileges granted to the other Party under this Agreement will continue subject to the respective terms and conditions hereof, and will not be affected, even by such Party's rejection of this Agreement.

3. Professional Services.

3.1 **NYIAX Services.** From time to time during the Term, NYIAX shall provide to Datavault certain commercial strategy, ad sales support and other services ("**Services**") as described in more detail in one or more statements of work signed by both Parties (each, a "**Statement of Work**") in accordance with the terms and conditions of this Agreement. Each Statement of Work shall include the following information, if applicable: (a) a detailed description of the Services to be performed pursuant to the Statement of Work; (b) a detailed description of the tangible or intangible materials, items, or outputs, including but not limited to reports, presentations, designs, software, data, or other work products, required to be provided by NYIAX to Datavault under the applicable Statement of Work (collectively, "**Deliverables**"); (c) the date upon which the Services will commence and the term of such Statement of Work; (d) any criteria for completion of the Services; and (e) any other terms and conditions agreed upon by the Parties in connection with the Services to be performed pursuant to such Statement of Work.

4. Consideration.

4.1 **Note.** In consideration of the rights granted to NYIAX under this Agreement, NYIAX shall pay to Datavault a license fee in the form of a convertible promissory note in the aggregate amount of Two Million Five Hundred Thousand U.S. Dollars (\$2,500,000) in substantially the form attached hereto as **Exhibit E**.

4.2 Revenue Share.

(a) **Commercialization of Licensed Products.** NYIAX and Datavault agree to share all Gross Profit arising from the commercialization or exploitation of Licensed Products, with the Party that leads the commercialization or exploitation receiving sixty percent (60%) of the Gross Profit, and the other Party shall receive forty percent (40%) of the Gross Profit, regardless of which Party owns or controls the Licensed Products that are the subject of such commercialization or exploitation. For purposes of this Agreement, "**Gross Profit**" means the total revenue generated from the commercialization or exploitation of the applicable Licensed Products, less the following deductions: (i) Nasdaq Fees (as defined below) payable pursuant to Section 4.2(b); (ii) costs associated with customizable code needed to service the end user or purchaser of the Licensed Products; and (iii) other third-party costs directly related to the production and delivery of the Licensed Products.

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(b) **Nasdaq Fees.** Notwithstanding Section 4.2(a), in any commercialization or exploitation of Licensed Products involving the NYIAX White Label product or other software licensed from or jointly owned by Nasdaq, the Parties shall pay to Nasdaq a fee ("**Nasdaq Fees**") in an amount calculated as a percentage of gross revenue arising from such commercialization or exploitation, to the extent required and at the applicable percentage set forth in a written agreement between NYIAX and Nasdaq concerning the use and ownership of the NYIAX Platform and NYIAX Licensed Patents.

(c) **Payment Validity.** No revenue share payment under this Section 4.2 shall be due and payable unless and until the underlying purchaser of the relevant Licensed Products has made appropriate payment(s).

4.3 **Advance Payment.** Datavault agrees to provide an advance payment in the amount of Four Hundred Fifty Thousand U.S. Dollars (\$450,000) (the "**Advance**") to NYIAX. The Advance shall be payable to NYIAX upon the earlier of: (a) four (4) weeks following the Effective Date; or (b) Datavault's consummation of one or more financing(s), from one or more investors and/or financial institutions, resulting in aggregate gross proceeds to Datavault of at least Four Million U.S. Dollars (\$4,000,000). The Advance shall be credited against NYIAX's share of revenue generated through commercialization or exploitation of Licensed Products pursuant to Section 4.2. NYIAX shall apply the Advance against its earned revenue share on a periodic basis. If the total revenue share earned by NYIAX during the Term exceeds the Advance, Datavault shall remit any additional amounts due in accordance with the revenue share terms set forth herein. If, upon the expiration or termination of this Agreement, the total revenue share earned by NYIAX is less than the Advance provided, any remaining balance of the Advance shall be converted into a licensing fee for continued use of the NYIAX Platform. The Parties acknowledge that the Advance is not a loan and shall be recouped solely from NYIAX's share of revenue as defined herein. Partner shall not be entitled to reimbursement of any unearned portion of the Advance except as offset against NYIAX Platform licensing fees.

4.4 **Share Issuance.** As consideration for the Services provided by NYIAX pursuant to Section 3.1 and the rights to access and use the NYIAX Platform

granted to Datavault pursuant to Section 3.2, and upon the terms and subject to all of the conditions contained herein, Datavault shall issue to NYIAX 2,530,000 newly issued, fully paid and nonassessable shares (such shares, the “Consideration Shares”) of common stock of Datavault, par value \$0.0001 per share, on the Effective Date. As a condition and inducement to Datavault’s willingness to enter into this Agreement, NYIAX will enter into a lock-up agreement in substantially the form attached hereto as Exhibit D (the “Lock-Up Agreement”), in respect of the Consideration Shares. Datavault hereby agrees to sell, transfer, convey, assign and deliver to NYIAX all of the Consideration Shares free and clear of all liens and other encumbrances, other than restrictions arising from the Lock-Up Agreement.

4.5 Payment Terms. Each Party shall pay any amounts due hereunder: (a) in U.S. dollars by either (a) ACH, or (b) wire transfer of immediately available funds to a bank the receiving Party designates in writing; and (b) without deduction of exchange, collection, or other charges or withholding or other government-imposed fees or taxes.

4.6 Taxes. All amounts payable hereunder include any sales, use, excise or other taxes, duties, levies and assessments, as required by law.

4.7 Late Payment. If either Party fails to make any payment due under this Agreement by the due date for payment and for more than ninety (90) days thereafter, then such Party shall pay interest on the overdue amount at a rate of the lesser of twelve percent (12%) per annum and the maximum rate permitted under applicable law. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. In the event of late payment, such Party shall also be responsible for all costs incurred by the other Party in collecting the overdue amounts, including but not limited to reasonable attorney’s fees, court costs, and collection agency fees.

4.8 No Deduction or Setoff. Each Party shall pay all amounts due under this Agreement without setoff, deduction, recoupment, or withholding of any kind for amounts owed or payable by the other Party, whether under this Agreement, applicable law, or otherwise and whether relating to the other Party’s breach, bankruptcy, or otherwise, unless agreed by the Parties in advance.

4.9 Audit Right. Each Party shall have the right, upon reasonable prior of at least fifteen (15) business days’ notice and during normal business hours, to inspect and audit the books and records of the other Party to verify the accuracy of the amounts owed under the revenue sharing provisions of Section 4.2 of this Agreement. Such audits shall be conducted by an independent Third-Party auditor mutually agreed upon by both Parties. The costs of the audit shall be borne by the requesting Party, unless the audit reveals a discrepancy of more than ten percent (10%) in the amounts owed and both Parties agree with the discrepancy, in which case the costs shall be borne by the audited Party. Any discrepancies identified during the audit shall be promptly corrected, and any overpayments or underpayments shall be settled within thirty (30) days of the Parties’ concurrence to the audit’s findings, without interest.

5. Intellectual Property Rights.

5.1 Ownership of Licensed IP. As between the Parties: (a) Datavault acknowledges and agrees that NYIAX owns or jointly owns all right, title and interest in and to the NYIAX Licensed IP; (b) NYIAX acknowledges and agrees that Datavault owns all right, title and interest in and to the Datavault Licensed IP; and (c) each Party acknowledges and agrees that neither such Party nor any of its Affiliates or sublicensees will acquire any ownership rights in the Licensed IP licensed to such Party hereunder.

5.2 Improvements. As between the Parties, each Party will solely own all right, title, and interest in and to any Improvement conceived or developed by its employees or independent contractors. Each Party’s Improvements will be deemed to be such Party’s Confidential Information. Each Party expressly acknowledges and agrees that no right or license, express or implied, is granted hereunder in or to any Improvements by Licensor to Licensee.

5.3 Deliverables. Datavault is, and shall be, the sole and exclusive owner of all right, title, and interest in and to the Deliverables, including all Intellectual Property Rights therein. NYIAX agrees, and will cause its personnel to agree, that with respect to any Deliverables that may qualify as “work made for hire” as defined in 17 U.S.C. § 101, such Deliverables are hereby deemed a “work made for hire” for Datavault. To the extent that any of the Deliverables do not constitute a “work made for hire,” NYIAX hereby irrevocably assigns, and shall cause its personnel to irrevocably assign to Datavault, in each case without additional consideration, all right, title, and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. NYIAX shall cause its personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such personnel may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of droit moral with respect to the Deliverables.

5.4 Use of Adio Licensed Marks. All use of the Adio Licensed Marks by or on behalf of NYIAX and its Affiliates or permitted sublicensees must comply with Datavault’s usage guidelines and quality standards communicated in writing to NYIAX and will be subject to Datavault’s review and approval. NYIAX, its Affiliates and permitted sublicensees shall not modify or alter any the Adio Licensed Marks or use any of the Adio Licensed Marks in combination with other letters, words or designs, except upon the prior written approval of Datavault. All goodwill accruing from NYIAX’s or its Affiliates’ or permitted sublicensees’ use of any Adio Licensed Mark under this Agreement will inure solely to the benefit of Datavault.

6. Prosecution, Maintenance and Enforcement of Licensed IP.

6.1 No Challenge. If either Party, as Licensee, directly or indirectly challenges the validity, enforcement, inventorship, or ownership of any Patent within the Licensed IP, or assists any Third Party to bring or conduct any such challenge, in any forum of competent jurisdiction (whether a court, a patent office or other governmental authority, or an arbitral tribunal), then Licensor may upon thirty (30) days’ prior written notice to Licensee, terminate any and all licenses and rights granted under this Agreement to Licensee with respect to the Patents that are the subject of any such challenge, unless the applicable challenge is dismissed or withdrawn within ten (10) days following Licensor’s notice to Licensee under this Section 6.1 and not thereafter continued.

6.2 Prosecution and Maintenance. As between the Parties, Licensor will have the sole and exclusive right and obligation, at its own cost and expense, to file, prosecute, and maintain all Patents and Marks within the Licensed IP under which Licensor grants a license to Licensee hereunder, the foregoing being subject to any prior Third Party obligations related to the NYIAX Licensed Patents set forth on Exhibit C.

6.3 Enforcement. As between the Parties, Licensor will have the sole and exclusive right, but no obligation, at its own cost and expense, to initiate and control any legal proceeding or take other appropriate action against any infringement or misappropriation of, or to defend against any challenge to, the Licensed IP under which Licensor grants a license to Licensee hereunder. Licensor may retain all amounts recovered by Licensor in any such action (including by settlement or other disposition), unless otherwise agreed in writing by the Parties.

6.4 Cooperation. Upon Licensor's request, Licensee shall provide reasonable assistance and cooperation in connection with any activities undertaken by Licensor pursuant to Sections 6.2 (Prosecution and Maintenance) or 6.3 (Enforcement). Licensor shall keep Licensee reasonably informed of the status of any such activities and shall reimburse Licensee for its reasonable out-of-pocket costs and expenses incurred in connection therewith.

7. Certain Covenants.

7.1 Non-Competition. During the Term and for a period of twenty-four (24) months following the effective date of termination of this Agreement (the "Restricted Period"), each Party shall not, and shall not permit any of its Affiliates to, directly or indirectly: (a) engage in or assist others in engaging in the Restricted Business in the Territory; or (b) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the other Party and its customers or suppliers in connection with the Restricted Business.

7.2 Non-Circumvention. During the Restricted Period: (a) Datavault shall not, and shall not permit any of its Affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, Nasdaq as a client or customer for purposes of diverting their business or services from NYIAX; and (b) NYIAX shall not, and shall not permit any of its Affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of Datavault or potential clients or customers of Datavault for purposes of diverting their business or services from Datavault.

7.3 No Solicitation. During the Restricted Period, each Party shall not, and shall not permit any of its Affiliates to, directly or indirectly, hire or solicit any employee of the other Party or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; provided that nothing in this Section 7.3 shall prevent a Party or any of its Affiliates from hiring (a) any employee whose employment has been terminated by the other Party; or (b) after one-hundred eighty (180) days from the date of termination of employment, any employee whose employment has been terminated by the employee.

7.4 Compliance with Laws; Patent Notices. Each Party shall comply with all applicable laws and regulations in the Territory in exercising its rights and performing its obligations under this Agreement. Without limiting the foregoing, Licensee shall comply with: (a) the patent marking provisions of 35 U.S.C. § 287(a) and the patent marking laws of all applicable countries in the Territory; (b) any requirements for recording all or part of this Agreement with a national or supranational governmental authority to the extent necessary for either Party to fully enjoy the rights, privileges, and benefits of this Agreement; and (c) all applicable laws and regulations concerning the export of any Licensed Product and any associated technical data, materials, or information, including any requirements for obtaining an export license or other governmental approval.

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7.5 Enforceability. Each Party acknowledges that the restrictions contained in this Section 7 are reasonable and necessary to protect the legitimate interests of the other Party and constitute a material inducement to the other Party to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 7 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable law.

8. Confidentiality.

8.1 Confidential Information. Each Party (the "Receiving Party") acknowledges that in connection with this Agreement it will gain access to Confidential Information of the other Party (the "Disclosing Party"). For purposes of this Agreement, "Confidential Information" means all non-public, confidential, or proprietary information of the Disclosing Party or its Affiliates, whether in oral, written, electronic, or other form or media, whether or not such information is marked, designated, or otherwise identified as "confidential" and includes any information that, due to the nature of its subject matter or circumstances surrounding its disclosure, would reasonably be understood to be confidential or proprietary, including, specifically: (a) the Licensed Know-How; (b) the Disclosing Party's other unpatented inventions, ideas, methods, discoveries, know-how, trade secrets, unpublished patent applications, invention disclosures, invention summaries, and other confidential intellectual property; and (c) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations, and other materials prepared by or for the Receiving Party or its Affiliates that contain, are based on, or otherwise reflect or are derived from any of the foregoing in whole or in part.

8.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by documentation: (a) was already known to the Receiving Party or its Affiliates without restriction on use or disclosure prior to the receipt of such information directly or indirectly from or on behalf of the Disclosing Party; (b) was or is independently developed by the Receiving Party or its Affiliates without reference to or use of any Confidential Information; (c) was or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party or its Affiliates; or (d) was received by Receiving Party or its Affiliates from a Third Party who was not, at the time, under any obligation to the Disclosing Party or any Third Party to maintain the confidentiality of such information.

8.3 Confidentiality Obligations. As a condition to being provided with Confidential Information, the Receiving Party shall: (a) not use the Disclosing Party's Confidential Information other than as strictly necessary to exercise its rights and perform its obligations under this Agreement; and (b) maintain the Disclosing Party's Confidential Information in strict confidence and, subject to Section 8.2, not disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, provided, however, the Receiving Party may disclose the Confidential Information to its officers, directors, employees, agents, representatives, consultants and advisors, including, without limitation, attorneys, accountants and financial advisors ("Representatives") who: (i) have a need to know the Confidential Information for purposes of the Receiving Party's performance, or exercise of its rights concerning the Confidential Information, under this Agreement; (ii) have been apprised of this restriction; and (iii) are themselves bound by written nondisclosure agreements at least as restrictive as those set forth in this Section 8. The Receiving Party shall be responsible for ensuring its Representatives' compliance with, and shall be liable for any breach by its Representatives of, this Section 8. The Receiving Party shall use reasonable care, at least as protective as the efforts it uses for its own confidential information, to safeguard the Disclosing Party's Confidential Information from use or disclosure other than as permitted hereby.

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8.4 Compelled Disclosures. If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall: (a) provide prompt written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy or waive its rights under this Section 8.4; and (b) disclose only the portion of Confidential Information that it is legally required to furnish. If a protective order or other remedy is not obtained, or the Disclosing Party waives compliance, the Receiving Party shall, at the Disclosing Party's expense, use reasonable efforts to obtain assurance that confidential treatment will be afforded the Confidential Information.

8.5 Duration. The Receiving Party's confidentiality obligations under this Section 8 shall survive for a period of five (5) years following termination of

this Agreement; provided that, with respect to Confidential Information that constitutes trade secrets, such confidentiality obligations shall continue in full force and effect for as long as such Confidential Information remains a trade secret.

9. Representations and Warranties.

9.1 **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that, as of the Effective Date: (a) it is duly organized, validly existing, and in good standing under the laws of the state or jurisdiction of its organization; (b) it has the full right, power, and authority to enter into and perform its obligations under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate or organizational action of such Party; and (d) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of that Party, enforceable against that Party in accordance with its terms.

9.2 **Datavault Representations and Warranties.** Datavault represents and warrants that: (a) Datavault is the owner of the entire right, title, and interest in and to the Datavault Licensed IP; (b) the Intellectual Property Rights in the Datavault Licensed IP are valid, subsisting and enforceable; (c) Datavault has not granted to any Third Party any licenses or other rights under the Datavault Licensed IP that conflict with rights granted to NYIAX under this Agreement; and (d) the Datavault Licensed IP does not and will not infringe, misappropriate or violate the Intellectual Property Rights of any Third Party.

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9.3 **NYIAX Representations and Warranties.** NYIAX represents and warrants that: (a) (i) NYIAX is the owner of the entire right, title, and interest in and to the NYIAX Licensed IP, excluding the Jointly Owned NYIAX Licensed Patents, and (ii) NYIAX is a joint owner of the entire right, title and interest in and to the Jointly Owned NYIAX Licensed Patents; (b) the Intellectual Property Rights in the NYIAX Licensed IP are valid, subsisting and enforceable; (c) the NYIAX Licensed IP is free and clear of all encumbrances and, except for prior Third Party obligations related to the NYIAX Licensed Patents set forth on Exhibit C, is not subject to any licenses or other rights or obligations to any Third Party that conflict with rights granted to Datavault under this Agreement; (d) none of the NYIAX Licensed IP, the NYIAX Platform, the Services or the Deliverables does or will infringe, misappropriate or violate the Intellectual Property Rights of any Third Party; and (e) it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

9.4 **Disclaimer.** EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS SECTION 9, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WITH RESPECT TO THE VALIDITY, ENFORCEABILITY, PATENTABILITY, OR SCOPE OF SUCH PARTY'S LICENSED IP, OR ANY REPRESENTATION OR WARRANTY THAT ANY MANUFACTURE, USE, SALE, OFFER FOR SALE, IMPORT, LEASE OR OTHER DISPOSITION OF PRODUCTS OR SERVICES BY THE OTHER PARTY WILL BE FREE FROM INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OTHER THAN SUCH PARTY'S LICENSED IP LICENSED HEREIN, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES.

9.5 **Acknowledgment.** For the avoidance of doubt, notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that nothing in this Agreement is intended to limit or restrict any of the representations, warranties, or remedies available to the Parties or their Affiliates under the Transaction Agreements.

10. Limitation of Liability.

10.1 **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, OR ENHANCED DAMAGES, OR FOR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS, ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE USE OF THE LICENSED IP, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), STATUTE, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS DO NOT APPLY TO CLAIMS OR LOSSES ARISING FROM OR RELATING TO: (A) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 8; (B) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11; OR (C) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

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11. Indemnification.

11.1 **Datavault Indemnification.** Datavault shall indemnify, defend, and hold harmless NYIAX and its Affiliates, and each of NYIAX's and its Affiliates' respective officers, directors, employees, and agents against all losses, damages, liabilities, costs (including reasonable attorneys' fees) resulting from any third-party claim, suit, action, or other proceeding arising out of: (a) Datavault's or any of its sublicensees' use of any NYIAX Licensed IP; or (b) the manufacture, use, or sale of any Datavault Licensed Product by or on behalf of Datavault or any of its sublicensees, including any product liability claim. The foregoing indemnification obligations shall not apply to the extent any such claim arises as a result of NYIAX's gross negligence or willful misconduct or any claim that the NYIAX Platform or Datavault's use thereof in accordance with Section 2.2(b) of this Agreement infringes, misappropriates or violates the Intellectual Property Rights of any Third Party.

11.2 **NYIAX Indemnification.** NYIAX shall indemnify, defend, and hold harmless Datavault and its Affiliates, and each of Datavault's and its Affiliates' respective officers, directors, employees, and agents against all losses, damages, liabilities, costs (including reasonable attorneys' fees) resulting from any third-party claim, suit, action, or other proceeding arising out of: (a) NYIAX's or any of its sublicensees' use of any Datavault Licensed IP; (b) the manufacture, use, or sale of any NYIAX Licensed Product by or on behalf of NYIAX or any of its sublicensees, including any product liability claim, except to the extent caused by Datavault's gross negligence or willful misconduct; or (c) any claim that the NYIAX Platform or Datavault's use thereof in accordance with Section 2.2(b) of this Agreement infringes, misappropriates or violates the Intellectual Property Rights of any Third Party.

11.3 **Indemnification Procedure.** The indemnified Party shall promptly notify the indemnifying Party in writing of any claim, suit, action, or other proceeding for which it is entitled to indemnification under Section 11.1 or 11.2 (each, an "Indemnified Claim"). The indemnifying Party shall control the investigation and defense of the Indemnified Claim and shall employ counsel of its choice to handle and defend the Indemnified Claim, at the indemnifying Party's expense. The indemnified Party shall provide all assistance reasonably requested by the indemnifying Party, at the indemnifying Party's expense. The indemnifying Party shall not settle any Indemnified Claim in a manner that adversely affects the rights of the indemnified Party or its Affiliates without the indemnified Party's prior written consent. The indemnified Party may participate in and observe the proceedings at its own cost and expense with counsel of its choice.

12. Insurance.

12.1 **Insurance.** Prior to using, selling, transferring, or otherwise disposing of any Licensed Product (including for the purpose of obtaining regulatory

approvals), and for a period of three (3) years after the Term, each Party shall, at its sole cost and expense, obtain, pay for, and maintain in full force and effect commercial general liability and professional liability (Errors and Omissions) insurance in commercially reasonable and appropriate amounts that in any event provides product liability coverage concerning the Licensed Products and contractual liability coverage for such Party's defense and indemnification obligations under this Agreement of at least One Million U.S. Dollars (\$1,000,000), with no more than One Hundred Thousand U.S. Dollars (\$100,000) of retained risk (deductible) from a carrier rated A- or better by A.M. Best. Each Party shall have the other Party named in each policy as an additional insured. Each Party shall carry any workers compensation insurance required by law. Upon request by the other Party, each Party shall provide the other Party with certificates of insurance or other reasonable written evidence of all coverages described in this Section 12.

13. Term and Termination.

13.1 Term. This Agreement shall commence on the Effective Date and shall continue in effect for a period of five (5) years (the "Initial Term"). This Agreement shall automatically renew at the end of the Initial Term and each succeeding period, for an additional period of five (5) years (each, a "Renewal Term") and together with the Initial Term, the "Term") unless a Party provides the other Party written notice of its intent not to renew no less than one hundred eighty (180) days prior to the end of the Initial Term or then-current Renewal Term.

13.2 Termination for Breach. Either Party shall have the right to terminate this Agreement at any time upon written notice to the other Party if the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof.

13.3 Effect of Termination. Upon termination of this Agreement pursuant to Section 13.1, the Parties shall negotiate in good faith to determine post-termination license and ad partnership continuation rights and appropriate compensation therefor; provided that any use of the Licensed IP during such post-termination period shall be subject to the terms of this Agreement, and upon expiration of such period, each Party shall have no further right, title, or interest therein. Upon termination of this Agreement pursuant to Section 13.2: (a) the breaching Party shall, and shall ensure that its sublicensees, promptly cease all use of the Licensed IP; and (b) all rights and licenses granted to such breaching Party and its sublicensees under this Agreement will immediately revert to the non-breaching Party; and (c) the rights and licenses granted by the breaching Party to the non-breaching Party will survive such termination but remain subject to the terms and conditions of this Agreement.

13.4 Survival. The provisions set forth in the following Sections, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 5.1 (Ownership of Licensed IP), Section 5.2 (Improvements), Section 8 (Confidentiality), Section 9.4 (Disclaimer of Warranties), Section 10 (Limitation of Liability), Section 11 (Indemnification), and Section 15 (General Terms).

14. Assignment; Change of Control.

14.1 Assignment. Neither Party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without the other Party's prior written consent; provided that each Party may make such an assignment, delegation, or other transfer, in whole or in part, upon prior written notice to the other Party, without the other Party's consent:

(a) to an Affiliate, provided that: (i) the Affiliate assumes all of the assigning Party's obligations under this Agreement; and (ii) the assigning Party shall remain liable and responsible for such Affiliate's performance of all obligations and compliance with all other terms and conditions of this Agreement; or

(b) in connection with or as a result of a Change of Control of a Party (such Party, the "Acquired Party"); provided that the Third Party that is the acquiring or surviving entity in a Change of Control involving any Party (the "Acquiring Party"): (i) assumes all of the applicable obligations of the Acquired Party by operation of law or by express delegation, as applicable; and (ii) delivers to the other Party, prior to or concurrently with the consummation of such Change of Control, an express written acknowledgment of the limitations and restrictions on the licenses granted to the Acquired Party hereunder as a result of such Change of Control.

14.2 Transfer of Licensed IP. Each Party may license, assign or otherwise transfer any of its Licensed IP, provided that the assigning Party shall ensure that any purchaser, assignee or transferee of any Intellectual Property Rights underlying the licenses granted herein is notified about the restrictions and grants of licenses and other rights contained in this Agreement and shall require that any such purchaser, assignee or transferee and its Affiliates agree to be bound in writing by the licenses and obligations of the transferor set forth herein.

14.3 Change of Control. In the event of a Change of Control:

(a) where NYIAX is the Acquired Party: (i) the licenses granted under Section 2.1 will not extend to any product, service, or business of the Acquiring Party or its Affiliates that was commercialized or conducted as of or at any time prior to the date of the consummation of such Change of Control of NYIAX; and (ii) the licenses granted hereunder to Datavault will continue in accordance with the terms and conditions of this Agreement and will not otherwise be affected by the Change of Control of NYIAX; and

(b) where Datavault is the Acquired Party: (i) the licenses granted under Section 2.2 will not extend to any product, service, or business of the Acquiring Party or its Affiliates that was commercialized or conducted as of or at any time prior to the date of the consummation of such Change of Control of Datavault; and (ii) the licenses granted hereunder to NYIAX will continue in accordance with the terms and conditions of this Agreement and will not otherwise be affected by the Change of Control of Datavault.

(c) Nothing set forth herein will restrict either Party from transferring, assigning, or licensing any Licensed IP owned or controlled by such Party; provided that any transfer, assignment, or exclusive license of any Licensed IP will be subject to the licenses granted in this Agreement with respect to such Licensed IP.

14.4 Any purported assignment, delegation, or transfer in violation of this Section 14 is void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

15. General Terms.

15.1 Further Assurances. Each Party shall, and shall cause its respective Affiliates to, upon the reasonable request of the other Party, promptly execute such documents and take such further actions as may be necessary to give full effect to the terms of this Agreement.

15.2 Cost and Expenses. Except as otherwise expressly agreed in writing, each Party assumes full responsibility for all costs and expenses which it

15.3 Relationship of the Parties. The relationship of the Parties under this Agreement shall be and at all times remain one of independent contractors. Neither Party is an employee, agent, franchisee, joint venturer, partner, or legal representative of the other and neither Party shall have the authority to assume or create obligations on the other Party except as specifically set forth in this Agreement.

15.4 Publicity. Either Party desiring to issue a press release or make a public statement or disclosure regarding this Agreement shall provide the other Party with a copy of the proposed press release, statement or disclosure for review and approval in advance, which advance approval shall not be unreasonably withheld, conditioned or delayed. No public statement or disclosure concerning the terms of this Agreement shall be made, either directly or indirectly, by either Party hereto, without first obtaining the written approval of the other Party, which advance approval shall not be unreasonably withheld, conditioned or delayed. Once any public statement or disclosure has been approved in accordance with this Section 15.4, then either Party may appropriately communicate information contained in such permitted statement or disclosure. Notwithstanding anything to the contrary in Section 8 of this Agreement, a Party may disclose the terms of this Agreement (a) where required, as reasonably determined by the Disclosing Party, by applicable law, regulation or legal process or by applicable stock exchange rule, and (b) under obligations of confidentiality as required in Section 8 to such Party's Representatives in connection with such Party's reasonable business activities.

15.5 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder must be in writing and sent to the respective Party at the addresses indicated below (or at such other address for a Party as may be specified in a notice given in accordance with this Section 15.5):

Notices to Datavault:

Datavault AI Inc.
15268 NW Greenbrier Pkwy
Beaverton, Oregon 97006
Attn: Nathaniel Bradley

Notices to NYIAX:

NYIAX, Inc.
244 Fifth Avenue
New York, NY 10001
Attn: Teri Gallo and Bill Feldman

Notices sent in accordance with this Section 15.5 will be deemed effective: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next day if sent after normal business hours of the recipient; or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

15.6 Force Majeure. Except for NYIAX's payment obligations, if the performance of any part of this Agreement by either Party, or of any obligation under this Agreement, is prevented, restricted, interfered with or delayed by reason of any cause beyond the reasonable control of the Party liable to perform, unless conclusive evidence to the contrary is provided, the Party so affected shall, on giving written notice to the other Party, be excused from such performance to the extent of such prevention, restriction, interference or delay, provided that the affected Party shall use its best efforts to avoid or remove such causes of nonperformance and shall continue performance with the utmost dispatch whenever such causes are removed. When such circumstances arise, the Parties shall discuss what, if any, modification of the terms of this Agreement may be required in order to arrive at an equitable solution.

15.7 Entire Agreement. This Agreement, together with all Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

15.8 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any third party any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

15.9 Amendment; Waiver. No amendment to this Agreement will be effective unless it is in writing and signed by both Parties. No waiver by either Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the waiving Party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.10 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.11 Governing Law; Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder must be instituted exclusively in the federal courts of the United States or the courts of

the State of New York in each case located in the city of New York and County of New York, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

15.12 Export Regulation. The Licensed IP may be subject to U.S. export control laws, including the Export Control Reform Act and its associated regulations. Neither party shall directly or indirectly export, re-export, or release the Licensed IP to, or make the Licensed IP accessible from, any country, jurisdiction, or third party to which export, re-export, or release is prohibited by applicable law. Each Party shall comply with all applicable laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Licensed IP available outside the United States.

15.13 Interpretation; Conflict. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. In the event of any conflict between this Agreement and any attached Exhibit, the terms and conditions of this Agreement shall control.

15.14 Equitable Relief. Each Party acknowledges that a breach by the other Party of this Agreement may cause the non-breaching Party irreparable harm, for which an award of damages would not be adequate compensation and, in the event of such a breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including in the form of a restraining order, orders for preliminary or permanent injunction, specific performance, and any other relief that may be available from any court, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such relief. These remedies are not exclusive but are in addition to all other remedies available under this Agreement at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

15.15 Headings. The headings in this Agreement are for convenience only, confirm no rights or obligations in either Party and do not alter any terms of this Agreement.

15.16 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, any of which may be executed and delivered in electronic format or by electronic means, and all of which together shall constitute one and the same agreement.

[signature page follows]

IN WITNESS WHEREOF, Datavault and NYIAX have caused this Agreement to be executed as of the Effective Date by their respective duly authorized officers.

DATAVault:

DATAVault AI INC.

By: /s/ Nathaniel Bradley
Name: Nathaniel Bradley
Title: Chief Executive Officer

NYIAX:

NYIAX, INC.

By: /s/ Teri Gallo
Name: Teri Gallo
Title: Chief Executive Officer

[Signature Page to White Label, Co-Marketing and Intellectual Property Cross-License Agreement]

SOFTWARE DEVELOPMENT AGREEMENT

This SOFTWARE DEVELOPMENT AGREEMENT (this “Agreement”), dated as of March 16, 2025 (the “Effective Date”), is entered into by and between Datavault AI Inc., a Delaware corporation with a principal place of business at 15268 NW Greenbrier Pkwy, Beaverton, Oregon 97006 (“Datavault”), and NYIAX, Inc., a Delaware corporation with a principal place of business at 244 Fifth Avenue, New York, NY 10001 (“NYIAX”) (each a “Party” and together the “Parties”).

WHEREAS, in connection with that certain Share Exchange Agreement, dated as of March 16, 2025, by and between Datavault and NYIAX, and that certain Intellectual Property Cross-License Agreement, dated as of March 16, 2025 by and between Datavault and NYIAX (the “License Agreement”), NYIAX desires to retain Datavault as an independent contractor to provide certain software development services described herein, and Datavault wishes to provide such services to NYIAX, each on the terms and conditions set forth in this Agreement.

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

1. Definitions.

Capitalized terms used but not defined elsewhere in this Agreement have the following meanings:

1.1 “Affiliate” means, with respect to a Party or third party, a corporation, company or other entity, directly or through one or more intermediaries, controlling, controlled by, or under common control with such Party or third party. For purposes of this Section 1.1, “control,” “controlled” and “controlling” mean direct or indirect ownership or control of more than fifty percent (50%) of the outstanding shares or securities having the right to vote for the election of directors or other managing authority of the controlled entity.

1.2 “Change of Control” means, with respect to a Party, the occurrence after the Effective Date of any of the following: (a) an acquisition, reorganization, merger, or consolidation of such Party by or with a third party in which the holders of the voting securities of such Party outstanding immediately before such transaction cease to beneficially own at least fifty percent (50%) of the combined voting power of the surviving entity, directly or indirectly, immediately after such transaction; (b) a transaction or series of related transactions in which a third party becomes the beneficial owner of fifty percent (50%) or more of the combined voting power of the outstanding securities of such Party; or (c) the sale or other transfer to a third party of all or substantially all of such Party’s assets.

1.3 “Deliverables” means the Software, Documentation, and other work product that Datavault is required to deliver to NYIAX pursuant to an SOW under this Agreement.

1.4 “Documentation” means any and all manuals, instructions, specifications, and other documents and materials that Datavault provides or makes available to NYIAX in any medium and which describe the functionality, components, features, or requirements of the Software, including the installation, configuration, integration, operation, use, support, or maintenance thereof.

1.5 “Intellectual Property Rights” means any and all of the following arising under the laws of any jurisdiction throughout the world: (a) patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other governmental authority-issued indicia of invention ownership (including certificates of invention, petty patents, and utility models); (b) copyrights and works of authorship (whether or not copyrightable), and all registrations, applications for registration, and renewals of any of the foregoing; (c) trademarks, service marks, trade dress, trade names, domain names, social media accounts or usernames, URLs, IP addresses, IP address ranges, websites or other indicia of source or origin, together with all goodwill symbolized thereby and associated therewith; (d) trade secrets, know-how, technology, inventions (whether or not patentable), discoveries, ideas, processes, methods, designs, plans, instructions, specifications, formulas, testing and other protocols, settings, and procedures, and other confidential or proprietary technical, scientific, engineering, business, or financial information; and (e) other intellectual property and related proprietary rights.

1.6 “NYIAX Materials” means all materials, information, data, content, hardware, software, knowledge, know-how, inventions, documentation, specifications, intellectual property, documents and technology that are provided to Datavault by or on behalf of NYIAX in connection with this Agreement.

1.7 “Services” mean those certain software development and professional services mutually agreed by the Parties in writing in one more SOWs.

1.8 “Software” means the software Datavault is required to or otherwise does create or provide to NYIAX in connection with the Services.

1.9 “SOW” means a statement of work mutually executed by the Parties under this Agreement pursuant to which Datavault agrees to perform certain Services described therein, which shall include the following information, if applicable: (a) a detailed description of the Services to be performed, Deliverables to be provided, and the specification and functionality required for the Software pursuant to the SOW; (b) the date upon which the Services will commence and the term of such SOW; (c) any criteria for completion of the Services; and (d) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such SOW.

1.10 “Specifications” means the specifications for the Software set forth in the applicable Development Plan.

2. Engagement of Datavault and Software Development.

2.1 Engagement of Datavault. NYIAX hereby engages Datavault, and Datavault hereby accepts such engagement, to develop certain Software and provide certain Services related thereto as further described in one or more SOWs mutually agreed and executed by the Parties on the terms and conditions set forth in this Agreement. Datavault may from time to time in its discretion engage third parties to perform Services.

2.2 Project Management. Each Party shall, throughout the term of this Agreement, maintain within its organization a project manager to serve as such Party’s primary point of contact for day-to-day communications, consultation, and decision-making regarding the Services (each, a “Project Manager”). Each such Project Manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each Party shall ensure its Project Manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. Each Party shall use commercially reasonable efforts to maintain the same Project Manager in place throughout the term of this Agreement. If either Party’s Project Manager ceases to be employed by such Party or such Party otherwise wishes

to replace its Project Manager, such Party shall promptly name a new Project Manager by written notice to the other Party.

2.3 Development Plan. In connection with each SOW, the Parties shall mutually prepare a development plan ("Development Plan") for the Software described in such SOW. The Development Plan shall include, without limitation, (a) detailed Specifications for the Software; (b) a confirmation and listing of all Deliverables; (c) the dates by which the Parties are required to complete certain tasks, including a confirmation of the delivery schedule for each Deliverable; (d) if the Services are to be performed on an hourly basis, a then-current rate card for personnel assigned to the applicable project, and an estimate of the number of development hours by resource for all Deliverables; (e) the designation of a Project Manager; (f) any mutually agreed requirements for quality assurance testing and record keeping during the applicable development; and (g) any applicable requirements for the storage and delivery of Software source code. Upon mutual approval, the Development Plan will be attached and made part of the corresponding SOW, and each Party will sign the SOW indicating acceptance of the Specifications and other terms set forth therein. Each executed SOW will be deemed by both Parties to have become a part of this Agreement and will be incorporated by reference.

2.4 Resources. Datavault shall have the right to utilize its own personnel, including employees, contractors, and, upon NYIAX's prior written approval, which shall not be unreasonably withheld, conditioned or delayed, subcontractors, to perform the Services under this Agreement. Datavault shall ensure that all personnel assigned to perform the Services possess the necessary skills, qualifications, and experience to effectively execute their assigned tasks. NYIAX reserves the right to request the replacement of any Datavault personnel designated in the applicable SOW as "key" personnel who fail to meet the agreed-upon qualifications, demonstrate a lack of necessary skills, or engage in conduct that materially disrupts the applicable project.

2.5 Changes in Project Scope. If at any time following execution of a SOW with an attached Development Plan, NYIAX should desire a material change that will alter or amend the Specifications or other elements of such Development Plan, NYIAX will prepare an amendment of the original SOW setting forth the desired change(s) and Datavault will prepare an amended Development Plan. Upon the mutual written agreement of the Parties, the amended Development Plan will be attached and made part of the corresponding amended SOW, and each Party shall sign the amended SOW indicating acceptance of the Specifications and other terms set forth therein. Each executed amended SOW will be deemed by both Parties to have become a part of this Agreement and will be incorporated by reference. Datavault shall then commence development of Software that will substantially conform to the requirements set forth in the amended Development Plan. If there is any conflict between the original SOW and the corresponding amended SOW, the terms of the amended SOW will control.

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2.6 Delays. Datavault shall use commercially reasonable efforts to complete the Services within the agreed-upon timeline set forth in the applicable SOW. If Datavault anticipates material delays in meeting the Services timeline, it shall promptly notify NYIAX in writing, providing reasons for the anticipated delay and an updated timeline. Penalties, if any, for delays within Datavault's control, shall be mutually agreed by the Parties in the applicable SOW. Notwithstanding the foregoing, Datavault is not responsible or liable for any late delivery or delay or failure of performance caused in whole or in part by NYIAX's delay in performing, or failure to perform, any of its obligations under this Agreement. In the event of any such delay or failure, Datavault may, by written notice to NYIAX, extend all or any subsequent due dates set forth in the Development Plan as Datavault deems reasonably necessary. The foregoing is in addition to, and not in lieu of, all other remedies Datavault may have for any such failure or delay by NYIAX.

2.7 Nasdaq Requirements. Datavault shall comply with all requirements imposed by Nasdaq Technologies AB ("Nasdaq") on NYIAX and the NYIAX Licensed IP, to the extent applicable to the Services or Deliverables and communicated to Datavault in writing.

3. Delivery; Acceptance.

3.1 Delivery. On each Deliverable delivery date as set forth in the applicable SOW, Datavault shall deliver the Deliverable to NYIAX, including, for any Software, the object code and/or source code for such Software as expressly provided in the applicable SOW, and all Documentation and other materials required to be provided in accordance with the delivery schedule.

3.2 Testing and Acceptance.

(a) In each SOW, the Parties will mutually agree on the applicable timeline for testing any Deliverable that constitutes Software (the "Testing Period"). During the Testing Period, NYIAX shall inspect, test and evaluate the Deliverable ("Acceptance Tests") to evaluate whether it materially conforms to the Specifications and performs in accordance with the Documentation. Datavault has the right to observe or participate in all or any part of such Acceptance Tests.

(b) Promptly upon the completion of the Acceptance Tests, NYIAX shall notify Datavault in writing of its acceptance or, solely if the Acceptance Tests identify any material failure of the Deliverable to conform to the Specifications and perform in accordance with the Documentation (each, a "Nonconformity"), rejection of the Deliverable. NYIAX shall not unreasonably withhold its acceptance and shall include in any rejection notice a reasonably detailed description of the Acceptance Tests conducted, the results thereof, and each identified Nonconformity. Each Software Deliverable will be deemed accepted by NYIAX upon the expiration of the Testing Period therefor if NYIAX has not delivered a written notice accepting or rejecting the Software Deliverable prior to such expiration.

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(c) Datavault shall use commercially reasonable efforts to correct any Nonconformity and re-deliver the nonconforming Software Deliverable in conformance with the Specifications. Upon re-delivery, NYIAX shall have an additional Testing Period to conduct Acceptance Tests to determine whether each Nonconformity has been remedied.

(d) The Parties shall repeat the process set forth in Section 3.2(b) and Section 3.2(c) until NYIAX has accepted the Deliverable as set forth in Section 3.2(b), provided, however, if Datavault fails more than three (3) times to remedy a material Nonconformity: (i) NYIAX may accept the Deliverable as nonconforming, in which case the fees will be reduced equitably to reflect the value of the Deliverable as received relative to the value of the Deliverable had it materially conformed to the Specifications and performed in accordance with the Documentation; and (ii) if NYIAX does not accept the Deliverable as non-conforming, either Party may terminate this Agreement by written notice to the other Party.

(e) Notwithstanding anything to the contrary in this Section 3.2, Datavault shall only be obligated to correct a Nonconformity in a Deliverable caused by Datavault's own reproducible programming errors. Datavault shall not be obligated to correct any failure, error, malfunction, or noncompliance caused by NYIAX's modifications, enhancements, or other actions with respect to the Deliverable or by any third-party software or hardware not recommended or required by Datavault. NYIAX shall pay Datavault for any expended time at Datavault's then current rate for the correction of the failure, error, malfunction, or noncompliance caused by NYIAX or any such third-party software or hardware.

(f) This Section 3.2 sets forth Datavault's sole obligations and NYIAX's exclusive remedies for any failure of any Deliverable to conform to the Specifications or perform in accordance with the Documentation.

4. Certain NYIAX Obligations.

4.1 NYIAX Resources and Cooperation. NYIAX shall, in accordance with the Development Plan: (a) perform all obligations identified as “NYIAX Responsibilities” in the Development Plan; (b) provide the NYIAX Materials and all such other resources as may be specified in the Development Plan; (c) provide Datavault personnel with such access to NYIAX’s premises and/or operating environment as is necessary for Datavault to perform its obligations on a timely basis as set forth in the Development Plan; (d) ensure that NYIAX’s operating environment is set up and in working order to allow Datavault to perform the Services and deliver each Deliverable constituting Software on or prior to the applicable due date set forth in the Development Plan; (e) participate with suitably qualified and authorized personnel in all meetings scheduled in, or in accordance with, the Development Plan and such other meetings as may be scheduled by the Parties; (f) provide all consents, approvals, exception notices, and other communications specified in the Development Plan or as otherwise may be required under this Agreement; and (g) provide all cooperation and assistance Datavault reasonably requests to enable Datavault to exercise its rights or perform its obligations under this Agreement.

4.2 Non-Solicitation. During the term of this Agreement and for one (1) year thereafter, NYIAX shall not, and shall not assist any third party to, directly or indirectly, recruit or solicit (other than by general advertisement not directed specifically to any person) for employment or engagement as an independent contractor any person employed or engaged by Datavault involved in any respect with the Services or the performance of this Agreement.

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4.3 Financing. NYIAX agrees to use best efforts to raise additional capital through one or more financing(s), from one or more investors and/or financial institutions, resulting in aggregate gross proceeds to NYIAX of at least Ten Million U.S. Dollars (\$10,000,000) (the “Financings”). After completing one or more Financings resulting in aggregate gross proceeds to NYIAX of at least Ten Million U.S. Dollars (\$10,000,000), NYIAX hereby commits and agrees to pay to Datavault twenty percent (20%) of such proceeds as Development Fees (as defined below) pursuant to Section 5.1 of this Agreement, with a minimum amount of Two Million U.S. Dollars (\$2,000,000) guaranteed payment to Datavault.

5. Fees and Payment.

5.1 Development Fees. NYIAX shall pay Datavault for all Services in accordance with each applicable SOW (such fees, the “Development Fees”). Datavault shall charge NYIAX the lowest rates that it would charge any other client for similar development Services. The pricing for these Services shall be in accordance with industry standard norms and rates and in compliance with Nasdaq’s applicable requirements.

5.2 Expenses. NYIAX shall reimburse Datavault for all reasonable out-of-pocket expenses incurred by Datavault in performing Services under this Agreement; provided that all individual expenses greater than One Thousand U.S. Dollars (\$1,000), and aggregate expenses in any calendar month in excess of Five Thousand U.S. Dollars (\$5,000), shall require NYIAX’s prior written approval. With each monthly invoice, Datavault shall submit an itemized statement of Datavault’s expenses incurred during the given calendar month, if any.

5.3 Payment Terms. NYIAX shall pay all Development Fees and reimbursable expenses due hereunder: (a) within forty-five (45) days after the date of the invoice therefor; (b) in U.S. dollars by wire transfer of immediately available funds to a bank account Datavault designates in writing; and (c) without deduction of exchange, collection, or other charges or withholding or other government-imposed fees or taxes. The amounts payable under this Agreement are not refundable.

5.4 Taxes. The Development Fees and other charges payable to Datavault hereunder include any sales, use, excise or other taxes, duties, levies and assessments, as required by law. If any new or increased taxes, duties, levies, or assessments become applicable after the execution of this Agreement, such additional costs shall be borne by NYIAX.

5.5 Late Payment. If NYIAX fails to make any payment due under this Agreement by the due date for payment and for more than ninety (90) days thereafter, then NYIAX shall pay interest on the overdue amount at a rate of the lesser of twelve percent (12%) per annum and the maximum rate permitted under applicable law. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. In the event of late payment, NYIAX shall also be responsible for all costs incurred by Datavault in collecting the overdue amounts, including but not limited to reasonable attorney’s fees, court costs, and collection agency fees.

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5.6 No Deduction or Setoff. NYIAX shall pay all amounts due under this Agreement without setoff, deduction, recoupment, or withholding of any kind for amounts owed or payable by Datavault, whether under this Agreement, applicable law, or otherwise and whether relating to Datavault’s breach, bankruptcy, or otherwise.

5.7 Financing. On a case-by-case basis during the term of this Agreement, NYIAX may request that Datavault provide financing for select Services provided under an SOW. Datavault agrees to consider any such request in good faith, taking into account the financial position of both Parties at the time of the request. For any financing agreed upon under this Section 5.8, Datavault shall have the right and option to convert any such loan into NYIAX equity.

6. Intellectual Property Rights.

6.1 Ownership of Work Product. All materials, including, but not limited to, Software, patents, patentable ideas, trade secrets, Documentation, programs, source code and object code, comments to the source or object code, Specifications, documents, abstracts and summaries thereof (collectively, the “Work Product”) developed by Datavault in connection with this Agreement for NYIAX, or jointly by NYIAX and Datavault, or by Datavault pursuant to specifications or instructions provided by NYIAX, shall belong exclusively to NYIAX. Datavault acknowledges that the Work Product shall be deemed “works made for hire” by Datavault for NYIAX, and, therefore, shall be the exclusive property of NYIAX. To the extent the Work Product are not deemed “works made for hire” under applicable law, Datavault hereby irrevocably assigns and transfers to NYIAX all right, title and interest in and to the Work Product, including, without limitation, all patent and copyright interests, and agrees to execute, and to cause its employees and/or contractors to execute, all documents reasonably requested by NYIAX for the purpose of applying for and securing any Intellectual Property Rights in the Work Product at no charge to NYIAX.

6.2 License-Back of Work Product. Notwithstanding Section 6.1, NYIAX hereby grants to Datavault a non-exclusive license, on the terms and subject to the conditions set forth in Section 2.2 of the License Agreement, to all Work Product created under this Agreement.

6.3 NYIAX Materials. NYIAX hereby grants to Datavault a limited, fully paid-up and royalty-free, non-exclusive, worldwide right and license to use, reproduce, perform, display, distribute, modify, and create derivative works and improvements of the NYIAX Materials solely to develop the Work Product and otherwise as necessary to perform the Services for the benefit of NYIAX. The term of such license will commence upon NYIAX’s first delivery of NYIAX Materials to Datavault and continue in effect until the termination or expiration of this Agreement. As between the Parties, NYIAX is and will remain, the sole and exclusive owner of all right, title, and interest in and to the NYIAX Materials, including all Intellectual Property Rights therein, subject only to the license granted under this Section 6.3.

6.4 Background Technology. NYIAX acknowledges that Datavault owns or holds a license to use and sublicense, and may develop or acquire during the term of this Agreement: (a) various development tools, routines, subroutines and other programs, data and materials that Datavault may include, in whole or in part, in the Software developed under this Agreement; and (b) Intellectual Property Rights for use in the Work Product, or for the development of the Work Product (collectively, "Background Technology"). As between the Parties, Datavault owns and shall retain all right, title and interest in and to such Background Technology. Subject to full payment of the fees due under this Agreement, Datavault grants NYIAX a nonexclusive, perpetual, worldwide license to use the Background Technology, and all updates and revisions thereto, solely for purposes of using, making, selling, offering for sale, licensing, or sublicensing, or otherwise exploiting the Work Product.

7. Confidentiality.

7.1 Confidential Information. Each Party (the "Receiving Party") acknowledges that in connection with this Agreement it will gain access to Confidential Information of the other Party (the "Disclosing Party"). For purposes of this Agreement, "Confidential Information" means all non-public, confidential, or proprietary information of the Disclosing Party or its Affiliates, whether in oral, written, electronic, or other form or media, whether or not such information is marked, designated, or otherwise identified as "confidential" and includes any information that, due to the nature of its subject matter or circumstances surrounding its disclosure, would reasonably be understood to be confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations.

7.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by documentation: (a) was already known to the Receiving Party or its Affiliates without restriction on use or disclosure prior to the receipt of such information directly or indirectly from or on behalf of the Disclosing Party; (b) was or is independently developed by the Receiving Party or its Affiliates without reference to or use of any Confidential Information; (c) was or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party or its Affiliates; or (d) was received by Receiving Party or its Affiliates from a third party who was not, at the time, under any obligation to the Disclosing Party or any third party to maintain the confidentiality of such information.

7.3 Confidentiality Obligations. As a condition to being provided with Confidential Information, the Receiving Party shall: (a) not use the Disclosing Party's Confidential Information other than as strictly necessary to exercise its rights and perform its obligations under this Agreement; and (b) maintain the Disclosing Party's Confidential Information in strict confidence and, subject to Section 7.2, not disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, provided, however, the Receiving Party may disclose the Confidential Information to its officers, directors, employees, agents, representatives, consultants and advisors, including, without limitation, attorneys, accountants and financial advisors ("Representatives") who: (i) have a need to know the Confidential Information for purposes of the Receiving Party's performance, or exercise of its rights concerning the Confidential Information, under this Agreement; (ii) have been apprised of this restriction; and (iii) are themselves bound by written nondisclosure agreements at least as restrictive as those set forth in this Section 7. The Receiving Party shall be responsible for ensuring its Representatives' compliance with, and shall be liable for any breach by its Representatives of, this Section 7. The Receiving Party shall use reasonable care, at least as protective as the efforts it uses for its own confidential information, to safeguard the Disclosing Party's Confidential Information from use or disclosure other than as permitted hereby.

7.4 Compelled Disclosures. If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall: (a) provide prompt written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy or waive its rights under this Section 7.4; and (b) disclose only the portion of Confidential Information that it is legally required to furnish. If a protective order or other remedy is not obtained, or the Disclosing Party waives compliance, the Receiving Party shall, at the Disclosing Party's expense, use reasonable efforts to obtain assurance that confidential treatment will be afforded the Confidential Information.

7.5 Duration. The Receiving Party's confidentiality obligations under this Section 7 shall survive for a period of five (5) years following termination of this Agreement; provided that, with respect to Confidential Information that constitutes trade secrets, such confidentiality obligations shall continue in full force and effect for as long as such Confidential Information remains a trade secret.

8. Term and Termination.

8.1 Term. This Agreement shall commence as of the Effective Date and shall continue in effect until the later of five (5) years following the Effective Date or the completion of the Services specified under all SOWs executed hereunder, unless sooner terminated pursuant to its terms.

8.2 Termination for Breach. Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (a) is incapable of cure; or (b) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach.

8.3 Termination for Insolvency. Either Party may terminate this Agreement, effective immediately, if the other Party: (a) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (b) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (c) makes or seeks to make a general assignment for the benefit of its creditors; or (d) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

8.4 Effect of Termination. Upon termination or expiration of this Agreement: (a) all outstanding amounts payable under this Agreement or any SOW will be due and payable in sixty (60) days; (b) Datavault shall deliver to NYIAX no later than thirty (30) days after the date of termination all object code and source code for any Software, and any associated documentation and other materials required, for any and all work in progress for NYIAX that has not previously been delivered to NYIAX (to include revisions, updates or other modified versions of previously-delivered Software); and (c) each Party shall (i) return to the other Party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other Party's Confidential Information; and (ii) permanently erase the other Party's Confidential Information from its computer systems, except to the extent that (1) Datavault requires such Confidential Information to exercise its rights under the license granted pursuant to Section 6.2, or (2) NYIAX requires such Confidential Information to exercise its rights under the license granted pursuant to Section 6.4.

8.5 Survival. The provisions set forth in the following Sections, and any other right or obligation of the parties in this Agreement that, by its nature,

should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 6, Section 7, this Section 8.5, Section 10, Section 11, and Section 13.

9. Representations and Warranties.

9.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that, as of the Effective Date: (a) it is duly organized, validly existing, and in good standing under the laws of the state or jurisdiction of its organization; (b) it has the full right, power, and authority to enter into and perform its obligations under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate or organizational action of such Party; and (d) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of that Party, enforceable against that Party in accordance with its terms.

9.2 NYIAX Representations and Warranties. NYIAX represents and warrants that any NYIAX Materials furnished to Datavault by or on behalf of NYIAX for Datavault's use in connection with any SOW, Deliverable or Software to be provided under this Agreement, and Datavault's use thereof as contemplated under this Agreement, does not infringe the Intellectual Property Rights of any third party nor arises from or is connected with any misappropriation of any trade secrets or other intellectual or industrial property rights of any third party.

9.3 Datavault Representations and Warranties.

(a) Services Warranty. Datavault represents and warrants to NYIAX that Datavault will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

(b) Software Performance Warranty. Datavault warrants that upon delivery, the Software will materially conform to the Specifications in the applicable Development Plan. If upon delivery, the Software does not perform as warranted in this Section 9.3(b), and NYIAX notifies Datavault of the existence and nature of such breach promptly upon discovery, then Datavault will undertake, at its sole option and as NYIAX's exclusive remedy for breach of this warranty, to correct the non-conformance or replace the Software at no additional expense to NYIAX. This warranty shall be null and void if the nonconformance is due to: (a) hardware failures due to defects, power problems, environmental problems or any cause other than the Software itself; (b) modification of the Software operating systems or computer hardware other than by Datavault; or (c) misuse, errors or negligence of NYIAX, its employees or agents in operating the Software.

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9.4 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 9, ALL SOFTWARE, SERVICES, AND WORK PRODUCT ARE PROVIDED "AS IS" AND DATAVAULT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. DATAVAULT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, DATAVAULT MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE OR WORK PRODUCT, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET NYIAX'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN NYIAX AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

10. Indemnification.

10.1 Datavault Indemnification. Datavault shall indemnify, defend, and hold harmless NYIAX and its officers, directors, employees, agents, successors, and assigns (each, a "NYIAX Indemnitee") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, and the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers ("Losses") incurred by any NYIAX Indemnitee resulting from any claim, suit, action, or other proceeding ("Action") by a third party (other than an Affiliate of a NYIAX Indemnitee) to the extent such action is alleging that NYIAX's use of the Software (excluding NYIAX Materials and third-party materials) in compliance with this Agreement infringes a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any: (a) combination of the Software with any hardware, system, or other software or materials not provided or authorized in writing by Datavault; (b) modification of the Software other than by Datavault; (c) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to NYIAX; or (d) act, omission, or other matter described in Section 10.2, whether or not the same results in any Action against or Loss by any Datavault Indemnitee.

10.2 NYIAX Indemnification. NYIAX shall indemnify, defend, and hold harmless Datavault and its subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "Datavault Indemnitee") from and against any and all Losses incurred by any Datavault Indemnitee in connection with any Action by a third party (other than an Affiliate of a Datavault Indemnitee) to the extent such Action is arising out of or relating to: (a) NYIAX Materials or Datavault's use thereof in accordance with this Agreement; (b) Datavault's compliance with any specifications or directions provided by or on behalf of NYIAX; or (c) any allegation of facts that, if true, would constitute NYIAX's breach of any of its representations, warranties, covenants, or obligations under this Agreement.

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10.3 Indemnification Procedure. The indemnified Party shall promptly notify the indemnifying Party in writing of any claim, suit, action, or other proceeding for which it is entitled to indemnification under Section 10.1 or 10.2 (each, an "Indemnified Claim"). The indemnifying Party shall control the investigation and defense of the Indemnified Claim and shall employ counsel of its choice to handle and defend the Indemnified Claim, at the indemnifying Party's expense. The indemnified Party shall provide all assistance reasonably requested by the indemnifying Party, at the indemnifying Party's expense. The indemnifying Party shall not settle any Indemnified Claim in a manner that adversely affects the rights of the indemnified Party or its Affiliates without the indemnified Party's prior written consent. The indemnified Party may participate in and observe the proceedings at its own cost and expense with counsel of its choice.

10.4 THIS SECTION 10 SETS FORTH NYIAX'S SOLE REMEDIES AND DATAVAULT'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SOFTWARE) INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

11. Limitations of Liability.

11.1 EXCLUSION OF CERTAIN DAMAGES. IN NO EVENT SHALL DATAVAULT OR ITS AFFILIATES BE LIABLE TO NYIAX OR ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, OR ENHANCED DAMAGES, OR FOR ANY LOSS OF

ACTUAL OR ANTICIPATED PROFITS, ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE USE OF THE SOFTWARE, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), STATUTE, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 CAP ON MONETARY LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT IN CONNECTION WITH DATAVAULT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.1 OR DATAVAULT'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 7, DATAVAULT'S MAXIMUM AGGREGATE LIABILITY TO NYIAX UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL FEES PAID BY NYIAX TO DATAVAULT UNDER THE APPLICABLE SOW IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

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12. Assignment; Change of Control.

12.1 Assignment. Neither Party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without the other Party's prior written consent; provided that each Party may make such an assignment, delegation, or other transfer, in whole or in part, upon prior written notice to the other Party, without the other Party's consent:

(a) to an Affiliate, provided that: (i) the Affiliate assumes all of the assigning Party's obligations under this Agreement; and (ii) the assigning Party shall remain liable and responsible for such Affiliate's performance of all obligations and compliance with all other terms and conditions of this Agreement; or

(b) in connection with or as a result of a Change of Control of a Party (such Party, the "Acquired Party"); provided that the third party that is the acquiring or surviving entity in a Change of Control involving any Party (i) assumes all of the applicable obligations of the Acquired Party by operation of law or by express delegation, as applicable; and (ii) delivers to the other Party, prior to or concurrently with the consummation of such Change of Control, an express written acknowledgment of the limitations and restrictions on the licenses granted to the Acquired Party hereunder as a result of such Change of Control.

13. General Terms.

13.1 Further Assurances. Each Party shall, and shall cause its respective Affiliates to, upon the reasonable request of the other Party, promptly execute such documents and take such further actions as may be necessary to give full effect to the terms of this Agreement.

13.2 Costs and Expenses. Except as otherwise expressly agreed in writing, each Party assumes full responsibility for all costs and expenses which it incurs in connection with this Agreement, including in carrying out its obligations hereunder, without the right to reimbursement for any portion thereof from the other Party.

13.3 Relationship of the Parties. The relationship of the Parties under this Agreement shall be and at all times remain one of independent contractors. Neither Party is an employee, agent, franchisee, joint venturer, partner, or legal representative of the other and neither Party shall have the authority to assume or create obligations on the other Party except as specifically set forth in this Agreement. In its capacity as an independent contractor: (a) Datavault has the right to perform services for others during the term of this Agreement, subject to Datavault's compliance with its confidentiality obligations under this Agreement; (b) Datavault has the sole right to control and direct the means, manner and method by which the Services will be performed; and (c) Datavault has the right to perform the Services at any place or location and at such times as Datavault may determine.

13.4 No Public Statements. Either Party desiring to issue a press release or make a public statement or disclosure regarding this Agreement shall provide the other Party with a copy of the proposed press release, statement or disclosure for review and approval in advance, which advance approval shall not be unreasonably withheld, conditioned or delayed. No public statement or disclosure concerning the terms of this Agreement shall be made, either directly or indirectly, by either Party hereto, without first obtaining the written approval of the other Party, which advance approval shall not be unreasonably withheld, conditioned or delayed. Once any public statement or disclosure has been approved in accordance with this Section 13.4, then either Party may appropriately communicate information contained in such permitted statement or disclosure. Notwithstanding anything to the contrary in Section 7 of this Agreement, a Party may disclose the terms of this Agreement (a) where required, as reasonably determined by the Disclosing Party, by applicable law, regulation or legal process or by applicable stock exchange rule, and (b) under obligations of confidentiality as required in Section 7 to such Party's Representatives in connection with such Party's reasonable business activities.

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13.5 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder must be in writing and sent to the respective Party at the addresses indicated below (or at such other address for a Party as may be specified in a notice given in accordance with this Section 13.5):

Notices to Datavault:

Datavault AI Inc.
15268 NW Greenbrier Pkwy
Beaverton, Oregon 97006
Attn: Nathaniel Bradley

Notices to NYIAX:

NYIAX, Inc.
244 Fifth Avenue
New York, NY 10001
Attn: Teri Gallo and Bill Feldman

Notices sent in accordance with this Section 13.5 will be deemed effective: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next day if sent after normal business hours of the recipient; or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

13.6 Force Majeure. Except for NYIAX's payment obligations and as otherwise expressly provided in this Agreement, if the performance of any part of this Agreement by either Party, or of any obligation under this Agreement, is prevented, restricted, interfered with or delayed by reason of any cause beyond the reasonable

control of the Party liable to perform, unless conclusive evidence to the contrary is provided, the Party so affected shall, on giving written notice to the other Party, be excused from such performance to the extent of such prevention, restriction, interference or delay, provided that the affected Party shall use its best efforts to avoid or remove such causes of nonperformance and shall continue performance with the utmost dispatch whenever such causes are removed. When such circumstances arise, the Parties shall discuss what, if any, modification of the terms of this Agreement may be required in order to arrive at an equitable solution.

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13.7 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

13.8 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any third party any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

13.9 Amendment; Waiver. No amendment to this Agreement will be effective unless it is in writing and signed by both Parties. No waiver by either Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the waiving Party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13.10 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.11 Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder must be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the city of New York and County of New York, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

13.12 Export Regulation. The Software may be subject to U.S. export control laws, including the Export Control Reform Act and its associated regulations. NYIAX shall not directly or indirectly export, re-export, or release the Software to, or make the Software accessible from, any country, jurisdiction, or third party to which export, re-export, or release is prohibited by applicable law. NYIAX shall comply with all applicable laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the United States.

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13.13 Interpretation; Conflict. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

13.14 Equitable Relief. Each Party acknowledges that a breach by the other Party of this Agreement may cause the non-breaching Party irreparable harm, for which an award of damages would not be adequate compensation and, in the event of such a breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including in the form of a restraining order, orders for preliminary or permanent injunction, specific performance, and any other relief that may be available from any court, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such relief. These remedies are not exclusive but are in addition to all other remedies available under this Agreement at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

13.15 Headings. The headings in this Agreement are for convenience only, confirm no rights or obligations in either Party and do not alter any terms of this Agreement.

13.16 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, any of which may be executed and delivered in electronic format or by electronic means, and all of which together shall constitute one and the same agreement.

[signature page follows]

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

DATAVAULT:

DATAVAULT AI INC.

By: /s/ Nathaniel Bradley
Name: Nathaniel Bradley
Title: Chief Executive Officer

NYIAX:

NYIAX, INC.

By: /s/ Teri Gallo
Name: Teri Gallo
Title: Chief Executive Officer

[[Signature Page to Software Development Agreement]]

NEITHER THIS CONVERTIBLE NOTE NOR THE SHARES OF COMMON STOCK ISSUABLE AS INTEREST OR UPON CONVERSION OF THIS NOTE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. NO SALE OR DISPOSITION MAYBE EFFECTED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR THE HOLDER SATISFACTORY TO THE COMPANY PROVIDING THAT REGISTRATION IS NOT REQUIRED UNDER THE ACT.

NYIAX, INC.

CONVERTIBLE NOTE

FOR VALUE RECEIVED, NYIAX, Inc., a Delaware corporation with principal place of business at 900 Easton Avenue, STE 26-1088, Somerset, NJ 08873-1760, (hereinafter called “Borrower” or the “Company”), hereby promises to pay to Datavault AI Inc (“Holder”), the sum of Two Million Five Hundred Thousand U.S. Dollars (US\$2,500,000), with interest accruing at the annual rate of four percent (4%) percent. Interest hereunder shall be payable quarterly in kind, with payment in shares of the Company common stock, par value \$0.0001 per share (the “Common Stock”) valued at two (\$2.00) dollars per share (“PIK Shares”). The Company and Holder collectively shall be designated for purposes of this Note as the Parties.

The principal and accrued interest pursuant to this Note shall automatically convert to shares of the Company’s Common Stock (the “Conversion Shares” and the PIK Shares, respectively) pursuant to the terms of the Automatic Conversion mechanism set forth in Section 1.3 below or on the Maturity Date (as defined below). All the Conversion Shares and PIK Shares issuable hereunder will upon issuance be fully paid and non-assessable, and free from all taxes, liens and charges with respect to the issue thereof, but subject to the lock-up provisions of the Holder in the Share Exchange Agreement between the Parties dated March 16, 2025. The Borrower shall at all times have authorized and reserved for issuance a sufficient number of shares of its Common Stock to provide for the payment of interest and the conversion of this Note. The Company shall, as soon as practicable after the applicable conversion date, issue and deliver to the Holder, or to its nominees, in a book-entry form the number of shares of Common Stock, to which the Holder shall be entitled.

The following terms shall apply to this Note:

ARTICLE I PAYMENT RELATED PROVISIONS

1.1 Interest Payments. Borrower shall pay interest on the outstanding principal amount of this Note in PIK Shares each quarter commencing three (3) months from the date of the Note until the Maturity Date.

1.2 Repayment. This Note, including accrued interest, shall be repaid to the Holder on or before the Maturity Date as provided herein unless the Automatic Conversion provisions contained herein are satisfied in section 1.3.

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1.3 Automatic Conversion. In the event the Borrower has completed a public offering of its Common Stock before the Maturity Date and become subject to the Securities Exchange Act of 1934, the outstanding principal balance of the Note and any accrued interest shall be converted into the Company’s Common Stock at \$2.00 per share..

1.4 Reserved.

1.5 Maturity Date: Unless earlier converted as set forth above, the outstanding principal and all accrued interest under the Note will become due and payable on the earliest to occur of: (i) March 16, 2026 or (ii) an Event of Default occurs (the “Maturity Date”). On the Maturity Date, the Note and any accrued interest will automatically convert into the Borrower’s Common Stock at \$2.00 per share.

ARTICLE II EVENTS OF DEFAULT

The occurrence of any of the following events of default (each, an “Event of Default”) shall, at the option of the Holder hereof, make all sums or principal and interest then remaining unpaid hereon and all other amounts payable hereunder immediately due and payable, all without demand, presentment or notice, or grace period, all of which hereby are expressly waived, except as set forth below:

2.1 Breach of Covenant. The Borrower breaches any covenant or other term, or condition of this Note and such breach continues in excess of a period of thirty (30) business days after written notice to the Borrower from a Holder.

2.2 Receiver or Trustee. The Borrower shall make an assignment for the benefit of Holders or apply for, or consent to, the appointment of a receiver or trustee for it or for a substantial part of its property or business; or such a receiver or trustee shall otherwise be appointed.

2.3 Bankruptcy. Bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings or relief under any bankruptcy law or any law for the relief of Borrowers shall be instituted by the Borrower.

2.4 Conversion. The Company shall fail for any reason to deliver the shares of Common Stock to the Holder prior to the second (2nd) business day after the automatic conversion of the Note pursuant to Section 1.3 or 1.5.

ARTICLE III REPRESENTATIONS BY HOLDER

Holder represents and warrants to Borrower as follows:

3.1 Holder has received and examined all public information, of or concerning Borrower which Holder considers necessary to making an informed decision regarding this Note. In addition, Holder has had the opportunity to ask questions of, and receive answers from, the officers and agents of Borrower concerning Borrower and to obtain such information, to the extent such persons possessed the same or could acquire it without unreasonable effort or expense, as Holder deemed necessary to verify the accuracy of the information referred to herein.

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3.2Holder acknowledges and understands that (i)the proceeds of this Note will not be sufficient to provide Borrower with the necessary funds to achieve its current business plan; (ii)the Borrower does not have sufficient cash available to repay this Note; (iii)this Note will not be guaranteed, (iv)Holder bears the economic risk of never being repaid on this Note; and (v)the Borrower may use the proceeds of this Note to satisfy past payables and working capital obligations. Holder has such knowledge and experience in financial and business matters that the Holder can evaluate the merits and risks of the Holder's investment in this Note.

3.3 Holder is acquiring this Note its own account, for investment purposes only, and not with a view to the resale or distribution of all or any part thereof.

3.5Holder acknowledges that this Note and the securities issued upon conversion thereof (a)have not been registered under applicable securities laws, (b)will be a "restricted security: as defined in applicable securities laws, (c)has been issued in reliance on the statutory exemptions from registration contemplated by applicable securities laws based (in part) on the accuracy of Holder's representations contained herein, and (d)will not be transferable without registration under applicable securities laws, unless an exemption from such registration requirements is available.

3.6 Holder has had this Note and any other documents executed in connection herewith reviewed by their own counsel.

ARTICLE IV MISCELLANEOUS

4.1 Failure or Indulgency Not Waiver. No failure or delay on the part of Holder hereof in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or the exercise of any other right, power or privilege. All rights and remedies existing hereunder are cumulative to, and not exclusive of, any rights or remedies otherwise available.

4.2 Notices. Any notice herein required or permitted to be given shall be in writing and may be personally served and shall be deemed to be delivered upon receipt or if sent by United States mail, three (3)business days after being deposited in the United States mail, certified, with postage pre-paid and properly addressed, if sent by fax transmission (with the original sent by certified or registered mail or by overnight courier) and shall be deemed to have been delivered on the day telecopied, or by electronic mail or services such as DocuSign with acknowledged receipt by the Parties. For the purposes hereof, the addresses and fax numbers of Holder and the Borrower are as set forth on the signature pagehereof. Holder and Borrower may change the address, fax number, and email for service by service of written notice, fax notice, or email notice to the other as herein provided as follows (or to such other address as any party may give in a notice given in accordance with the provisions hereof):

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Borrower:

NYIAX, Inc.,
900 Easton Avenue,
STE 26-1088, Somerset,
NJ 08873-1760,
Attn: CEO

Holder:

Datavault AI Inc
15268 N. W. Greenbrier Parkway
Beaverton, OR 97006
ATT CEO

4.3 Definition of Note. The term "Note" and all reference thereto, as used throughout this instrument, shall mean this instrument as originally executed, or if later amended or supplemented, then as so amended or supplemented.

4.4 Assignability. This Note may not be assigned by the Borrower without the written consent of the Holder. This Note shall be binding upon the Borrower and its successors and assigns and shall inure to the benefit of the Holder and its successors and assigns.

4.5 Cost of Collection. If default is made in the payment of this Note, Borrower shall pay the Holder hereof costs of collection, including attorneys' fees.

4.6 Governing Law; Dispute Resolution; Waiver of Jury Trial. This Note shall be construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law. The parties hereunder agree that any dispute arising out of or relating to an investment pursuant to this Subscription Agreement or concerning this Subscription Agreement, including but not limited to disputes as to arbitrability and all disputes with the Company, or any employee, agent, representative, officer, director or attorney of the Company, shall be resolved through final, binding, non-appealable arbitration, before a single, neutral arbitrator, at JAMS, in New York County, New York in accordance with the rulesand regulations of the American Arbitration Association. Venue of all arbitration shall be JAMS Dispute Resolution Center, New York County, New York. The Parties agree that each side will pay fifty percent (50%) of the cost of any arbitration proceedings. Judgment on any arbitration award may be entered in any court having jurisdiction. Any arbitration award shall be in United States Dollars and may be enforced in any jurisdiction in which the party against whom enforcement is sought maintains assets. The Parties agree to limit their respective testimony at any arbitration hearing to three hours per side. SUBSCRIBER HEREBY WAIVES ANY RIGHT TO SEEK ANY TYPE OF DAMAGES OTHER THAN COMPENSATORY DAMAGES,INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES AND PUNITIVE DAMAGES. SUBSCRIBER HEREBY FURTHER WAIVES THE RIGHT TO A TRIAL BY JURY, THE RIGHT TO BRING A CLASSACTION SUIT, AND OTHER POTENTIAL REMEDIES THAT OTHERWISE MAYBE AFFORDED BY LAW. THIS IS A CLASSACTION WAIVER THAT APPLIES TO ALL DISPUTES ARISING OUT OF THIS INVESTMENT,INCLUDING BUT NOT LIMITED TO ANY DISPUTES WITH THE COMPANY AND ALL OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OFFICERS, DIRECTORS, OR ATTORNEYS.

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4.7 No Amendment. This Note shall not be amended without the prior written consent of the Holder.

[signature page follows]

IN WITNESS WHEREOF, Borrower has caused this Note to be signed in its name on the 16th day of March,2025.

NYIAX, Inc.
:

Name: /s/ William Feldman
Title: Chief Financial Officer

DATA VAULT AI INC
By: /s/ Brett Moyer
Name: Brett Moyer
Title: CFO

Address for Notice to Borrower:

Address for Notice to Holder: _____

Email: _____

Email: _____

Date: March 16, 2025

Date: March 16, 2025

FOR IMMEDIATE RELEASE**NYIAX Technology Platform Powered by Nasdaq Collaborates with Datavault AI's Patented Information Data Exchange® through Co-Marketing and Technology Alliance**

Unlocking New Revenue Streams: Transforming Real-World Assets and Data into Financial Opportunities

BEAVERTON, OR, March 17, 2025 – Datavault AI Inc. (Nasdaq: DVLTL), a leader in AI-driven data experience, valuation, and monetization, today announced a multi-year commercial and intellectual property (IP) alliance with NYIAX, a pioneer in transparent trading technology built on the Nasdaq financial framework. This partnership will integrate Datavault AI's patented Information Data Exchange® (IDE) and award-winning Data Vault® platform with NYIAX's cutting-edge blockchain exchange technology. The collaboration leverages NYIAX's capabilities, enabling businesses to scale, list, price, and trade data and digital assets efficiently, creating new revenue opportunities. With the increasing recognition of data as a strategic financial asset, this partnership provides businesses with the infrastructure to monetize data in a secure and scalable environment, bridging the gap between data valuation and liquidity.

Market Impact and Growth Potential

The global data monetization market is expected to exceed \$700 billion by 2025¹, fueled by the rising demand for platforms that convert data into financial assets.

"Companies possess data with untapped economic value that can generate significant revenue," said Teri Gallo, CEO of NYIAX. "This alliance establishes a structured market where data is traded like traditional assets, offering businesses greater valuation transparency and liquidity."

Key Highlights of the Alliance:

- **Seamless, Transparent Trading** – Leveraging the joint NYIAX-Nasdaq patented technology and Datavault AI's Information Data Exchange®, this collaboration establishes the most robust cross-sector data-trading platform.
- **AI-Powered Data Monetization** – Datavault AI's high-performance computing and AI agents will enhance NYIAX's capabilities in advertising, digital asset trading and data exchanges.
- **Scalable and Secure Transactions** – Datavault AI and NYIAX will develop cyber-secure, scalable, and regulatory-compliant real-time transactions with built-in audit trails.
- **Next-Generation Web 3.0 Monetization** – The integration introduces tokenized data exchanges, allowing AI-driven real-time pricing, valuation, and liquidity management.

Nathaniel Bradley, CEO of Datavault AI, emphasized the transformative potential of this partnership:

¹ Data Monetization Market to touch US\$ 708.86 Bn by 2025 - TMR

"This is a breakthrough for businesses looking to unlock financial value from their data. By integrating the Information Data Exchange® with NYIAX's platform built on co-developed patents with Nasdaq, we are enabling a new era of AI-driven data monetization. Our customers gain access to secure, real-time valuation and trading mechanisms, helping them capitalize on the expanding data economy. The integration introduces multi-sector, tokenized data exchanges, enabling AI agents that provide for real-time pricing, scoring and liquidity estimations while ensuring transactional integrity and compliance. Web 3.0 solutions, including Datavault AI agents DataValue®, DataScore®, and Data Vault Bank® enable automated smart contract administration, data completeness accuracy and Information Data Exchange provides for bid/ask data exchange management."

Opportunity and Business Implications

Through this collaboration, Datavault AI and NYIAX create a direct financial pathway for data monetization within NYIAX's industry-leading Smart Contract trading platform, providing businesses with a clear mechanism to convert proprietary data into a liquid asset.

The partnership delivers a structured, scalable revenue model that enables businesses to leverage AI and blockchain for:

- Automated smart contract execution ensuring data integrity.
- Transparent price discovery for data assets.
- Enhanced market liquidity through tokenized trading solutions.

About Datavault AI Inc.

Datavault AI Inc. (Nasdaq: DVLTL) is a leading data technology and licensing company focused on AI-driven data valuation and monetization. Through its cloud-based Web 3.0 platform, Datavault AI offers solutions in high-performance computing, experiential data perception, and secure monetization.

Learn more at: www.dvlt.ai

About NYIAX

Founded with a vision of delivering trust and transparency to the markets of tomorrow, NYIAX brings a new wave of innovation to the advertising industry -- solving the industry's most pressing challenges.

Built on the Nasdaq Financial Framework and powered by blockchain, NYIAX's patented technology addresses market inefficiencies, fraud, supply chain opacity, and outdated legacy processes. By unifying direct and programmatic workflows, NYIAX streamlines the entire media process from discovery to billing, creating a marketplace designed for the future that buyers and sellers have long sought.

For more information, visit: www.nyiix.com

Cautionary Note Regarding Forward-Looking Statements

This press release of Datavault AI contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements, include, among others, the Company's expectations with respect to the strategic business and intellectual property agreements (the "Agreements"), including statements regarding the benefits of the Agreements, the implied valuation of the Company, the products offered by the Company and the markets in which it operates, and the Company's projected future results and market opportunities, as well as information with respect to Datavault AI's future operating results and business strategy. Readers are cautioned not to place undue reliance on these forward-looking statements. Actual results may differ materially from those indicated by these forward-looking statements as a result of a variety of factors, including, but not limited to: (i) risks and uncertainties impacting Datavault AI's business including, risks related to its current liquidity position and the need to obtain additional financing to support ongoing operations, Datavault AI's ability to continue as a going concern, Datavault AI's ability to maintain the listing of its common stock on Nasdaq, Datavault AI's ability to predict the timing of design wins entering production and the potential future revenue associated with design wins, Datavault AI's ability to predict its rate of growth, Datavault AI's ability to predict customer demand for existing and future products and to secure adequate manufacturing capacity, consumer demand conditions affecting Datavault AI's customers' end markets, Datavault AI's ability to hire, retain and motivate employees, the effects of competition on Datavault AI's business, including price competition, technological, regulatory and legal developments, developments in the economy and financial markets, and potential harm caused by software defects, computer viruses and development delays, (ii) risks related to Datavault AI's ability to realize some or all of the anticipated benefits from the Agreements, any risks that may adversely affect the business, financial condition and results of operations of Datavault AI after the completion of the Agreements, including but not limited to cybersecurity risks, the potential for AI design and usage errors, risks related to regulatory compliance and costs, potential harm caused by data privacy breaches, digital business interruption and geopolitical risks, and (iii) other risks as set forth from time to time in Datavault AI's filings with the U.S. Securities and Exchange Commission. The information in this press release is as of the date hereof and the Company undertakes no obligation to update such information unless required to do so by law. The reader is cautioned not to place under reliance on forward looking statements. The Company does not give any assurance that the Company will achieve its expectations.

Investor and Media Contacts

Investors:

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(415) 433-3777
datavaultinvestors@allianceadvisors.com

Media Inquiries:

Sonia Choi
(844) DATA-400
sonia@vault.email
