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

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): May 19, 2025**

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**LUMINAR TECHNOLOGIES, INC.**

(Exact name of registrant as specified in its charter)

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

**001-38791**  
(Commission  
File Number)

**83-1804317**  
(IRS Employer  
Identification No.)

**2603 Discovery Drive, Suite 100  
Orlando, Florida 32826**  
(Address of principal executive offices, including zip code)  
**Registrant's telephone number, including area code: (407) 900-5259**

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

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

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

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

Title of each class	Trading symbol	Name of each exchange on which registered
Class A Common Stock, par value of \$0.0001 per share	LAZR	The Nasdaq Stock Market LLC

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

Emerging growth company ☐

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

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

On May 19, 2025, Luminar Technologies, Inc. (the “Company” or “Luminar”) entered into a securities purchase agreement (the “Purchase Agreement”) with certain institutional accredited investors, pursuant to which the Company may issue and sell, in a series of registered direct offerings, up to an aggregate of 200,000 shares of newly designated Series A Convertible Preferred Stock, par value \$0.0001 per share, with a stated value of \$1,000 per share (the “Series A Preferred Stock”), to the investors at a purchase price of \$960.00 per share. The initial offering for 35,000 shares (the “Preferred Shares”) of Series A Preferred Stock is expected to close on or about May 22, 2025 (the “First Closing”), following the satisfaction or waiver of certain closing conditions set forth in the Purchase Agreement, for net proceeds to the Company of \$33.6 million, before deducting placement agent fees and other offering expenses.

The Company also agreed to issue to the lead investor \$2.0 million in shares of the Company’s Class A common stock, par value \$0.0001 per share (the “Common Stock”), at a price per share equal to the Nasdaq Official Closing Price on the trading day immediately preceding the First Closing (such shares of Common Stock, the “Commitment Shares” and, together with the Preferred Shares, the “Securities”) as a commitment fee.

Each additional closing under the Purchase Agreement is at the option of the Company upon notice to the investors and subject to the satisfaction or waiver of certain closing conditions set forth in the Purchase Agreement, including, among others and subject to certain qualifications, the absence of certain defaults, no material adverse effect, a minimum liquidity requirement, satisfaction of certain trading price and volume thresholds during the ten consecutive trading day period preceding the additional closing, that any such additional closing may be no less than 60 days following the immediately preceding closing (or, if more than 25,000 shares of Series A Preferred Stock were sold at the immediately preceding closing, 90 days or such earlier date after 60 days following the immediately preceding additional closing that the investors no longer hold any shares of the Series A Preferred Stock sold at the immediately preceding closing and, with respect to the first additional closing after the First Closing, if any shares of Series A Preferred Stock are outstanding as of the date we receive the Stockholder Approval (as defined below), 45 days after receipt of the Stockholder Approval, or such earlier date after such time as the investors no longer hold any of the Preferred Shares sold at the First Closing) and receipt of the Stockholder Approval prior to the first such additional closing. The Company is under no obligation to sell any securities to the investors under the Purchase Agreement subsequent to the First Closing.

The offering of the Securities is being made, and the Securities will be issued, pursuant to the Company’s registration statement on Form S-3 (File No. 333-279118) (the “Registration Statement”), which was declared effective by the Securities and Exchange Commission (the “SEC”) on April 4, 2025, including the prospectus contained therein, as well as a prospectus supplement to be filed with the SEC relating to the offering of the Securities.

The Company retained D. Boral Capital LLC (the “Placement Agent”) as exclusive placement agent for the offering of the Series A Preferred Stock. As compensation for such services, the Company will pay the Placement Agent a cash fee equal to 4.6% of the gross proceeds actually received by the Company from the sale of the Series A Preferred Stock.

This Current Report on Form 8-K does not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall it constitute an offer to sell, solicitation or sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful.

#### ***Series A Preferred Stock***

In connection with the First Closing, the Company will designate 254,000 shares of its authorized and unissued preferred stock as Series A Preferred Stock and establish the voting and other relative rights, powers and preferences of the Series A Preferred Stock and the qualifications, limitations and restrictions thereof pursuant to the Certificate of Designations of the Series A Preferred Stock (the “Certificate of Designations”), to be filed with the Secretary of State of the State of Delaware, as summarized below:

*General.* Each share of Series A Preferred Stock has an initial stated value of \$1,000 per share, which is subject to proportional adjustment upon the occurrence of any stock split, stock dividend, stock combination and/or similar transactions, and, when issued, the Series A Preferred Stock will be fully paid and non-assessable.

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*Ranking.* The Series A Preferred Stock, with respect to the payment of dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company, ranks senior to all of the Company's capital stock, unless the Required Holders (as defined in the Certificate of Designations) consent to the creation of other capital stock that is senior or equal in rank to the Series A Preferred Stock.

*Dividends.* The holders of Series A Preferred Stock will be entitled to receive dividends on the stated value of their shares of Series A Preferred Stock from and after the occurrence of any Triggering Event (as defined in the Certificate of Designations) and during the continuance of the Triggering Event. Triggering Events include, but are not limited to: suspension from trading or failure of the Common Stock to be trading or listed within certain time periods; failure to issue Conversion Shares (as defined below) within certain time periods; failure to pay dividends on any dividend date; and certain bankruptcy or insolvency events. Any such dividends are payable "in kind," in the form of additional shares of Series A Preferred Stock, quarterly in arrears at the dividend rate of 18% per annum.

#### *Conversion Rights*

*Conversion at the Option of the Holders.* Each holder of Series A Preferred Stock may convert all, or any part, of its shares of outstanding Series A Preferred Stock, at any time at such holder's option, into shares of Common Stock (such converted shares of Common Stock, the "Conversion Shares") at a conversion price (the "Conversion Price") equal to the lesser of:

- a fixed conversion price equal to \$4.752 (the "Fixed Conversion Price"); and
- a variable conversion price equal to 95% of the lowest volume weighted average price of the Common Stock during the 5 consecutive trading day period immediately preceding, but not including, the applicable conversion date, provided that the variable conversion price will not be lower than the floor price of \$0.792 (the "Floor Price").

*Adjustments to the Conversion Price.* The Fixed Conversion Price and the Floor Price are each subject to proportional adjustment upon the occurrence of any stock split, stock dividend, stock combination and/or similar transactions. If the Company at any time issues or sells or enters into an agreement to issue or sell, any Common Stock, options or convertible securities that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock at a price which varies or may vary with the market price of the shares of Common Stock, including by way of one or more reset(s) to a fixed price, other than customary anti-dilution provisions and specified other exclusions, each holder will have the right, in its sole discretion to substitute such variable price for the Conversion Price upon any conversion of the Series A Preferred Stock, provided that the variable price will not be lower than the Floor Price.

#### *Conversion Limitations*

*Beneficial Ownership Limitation.* The Company may not effect the conversion of any shares of Series A Preferred Stock held by a holder, and such holder will not have the right to convert any shares of Series A Preferred Stock held by such holder to the extent that after giving effect to such conversion, such holder, together with any person whose beneficial ownership of Common Stock would or could be aggregated with such holder's for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), collectively would beneficially own in excess of 4.99% (the "Maximum Percentage") of the shares of Common Stock outstanding immediately after giving effect to such conversion.

*Monthly Conversion Limitation.* In addition, the Company may not effect the conversion of any shares of Series A Preferred Stock held by a holder, to the extent that after giving effect to such conversion, the aggregate stated value of shares of Series A Preferred Stock that has been converted into shares of Common Stock during the calendar month in which such conversion occurred exceeds the greater of (x) \$12,500,000 and (y) 12.5% of the aggregate daily dollar trading volume for the Common Stock on The Nasdaq Stock Market LLC ("Nasdaq") during such monthly period; provided that this monthly conversion cap does not apply during the period when a Triggering Event has occurred and is continuing or to any conversion of the Series A Preferred Stock at the Fixed Conversion Price.

*Limitation on Conversions for Purposes of Listing Rules.* The Company may not issue any shares of Common Stock upon conversion of the Series A Preferred Stock or otherwise pursuant to the terms of the Certificate of

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Designations if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue without breaching the listing rules of Nasdaq until the Company obtains the approval of stockholders as required by the applicable Nasdaq listing rules (the “Exchange Cap”). The Company has agreed, pursuant to the Purchase Agreement, to use reasonable best efforts to solicit such stockholder approval (the “Stockholder Approval”) no later than August 31, 2025.

*Voting Rights.* Except as provided in the Certificate of Designations or as otherwise required by law, holders of the Series A Preferred Stock will vote as a single class with the holders of Common Stock (and any other class or series of capital stock of the Company that votes as a single class with the holders of the Common Stock) on an “as converted” basis on all matters submitted to a vote of stockholders of the Company; provided, however, that (i) holders of the Series A Preferred Stock are not entitled to vote on any proposal to approve the issuance of Common Stock pursuant to the Certificate of Designations in excess of the Exchange Cap and (ii) no holder of the Series A Preferred Stock will have the power to vote any shares beneficially owned or that may be deemed to be beneficially owned by such holder in excess of the Maximum Percentage.

*Transfer Restrictions.* A holder may not transfer all or any portion of its shares of Series A Preferred Stock without the Company’s express prior written consent, except to an affiliate of such holder or to the Company.

*Company Optional Redemption.* At any time at or after the repayment in full of the Company’s Floating Rate Senior Secured Notes due 2028 (the “First Lien Notes”) and the Company’s Convertible Second Lien Senior Secured Notes due 2030 (the “Second Lien Notes”), the Company has the right to redeem all or some of the then outstanding shares of Series A Preferred Stock at a cash redemption price equal to the stated value of such shares, subject to the satisfaction of certain conditions set forth in the Certificate of Designations.

*Company Optional Redemption in Connection with a Fundamental Transaction.* In connection with any Fundamental Transaction (as described below), the Company has the right to redeem all, and not less than all, of the Series A Preferred Stock then outstanding at a cash redemption price equal to a 105% redemption premium to the stated value of the Series A Preferred Stock being redeemed (such price, the “Fundamental Transaction Redemption Price”), subject to the satisfaction of certain conditions set forth in the Certificate of Designations, including the prior repayment in full of the First Lien Notes and the Second Lien Notes.

*Redemption at the Option of the Holders.* At any time beginning on or after the later of the date that is 181 days after the maturity date of the First Lien Notes and the Second Lien Notes, a holder of Series A Preferred Stock may require the Company to repurchase all or any portion of the holder’s Series A Preferred Stock at the stated value of such shares.

*Repurchase at the Option of the Holders Upon a Fundamental Transaction.* In connection with a Fundamental Transaction, a holder of Series A Preferred Stock may require the Company to repurchase all or any portion of the holder’s Series A Preferred Stock at a 105% redemption premium, subject to the prior repayment in full of the First Lien Notes and the Second Lien Notes.

*Purchase Rights.* If at any time the Company grants, issues or sells any options, convertible securities, or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of Common Stock (the “Purchase Rights”), then each holder of Series A Preferred Stock will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Common Stock acquirable upon complete conversion of all the Series A Preferred Stock held by such holder immediately prior to the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights, subject to certain limitations on beneficial ownership.

*Fundamental Transactions.* The Certificate of Designations prohibits the Company from entering into specified fundamental transactions (including, without limitation, mergers, business combinations and similar transactions) (each, a “Fundamental Transaction”) unless the Company (or the Company’s successor) assumes in writing all of the Company’s obligations under the Certificate of Designations and the other Transaction Documents (as defined in the Certificate of Designations) and the successor entity is a publicly traded corporation listed on an eligible market or else the Company redeems the then outstanding Series A Preferred Stock in full in connection with the Fundamental Transaction.

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*Covenants.* The Certificate of Designations contains a variety of obligations on the Company's part not to engage in specified activities. In particular, the Company will not, and will cause its subsidiaries to not, redeem, repurchase or declare or pay any cash dividend or distribution on any of the Company's capital stock (other than as required under the Certificate of Designations or permitted under the indentures governing the First Lien Notes and the Second Lien Notes); incur any indebtedness or any liens (other than any indebtedness or any liens permitted under the indenture governing the Second Lien Notes); or enter into or consummate any transaction for any variable price securities (other than sales of shares pursuant to the Company's existing "at-the-market" facility and certain other exclusions). In addition, the Company will not issue any preferred stock or issue any other securities that would cause a breach or default under the Certificate of Designations.

*Reservation Requirements.* So long as any shares of Series A Preferred Stock remain outstanding, the Company has agreed to at all times reserve a number of shares of Common Stock equal to the sum of (i) 100% of the aggregate number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Series A Preferred Stock then outstanding at the Floor Price then in effect (without regard to any limitations on conversions) and (ii) 100% of the aggregate number of shares of Common Stock that would be necessary to effect the conversion of that number of shares of Series A Preferred Stock equal to 18 months of dividends on the Series A Preferred Stock then outstanding at the Floor Price then in effect (without regard to any limitations on conversions).

The foregoing description of the terms of the Purchase Agreement and the Certificate of Designations does not purport to be complete and is qualified in its entirety by reference to the full text of the Purchase Agreement and the form of the Certificate of Designations, copies of which are filed as Exhibits 10.1 and 3.1, respectively, to this Current Report on Form 8-K, and are incorporated by reference herein.

#### **Item 7.01. Regulation FD Disclosure.**

On May 21, 2025, the Company issued a press release announcing the entry into the Purchase Agreement. A copy of the press release is attached to this Current Report on Form 8-K as Exhibit 99.1.

The information included in this Item 7.01 and in Exhibit 99.1 attached hereto is being furnished and shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, nor shall any such information or exhibits be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such document.

#### **Forward-Looking Statements**

Certain statements included in this Current Report on Form 8-K that are not historical facts are forward-looking statements for purposes of the safe harbor provisions under the Private Securities Litigation Reform Act of 1995. Forward-looking statements generally are accompanied by words such as "aims," "believe," "may," "will," "estimate," "set," "continue," "towards," "anticipate," "intend," "expect," "should," "would," "forward," and similar expressions that predict or indicate future events or trends or that are not statements of historical matters. These forward-looking statements include, but are not limited to, statements regarding the completion and timing of the closing of the offering of the Securities and there is no assurance that Luminar will satisfy the closing conditions for the issuance of additional tranches of Series A Preferred Stock subsequent to the First Closing. These statements are based on various assumptions, whether or not identified in this Current Report, and on the current expectations of Luminar's management and are not predictions of actual performance. Forward-looking statements are subject to a number of risks and uncertainties, including but not limited to whether we will consummate the financing on the expected terms or at all, which could differ or change based upon market conditions or for other reasons, that could cause actual results to differ materially from the forward-looking statements including the risks discussed under the heading "Risk Factors" in the Annual Report on Form 10-K filed by Luminar on March 28, 2025, and other documents Luminar files with the SEC in the future. You are cautioned not to place undue reliance upon any forward-looking statements, which speak only as of the date made and Luminar undertakes no obligation to update any forward-looking statement to reflect events or circumstances after the date of this Current Report.

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**Item 9.01 Financial Statements and Exhibits**

(d) *Exhibits*

Exhibit Number	Description
3.1	<a href="#">Form of Certificate of Designations of Series A Convertible Preferred Stock of Luminar Technologies, Inc.</a>
10.1†^	<a href="#">Securities Purchase Agreement, dated May 19, 2025, by and among Luminar Technologies, Inc. and the investors signatory thereto.</a>
99.1	<a href="#">Press Release, dated May 21, 2025.</a>
104	Cover page interactive data file formatted in Inline XBRL

† Certain of the exhibits and schedules to this exhibit have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant hereby agrees to furnish a copy of any omitted exhibit and/or schedule to the SEC upon its request.

^ Certain portions of this exhibit have been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K. The registrant hereby agrees to furnish supplementally an unredacted copy of the exhibit to the SEC upon its 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.

### **Luminar Technologies, Inc.**

Date: May 21, 2025

By: /s/ Thomas J. Fennimore

Name: Thomas J. Fennimore

Title: Chief Financial Officer

**FORM OF CERTIFICATE OF DESIGNATIONS OF  
SERIES A CONVERTIBLE PREFERRED STOCK  
OF  
LUMINAR TECHNOLOGIES, INC.**

I, Thomas J. Fennimore, hereby certify that I am the Chief Financial Officer of Luminar Technologies, Inc. (the “**Company**”), a corporation organized and existing under the Delaware General Corporation Law (the “**DGCL**”), and further do hereby certify:

That pursuant to the authority expressly conferred upon the Board of Directors of the Company (the “**Board**,” which term as used herein shall include any duly authorized committee of the Board of Directors of the Company) by the Company’s Certificate of Incorporation (the “**Certificate of Incorporation**”), and Section 151(g) of the DGCL, the Board on May [ ], 2025, adopted the following resolution determining it desirable and in the best interests of the Company and its stockholders for the Company to create a series of two hundred fifty-four thousand (254,000) shares of preferred stock designated as “**Series A Convertible Preferred Stock**”, none of which shares have been issued, to be issued pursuant to the Securities Purchase Agreement (as defined below) in accordance with the terms of the Securities Purchase Agreement:

RESOLVED, that, pursuant to the authority vested in the Board in accordance with the provisions of the Certificate of Incorporation, a series of preferred stock, par value \$0.0001 per share, of the Company be and hereby is created pursuant to this certificate of designations (this “**Certificate of Designations**”), and that the designation and number of shares thereof and the voting and other relative rights, powers and preferences of the shares of such series and the qualifications, limitations and restrictions thereof are as follows:

**TERMS OF SERIES A CONVERTIBLE PREFERRED STOCK**

1. Designation and Number of Shares. There shall hereby be created and established a series of preferred stock of the Company designated as “Series A Convertible Preferred Stock” (the “**Preferred Shares**”). The authorized number of Preferred Shares shall be two hundred fifty-four thousand (254,000) shares. Each Preferred Share shall have a par value of \$0.0001 and shall be uncertificated and represented in Book-Entry form unless and until otherwise determined by the Board. Capitalized terms not defined herein shall have the meanings as set forth in Section 31 below.

2. Ranking. Except (x) as permitted pursuant to Section 15(e) or (y) to the extent that the Required Holders (as defined below) expressly consent to the creation of Parity Stock or Senior Preferred Stock (as defined below) in accordance with Section 18, all shares of capital stock of the Company shall be junior in rank to the Preferred Shares with respect to the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company (such junior stock is referred to herein collectively as “**Junior Stock**”). The rights of all such shares of capital stock of the Company shall be subject to the rights, powers, preferences and privileges of the Preferred Shares. Without limiting any other provision of this Certificate of Designations, without the prior express consent of holders of at least a majority of the outstanding Preferred Shares (provided that such holders must include Yorkville Advisors Global LP or its Affiliates (collectively, “**Yorkville**”) for so long as Yorkville beneficially owns any of the outstanding Preferred Shares or may be obligated to

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purchase additional Preferred Shares pursuant to the terms of the Securities Purchase Agreement) (collectively, the “**Required Holders**”), voting separately as a single class, the Company shall not hereafter authorize or issue any additional or other shares of capital stock that is (i) of senior rank to the Preferred Shares in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company (collectively, the “**Senior Preferred Stock**”), (ii) of pari passu rank to the Preferred Shares in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company (collectively, the “**Parity Stock**”) or (iii) any Junior Stock having a maturity date or which is mandatorily redeemable or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date no Preferred Shares remain outstanding, except, in the case of the foregoing clause (i) and (ii), to the extent permitted pursuant to Section 15(e). In the event of the merger or consolidation of the Company with or into another corporation, so long as any Preferred Shares remain outstanding, the Preferred Shares shall maintain their relative rights, powers, designations, privileges and preferences provided for herein and no such merger or consolidation shall be consummated if it would result in the Preferred Shares being treated in any manner inconsistently with the foregoing, unless the Company has exercised its right of Company Redemption in full prior to or in connection with such merger or consolidation and actually pays the applicable Company Redemption Price prior to or simultaneously with such merger or consolidation.

3. Dividends.

(a) Dividends. From and after the occurrence of any Triggering Event (each, a “**Trigger Date**”) and during the continuance thereof, each holder of a Preferred Share (each, a “**Holder**” and collectively, the “**Holders**”), shall be entitled to receive dividends (“**Dividends**”) on the Stated Value of its Preferred Shares at the Dividend Rate (as defined below), which shall be payable “in kind” in the form of additional Preferred Shares as provided herein. Dividends on the Preferred Shares shall commence accruing on the Trigger Date and shall be computed on the basis of a 360-day year and twelve 30-day months. In the event that such Triggering Event is subsequently cured (and no other Triggering Event then exists), dividends shall cease accruing effective as of the calendar day immediately following the date of such cure. Any such Dividends shall be payable quarterly in arrears on the last Trading Day of each quarter (each, a “**Dividend Date**”) during which such Dividends accrue, and, on each Dividend Date, the Company shall issue additional Preferred Shares (“**PIK Shares**”) to each holder equal to the quotient of the (x) the aggregate amount of Dividends accrued on such Holder’s Preferred Shares and (y) the Stated Value. The Company shall promptly after each Dividend Date deliver to each Holder Book-Entry receipts evidencing the issuance of the PIK Shares on such Dividend Date, if any such PIK Shares are so issued on such Dividend Date. Dividends on the Preferred Shares as provided in this Section 3(a) shall accrue and be payable whether or not declared, set aside for payment or otherwise authorized by the Board and whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends, such that if Dividends are not paid as provided in this Section 3(a), the unpaid Dividends shall accumulate until paid.

4. Conversion. At any time after the Initial Issuance Date, each Preferred Share shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 4.

(a) Holder’s Conversion Right. Subject to the provisions of Section 4(d), Section 4(e) and Section 4(f), at any time or times on or after the Initial Issuance Date, each Holder shall be entitled to convert any Preferred Shares held by such Holder into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 4(c) at the Conversion Rate (as defined below). The Company shall not issue any

fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Preferred Shares.

(b) **Conversion Rate.** The number of shares of Common Stock issuable upon conversion of any Preferred Share pursuant to Section 4(a) shall be determined by dividing (x) the Conversion Amount of such Preferred Share by (y) the Conversion Price (the “**Conversion Rate**”):

(i) “**Conversion Amount**” means, with respect to each Preferred Share, as of the applicable date of determination, the sum of (A) the Stated Value thereof plus (B) any Additional Amount thereon as of such date of determination.

(ii) “**Conversion Price**” means, with respect to each Preferred Share, as of any Conversion Date or other date of determination, the lesser of (x) \$4.752 (“**Fixed Conversion Price**”) and (y) 95% of the lowest VWAP of the Common Stock during the five (5) consecutive Trading Day period immediately preceding but not including the Conversion Date (“**Variable Conversion Price**”), provided that the Variable Conversion Price shall not be lower than the Floor Price and subject to adjustment as provided herein.

(c) **Mechanics of Conversion.** The conversion of each Preferred Share shall be conducted in the following manner:

(i) **Optional Conversion.** To convert a Preferred Share into shares of Common Stock on any date (a “**Conversion Date**”), a Holder shall deliver (whether via electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York City time, on such date, a copy of an executed notice of conversion of the share(s) of Preferred Shares subject to such conversion in the form attached hereto as **Exhibit I** (the “**Conversion Notice**”) to the Company. On or before the first (1st) Trading Day (or the (2<sup>nd</sup>) Trading Day, if the Conversion Notice is received after 7:00 p.m., New York City time, on the Conversion Date) following the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment of confirmation of receipt of such Conversion Notice, substantially in the form attached hereto as **Exhibit II**, to such Holder and the Company’s transfer agent (the “**Transfer Agent**”), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein. On or before the first (1st) Trading Day (or the (2<sup>nd</sup>) Trading Day, if the Conversion Notice is received after 7:00 p.m., New York City time, on the Conversion Date) following each date on which the Company has received a Conversion Notice (the “**Share Delivery Deadline**”), the Company shall: (1) provided that the Transfer Agent is participating in DTC’s Fast Automated Securities Transfer Program (“**FAST**”), credit such aggregate number of shares of Common Stock to which such Holder shall be entitled pursuant to such conversion to such Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in FAST, upon the request of such Holder, issue and deliver (whether via electronic email or reputable overnight courier) to the address as specified in such Conversion Notice, a Book-Entry statement, registered in the name of such Holder or its designee, for the number of shares of

Common Stock to which such Holder shall be entitled. If less than all of the Preferred Shares then held by a Holder are submitted for conversion pursuant to any Conversion Notice, then the Company shall, as soon as practicable and in no event later than two (2) Trading Days (or three (3) Trading Days, if the Conversion Notice is received after 7:00 p.m., New York City time, on the Conversion Date) after receipt of the applicable Conversion Notice and at its own expense, issue and deliver to such Holder (or its designee) a new Book Entry (in accordance with Section 20(d)) representing the number of Preferred Shares not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Preferred Shares shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(ii) **Company's Failure to Timely Convert.** If the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, if the Transfer Agent is not participating in FAST, to issue and deliver to such Holder (or its designee) a Book-Entry for the number of shares of Common Stock to which such Holder is entitled and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, to credit such Holder's or its designee's balance account with DTC for such number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of any Conversion Amount (as the case may be) (a "**Conversion Failure**"), then, in addition to all other remedies available to such Holder, such Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, all, or any portion, of such Preferred Shares that has not been converted pursuant to such Conversion Notice; provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 4(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver to such Holder (or its designee) a Book-Entry and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, the Transfer Agent shall fail to credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (II) below, and if on or after such Share Delivery Deadline such Holder purchases (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of shares of Common Stock issuable upon such conversion that such Holder is entitled to receive from the Company and has not received from the Company in connection with such Conversion Failure, as applicable (a "**Buy-In**"), then, in addition to all other remedies available to such Holder, the Company shall, within two (2) Business Days after receipt of such Holder's request and in such Holder's discretion, either: (I) pay cash to such Holder in an amount equal to such Holder's total purchase price (including brokerage commissions, stock loan costs and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of such Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such Book-Entry (and to issue such shares of Common Stock) or credit to the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be)

(and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to such Holder a Book-Entry representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (II). Nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver a Book-Entry representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the conversion of Preferred Shares as required pursuant to the terms hereof.

(iii) Registration; Book-Entry. The Company (or the Transfer Agent, as custodian for the Preferred Shares) shall maintain a register (the "**Register**") for the recordation of the names and addresses of the Holders of each Preferred Share and the Stated Value of the Preferred Shares (the "**Registered Preferred Shares**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and each Holder of the Preferred Shares shall treat each Person whose name is recorded in the Register as the owner of a Preferred Share for all purposes (including, without limitation, the right to receive payments and Dividends hereunder) notwithstanding notice to the contrary. A Registered Preferred Share may be assigned, transferred or sold only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell one or more Registered Preferred Shares by such Holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Preferred Shares in the same aggregate Stated Value as the Stated Value of the surrendered Registered Preferred Shares to the designated assignee or transferee pursuant to Section 20, provided that, subject to Section 19, if the Company has granted its consent to an assignment or other transfer (or such consent is not required in accordance with Section 19) and the Company does not so record an assignment, transfer or sale (as the case may be) of such Registered Preferred Shares within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Each Holder and the Company shall maintain records showing the Stated Value, Dividends converted and/or paid (as the case may be) and Late Charges converted and/or paid (as the case may be), and the dates of such conversions and/or payments (as the case may be), or shall use such other method, reasonably satisfactory to such Holder and the Company, and if the Company does not update the Register to record such Stated Value, Dividends converted and/or paid (as the case may be) and Late Charges converted and/or paid (as the case may be), and the dates of such conversions and/or payments (as the case may be), within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence. In the event of any dispute or discrepancy, such records of such Holder establishing the number of Preferred Shares to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. A Holder and any transferee or assignee, by acceptance of a Book-Entry, acknowledge and agree that, by reason

of the provisions of this paragraph, following conversion of any Preferred Shares, the number of Preferred Shares represented by such Book-Entry may be less than the number of Preferred Shares stated in the most recent Book-Entry statement delivered to the Holder. Each Book-Entry representing Preferred Shares shall bear the following legend:

ANY TRANSFEREE OR ASSIGNEE OF THIS INSTRUMENT SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES A CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS INSTRUMENT, INCLUDING SECTION 4(c)(iii) THEREOF.

THE NUMBER OF SHARES OF SERIES A CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS INSTRUMENT MAY BE LESS THAN THE NUMBER OF SHARES OF SERIES A CONVERTIBLE PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 4(c)(iii) OF THE CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES A CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS INSTRUMENT.

(iv) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one Holder for the same Conversion Date and the Company can convert some, but not all, of such Preferred Shares submitted for conversion, the Company shall convert from each Holder electing to have Preferred Shares converted on such date a Holder Pro Rata Amount of such Holder's Preferred Shares submitted for conversion on such date based on the number of Preferred Shares submitted for conversion on such date by such Holder relative to the aggregate number of Preferred Shares submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to a Holder in connection with a conversion of Preferred Shares, the Company shall issue to such Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 25.

(d) Limitation on Beneficial Ownership. The Company shall not effect the conversion of any of the Preferred Shares held by a Holder, and such Holder shall not have the right to convert any of the Preferred Shares held by such Holder pursuant to the terms and conditions of this Certificate of Designations and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, such Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock

beneficially owned by such Holder and the other Attribution Parties shall include the number of shares of Common Stock held by such Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of the Preferred Shares with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Preferred Shares beneficially owned by such Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes, convertible preferred stock or warrants, including the Preferred Shares) beneficially owned by such Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 4(d). For purposes of this Section 4(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the 1934 Act and the rules and regulations promulgated thereunder. For purposes of determining the number of outstanding shares of Common Stock a Holder may acquire upon the conversion of such Preferred Shares without exceeding the Maximum Percentage, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify such Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause such Holder's beneficial ownership, as determined pursuant to this Section 4(d), to exceed the Maximum Percentage, such Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of any Holder, the Company shall within one (1) Business Day confirm in writing or by electronic mail to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including such Preferred Shares, by such Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to a Holder upon conversion of such Preferred Shares results in such Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which such Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and such Holder shall not have the power to vote or to transfer the Excess Shares. For purposes of clarity, the shares of Common Stock issuable to a Holder pursuant to the terms of this Certificate of Designations in excess of the Maximum Percentage shall not be deemed to be beneficially owned by such Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert such Preferred Shares pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4(d) to the extent necessary to correct this paragraph (or any portion of this

paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 4(d) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of such Preferred Shares.

(e) Limitation on Monthly Conversions. Subject to Section 4(d), the Company shall not effect the conversion of any of the Preferred Shares held by a Holder to the extent that after giving effect to such conversion, the aggregate Conversion Amount that has been converted into shares of Common Stock during the calendar month in which such Conversion Date occurred (the “**Monthly Conversion Period**”) exceeds the greater of (x) \$12,500,000 and (y) 12.5% of the aggregate daily dollar trading volume for the Common Stock on the Principal Market during such Monthly Conversion Period as reported by Bloomberg, with such amount allocated pro rata amongst the Holders in relation to their respective Exchange Cap Allocation (the greater of (x) and (y), the “**Conversion Cap**”) and provided further that the Conversion Cap shall not apply (A) during a Triggering Event Conversion Period (as defined below) or (B) to any conversion of the Preferred Shares at the Fixed Conversion Price. For purposes of this Section 4(e), a “**Triggering Event Conversion Period**” means the period (X) commencing at the time that is the earliest to occur of (1) a Holder’s receipt of a Triggering Event Notice and (2) the Company’s receipt of a written notice from a Holder of the occurrence of a Triggering Event upon such Holder becoming aware of such Triggering Event, and (Y) ending on the date such Triggering Event is cured and the Company delivers a written notice thereof via electronic email to each Holder. Upon the written request of any Holder, the Company will provide such Holder (I) a reasonable description of the applicable Triggering Event, (II) a certification as to whether, in the reasonable opinion of the Company, such Triggering Event is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Triggering Event, and (III) a certification as to the date the Triggering Event occurred and, if cured on or prior to the date of such Triggering Event Notice, the date of such cure. The calculation of “aggregate daily dollar trading volume” using Bloomberg shall be performed by each Holder and submitted to the Company (with reasonable supporting detail with respect to any calculation required pursuant to subsection (y) of the Conversion Cap) with each Conversion Notice, and such calculation by the Holder shall be deemed conclusive and binding on the Company absent manifest error.

(f) Principal Market Regulation. The Company shall not issue any shares of Common Stock upon conversion of any Preferred Shares or otherwise pursuant to the terms of this Certificate of Designations if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion of the Preferred Shares without breaching the Company’s obligations under the listing rules of the Principal Market (the number of shares which may be issued without violating such rules, including rules related to the aggregate offerings under NASDAQ Listing Rule 5635(d) and NYSE Listed Company Manual Section 312.03(c), as applicable, the “**Exchange Cap**”), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable listing rules of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from outside counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Required Holders. Until such approval or such written opinion is obtained, no Holder shall be issued in the aggregate, upon conversion of any Preferred Shares, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap as of the Initial Issuance Date multiplied by (ii) the quotient of (1) the aggregate number of Preferred Shares issued to such Holder on the Initial Issuance

Date divided by (2) the aggregate number of Preferred Shares issued to the Holders on the Initial Issuance Date (with respect to each Holder, the “**Exchange Cap Allocation**”). In the event that any Holder shall sell or otherwise transfer any of such Holder’s Preferred Shares, the transferee shall be allocated a pro rata portion of such Holder’s Exchange Cap Allocation with respect to such portion of such Preferred Shares so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation so allocated to such transferee. Upon conversion in full of a Holder’s Preferred Shares, the difference (if any) between such Holder’s Exchange Cap Allocation and the number of shares of Common Stock actually issued to such Holder upon such Holder’s conversion in full of such Preferred Shares shall be allocated to the respective Exchange Cap Allocations of the remaining Holders of Preferred Shares on a pro rata basis in proportion to the shares of Common Stock underlying the Preferred Shares then held by each such Holder of Preferred Shares.

5. Triggering Events.

(a) Triggering Event. Each of the following events shall constitute a “**Triggering Event**”:

(i) the suspension from trading or the failure of the Common Stock to be trading or listed (as applicable) on an Eligible Market for a period of five (5) consecutive Trading Days;

(ii) the Company’s (A) failure to cure a Conversion Failure (as defined herein) by delivery of the required number of shares of Common Stock within three (3) Trading Days after the applicable Conversion Date or (B) written notice to any Holder of Preferred Shares, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Preferred Shares into shares of Common Stock that is requested in accordance with the provisions of this Certificate of Designations, other than pursuant to Section 4(d), Section 4(e) or Section 4(f) hereof;

(iii) except to the extent the Company is in compliance with Section 10(b) below, at any time following the tenth (10th) consecutive day that a Holder’s Authorized Share Allocation (as defined in Section 10(a) below) is less than 100% of the number of shares of Common Stock that such Holder would be entitled to receive upon a conversion in full, of all of the Preferred Shares then held by such Holder (assuming conversion at the Floor Price then in effect without regard to any limitations on conversion set forth in this Certificate of Designations);

(iv) the Company’s failure to pay to any Holder any Dividend on any Dividend Date (whether or not declared by the Board);

(v) the Company’s failure to pay any other amount due in cash when and as due under this Certificate of Designations (including, without limitation, the Company’s failure to pay any Late Charges or other amounts due in cash hereunder), the Securities Purchase Agreement or any other Transaction Document or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby (in each case, whether or not permitted pursuant to the DGCL), solely to the extent such failure remains uncured for a period of at least five (5) Trading Days;



(vi) the Company fails to deliver the shares of Common Stock issuable upon a conversion of Preferred Shares without a restrictive legend either on any Book-Entry representing such shares of Common Stock or by credit of such shares of Common Stock to such Holder's or its designee's balance account with DTC as and when required by this Certificate of Designations, unless otherwise then prohibited by applicable federal securities laws as a result of any action taken by such Holder, and any such failure remains uncured for at least three (3) Trading Days;

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

- (1) commences a voluntary case or proceeding;
- (2) consents to the entry of an order for relief against it in an involuntary case or proceeding;
- (3) consents to the appointment of a custodian of it or for substantially all of its property;
- (4) makes a general assignment for the benefit of its creditors;
- (5) takes any comparable action under any foreign Bankruptcy Law; or
- (6) generally is not paying its debts as they become due;

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

- (1) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case or proceeding;
- (2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;
- (3) orders the winding up or liquidation of the Company or any Significant Subsidiary; or
- (4) grants any similar relief under any foreign Bankruptcy Law,

and, in each case under this subsection (viii), such order or decree remains unstayed and in effect for at least sixty (60) days;

(ix) one or more final and non-appealable judgment being rendered against the Company or any of its Significant Subsidiaries for the payment of at least \$5,500,000 in the aggregate (excluding any amounts covered by insurance or bond), where such judgment is not discharged, stayed, vacated or otherwise satisfied within sixty (60) days after (A) the date on which the right to appeal the

same has expired, if no such appeal has commenced or (B) the date on which all rights to appeal have been extinguished;

(x) a default by the Company or any of its Subsidiaries with respect to any one or more mortgages, agreements or other instruments under which there is outstanding, or by which there is secured or evidenced, any indebtedness for money borrowed of at least \$5,500,000 (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such indebtedness exists as of the Initial Issuance Date or is thereafter created, where such default: (A) constitutes a failure to pay the principal of, or premium or interest on, any of such indebtedness when due and payable in accordance with its terms, upon required repurchase, upon declaration of acceleration or otherwise, in each case after the expiration of any applicable grace period; or (B) results in such indebtedness becoming or being declared due and payable before its stated maturity;

(xi) other than as specifically set forth in another clause of this Section 5(a), the Company or any Subsidiary breaches any representation or warranty made by or on behalf of the Company or such Subsidiary in any Transaction Document in any material respect (other than the representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any material covenant or other material term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days;

(xii) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company that either (A) the Equity Conditions are satisfied, or (B) as to whether any Triggering Event has occurred;

(xiii) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 15(e) of this Certificate of Designations; or

(xiv) any material provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the Company, or the validity or enforceability thereof shall be contested, directly or indirectly, by the Company or any Subsidiary, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof or the Company or any of its Subsidiaries shall deny in writing that it has any liability or obligation purported to be created under one or more Transaction Documents, except resulting from the satisfaction of the obligations under such Transaction Document or resulting from the application of applicable law.

(b) **Notice of a Triggering Event.** Within one (1) Business Day after the occurrence of a Triggering Event, the Company shall deliver written notice thereof via electronic mail (a “**Triggering Event Notice**”) to each Holder.

6. **Rights Upon Fundamental Transactions.**

(a) **Assumption.** The Company shall not enter into or be party to a Fundamental Transaction unless (i) (x) the Successor Entity or its Parent Entity (in which

case, all subsequent references to “Successor Entity” in this paragraph shall be deemed to refer to such Parent Entity) assumes in writing all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents in accordance with the provisions of this Section 6(a) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction (such approval not to be unreasonably withheld, conditioned or delayed), including agreements to deliver to each Holder of Preferred Shares in exchange for such Preferred Shares a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designations, including, without limitation, having a stated value and dividend rate equal to the stated value and dividend rate of the Preferred Shares held by the Holders and having similar ranking to the Preferred Shares, and satisfactory to the Required Holders and (y) the Successor Entity is a publicly traded corporation whose shares of common stock are quoted on or listed for trading on an Eligible Market or (ii) the Company exercises its right of Company Redemption in full effective upon the consummation of such Fundamental Transaction. Except in the case of the foregoing clause (ii), upon the occurrence of any Fundamental Transaction, (A) the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designations and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein and therein, and (B) the Successor Entity shall deliver to each Holder confirmation that there shall be issued upon conversion of the Preferred Shares at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 7 and 15, which shall continue to be receivable thereafter)) issuable upon the conversion of the Preferred Shares prior to such Fundamental Transaction, such shares of the publicly traded common stock (or their equivalent) of the Successor Entity which each Holder would have been entitled to receive upon the happening of such Fundamental Transaction had all the Preferred Shares held by each Holder been converted immediately prior to such Fundamental Transaction at the Conversion Price in effect at such time (without regard to any limitations on the conversion of the Preferred Shares contained in this Certificate of Designations), as adjusted in accordance with the provisions of this Certificate of Designations. Notwithstanding the foregoing, such Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 6(a) to permit the Fundamental Transaction without the assumption of the Preferred Shares. The provisions of this Section 6 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of the Preferred Shares.

7. Rights Upon Issuance of Purchase Rights and Other Corporate Events.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 8 and Section 15 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of Common Stock (the “**Purchase Rights**”), then each Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of all the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares and assuming for such purpose

that all the Preferred Shares were converted at the Conversion Price as of the applicable record date) held by such Holder immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights, provided, however, to the extent that such Holder's right to participate in any such Purchase Right would result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Purchase Right to such extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent of any such excess) and such Purchase Right to such extent shall be held in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable) for the benefit of such Holder until such time or times, if ever, as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times such Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable)) to the same extent as if there had been no such limitation.

(b) Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), except to the extent the Company exercises its right of Company Redemption effective upon the consummation of such Fundamental Transaction, the Company shall make appropriate provision to ensure that each Holder will thereafter have the right, at such Holder's option, to receive upon a conversion of all the Preferred Shares held by such Holder (i) such securities or other assets to which such Holder would have been entitled with respect to the shares of Common Stock receivable upon such conversion had such shares of Common Stock been held by such Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares set forth in this Certificate of Designations) or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as such Holder would have been entitled to receive had the Preferred Shares held by such Holder initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate in effect at such time. Provision made pursuant the preceding sentence shall be in a form and substance reasonably satisfactory to the Required Holders. The provisions of this Section 7 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion of the Preferred Shares set forth in this Certificate of Designations.

8. Rights Upon Issuance of Other Securities.

(a) [Reserved].

(b) Adjustment of Fixed Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 7, if the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend,

stock combination, recapitalization or other similar transaction) its outstanding shares of Common Stock into a greater number of shares, the Fixed Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Section 7, if the Company at any time on or after the Subscription Date combines (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) its outstanding shares of Common Stock into a smaller number of shares, the Fixed Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 8(b) shall become effective immediately after the effective time of such subdivision or combination.

(c) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 8(c) and Section 15(h), if, notwithstanding the provisions of Section 15(h), the Company in any manner issues or sells or enters into (whether initially or pursuant to any subsequent amendment thereof) any agreement to issue or sell, any Common Stock, Options or Convertible Securities (any such securities, "**Variable Price Securities**") after the Subscription Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock at a price which varies or may vary with the market price of the shares of Common Stock, including by way of one or more reset(s) to a fixed price, but exclusive of (i) Excluded Securities and (ii) such formulations reflecting customary anti-dilution provisions (such as share splits, share combinations, share dividends and similar transactions) (each of the formulations for such variable price being herein referred to as, the "**Variable Price**"), including, but not limited to, an equity line of credit or an "at-the-market" facility, whereby the Company may issue securities at a future determined price regardless of whether shares pursuant to such agreement have actually been issued and regardless of whether such agreement is subsequently canceled, the Company shall provide written notice thereof via electronic mail and overnight courier to each Holder on the date of such agreement and/or the issuance of such shares of Common Stock, Convertible Securities or Options, as applicable. From and after the date the Company enters into such agreement or issues any such Variable Price Securities, each Holder shall have the right, but not the obligation, in its sole discretion to substitute the Variable Price for the Conversion Price upon conversion of the Preferred Shares by designating in the Conversion Notice delivered upon any conversion of Preferred Shares that solely for purposes of such conversion such Holder is relying on the Variable Price rather than the Conversion Price then in effect, provided that the Variable Price shall not be lower than the Floor Price. A Holder's election to rely on a Variable Price for a particular conversion of Preferred Shares shall not obligate such Holder to rely on a Variable Price for any future conversions of Preferred Shares. Notwithstanding anything to the contrary herein, this Section 8(c) will not prohibit the Company from issuing, selling or entering into any agreement (whether initially or pursuant to any subsequent amendment thereof) or arrangement to issue or sell any of the following securities pursuant to any of the following transaction structures (collectively, "**Permitted Variable Price Securities**"): (A) shares of Common Stock issued and sold pursuant to the ATM Facility; or (B) the making of payments to customers, vendors or suppliers in the ordinary course of business consistent with past practice consisting of, or the consideration for which consists of, securities subject to a Variable Price; or (C) the repurchase, redemption, defeasance or other acquisition or retirement for value of any 2026 Notes or Second Lien Notes outstanding as of the Subscription Date, including in exchange for the issuance of shares of Common Stock or securities convertible into or exercisable or exchangeable for shares of Common Stock, pursuant to arrangements in which the repurchase price or exchange ratio with respect thereto is determined based on the market price of the shares of Common Stock within the ten (10) Trading Day period following the entry into any such arrangement or transaction (a "**Forward-Priced Transaction**"); provided, however, that the aggregate value of the Permitted Variable

Price Securities issued pursuant to Forward-Priced Transactions made under this clause (C) do not exceed \$10,000,000 in any calendar year.

(d) Calculations. All calculations under this Section 8 shall be made by rounding to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(e) Voluntary Adjustment by Company. Subject to the rules and regulations of the Principal Market, the Company may at any time any Preferred Shares remain outstanding, with the prior written consent of the Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board.

9. Non-circumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, Bylaws (as defined in the Securities Purchase Agreement) or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designations, and will at all times in good faith carry out all the provisions of this Certificate of Designations and take all action as may be required to protect the rights of the Holders hereunder. Without limiting the generality of the foregoing or any other provision of this Certificate of Designations or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon the conversion of any Preferred Shares above the Conversion Price then in effect, (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of Preferred Shares and (c) shall, so long as any Preferred Shares are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Preferred Shares, the maximum number of shares of Common Stock as shall from time to time be necessary to effect the conversion of the Preferred Shares then outstanding (without regard to any limitations on conversion contained herein). Notwithstanding anything herein to the contrary, if after the Stockholder Meeting Deadline (as defined in the Securities Purchase Agreement), each Holder is not permitted to convert such Holder's Preferred Shares in full for any reason (other than pursuant to restrictions set forth in Section 4(d) or Section 4(e) hereof), the Company shall use its reasonable best efforts to promptly remedy such failure, including, without limitation, obtaining such consents or approvals as necessary to effect such conversion into shares of Common Stock.

10. Authorized Shares.

(a) Reservation. So long as any Preferred Shares remain outstanding, the Company shall at all times reserve out of its authorized and unissued Common Stock a number of shares of Common Stock equal to the sum of (i) 100% of the aggregate number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Preferred Shares then outstanding at the Floor Price then in effect (without regard to any limitations on conversions) and (ii) 100% of the aggregate number of shares of Common Stock that would be necessary to effect the conversion of that number of PIK Shares equal to eighteen (18) months of Dividends on the Preferred Shares then outstanding at the Floor Price then in effect (without regard to any limitations on conversions set forth herein) (the "**Required Reserve Amount**"). The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the Holders based on the number of the

Preferred Shares held by each Holder on the Initial Issuance Date or increase in the number of reserved shares, as the case may be (the “**Authorized Share Allocation**”). In the event that a Holder shall sell or otherwise transfer any of such Holder’s Preferred Shares, each transferee shall be allocated a pro rata portion of such Holder’s Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Preferred Shares shall be allocated to the remaining Holders of Preferred Shares, pro rata based on the number of the Preferred Shares then held by the Holders.

(b) **Insufficient Authorized Shares.** If, notwithstanding Section 10(a) and not in limitation thereof, at any time while any of the Preferred Shares remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Preferred Shares at least a number of shares of Common Stock equal to the Required Reserve Amount (an “**Authorized Share Failure**”), then the Company shall immediately take all action necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Preferred Shares then outstanding (or deemed outstanding pursuant to Section 10(a) above). Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders’ approval of such increase in authorized shares of Common Stock and to cause the Board to recommend to the stockholders that they approve such proposal. Nothing contained in Section 10(a) or this Section 10(b) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

11. Redemption at the Option of the Company.

(a) At any time at or after the repayment in full of the First Lien Notes and the Second Lien Notes, whether at maturity thereof or otherwise, and provided that, other than following the occurrence of a Triggering Event, the Equity Conditions are satisfied on the date on which the Company provides the Notice of Company Optional Redemption to the Holders and on each Trading Day during the Company Optional Redemption Notice Period prior to the Company Optional Redemption Date, the Company shall have the right to redeem, all or some, of the Preferred Shares outstanding at such time (the “**Company Optional Redemption**”) at a redemption price equal to the Conversion Amount of the Preferred Shares being redeemed (such price, the “**Company Optional Redemption Price**”). Notwithstanding the foregoing, the Company will not exercise its rights to Company Optional Redemption, or otherwise send a Notice of Company Optional Redemption unless the Company has sufficient funds legally available to fully pay the Company Optional Redemption Price in respect of all Preferred Shares called for Company Optional Redemption. The Company Optional Redemption Price shall be payable in cash.

(b) If the Company elects to effect a Company Optional Redemption, the Company shall send to the Holders a written notice (i) notifying the Holders of the election of the Company to redeem all or the applicable part of the Preferred Shares and the date set for redemption (the “**Company Optional Redemption Date**”), (ii) the Conversion Amount subject to the Company Optional Redemption (the “**Company Optional Redemption Amount**”), (iii) stating the place or places at which the Preferred

Shares shall be redeemed (and other instructions a Holder must follow to receive payment), and (iv) stating the Company Optional Redemption Price therefor (such notice, a “**Notice of Company Optional Redemption**”). The Company Optional Redemption Date selected by the Company shall be no less than twenty (20) Trading Days and no more than sixty-five (65) Trading Days after the date on which the Company provides the Notice of Company Optional Redemption to the Holders (such period, “**Company Optional Redemption Notice Period**”). In the case of a partial redemption, then (x) the Preferred Shares to be redeemed will be selected pro rata among the Holders based on the number of the Preferred Shares held by each Holder on the Company Optional Redemption Date and (y) all Conversion Amounts converted by the Holder after the date of the Notice of Company Optional Redemption shall reduce the Company Optional Redemption Amount required to be redeemed on the Company Optional Redemption Date.

(c) In connection with any Fundamental Transaction, the Company shall have the right to redeem all, and not less than all, of the Preferred Shares then outstanding (the “**Company Fundamental Transaction Redemption**” and, together with a Company Optional Redemption, a “**Company Redemption**”) at a redemption price equal to the Conversion Amount of the Preferred Shares being redeemed multiplied by the Conversion Premium (such price, the “**Company Fundamental Transaction Redemption Price**” and, together with the Company Optional Redemption Price, the “**Company Redemption Price**”), by delivering to the Holders a written notice of such redemption (a “**Notice of Company Fundamental Transaction Redemption**” and, together with a Notice of Company Optional Redemption, a “**Notice of Company Redemption**”) not less than twenty (20) Trading Days prior to the consummation of such Fundamental Transaction (or such shorter time as may be agreed by the Required Holders), which Company Fundamental Transaction Redemption shall be effected at the later of (x) substantially concurrently with the consummation of such Fundamental Transaction and (y) following the repayment in full of the First Lien Notes and the Second Lien Notes in connection with or subsequent to such Fundamental Transaction (the date of such redemption, the “**Company Fundamental Transaction Redemption Date**” and, together with the Company Optional Redemption Date, the “**Company Redemption Date**”; and such period, the “**Company Fundamental Transaction Redemption Notice Period**” and, together with the Company Optional Redemption Notice Period, the “**Company Redemption Notice Period**”). The Company Fundamental Transaction Redemption Price shall be payable in cash.

(d) For the avoidance of doubt, the Holder may convert Preferred Shares, at any time and from time to time during or after a Company Redemption Notice Period until the Company actually pays the Company Redemption Price to the Holder; provided that, if any Conversion Notice relating to Preferred Shares subject to such Company Redemption is received after the taking of a record of Holders for purposes of such Company Redemption (which, for purposes hereof, shall be deemed to occur at 5:00 p.m., New York City time, on the Business Day immediately before the applicable Company Redemption Date), then, solely for purposes of such conversion, such Conversion Notice shall be deemed withdrawn if the Company actually pays the Company Redemption Price to such Holder for such Preferred Shares on the Company Redemption Date and no Conversion Failure will be deemed to have occurred with respect to such Conversion Amount. With respect to any portion of the Conversion Amount of the Preferred Shares which have not been converted by a Holder prior to the applicable Company Redemption Date and have been specified to be redeemed by the Company pursuant to the Company Redemption and which have been redeemed in accordance with the provisions of this Section 11, (i) Dividends, if any, shall cease to accrue on such Preferred Shares, (ii) such Preferred Shares shall no longer be deemed



outstanding and (iii) all rights with respect to such Preferred Shares shall cease and terminate.

(e) Any such Notice of Company Redemption given in accordance with the provisions of this Section 11 may, at the Company's discretion, be given prior to the completion of a transaction (including a Fundamental Transaction or other transaction) and be subject to the satisfaction (or waiver by the Company) of one or more conditions precedent, including, but not limited to, completion of a related transaction. If such Company Redemption is so subject to satisfaction of one or more conditions precedent, such Notice of Company Redemption shall describe each such condition, and if applicable, shall state that, in the Company's discretion, the applicable Company Redemption Date may be delayed until such time (including more than 65 Trading Days after the date the Notice of Company Redemption was delivered) as any or all such conditions shall be satisfied (or waived by the Company), or such Company Redemption may not occur and such Notice of Company Redemption may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Company) by such Company Redemption Date, or by such Company Redemption Date as so delayed. In addition, the Company may provide in such Notice of Company Redemption that payment of the Company Redemption Price and performance of the Company's obligations with respect to such Company Redemption may be performed by another Person. If any such condition precedent has not been satisfied (or waived by the Company), the Company shall provide written notice to the Holders no later than the close of business on the third (3rd) Business Day prior to the applicable Company Redemption Date. To the extent any such condition precedent is satisfied (or waived by the Company) prior to the Company Redemption Date, the Company shall promptly provide written notice to the Holders of the completion of the conditions precedent. Upon the Company providing such written notice to the Holders, the Notice of Company Redemption shall be rescinded or delayed, and the Company Redemption of the Preferred Shares shall be rescinded or delayed, in each case, as provided in such Notice of Company Redemption.

(f) To the extent applicable, the Company will comply, in all material respects, with all federal and state securities laws in connection with a Company Redemption (including complying with Rules 13e-4 and 14e-1 under the 1934 Act and filing any required Schedule TO, to the extent applicable) so as to permit effecting such Company Redemption in the manner set forth in this Section 11; provided, however, that, to the extent that the Company's obligations pursuant to this Section 11 conflict with any law or regulation that is applicable to the Company and enacted after the Subscription Date, the Company's compliance with such law or regulation will not be considered to be a Triggering Event.

12. Redemption at the Option of the Holders.

(a) At any time at beginning on and after the Initial Eligible Call Date, each Holder shall have the right, exercisable from time to time in its sole discretion, to require the Company to redeem, all or some, of the Preferred Shares outstanding at such time (the "**Holder Optional Redemption**") at a redemption price equal to the Conversion Amount of the Preferred Shares being redeemed (such price, the "**Holder Optional Redemption Price**"). The Holder Optional Redemption Price shall be payable in cash.

(b) If a Holder elects to effect a Holder Optional Redemption, such Holder shall send to the Company a written notice (i) notifying the Company of the election by such Holder to require the Company to redeem all or the applicable part such Holder's Preferred Shares and the date set for redemption (the "**Holder Optional Redemption**")

**Date**”), (ii) stating the Conversion Amount to be redeemed (the “**Holder Optional Redemption Amount**”), (iii) stating the place or places at which the Preferred Shares shall be redeemed, and (iv) stating the Holder Optional Redemption Price therefor (such notice, a “**Notice of Holder Optional Redemption**”). The Holder Optional Redemption Date selected by the Holder shall be no less than twenty (20) Trading Days and no more than thirty-five (35) Trading Days after the date on which the Holder provides the Notice of Holder Optional Redemption to the Company (such period, “**Holder Optional Redemption Notice Period**”). For the avoidance of doubt, a Holder may convert Preferred Shares, at any time and from time to time during the Holder Optional Redemption Notice Period until 5:00 p.m., New York City time, on the Business Day immediately before the applicable Holder Optional Redemption Date, except to the extent the Company fails to pay the Holder Optional Redemption Price for such Preferred Shares in accordance with this Section 12. In the case of a partial redemption, all Conversion Amounts subject to a Notice of Holder Optional Redemption converted by the Holder after the date of the Notice of Holder Optional Redemption shall reduce the Holder Optional Redemption Amount required to be redeemed on the Holder Optional Redemption Date.

(c) With respect to any Holder Optional Redemption Amount which has not been converted by a Holder prior to the Holder Optional Redemption Date and has been specified to be redeemed by the Company pursuant to the Holder Optional Redemption and which have been redeemed in accordance with the provisions of this Section 12, (i) Dividends, if any, shall cease to accrue on such Preferred Shares, (ii) such Preferred Shares shall no longer be deemed outstanding and (iii) all rights with respect to such Preferred Shares shall cease and terminate.

13. Repurchase at the Option of the Holders Upon a Fundamental Transaction.

(a) No sooner than thirty (30) days nor later than fifteen (15) days prior to the consummation of a Fundamental Transaction, but not prior to the public announcement of such Fundamental Transaction, the Company shall deliver written notice thereof via electronic mail to the Holders (a “**Fundamental Transaction Notice**”). If the Company fails to deliver such Fundamental Transaction Notice, the Holders may deliver such notice to the Company of the Fundamental Transaction, and it shall be deemed as if the Company delivered such notice to the Holders.

(b) On a Business Day of the Company’s choosing during the period beginning twenty (20) Business Days after the date the Company delivers (or is deemed to deliver) the related Fundamental Transaction Notice and ending thirty five (35) Business Days from such date (a “**Fundamental Transaction Repurchase Date**”), and provided that the obligations under the First Lien Notes and the Second Lien Notes have been repaid in full in cash on or prior to such Fundamental Transaction Repurchase Date, a Holder may require the Company to repurchase (a “**Fundamental Transaction Repurchase**”) all or any portion of such Holder’s Preferred Shares at a redemption price equal to the Conversion Amount of the Preferred Shares being redeemed multiplied by the Conversion Premium (such price, the “**Fundamental Transaction Repurchase Price**” and, such Holder’s right to require a Fundamental Transaction Repurchase, a “**Fundamental Transaction Repurchase Right**”) by delivering written notice thereof (such notice, a “**Notice of Fundamental Transaction Repurchase**”) to the Company before 5:00 p.m., New York City time, on the Business Day immediately before the related Fundamental Transaction Repurchase Date (or such later time as may be required by law), which Notice of Fundamental Transaction Repurchase shall indicate the Preferred Shares a Holder is electing to require the Company to repurchase on such Fundamental Transaction Repurchase Date. A Holder that has delivered a Notice of

Fundamental Transaction Repurchase with respect to any Preferred Shares may withdraw such Notice of Fundamental Transaction Repurchase by delivering a written notice of withdrawal to the Company at any time before 5:00 p.m., New York City time, on the Business Day immediately before the related Fundamental Transaction Repurchase Date. For the avoidance of doubt, the Holder may convert Preferred Shares, at any time and from time to time after the delivery of a Fundamental Transaction Notice until the Company actually redeems the Preferred Shares in accordance with this Section 13; provided that, if any Conversion Notice relating to Preferred Shares subject to Notice of Fundamental Transaction Repurchase is received after the taking of a record of Holders for purposes of such Fundamental Transaction Repurchase (which, for purposes hereof, shall be deemed to occur at 5:00 p.m., New York City time, on the Business Day immediately before the applicable Fundamental Transaction Repurchase Date) (such date and time, the “**Fundamental Transaction Repurchase Record Time**”), then, solely for purposes of such conversion, such Conversion Notice shall be deemed withdrawn if the Company actually pays the Fundamental Transaction Repurchase Price to such Holder for such Preferred Shares on the Fundamental Transaction Repurchase Date and no Conversion Failure will be deemed to have occurred with respect to such Conversion Amount. All Preferred Shares subject to a Notice of Fundamental Transaction Repurchase converted by the Holder after the date of the Notice of Fundamental Transaction Repurchase, but before the Fundamental Transaction Repurchase Record Time, shall reduce such Holder’s Preferred Shares required to be repurchased by the Company on the Fundamental Transaction Repurchase Date.

(c) As a condition to each Holder’s exercise of its Fundamental Transaction Repurchase Rights under this Section 13, such Holder must own beneficially and of record, the Preferred Shares to be repurchased, free and clear of any liens, claims, equities, charges, options, rights of first refusal or encumbrances (other than such imposed by applicable securities laws) and make customary representations solely regarding the ability to transfer, convey and deliver full ownership and title of such Preferred Shares to the Company, free and clear of any liens, claims, equities, charges, options, rights of first refusal or encumbrances.

(d) With respect to any portion of the Preferred Shares subject to a Notice of Fundamental Transaction Repurchase which have not been converted by a Holder prior to the Fundamental Transaction Repurchase Date and have been specified to be repurchased pursuant to such Holder’s Fundamental Transaction Repurchase Right and which have been repurchased in accordance with the provisions of this Section 13, (i) Dividends, if any, shall cease to accrue on such Preferred Shares, (ii) such Preferred Shares shall no longer be deemed outstanding and (iii) all rights with respect to such Preferred Shares shall cease and terminate.

(e) Notwithstanding anything to the contrary in this Section 13, the Company will be deemed to satisfy its obligations under this Section 13 if (i) one or more third parties conduct any Fundamental Transaction Repurchase required by this Section 13 in a manner that would have satisfied the requirements of this Section 13 if conducted directly by the Company; and (ii) a Holder of Preferred Shares repurchased by such third party or parties will not receive a lesser amount (as a result of withholding or other similar taxes) than such Holder would have received had the Company repurchased such Preferred Shares.

(f) To the extent applicable, the Company will comply, in all material respects, with all federal and state securities laws in connection with a Fundamental Transaction Repurchase (including complying with Rules 13e-4 and 14e-1 under the 1934 Act and filing any required Schedule TO, to the extent applicable) so as to permit

effecting such Fundamental Transaction Repurchase in the manner set forth in this Section 13; provided, however, that, to the extent that the Company's obligations pursuant to this Section 13 conflict with any law or regulation that is applicable to the Company and enacted after the Subscription Date, the Company's compliance with such law or regulation will not be considered to be a Triggering Event.

14. Voting Rights.

(a) Voting. Except as otherwise provided herein or as otherwise required by law, the Holders of Preferred Shares shall vote as a single class with the holders of the Common Stock (and any other class or series of capital stock of the Company that votes as a single class with the holders of the Common Stock) on an "as converted" (taking into account the restrictions on conversion set forth in Section 4(d), Section 4(e) and Section 4(f)) basis on all matters submitted to a vote of stockholders of the Company; provided, however, that the Preferred Shares are not entitled to vote on any proposal to approve the issuance of Common Stock pursuant to this Certificate of Designation in excess of the Exchange Cap.

(b) To the extent that under the DGCL or this Certificate of Designations the vote of the holders of the Preferred Shares, voting separately as a class or series, as applicable, is required to authorize a given action of the Company, the affirmative vote or consent of the Required Holders of the shares of the Preferred Shares, voting together in the aggregate and not in separate series unless required under the DGCL, represented at a duly held meeting at which a quorum is presented or by written consent of the Required Holders (except as otherwise may be required under the DGCL), voting together in the aggregate and not in separate series unless required under the DGCL, shall constitute the approval of such action by both the class or the series, as applicable. Subject to Section 4(d), each Preferred Share shall entitle the holder thereof to cast that number of votes per share as is equal to the number of shares of Common Stock into which it is then convertible (subject to the ownership limitations specified in Section 4(d) hereof) using the record date for determining the stockholders of the Company eligible to vote on such matters as the date as of which the Conversion Price is calculated. Holders of the Preferred Shares shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders) with respect to which they would be entitled to vote, which notice would be provided pursuant to the Company's Bylaws and the DGCL. Notwithstanding the foregoing, until receipt of the Stockholder Approval, that solely with respect to the rights of the Holders of the Preferred Shares to vote Preferred Shares on an as converted to common stock basis as set forth in this Section 14, any adjustment to the Conversion Price hereunder shall not cause the Conversion Price for such voting purposes to be less than Minimum Price, as defined by the Principal Market, as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction.

15. Covenants. For so long as any Preferred Shares are outstanding and/or issuable pursuant to the terms of the Securities Purchase Agreement, without the prior written consent of the Required Holders:

(a) Incurrence of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than Permitted Indebtedness).

(b) Existence of Liens. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any

property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, “**Liens**”) other than Permitted Liens.

(c) Restriction on Redemption and Cash Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or distribution on any of its capital stock (other than as required by this Certificate of Designations or permitted under the First Lien Indenture or the Second Lien Indenture).

(d) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary; provided, however, that the Company shall not be required to preserve any such corporate existence of any of its Subsidiaries if, in the judgment of the Company, the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and all material assets of any such Subsidiaries have been assigned to the Company or another Subsidiary, in each case where such restructuring does not have a material impact on the Company’s ability to comply with the provisions hereof.

(e) Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the Required Holders, (i) issue any Preferred Shares (other than as contemplated by the Securities Purchase Agreement and this Certificate of Designations), (ii) issue any other securities that would cause a breach or default under this Certificate of Designations or (iii) other than where the use of proceeds are used to (x) redeem the Preferred Shares in full or (y) refinance the Company or its Subsidiary’s Indebtedness existing as of the Subscription Date, create, or authorize the creation of, any additional class or series of capital stock of the Company (or any security convertible into or exercisable for any such class or series of capital stock of the Company) or issue or sell, or obligate itself to issue or sell, any securities of the Company (or any security convertible into or exercisable for any such class or series of capital stock of the Company) that ranks on par or superior (except in the case of clause (y), in which case such securities may only rank par or junior) to the Preferred Shares as to dividends, distributions and payments upon the liquidation, dissolution or winding up of the Company or as to redemption or repurchase rights.

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

(g) Taxes. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect

on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to file would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(h) Variable Rate Transaction. Neither the Company nor its Subsidiaries will be party to, enter into, effect or consummate any Variable Rate Transaction or enter into any agreement to effect or consummate any Variable Rate Transaction. “**Variable Rate Transaction**” means a transaction in which the Company or any Subsidiary (i) issues or sells any Convertible Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such Convertible Securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock, other than pursuant to a customary “weighted average” anti-dilution provision or (ii) enters into any agreement (including, without limitation, an equity line of credit or an “at-the-market” offering) whereby the Company or any Subsidiary may sell securities at a future determined price (other than standard and customary “preemptive” or “participation” rights), provided, however, (i) shares of Common Stock issued and sold pursuant to the ATM Facility; (ii) the issuance of Excluded Securities; and (iii) the making of payments to customers, vendors or suppliers in the ordinary course of business consistent with past practice consisting of, or the consideration for which consists of, securities subject to a Variable Price, in each case, shall not be deemed a Variable Rate Transaction for purposes of this Section 15(h).

(i) Organizational Documents. The Company shall not amend, alter, modify, or repeal its Certificate of Incorporation, this Certificate of Designation, or its Bylaws, including the amendment of the Certificate of Incorporation by the adoption or amendment of any Certificate of Designation or similar document, in each case, in any manner that materially adversely affects the rights of any of the Holders of the Preferred Shares.

(j) Agreement. The Company shall not enter into any agreement which would substantially impair its obligations under this Certificate of Designations or any other Transaction Document.

(k) Independent Investigation. At the request of any Holder holding not less than \$5.0 million in Stated Value of Preferred Shares either (x) at any time when a Triggering Event has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute a Triggering Event or (z) at any time such Holder reasonably believes a Triggering Event may have occurred or be continuing, the Company will permit an independent, reputable investment bank selected by the Company and approved by such Holder (such approval not to be unreasonably withheld) to investigate, at the Company’s expense, as to whether any breach of the Certificate of Designations has occurred (the “**Independent Investigator**”); provided that, absent the occurrence and continuance of a Triggering Event, no more than two (2) such investigations shall be permitted in any fiscal year. If the Independent Investigator determines that such breach of the Certificate of Designations has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each Holder of such breach. In connection with such

investigation, the Independent Investigator may, upon reasonable notice and at such reasonable times during normal business hours, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its legal advisors and accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request; provided that, prior to being permitted to engage in any such visitation, inspection or access rights provided for under this Section 15(k), such Independent Investigator shall have executed a standard confidentiality agreement in favor of the Company on customary terms reasonably satisfactory to the Company. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

16. Liquidation, Dissolution, Winding-Up. In the event of a Liquidation Event, the Holders shall be entitled to receive in cash out of the assets of the Company, whether from capital or from earnings available for distribution to its stockholders (the "**Liquidation Funds**"), before any amount shall be paid to the holders of any shares of Junior Stock, but pari passu with any Parity Stock then outstanding, an amount per Preferred Share equal to the amount per share such Holder would receive if such Holder converted such Preferred Share into Common Stock immediately prior to the date of such payment, provided that if the Liquidation Funds are insufficient to pay the full amount due to the Holders and holders of shares of Parity Stock, if any, then each Holder and each holder of Parity Stock shall receive a percentage of the Liquidation Funds equal to the full amount of Liquidation Funds payable to such Holder and such holder of Parity Stock as a liquidation preference, in accordance with their respective certificate of designations (or equivalent), as a percentage of the full amount of Liquidation Funds payable to all holders of Preferred Shares and all holders of shares of Parity Stock. To the extent necessary, the Company shall cause such actions to be taken by each of its Subsidiaries so as to enable, to the maximum extent permitted by law, the proceeds of a Liquidation Event to be distributed to the Holders in accordance with this Section 16. All the preferential amounts to be paid to the Holders under this Section 16 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation Funds of the Company to the holders of shares of Junior Stock in connection with a Liquidation Event as to which this Section 16 applies.

17. Distribution of Assets. In addition to any adjustments pursuant to Section 7(a) and Section 8, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of shares of Common Stock, by way of return of capital or otherwise (including without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (the "**Distributions**"), then each Holder, as holders of Preferred Shares, will be entitled to such Distributions as if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares and assuming for such purpose that the Preferred Share was

converted at the current Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that such Holder's right to participate in any such Distribution would result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Distribution to the extent of any such excess over the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of such Holder until such time or times as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times, if any, such Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

18. Vote to Change the Terms of or Issue Preferred Shares. In addition to any other rights provided by law, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Certificate of Incorporation, without first obtaining the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders, voting together as a single class, the Company shall not: (a) amend or repeal any provision of, or add any provision to, its Certificate of Incorporation or Bylaws, or file any certificate of designations or articles of amendment of any series of shares of preferred stock, including this Certificate of Designations, if such action would materially adversely alter or change in any respect the preferences, rights, privileges or powers, or restrictions provided for the benefit of the Preferred Shares hereunder, regardless of whether any such action shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise; (b) increase or decrease (other than by conversion) the authorized number of Preferred Shares; (c) without limiting any provision of Section 2, create or authorize (by reclassification or otherwise) any new class or series of Senior Preferred Stock or Parity Stock; (d) purchase, repurchase or redeem any shares of Junior Stock (other than pursuant to the terms of the Company's equity incentive plans and options and other equity awards granted under such plans (that have in good faith been approved by the Board) and except as permitted by First Lien Indenture or the Second Lien Indenture); (e) without limiting any provision of Section 2, pay dividends or make any other distribution on any shares of any Junior Stock except as permitted by the First Lien Indenture or the Second Lien Indenture; (f) issue any Preferred Shares other than as contemplated hereby or pursuant to the Securities Purchase Agreement; or (g) without limiting any provision of Section 9, whether or not prohibited by the terms of the Preferred Shares, circumvent a right of the Preferred Shares hereunder.

19. Transfer of Preferred Shares. A Holder may not transfer all or any portion of its Preferred Shares without the express prior written consent of the Company, except to an Affiliate of such Holder or to the Company. Any transfer of Preferred Shares shall be in compliance with all applicable securities laws and Section 5 of the Securities Purchase Agreement. Any purported transfer of Preferred Shares in violation of this Certificate of Designations shall be null and void, and no such transfer shall be recorded on the Company's books and the purported transferee in any such transfer shall not be treated (and the Holder proposing to make any such transfer shall continue be treated) as the owner of such Preferred Shares for all purposes of this Certificate of Designations. Each Holder shall pay all costs and expenses incurred by the Company in connection with any transfer of Preferred Shares by such Holder.

20. Reissuance of Book-Entries.

(a) Transfer. If any Preferred Shares are to be transferred, the applicable Holder shall provide written notice of such transfer to the Company and surrender the



applicable Preferred Shares represented by Book-Entry to the Company by written instruction letter, whereupon the Company will forthwith issue and deliver upon the order of such Holder evidence of the transfer of such Book-Entry, registered as such Holder may request, representing the outstanding number of Preferred Shares being transferred by such Holder and, if less than the entire outstanding number of Preferred Shares is being transferred, a new Book-Entry (in accordance with Section 20(d)) to such Holder representing the outstanding number of Preferred Shares not being transferred. Such Holder and any assignee, by acceptance of the evidence of Book-Entry issuance acknowledge and agree that, by reason of the provisions of Section 4(c)(i) following conversion of any of the Preferred Shares, the outstanding number of Preferred Shares represented by the Book-Entry may be less than the number of Preferred Shares stated in such Book-Entry.

(b) [Reserved].

(c) Book-Entries Exchangeable for Different Denominations. Each Book-Entry may be split by the applicable Holder by delivery of a written notice to the Company into two or more new Book-Entries (in accordance with Section 20(d)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Book-Entry, and each such new Book-Entry will represent such portion of such outstanding number of Preferred Shares from the original Book-Entry as is designated in writing by such Holder at the time of such surrender.

(d) Issuance of New Book-Entry. Whenever the Company is required to issue a new Book-Entry pursuant to the terms of this Certificate of Designations, such new Book-Entry (i) shall represent, as indicated in such Book-Entry the number of Preferred Shares remaining outstanding which, when added to the number of Preferred Shares represented by the other new Book-Entry issued in connection with such issuance, does not exceed the number of Preferred Shares remaining outstanding under the original Book-Entry immediately prior to such issuance of new Book-Entry, and (ii) shall have an issuance date, as indicated in such new Book-Entry, which is the same as the issuance date of such original Book-Entry.

21. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations and any of the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit any Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Certificate of Designations. No failure on the part of a Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by such Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of a Holder at law or equity or under this Certificate of Designations or any of the documents shall not be deemed to be an election of such Holder's rights or remedies under such documents or at law or equity. The Company covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by a Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). No failure on the part of a Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by such Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the

exercise of any right or remedy of any Holder at law or equity or under Preferred Shares or any of the documents shall not be deemed to be an election of such Holder's rights or remedies under such documents or at law or equity. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, each Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to a Holder that is reasonably requested in writing by such Holder to enable such Holder to confirm the Company's compliance with the terms and conditions of this Certificate of Designations; provided that, to the extent the Company indicates to such Holder that the requested information or documentation may contain material non-public information, such information or documentation will not be provided to such Holder without such Holder's express prior written consent.

22. Payment of Collection, Enforcement and Other Costs. If (a) any Preferred Shares are placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or a Holder otherwise takes action to collect amounts due under this Certificate of Designations with respect to the Preferred Shares or to enforce the provisions of this Certificate of Designations or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Certificate of Designations, then the Company shall pay the costs reasonably incurred by such Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Certificate of Designations with respect to any Preferred Shares shall be affected, or limited, by the fact that the purchase price paid for each Preferred Share was less than the original Stated Value thereof.

23. Construction; Headings. This Certificate of Designations shall be deemed to be jointly drafted by the Company and the Holders and shall not be construed against any such Person as the drafter hereof. The headings of this Certificate of Designations are for convenience of reference and shall not form part of, or affect the interpretation of, this Certificate of Designations. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Certificate of Designations instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Certificate of Designations. Terms used in this Certificate of Designations and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Issuance Date in such other Transaction Documents unless otherwise consented to in writing by the Required Holders.

24. Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder 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 of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. Notwithstanding the foregoing, nothing contained in this Section 24 shall permit any waiver of any provision of Section 4(d).

25. Dispute Resolution.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the applicable Holder (as the case may be) shall submit the dispute to the other party via electronic mail (A) if by the Company, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by such Holder at any time after such Holder learned of the circumstances giving rise to such dispute. If such Holder and the Company are unable to promptly resolve such dispute relating to such Closing Bid Price, such Closing Sale Price, such Conversion Price, such VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate, at any time after the tenth (10th) Business Day following such initial notice by the Company or such Holder (as the case may be) of such dispute to the Company or such Holder (as the case may be), then such Holder and the Company may select an independent, reputable investment bank mutually agreeable in good faith to them to resolve such dispute.

(ii) Such Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 25 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such investment bank was selected (the “**Dispute Submission Deadline**”) (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the “**Required Dispute Documentation**”) (it being understood and agreed that if either such Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and such Holder or otherwise requested by such investment bank, neither the Company nor such Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and such Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and such Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank’s resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 25 constitutes an agreement to arbitrate between the Company and each Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules (“**CPLR**”) and that any Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance

with this Section 25, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) the consideration per share at which an issuance or deemed issuance of Common Stock occurred, (B) whether any issuance or sale or deemed issuance or sale of Common Stock was an issuance or sale or deemed issuance or sale of Excluded Securities, and (C) whether an agreement, instrument, security or the like constitutes an Option or Convertible Security, (iii) the terms of this Certificate of Designations and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Certificate of Designations and any other applicable Transaction Documents, (iv) the applicable Holder (and only such Holder with respect to disputes solely relating to such Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 25 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 25 and (v) nothing in this Section 25 shall limit such Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 25).

26. Notices; Currency; Payments.

(a) Notices. The Company shall provide each Holder of Preferred Shares with prompt written notice of all actions taken pursuant to the terms of this Certificate of Designations, including in reasonable detail a description of such action and the reason therefor; provided that the Company shall not be required to provide any such notice in connection with (x) a Conversion Notice except as set forth in Section 4 or (y) transfers of any Book-Entry except as set forth in Section 20. Without limiting the generality of the foregoing, the Company shall give written notice to each Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of all or substantially all shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or simultaneously with such notice being provided to such Holder by issuance of press release or the filing of Form 8-K with the SEC. Whenever notice is required to be given under this Certificate of Designations, unless otherwise provided herein, such notice must be in writing and shall be given in accordance with Section 9(f) of the Securities Purchase Agreement.

(b) Currency. All dollar amounts referred to in this Certificate of Designations are in United States Dollars ("**U.S. Dollars**"), and all dollar amounts owing under this Certificate of Designations shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Certificate of Designations, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Certificate of Designations, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by wire transfer of immediately available funds pursuant to wire transfer instructions that Holder shall provide to the Company in writing from time to time. Whenever any amount expressed to be due by the terms of this Certificate of Designations is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount due under the Transaction Documents in cash which is not paid when due (except to the extent such amount is simultaneously accruing Dividends) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of fifteen percent (15%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

27. Waiver of Notice. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Certificate of Designations and the Securities Purchase Agreement.

28. Governing Law. This Certificate of Designations shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Certificate of Designations shall be governed by, the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. Except as otherwise required by Section 25 above, the Company and each Holder (by acceptance of its Preferred Shares) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of such Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 25 above. **THE COMPANY AND EACH HOLDER (BY ACCEPTANCE OF ITS PREFERRED SHARES) HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS CERTIFICATE OF DESIGNATIONS OR ANY TRANSACTION CONTEMPLATED HEREBY.**

29. Judgment Currency.

(a) If for the purpose of obtaining or enforcing judgment against the Company in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 29 referred to as the "**Judgment Currency**") an amount due in U.S. dollars under this Certificate of Designations, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(ii) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 29(a)(ii) being hereinafter referred to as the “**Judgment Conversion Date**”).

(b) If in the case of any proceeding in the court of any jurisdiction referred to in Section 29(a)(ii) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

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

30. Severability. If any provision of this Certificate of Designations is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Certificate of Designations so long as this Certificate of Designations as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

31. Maximum Payments. Without limiting Section 9(d) of the Securities Purchase Agreement, nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the applicable Holder and thus refunded to the Company.

32. Stockholder Matters; Amendment.

(a) [Reserved].

(b) Amendment. Except for Section 4(d), which may not be amended or waived hereunder, this Certificate of Designations or any provision hereof may be amended by obtaining the affirmative vote at a meeting duly called for such purpose, or written consent without a meeting in accordance with the DGCL, of the Required Holders, voting separate as a single class, and with such other stockholder approval, if any, as may then be required pursuant to the DGCL and the Certificate of Incorporation.

33. Certain Defined Terms. For purposes of this Certificate of Designations, the following terms shall have the following meanings:

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

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

“**2026 Notes**” means the Company’s 1.25% Convertible Senior Notes due 2026 issued pursuant to the Indenture, dated as of December 17, 2021 (the “**2026 Indenture**”), between the Company and U.S. Bank National Association, as trustee.

“**Additional Amount**” means, as of the applicable date of determination, with respect to each Preferred Share, all unpaid Dividends that have accrued on such Preferred Share and any other unpaid amounts then due and payable hereunder with respect to such Preferred Share.

“**Affiliate**” or “**Affiliated**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that “control” of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“**Affiliated Party**” means, with respect to any natural person, (i) any company, partnership, trust or other entity for which such natural person (or such natural person’s estate) has dispositive or voting power with respect to the equity securities of the Company held by such company, partnership, trust or other entity; (ii) any trust the beneficiaries of which consist solely of such natural person, any Family Member of such natural person or any person described in clause (i); (iii) the trustees, legal representatives, beneficiaries or beneficial owners (in each case, solely in such capacity and not in their individual or other capacities) of any such company, partnership, trust or other entity referred to in clause (i) or (ii); (iv) the estate of such natural person (it being understood, for the avoidance of doubt, that this clause (iv) will not include any person to whom any securities are transferred from any such estate); and (v) the Family Members of such natural person.

“**Approved Stock Plan**” means any employee benefit plan which has been approved by the Board prior to or subsequent to the Subscription Date pursuant to which shares of Common Stock and options to purchase Common Stock or other awards convertible, exercisable for or exchangeable for shares of Common Stock may be issued to any employee, officer, consultant, director or other service provider of the Company or any of its Subsidiaries for services provided to the Company or any of its Subsidiaries in their capacity as such.

**“ATM Facility”** means the Company’s “at the market” facility with Virtu Financial for the issuances and sale of up to (but no more than) \$209,000,000 of Common Stock at prevailing market prices from time to time.

**“Attribution Parties”** means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Initial Issuance Date, directly or indirectly managed or advised by a Holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of such Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with such Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company’s Common Stock would or could be aggregated with such Holder’s and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively such Holder and all other Attribution Parties to the Maximum Percentage.

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

**“Bloomberg”** means Bloomberg, L.P.

**“Book-Entry”** means each entry on the Register evidencing one or more shares of Preferred Shares or Common Stock held by a Holder.

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

**“Closing Bid Price”** and **“Closing Sale Price”** means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be), then the last bid price or last trade price, respectively, of such security prior to 4:00:00 p.m., New York City time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of



the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Required Holder. If the Company and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 25. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

“**Common Stock**” means (i) the Company’s shares of Class A Common Stock, \$0.0001 par value per share, and (ii) any capital stock into which such Class A Common Stock shall have been changed or any share capital resulting from a reclassification of such Class A Common Stock.

“**Contingent Obligation**” means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

“**Conversion Premium**” means 105%.

“**Convertible Securities**” means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

“**Current Subsidiary**” means any Person in which the Company on the Subscription Date, directly or indirectly, (i) owns more than fifty percent (50%) of the outstanding voting power of the capital stock or equity or similar interests of such Person entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such Person; or (ii) controls the business, operations or administration of such Person, and all of the foregoing, collectively, “**Current Subsidiaries**”. For purposes of this definition, “control” means the power to direct the management and the policies of such Person, whether through the ownership of voting capital, by contract or otherwise.

“**Dividend Rate**” means eighteen percent (18%) per annum.

**“Eligible Market”** means The New York Stock Exchange, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market or the Nasdaq Global Select Market, or, in each case, any successor thereto.

**“Equity Conditions”** means, with respect to a given date or period of determination: (i) on each day during the period beginning thirty (30) Trading Days prior to such applicable date of determination and ending on and including such applicable date of determination (the **“Equity Conditions Measuring Period”**), all shares of Common Stock issuable upon conversion of the Preferred Shares shall be eligible to be resold by the Holders without restriction or any legend under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Preferred Shares); (ii) the Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Preferred Shares) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on such Eligible Market nor shall delisting or suspension by such Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (A) a writing by such Eligible Market or (B) the Company falling below the minimum listing maintenance requirements of such Eligible Market; (iii) the Company shall have delivered all shares of Common Stock issuable upon conversion of the Preferred Shares on a timely basis as set forth in Section 4 hereof and all other shares of capital stock required to be delivered by the Company on a timely basis as set forth in the other Transaction Documents; (iv) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination) may be issued in full without violating Section 4(d), Section 4(e) or Section 4(f) hereof; (v) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable); (vi) on each day during the Equity Conditions Measuring Period, no public announcement of a pending, proposed or intended Fundamental Transaction shall have occurred which has not been abandoned, terminated or consummated; (vii) none of the Holders shall be in possession of any material, non-public information provided to any of them by the Company, any of its Subsidiaries or any of their respective affiliates, employees, officers, representatives, agents or the like; (viii) on each day during the Equity Conditions Measurement Period, the Company otherwise shall have been substantially in compliance with, and shall not have breached in any material respect any representation or warranty (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document in any material respect, including, without limitation, the Company shall not have failed to timely make any payment pursuant to any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach

remains uncured as of or after the date that is ten (10) Trading Days prior to the applicable date of determination; (ix) there shall not have occurred any Volume Failure or Price Failure as of such applicable date of determination; (x) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and the applicable Required Reserve Amount of shares of Common Stock are available under the Certificate of Incorporation of the Company and reserved by the Company to be issued pursuant to this Certificate of Designations and (B) all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (xi) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist a Triggering Event or an event that with the passage of time or giving of notice would constitute a Triggering Event; or (xii) the shares of Common Stock issuable pursuant to the event requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

**“Excluded Securities”** means (i) shares of Common Stock or options to purchase Common Stock or other awards convertible, exercisable for or exchangeable for shares of Common Stock issued or issuable to directors, consultants, officers, employees or other service providers of the Company or any of its Subsidiaries for services rendered to the Company or any of its Subsidiaries in their capacity as such pursuant to an Approved Stock Plan (as defined above), provided that the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that materially adversely affects any of the Holders; (ii) Convertible Securities and/or shares of Common Stock issued or issuable upon the conversion or exercise of Convertible Securities (other than options to purchase Common Stock or other awards convertible, exercisable for or exchangeable for shares of Common Stock issued or issuable pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the Subscription Date or Second Lien Notes issued subsequent to the Subscription Date pursuant to the Second Lien Indenture, provided that the conversion, exercise or issuance price of any such Convertible Securities (other than options to purchase Common Stock or other awards convertible, exercisable for or exchangeable for shares of Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered (other than in accordance with the terms thereof in effect as of the Subscription Date), none of such Convertible Securities (other than options to purchase Common Stock or other awards convertible, exercisable for or exchangeable for shares of Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder (other than in accordance with the terms thereof in effect as of the Subscription Date) and none of the terms or conditions of any such Convertible Securities (other than options to purchase Common Stock or other awards convertible, exercisable for or exchangeable for shares of Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any

manner that materially adversely affects any of the Holders; (iii) the shares of Common Stock issuable upon conversion of the Preferred Shares or otherwise pursuant to the terms of this Certificate of Designations; provided, that the terms of this Certificate of Designations are not amended, modified or changed on or after the Subscription Date (other than antidilution adjustments pursuant to the terms hereof in effect as of the Subscription Date); (iv) Permitted Variable Price Securities; and (v) securities issued as consideration for the acquisition of another entity by the Company by merger, purchase of substantially all of the assets or other reorganization or bona fide joint venture agreement, provided that such issuance is approved by the majority of the disinterested directors of the Company.

**“Family Member”** means, with respect to any individual, any other individual having a relationship by blood (to the second degree of consanguinity), marriage (including former spouses), domestic partnership (including former domestic partners) or adoption to such individual.

**“First Lien Notes”** means the Company’s Floating Rate Senior Secured Notes due 2028 issued pursuant to the First Lien Indenture, dated August 8, 2024, by among the Company, the Company’s Subsidiaries signatory thereto as guarantors, and GLAS Trust Company LLC, as indenture trustee (the **“First Lien Indenture”**), as such First Liens Notes, and the First Lien Indenture pursuant to which they are issued, are, in each case, in effect as of the Subscription Date, without giving effect to any modifications thereto subsequent to such date.

**“Floor Price”** means \$0.792.

**“Fundamental Transaction”** means (A) that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, unless, solely for purposes of Section 11 and Section 13 and clause (vi) of the definition of “Equity Conditions,” the holders of Common Stock of the Company immediately prior to such consolidation or merger continue to hold at least 50% of the aggregate ordinary voting power represented by the Common Stock of the Company (or the surviving or acquiring entity), or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, to one or more Subject Entities, other than solely to one or more of the Company’s wholly owned Subsidiaries, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding, or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or

Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, in any transaction or series of related transactions, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding, or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, unless, solely for purposes of Section 11 and Section 13 and clause (vi) of the definition of "Equity Conditions," the holders of Common Stock of the Company immediately prior to such reorganization, recapitalization or reclassification continue to hold at least 50% of the aggregate ordinary voting power represented by the Common Stock of the Company (or the surviving entity), (B) that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate, other than the Company or its wholly owned Subsidiaries, or their respective employee benefit plans, or any Permitted Party, to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Certificate of Designations calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their shares of Common Stock without approval of the stockholders of the Company or (C) directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

**“Fundamental Transaction Repurchase Premium”** means 105%.

**“GAAP”** means United States generally accepted accounting principles, consistently applied.

**“Group”** means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

**“Holder Pro Rata Amount”** means, with respect to any Holder, a fraction (i) the numerator of which is the number of Preferred Shares issued to such Holder pursuant to the Securities Purchase Agreement on the Initial Issuance Date and (ii) the denominator of which is the number of Preferred Shares issued to all Holders pursuant to the Securities Purchase Agreement on the Initial Issuance Date.

**“Indebtedness”** of any Person means, without duplication (A) all obligations of such Person for borrowed money, (B) all obligations of such Person issued, undertaken or assumed as the deferred purchase price of property or services, including, without limitation, “capital leases” in accordance with GAAP (other than trade payables or accrued expenses entered into in the ordinary course of business consistent with past practice, payroll liabilities and deferred compensation and severance, pension, health and welfare retirement and equivalent benefits to current or former employees, directors or managers of such Person and its subsidiaries), (C) all reimbursement or payment obligations of such Person with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations of such Person under any leasing or similar arrangement which, in connection with GAAP, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, deed of trust, lien, pledge, charge, security interest or other encumbrance of any nature whatsoever in or upon any property or assets (including accounts and contract rights) with respect to any asset or property owned by such Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above.

**“Initial Eligible Call Date”** means the later of (x) the date that is 181 days after the maturity date of the First Lien Notes and (y) the date that is 181 days after the maturity date of the Second Lien Notes.

**“Initial Issuance Date”** means the date Preferred Shares are first issued pursuant to the Securities Purchase Agreement.

**“Liquidation Event”** means, whether in a single transaction or series of transactions, the voluntary or involuntary liquidation, dissolution or winding up of the Company or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Company and its Subsidiaries, taken as a whole.

**“New Subsidiary”** means, as of any date of determination, any Person in which the Company after the Subscription Date, directly or indirectly, (i) owns or acquires more than fifty percent (50%) of the outstanding voting power of the capital stock or equity or similar interests of such Person entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such Person; or (ii) controls the business, operations or administration of such Person, and all of the foregoing, collectively, **“New Subsidiaries.”** For purposes of this definition, “control” means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

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

**“Parent Entity”** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

**“Permitted Indebtedness”** means (i) the First Lien Notes, (ii) the Second Lien Notes and (iii) other Indebtedness permitted pursuant to the Second Lien Indenture.

**“Permitted Liens”** means any Lien permitted under the Second Lien Indenture.

**“Permitted Party”** means (i) any of Austin Russell and his Affiliated Parties and (ii) any Group consisting solely of Permitted Parties.

**“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

**“Price Failure”** means, with respect to a particular date of determination, the VWAP of the Common Stock on any Trading Day during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination fails to exceed \$1.00 (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription Date).

**“Principal Market”** means, as of any date of determination, the Eligible Market on which the Common Stock is then listed or quoted.

**“SEC”** means the United States Securities and Exchange Commission or the successor thereto.

**“Second Lien Notes”** means the Company’s 9.0% Convertible Second Lien Senior Secured Notes due 2030 and the Company’s 11.5% Convertible Second Lien Senior Secured Notes due 2030, in each case, issued pursuant to the Second Lien Indenture, dated August 8, 2024, by among the Company, the Company’s Subsidiaries signatory thereto as guarantors, and GLAS Trust Company LLC, as indenture trustee (the **“Second Lien Indenture”**), as such Second Liens Notes, and the Second Lien Indenture pursuant to which they are issued, are, in each case, in effect as of the Subscription Date, without giving effect to any modifications thereto subsequent to such date.

**“Securities Purchase Agreement”** means that certain securities purchase agreement by and among the Company and the initial holders of Preferred Shares, dated as of the Subscription Date, as may be amended from time in accordance with the terms thereof.

**“Significant Subsidiary”** means, as of any date of determination, any Subsidiary of the Company that constitutes, or any group of Subsidiaries of the Company that, in the aggregate, would constitute, a “significant subsidiary” (as defined in Rule 1-02(w) of Regulation S-X under the 1934 Act) of the Company.

**“Stated Value”** shall mean \$1,000 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, subdivisions or other similar events occurring after the Initial Issuance Date with respect to the Preferred Shares.

**“Subscription Date”** means May 19, 2025.

**“Subject Entity”** means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

**“Subsidiaries”** means, as of any date of determination, collectively, all Current Subsidiaries and all New Subsidiaries, and each of the foregoing, individually, a **“Subsidiary.”**

**“Successor Entity”** means the Person formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been entered into.

**“Trading Day”** means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities



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

“**Transaction Documents**” means the Securities Purchase Agreement, this Certificate of Designations and each of the other agreements and instruments entered into or delivered by the Company or any of the Holders in connection with the transactions contemplated by the Securities Purchase Agreement, all as may be amended from time to time in accordance with the terms thereof.

“**VWAP**” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded), during the period beginning at 9:30:00 a.m., New York City time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its “VAP” function (set to 09:30:00 start time and 16:00:00 end time) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:00 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest Closing Bid Price and the lowest closing ask price of any of the market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Required Holders. If the Company and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 25. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

“**Volume Failure**” means, with respect to a particular date of determination, the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination, is less than \$2,000,000 (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription Date).

34. Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Certificate of Designations, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company and its Subsidiaries, taken as a whole, the Company shall within one (1) Business Day of such receipt or prior to (or simultaneous with) such delivery, as applicable, publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to such Holder explicitly in writing in such notice (or immediately upon receipt of notice from such Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from such Holder), such Holder shall be allowed to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. If the Company or any of its Subsidiaries provides material non-public information to a Holder that is not simultaneously filed in a Current Report on Form 8-K and such Holder has not agreed to receive such material non-public information, the Company hereby covenants and agrees that such Holder shall not have any duty of confidentiality to the Company, any of its Subsidiaries or any of their respective officers, directors, employees, affiliates or agents with respect to, or a duty to any of the foregoing not to trade on the basis of, such material non-public information. Nothing contained in this Section 34 shall limit any obligations of the Company, or any rights of any Holder, under Section 4(i) of the Securities Purchase Agreement.

35. Absence of Trading and Disclosure Restrictions. The Company acknowledges and agrees that no Holder is a fiduciary or agent of the Company and that, subject to such Holder's compliance with the provisions of Section 4(k) of the Securities Purchase Agreement, each Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information, in each case, in the absence of a written non-disclosure agreement signed by an officer of such Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that, subject to such Holder's compliance with the provisions of Section 4(k) of the Securities Purchase Agreement, each Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

\* \* \*

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations of Series A Convertible Preferred Stock of Luminar Technologies, Inc. to be executed this [ ] day of May, 2025.

**LUMINAR TECHNOLOGIES, INC.**

By: \_\_\_\_\_

Name: Thomas J. Fennimore

Title: Chief Financial Officer

*[Signature Page to Certificate of Designations  
of Series A Convertible Preferred Stock of  
Luminar Technologies, Inc.]*

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**EXHIBIT I**  
**LUMINAR TECHNOLOGIES, INC.**  
**CONVERSION NOTICE**

Reference is made to the Certificate of Designations of Series A Convertible Preferred Stock of Luminar Technologies, Inc. (the “**Certificate of Designations**”). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock, \$0.0001 par value per share (the “**Preferred Shares**”), of Luminar Technologies, Inc., a Delaware corporation (the “**Company**”), indicated below into shares of Class A common stock, \$0.0001 value per share (the “**Common Stock**”), of the Company, as of the date specified below.

Date of Conversion:

Aggregate number of Preferred Shares to be converted

Aggregate Stated Value of such Preferred Shares to be converted:

Aggregate accrued and unpaid Dividends with respect to such Preferred Shares, and such

Aggregate Dividends to be converted:

**AGGREGATE CONVERSION AMOUNT TO BE CONVERTED:**

Please confirm the following information:

Conversion Price:

Number of shares of Common Stock to be issued:

Please issue the Common Stock into which the applicable Preferred Shares are being converted to Holder, or for its benefit, as follows:

- ☐ Check here if requesting delivery in book-entry form to the following name and to the following address:

Issue to:

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- ☐ Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant:

DTC Number:

Account Number:

Date: \_\_, \_\_  
\_\_

Name of Registered Holder

By:\_\_\_\_\_

Name: \_\_

Title: \_\_

Tax ID: \_\_

Facsimile:\_\_

E-mail Address:\_\_

## **EXHIBIT II**

### **EMAIL ACKNOWLEDGMENT**

The Company acknowledges receipt of this Conversion Notice and hereby directs Equiniti Trust Company, LLC (the “Transfer Agent”) to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated \_\_\_\_\_, 2025, from the Company and acknowledged and agreed to by the Transfer Agent.

CERTAIN INFORMATION IN THIS EXHIBIT, MARKED BY [\*\*\*], HAS BEEN EXCLUDED BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.  
CERTAIN PERSONAL INFORMATION IN THIS EXHIBIT, MARKED BY [XXXXX], HAS BEEN EXCLUDED.

## SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (the “**Agreement**”), dated as of May 19, 2025, is by and among Luminar Technologies, Inc., a Delaware corporation (the “**Company**”), and each of the investors signatory hereto (individually, a “**Buyer**” and collectively, the “**Buyers**”). Capitalized terms used in this Agreement without definition have the respective meanings ascribed to them in the Certificate of Designations (as defined below).

### RECITALS

- A. The Company has authorized a new series of convertible preferred stock of the Company, designated as Series A Convertible Preferred Stock, \$0.0001 par value per share, the terms of which are set forth in the certificate of designations of preferences and rights for such series of preferred stock (the “**Certificate of Designations**”) in the form attached hereto as Exhibit A (together with any convertible preferred shares issued in replacement thereof in accordance with the terms thereof, the “**Series A Preferred Stock**”), which Series A Preferred Stock shall have a stated value of \$1,000 per share and be convertible into shares of Class A common stock of the Company, \$0.0001 par value per share (“**Common Stock**”) (such shares of Common Stock issuable pursuant to the terms of the Certificate of Designations, including, without limitation, upon conversion or otherwise, collectively, the “**Conversion Shares**”), in accordance with the terms of the Certificate of Designations.
  - B. The Buyers wish to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement and pursuant to one or more effective registrations statement under the Securities Act of 1933, as amended (the “**1933 Act**”), up to an aggregate of \$200,000,000 stated value of the Company’s Series A Preferred Stock at multiple closings, in each case, on the terms of and subject to the conditions set forth in this Agreement.
  - C. On or around the date of this Agreement, on the terms of and subject to the conditions set forth herein, the Buyers wish to purchase an aggregate of \$35,000,000 stated value of Series A Preferred Stock, each such Buyer to purchase such aggregate number of shares of Series A Preferred Stock set forth on the executed signature page of such Buyer under the heading “Initial Preferred Shares” (such amount, the “**Buyer Initial Share Purchase Amount**,” and such aggregate amount for all Buyers shall be referred to herein as the “**Initial Preferred Shares**”).
  - D. The Buyers further wish to purchase, on the terms of and subject to the conditions set forth in this Agreement, up to such aggregate number of shares of Series A Preferred Stock set forth on the executed signature page of each such Buyer under the heading “Additional Preferred Shares” (such amount, the “**Buyer Additional Share Purchase Amount**,” and together with the Buyer Initial Share Purchase Amount, the “**Buyer Share Purchase Amount**,” and such aggregate amount for all Buyers shall be referred to herein as the “**Additional Preferred Shares**” and, together with the Initial Preferred Shares, the
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“**Preferred Shares**”) at one or more closings after the First Closing Date (as defined below), each such closing in an aggregate amount of up to \$35,000,000 stated value of Additional Preferred Shares.

- E. The Preferred Shares are, under specific circumstances set forth in the Certificate of Designations, entitled to Dividends (as defined in the Certificate of Designations) and certain other amounts (the “**Dividend Shares**”).
- F. The Preferred Shares, the Conversion Shares and the Dividend Shares are collectively referred to herein as the “**Securities**.”

## **AGREEMENT**

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

### **1. Purchase and Sale of Preferred Shares.**

- (a) Purchase of Preferred Shares. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6(a) and 7(a) below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company on the First Closing Date (as defined below), such Buyer’s Buyer Initial Share Purchase Amount. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6(b) and 7(b) below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company on each Additional Closing Date (as defined below), such Buyer’s Buyer Additional Share Purchase Amount.
- (b) Closing. The first closing (the “**First Closing**”) of the purchase of the Initial Preferred Shares by the Buyers shall occur remotely by the electronic transfer of Closing documentation. The date and time of the Closing (the “**First Closing Date**”) shall be 10:00 a.m., New York City time, on the first (1st) Business Day on which the conditions to the Closing set forth in Sections 6(a) and 7(a) below are satisfied or waived by the Buyers (or such other date as is mutually agreed to by the Company and each Buyer). The second closing and each additional closing thereafter (each such closing an “**Additional Closing**” and all such Additional Closings collectively with the First Closing, the “**Closings**” and each a “**Closing**”) of the purchase of the Additional Preferred Shares by the Buyers shall occur remotely by the electronic transfer of Closing documentation. The date and time of each Additional Closing (each such date an “**Additional Closing Date**” and collectively with the First Closing Date, the “**Closing Dates**” and each a “**Closing Date**”) shall be 10:00 a.m., New York City time, on the first (1st) Business Day on which the conditions to the Closing set forth in Sections 6(b) and 7(b) below are satisfied or waived (or such other date as is mutually agreed to by the Company and each Buyer). As used herein “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to



remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

- (c) Purchase Price. The purchase price per Preferred Share is \$960. The aggregate purchase price for the Initial Preferred Shares to be purchased by each Buyer (the “**Initial Purchase Price**”) shall be the amount set forth on the executed signature page of such Buyer under the label “Initial Purchase Price.” The aggregate purchase price for the Additional Preferred Shares to be purchased by each Buyer (the “**Additional Purchase Price**”) shall be up to the maximum amount set forth on the executed signature page of such Buyer under the label “Additional Purchase Price.”

- (d) Form of Payment.

- (i) On the First Closing Date, (i) each Buyer shall pay its respective Initial Purchase Price (less, in the case of the Lead Buyer, the Transaction Expenses to be withheld pursuant to Section 4(g)) to the Company for the Initial Preferred Shares to be issued and sold to such Buyer at the First Closing, by wire transfer of immediately available funds in accordance with the Company’s written wire instructions and (ii) the Company shall deliver to each Buyer the Buyer Initial Shares Purchase Amount registered in the name of such Buyer or its designee.
- (ii) On each Additional Closing Date, (i) each Buyer shall pay its respective Additional Purchase Price to the Company for the Additional Preferred Shares to be issued and sold to such Buyer at such Additional Closing, by wire transfer of immediately available funds in accordance with the Company’s written wire instructions and (ii) the Company shall deliver to each Buyer the Buyer Additional Share Purchase Amount to be issued and sold to such Buyer at such Additional Closing in the name of such Buyer or its designee.

## **2. Buyer’s Representations and Warranties.**

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

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

- (b) Accredited Investor Status; Experience. Such Buyer is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D. Such Buyer, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Buyer is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.
- (c) Information. Such Buyer acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the SEC Documents (as defined below). Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Buyer. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer’s right to rely on the Company’s representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities. Such Buyer is not relying, and has not relied, upon any statement, advice (whether accounting, legal, tax or other), representation or warranty made by the Company, D. Boral Capital LLC (the “**Placement Agent**”) or any of their affiliates or representatives except for (i) the statements made by the Company in the SEC Documents and (ii) the representations and warranties made by the Company in this Agreement.
- (d) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.
- (e) Validity; Enforcement. This Agreement has been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligation of such Buyer enforceable against such Buyer in accordance with its terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.
- (f) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and the consummation by such Buyer of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Buyer, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would

become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

- (g) No Affiliates. Each Buyer (i) is not, and has not been at any time during the consecutive three-month period preceding the date hereof, a director, officer or “affiliate” (as defined in Rule 144 (as defined below)) of the Company or any of its Subsidiaries and (ii) is not, to its knowledge, a “beneficial owner” of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the 1934 Act).
- (h) Residency. Such Buyer is a resident of that jurisdiction set forth in the Buyer’s address for notice as it appears on the executed signature page of such Buyer.
- (i) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, such Buyer has not, nor has any Person acting on behalf of or pursuant to any understanding with such Buyer, directly or indirectly, executed any purchases or sales, including Short Sales, of the securities of the Company, during the period commencing as of the time that such Buyer first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material terms of the transactions contemplated hereunder, and such Buyer will not engage, directly or indirectly, in any such activities until the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the 8-K Filing (as defined below). Notwithstanding the foregoing, in the case of a Buyer that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Buyer’s assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Buyer’s assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement. Other than to other Persons party to this Agreement or to such Buyer’s representatives, including, without limitation, its officers, directors, partners, legal and other advisors, employees, agents and affiliates, such Buyer has maintained the confidentiality of all disclosures made to it in connection with the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments to be entered into in connection herewith or therewith (including the existence and terms of such transactions). “**Short Sales**” means all “short sales” as defined in Rule 200 of Regulation SHO under the 1934 Act (but shall not be deemed to include locating and/or borrowing shares of Common Stock). For purposes of this Agreement, “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity (as defined below) or any department or agency thereof.

(j) Placement Agent Fee. Each Buyer understands that the Company intends to pay the Placement Agent a fee in respect to the transactions contemplated hereunder.

### 3. Representations and Warranties of the Company.

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

- (a) Organization and Qualification. The Company and any subsidiary that is a significant subsidiary (as such term is defined in Rule 1-02 of Regulation S-X promulgated by the Securities and Exchange Commission (the “SEC”)) (each, a “**Subsidiary**,” collectively, the “**Subsidiaries**”), are, and will be, duly organized, validly existing as a corporation and in good standing under the laws of their respective jurisdictions of organization. The Company and the Subsidiaries are duly licensed or qualified as a foreign corporation for transaction of business and in good standing under the laws of each other jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such license or qualification, and have all corporate power and authority necessary to own or hold their respective properties and to conduct their respective businesses as described in the Registration Statement and the Prospectus, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect on the assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders’ equity or results of operations of the Company and the Subsidiaries taken as a whole, or prevent the consummation of the transactions contemplated hereby (a “**Material Adverse Effect**”). The Company owns directly or indirectly, all of the equity interests of the Subsidiaries free and clear of any lien, charge, security interest, encumbrance, right of first refusal or other restriction, and all the equity interests of the Subsidiaries are validly issued and are fully paid, nonassessable and free of preemptive and similar rights. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21.1 to the Company’s Annual Report on Form 10-K for the most recently ended fiscal year and other than (i) those subsidiaries not required to be listed on Exhibit 21.1 by Item 601 of Regulation S-K under the 1934 Act and (ii) those subsidiaries formed since the last day of the most recently ended fiscal year.
- (b) Authorization; Enforcement; Validity. The Company has full legal right, power and authority to enter into this Agreement and the other Transaction Documents and perform the transactions contemplated hereby and thereby (including, without limitation, the issuance by the Company of the Preferred Shares and the reservation for issuance and issuance of the Conversion Shares issuable upon conversion of the Preferred Shares and the reservation for issuance and issuance of any Dividend Shares issuable pursuant to the terms of the Certificate of Designations). This Agreement has been, and the other Transaction Documents to which it is a party will be prior to the Closing, duly authorized, executed and delivered by the Company and a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except to the

extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles and (ii) the indemnification and contribution provisions herein and therein may be limited by federal or state securities laws and public policy considerations in respect thereof. "**Transaction Documents**" means, collectively, this Agreement, the Certificate of Designations, the Irrevocable Transfer Agent Instructions (as defined below) and each of the other agreements and instruments entered into or delivered by the Company in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

- (c) **Issuance of Securities; Registration.** The Preferred Shares, when issued and delivered against payment therefor as provided herein, and the Dividend Shares, when issued and delivered in accordance with the terms of the Certificate of Designations, if and as when lawfully declared as dividends by the Company, will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Liens**") (other than any Lien arising from an act or omission of a Buyer) with respect to the issuance thereof. As of the Closing, the Company shall have reserved out of its authorized and unissued Common Stock a number of shares of Common Stock equal to the sum of (i) 100% of the aggregate number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Preferred Shares then outstanding (including the Preferred Shares being purchased by the Buyers at such Closing) at the Floor Price (as defined in the Certificate of Designations) then in effect (without regard to any limitations on conversions set forth in the Certificate of Designations) and (ii) 100% of the aggregate number of shares of Common Stock that would be necessary to effect the conversion of that number of Dividend Shares equal to eighteen (18) months of Dividends on the Preferred Shares then outstanding (including the Preferred Shares being purchased by the Buyers at such Closing) at the Floor Price then in effect (without regard to any limitations on conversions set forth in the Certificate of Designations). The Conversion Shares, when issued upon conversion of the Preferred Shares or the Dividend Shares in accordance with the terms of the Certificate of Designations, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens (other than any Lien arising from an act or omission of a Buyer) with respect to the issuance thereof. On or prior to each Closing Date, the Company has, or shall have, prepared and filed an effective registration statement (registering the issuance and sale of certain securities to be issued from time to time by the Company, including the Preferred Shares and certain Dividend Shares issuable in connection therewith and the Conversion Shares issuable upon conversion thereof) on Form S-3 with the SEC (a "**Registration Statement**") in conformity with the requirements of the 1933 Act, which became effective on or prior to the applicable Closing Date (such date of effectiveness, the "**Effective Date**"), including a prospectus forming a part of such Registration Statement (the "**Prospectus**"), and such amendments and supplements thereto as may have been required prior to the applicable Closing Date, including, if necessary or appropriate, a supplement to the Prospectus relating to the Securities filed with the SEC pursuant to Rule 424(b) of the 1933 Act and

delivered by the Company to each Buyer at the applicable Closing (a “**Prospectus Supplement**”). No stop order suspending the effectiveness of a Registration Statement or of any part thereof has been issued by the SEC and no proceedings for that purpose have been instituted or, to the knowledge of the Company, are threatened by the SEC. The Company, if required by the rules and regulations of the SEC, shall file each Prospectus with the SEC pursuant to Rule 424(b). At the time each Registration Statement and any amendments thereto became or becomes effective, at the date of its filing and at the applicable Closing Date, such Registration Statement and any amendments thereto conformed and will conform in all material respects with the requirements of the 1933 Act; and the applicable Prospectus and any amendments or supplements thereto, at the time such Prospectus or any amendment or supplement thereto was issued and at the applicable Closing Date, conformed and will conform in all material respects with the requirements of the 1933 Act. At the time each Registration Statement and any amendments thereto became or becomes effective did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and the applicable Prospectus and any amendments or supplements thereto, at the time such Prospectus or any amendment or supplement thereto was issued and at the applicable Closing Date, did not and will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company (i) is, and will be, eligible to use Form S-3 under the 1933 Act, and (ii) is and will meet the transaction requirements as set forth in General Instruction I.B.1 of Form S-3.

- (d) No Conflicts. Neither the execution of the Transaction Documents by the Company, nor the issuance, offering or sale of the Securities, nor the consummation of any of the transactions contemplated herein or therein, nor the compliance by the Company with the terms and provisions hereof or thereof will conflict with, or will result in a breach of, any of the terms and provisions of, or has constituted or will constitute a default under, or has resulted in or will result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any contract or other agreement to which the Company may be bound or to which any of the property or assets of the Company is subject, except (i) such conflicts, breaches or defaults as may have been waived and (ii) such conflicts, breaches and defaults that would not have a Material Adverse Effect; nor will such action result (x) in any violation of the provisions of the Certificate of Incorporation (as defined below), Bylaws (as defined below) or other organizational documents of the Company, or (y) in any material violation of the provisions of any statute or any order, rule or regulation applicable to the Company or of any court or of any federal, state or other regulatory authority or other government body having jurisdiction over the Company, including the Eligible Market on which the Common Stock is then listed or quoted (the “**Principal Market**”), except where such violation would not have a Material Adverse Effect.
- (e) Consents. The Company is not required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the filing with the SEC of any

applicable Registration Statement, Prospectus, Prospectus Supplement, any other filings as may be required under the 1933 Act or the 1934 Act or by any state securities agencies, the notice and/or application(s) to the Principal Market for the issuance and sale of the Securities and the listing of the Conversion Shares for trading thereon in the time and manner required thereby, and, solely with respect to the First Closing, the filing with the Delaware Secretary of State of the Certificate of Designations), any Governmental Entity (as defined below) or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company is required to obtain prior to the Closing Date pursuant to the preceding sentence have been or will be obtained or effected on or prior to the Closing Date, and the Company is not aware of any facts or circumstances which might prevent the Company from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents. “**Governmental Entity**” means any (i) nation, state, county, city, town, village, district, or other political jurisdiction of any nature, (ii) federal, state, local, municipal, foreign, or other government, (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), (iv) multi-national organization or body, or (v) body entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

- (f) Acknowledgment Regarding Buyer’s Purchase of Securities. Assuming the accuracy of each Buyer’s representations and warranties hereunder, the Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm’s length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Buyer is (i) an officer or director of the Company or any of its Subsidiaries, (ii) an “affiliate” (as defined in Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, “**Rule 144**”)) of the Company or any of its Subsidiaries or (iii) to its knowledge, a “beneficial owner” of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the “**1934 Act**”)). The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer’s purchase of the Securities. The Company further represents to each Buyer that the Company’s decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company and its representatives.

- (g) [Reserved].

- (h) No Integrated Offering. Assuming the accuracy of each Buyer's representations and warranties hereunder, none of the Company, its Subsidiaries nor, to the Company's knowledge, any of its affiliates or any Person acting on its behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any Company security under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the 1933 Act, which would require the registration of any such securities under the 1933 Act, or (ii) any applicable stockholder approval provisions of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation.
- (i) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares and the Dividend Shares will increase in certain circumstances. The Company further acknowledges that its obligation to issue the Conversion Shares, the Preferred Shares and the Dividend Shares pursuant to the terms of the Certificate of Designations and in accordance with this Agreement, is, in each case, absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.
- (j) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination, poison pill (including, without limitation, any distribution under a rights agreement), stockholder rights plan or other similar anti-takeover provision under the Certificate of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities, except as set forth in the Certificate of Designations. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of shares of Common Stock or a change in control of the Company or any of its Subsidiaries.
- (k) SEC Documents; Financial Statements. During the two (2) years prior to the later of the date hereof and the most recent Closing Date, the Company has timely filed all reports, schedules, forms, proxy statements, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to such date and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The Company has delivered or has made available to the Buyers or their respective representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As of their respective dates (except to the extent amended by a subsequently filed SEC Document), the SEC Documents complied in all material respects with the



requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC (except to the extent amended by a subsequently filed SEC Document), 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 consolidated financial statements of the Company included in the SEC Documents, together with the related notes and schedules, present fairly, in all material respects, the consolidated financial position of the Company and the Subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company and the Subsidiaries for the periods specified (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate) and have been prepared in compliance with the published requirements of the 1933 Act and 1934 Act, as applicable, and in conformity with generally accepted accounting principles in the United States ("GAAP") applied on a consistent basis (except (i) for such adjustments to accounting standards and practices as are noted therein and (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) during the periods involved. No other information provided by or on behalf of the Company to any of the Buyers which is not included in the SEC Documents (including, without limitation, information referred to in Section 2(c) of this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included or incorporated by reference in the Registration Statement and the Prospectus (the "**Financial Statements**"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financials Statements to be in conformity with GAAP and in compliance with the published requirements of the 1933 Act and 1934 Act, as applicable. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

- (1) Absence of Certain Changes. Since the date of the most recent financial statements of the Company included or incorporated by reference in the Registration Statement and Prospectus, there has not been (i) any Material Adverse Effect, or any development that would result in a Material Adverse Effect, (ii) any transaction which is material to the Company and the Subsidiaries taken as a whole, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company or the Subsidiaries, which is material to the Company and the Subsidiaries taken as a whole, (iv) any material change in the capital stock (other than (A) the grant of additional options under the Company's existing stock option plans, (B) changes in the number of

outstanding Common Stock of the Company due to the issuance of shares upon the exercise or conversion of securities exercisable for, or convertible into, Common Stock outstanding on the date hereof, (C) as a result of the issuance of Placement Shares, (D) any repurchases of capital stock of the Company, (E) as described in a proxy statement filed on Schedule 14A or a Registration Statement on Form S-4, or (F) otherwise publicly announced) or outstanding long-term indebtedness of the Company or the Subsidiaries or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company or any Subsidiary, other than in each case above in the ordinary course of business or as otherwise disclosed in the Registration Statement or Prospectus (including any document incorporated by reference therein). The Company has not taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company have any knowledge or reason to believe that any of its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company and its Subsidiaries, on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Company Insolvent (as defined below). For purposes of this Section 3(l), “**Company Insolvent**” means, with respect to the Company and its Subsidiaries, on a consolidated basis, (A) the present fair saleable value of the Company’s and its Subsidiaries’ consolidated assets is less than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (B) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company and its Subsidiaries intend to incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature. Neither the Company nor any of its Subsidiaries has engaged in any business or in any transaction, and is not about to engage in any business or in any transaction, for which the Company’s and its Subsidiaries’ remaining consolidated assets constitute unreasonably small capital with which to conduct the business in which the Company is engaged as such business is now conducted and is proposed to be conducted.

(m) [Reserved].

(n) Conduct of Business; Regulatory Permits. Neither the Company nor any Subsidiary is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other similar agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary is bound or to which any of the property or assets of the Company or any Subsidiary is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of each of clauses (ii) and (iii) above, for any such violation or default that would not, individually or in the aggregate, have a Material

Adverse Effect. To the Company's knowledge, no other party under any material contract or other agreement to which it or any Subsidiary is a party is in default in any respect thereunder where such default would have a Material Adverse Effect. Without limiting the generality of the foregoing, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that could reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future. Since January 1, 2023, (i) the Common Stock has been listed or designated for quotation on an Eligible Market, (ii) trading in the Common Stock has not been suspended by the SEC or such Eligible Market and (iii) except as disclosed in the SEC Documents, the Company has received no communication, written or oral, from the SEC or such Eligible Market regarding the suspension or delisting of the Common Stock from such Eligible Market. The Company and the Subsidiaries possess or have obtained, all licenses, certificates, consents, orders, approvals, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as currently conducted, as described in the Registration Statement and the Prospectus (the "**Permits**"), except where the failure to possess, obtain or make the same would not, individually or in the aggregate, have a Material Adverse Effect. Neither the Company nor any Subsidiary has received written notice of any proceeding relating to revocation or modification of any such Permit or has any reason to believe that such Permit will not be renewed in the ordinary course, except where the failure to obtain any such renewal would not, individually or in the aggregate, have a Material Adverse Effect. There is no agreement, commitment, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is a party which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted other than such effects, individually or in the aggregate, which have not had and would not reasonably be expected to have a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole.

- (o) No Improper Practices. (i) None of the Company or any of its Subsidiaries or affiliates, or any director or officer thereof, or, to the Company's knowledge, any employee, agent or representative of the Company or of any of its Subsidiaries or affiliates, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment, giving or receipt of money, property, gifts or anything else of value, directly or indirectly, to any government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) ("**Government Official**") in order to influence official action, or to any person in violation of any applicable anti-corruption laws; (ii) the Company and each of its Subsidiaries and affiliates have conducted their businesses in compliance with applicable

anti-corruption laws and have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with such laws and with the representations and warranties contained in this paragraph (o); and (iii) neither the Company nor any of its Subsidiaries will use, directly or indirectly, the proceeds of the offering in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any applicable anti-corruption laws.

- (p) Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or, to the knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any applicable provisions of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**") and the rules and regulations promulgated thereunder. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it or furnished by it to the Commission during the past 12 months. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in Rules 13a-15 and 15d-15 under the 1934 Act.
- (q) Transactions With Affiliates. Except as disclosed in the SEC Documents or for which no disclosure is required in the SEC Documents, no current or former employee, director, officer or stockholder (direct or indirect) of the Company or its Subsidiaries, or, to the knowledge of the Company, any affiliate of any thereof, or any relative with a relationship no more remote than first cousin of any of the foregoing, is presently, or has ever been, (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer or stockholder or such associate or affiliate or relative Subsidiaries (other than for ordinary course services as employees, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less than 5% of the common equity of a company whose securities are traded on or quoted through an Eligible Market (as defined in the Certificate of Designations)), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. No employee, officer, stockholder or director of the Company or any of its Subsidiaries or member of his or her immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company,

and (iii) for other standard employee benefits made generally available to all employees or executives (including stock option agreements outstanding under any stock option plan approved by the Board of Directors of the Company).

- (r) Equity Capitalization. As of the date hereof, the authorized capital stock of the Company consists solely of (i) 715,000,000 shares of Common Stock, of which, 43,564,103 shares of Common Stock are issued and outstanding, (ii) 121,000,000 shares of Class B common stock, of which, 4,872,578 shares of Class B common stock are issued and outstanding and (iii) 10,000,000 shares of preferred stock, of which none are issued and outstanding. **“Convertible Securities”** means any capital stock or other security of the Company that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock). All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and non-assessable. Except as disclosed in the Registration Statement, (i) none of the Company’s capital stock is subject to preemptive rights, rights of first refusal or similar rights; (ii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional capital stock of the Company or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company; (iii) there are no agreements or arrangements under which the Company is obligated to register the sale of any of its securities under the 1933 Act; (iv) there are no outstanding securities or other instruments of the Company which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company is or may become bound to redeem a security of the Company; (v) there are no securities or other instruments of the Company containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; (vi) the Company does not have any stock appreciation rights or “phantom stock” plans or agreements or any similar plan or agreement; and (vii) neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company’s or its Subsidiaries’ respective businesses and which, individually or in the aggregate, do not or would not have a Material Adverse Effect. The Company has furnished to the Buyers, or filed on EDGAR, true, correct and complete copies of the Company’s Certificate of Incorporation, as amended and as in effect on the date hereof (the **“Certificate of Incorporation”**), and the Company’s bylaws, as amended and as in effect on the date hereof (the **“Bylaws”**), and the terms of all Convertible Securities convertible into, or exercisable or exchangeable for, shares of Common Stock and the material rights of the holders thereof in respect thereto.

- (s) Indebtedness and Other Contracts. Except as set forth in the Registration Statement, neither the Company nor any of its Subsidiaries, (i) has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound (x) that would be required to be reflected in the Company's consolidated financial statements pursuant to GAAP or (y) that constitute material obligations of the Company and its Subsidiaries, taken as a whole, whether or not required to be so reflected, (ii) is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect, (iii) has any financing statements securing obligations in any amounts filed in connection with the Company or any of its Subsidiaries; (iv) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (v) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication (A) all obligations of such Person for borrowed money, (B) all obligations of such Person issued, undertaken or assumed as the deferred purchase price of property or services, including, without limitation, "capital leases" in accordance with GAAP, (other than trade payables or accrued expenses entered into in the ordinary course of business consistent with past practice, payroll liabilities and deferred compensation and severance, pension, health and welfare retirement and equivalent benefits to current or former employees, directors or managers of such Person and its subsidiaries), (C) all reimbursement or payment obligations of such Person with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations of such Person under any leasing or similar arrangement which, in connection with GAAP, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) with respect to any asset or property owned by such Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease,

dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

- (t) Litigation. There are no legal or governmental proceedings pending or threatened to which the Company or any Subsidiary is a party or to which any of the properties of the Company or any Subsidiary is subject (i) other than proceedings accurately described in all material respects in the Prospectus and proceedings that would not have a Material Adverse Effect on the Company and its subsidiaries, taken as a whole, or on the power or ability of the Company to perform its obligations under the Transaction Documents or to consummate the transactions contemplated hereby or thereby or (ii) that are required to be described in the Registration Statement or the Prospectus and are not so described. Without limitation of the foregoing, there has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries relating to the Company. Neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity.
- (u) Insurance. The Company and the Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as the Company and the Subsidiaries reasonably believe are adequate for the conduct of their business.
- (v) Employee Matters; Benefit Plans.
  - (i) No labor disturbance by or dispute with employees of the Company or any Subsidiary exists or, to the knowledge of the Company, is threatened which would result in a Material Adverse Effect.
  - (ii) To the knowledge of the Company, (i) each material employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”) that is maintained, administered or contributed to by the Company or any of its affiliates for employees or former employees of the Company and the Subsidiaries has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the “**Code**”); (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred which would result in a material liability to the Company with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and (iii) for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no “accumulated funding deficiency” as defined in Section 412 of the Code has been

incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) equals or exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions, other than, in the case of (i), (ii) and (iii) above, as would not have a Material Adverse Effect.

- (w) Assets; Title. The Company and the Subsidiaries have good and marketable title to all items of real property and good and valid title to all personal property (other than Intellectual Property, which is addressed exclusively in Section 3(x) below) described in the Registration Statement or Prospectus as being owned by them that are material to the businesses of the Company or such Subsidiary, in each case free and clear of all Liens, except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries or (ii) would not, individually or in the aggregate, have a Material Adverse Effect. Any real property described in the Registration Statement or Prospectus as being leased by the Company and the Subsidiaries is held by them under valid, existing and enforceable leases, except those that (A) do not materially interfere with the use made or proposed to be made of such property by the Company or the Subsidiaries or (B) would not, individually or in the aggregate, have a Material Adverse Effect.
- ( x ) Intellectual Property. The Company and the Subsidiaries own or possess adequate enforceable rights to use all patents, patent applications, trademarks (both registered and unregistered), trade names, trademark registrations, service marks, service mark registrations, Internet domain name registrations, copyrights, copyright registrations, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, the “**Intellectual Property**”), necessary for the conduct of their respective businesses as conducted as of the date hereof, except to the extent that the failure to own or possess adequate rights to use such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and the Subsidiaries have not received any written notice of any claim of infringement or conflict which asserted Intellectual Property rights of others, which infringement or conflict, if the subject of an unfavorable decision, would result in a Material Adverse Effect. There are no pending, or to the Company’s knowledge, threatened judicial proceedings or interference proceedings challenging the Company’s or any Subsidiary’s rights in or to or the validity of the scope of any of the Company’s or its Subsidiaries’ patents, patent applications or proprietary information. To the Company’s knowledge, there are no third parties who have established rights or have any claim in any of the Company’s or any of its Subsidiary’s patents, patent applications or any patent to be issued therefrom by virtue of any contract, license or other agreement entered into between such entity or individual and the Company or any Subsidiary or by any non-contractual obligation, other than by written licenses granted by the Company or any Subsidiary. The Company has not received any written notice of any claim challenging the rights of the Company or its Subsidiaries in or to any Intellectual Property owned,



licensed or optioned by the Company or any Subsidiary which claim, if the subject of an unfavorable decision, would result in a Material Adverse Effect.

- (y) Environmental Laws. The Company and the Subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, “**Environmental Laws**”); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses as described in the Registration Statement and the Prospectus; and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of any of clauses (i), (ii) or (iii) above, for any such failure to comply or failure to receive required permits, licenses, other approvals or liability as would not, individually or in the aggregate, have a Material Adverse Effect.
- (z) Subsidiary Rights. The Company or one of its Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company or such Subsidiary.
- (aa) Tax Status. The Company and the Subsidiaries have filed all federal, state, local and foreign tax returns which have been required to be filed and paid all taxes shown thereon through the date hereof, to the extent that such taxes have become due and are not being contested in good faith, except where the failure to do so would not have a Material Adverse Effect. Except as otherwise disclosed in or contemplated by the Registration Statement or the Prospectus, no tax deficiency has been determined adversely to the Company or any Subsidiary which has had, or would have, individually or in the aggregate, a Material Adverse Effect. The Company has no knowledge of any federal, state or other governmental tax deficiency, penalty or assessment which has been or might be asserted or threatened against it which would have a Material Adverse Effect.
- (bb) Internal Accounting and Disclosure Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company is not aware of any material weaknesses in its internal control over financial reporting (other than as set forth in the Registration Statement or the Prospectus). Since the date of the latest audited financial statements of the Company included in the Prospectus, there has been no change in the Company’s internal control

over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting (other than as set forth in the Registration Statement or the Prospectus). The Company has established disclosure controls and procedures (as defined in 1934 Act Rules 13a-15 and 15d-15) that comply with the requirements of the 1934 Act. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the fiscal year most recently ended (such date, the "**Evaluation Date**"). The Company presented in its Form 10-K for the fiscal year most recently ended the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the most recent Evaluation Date.

- (c c) Off Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, and/or, to the knowledge of the Company, any of its affiliates and any unconsolidated entity, including, but not limited to, any structured finance, special purpose or limited purpose entity (each, an "**Off Balance Sheet Transaction**") that would affect materially the Company's liquidity or the availability of or requirements for its capital resources, including those Off Balance Sheet Transactions described in the Commission's Statement about Management's Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the Registration Statement or the Prospectus which have not been described as required.
- (dd) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, required to register as an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.
- (e e) Acknowledgement Regarding Buyers' Trading Activity. The Company understands and acknowledges that, following the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the 8-K Filing (as defined below), one or more Buyers may engage in hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock) in compliance with Section 4(k) of this Agreement at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the Dividend Shares or Conversion Shares, as applicable, deliverable with respect to the Securities are being determined and such hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock), if any, can reduce the value of the existing stockholders' equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted.
- (ff) Manipulation of Price. Neither the Company, nor any Subsidiary, nor, to the knowledge of the Company, any of their respective directors, officers or controlling persons has taken, directly or indirectly, any action designed, or that has constituted or would cause or result in, under the 1934 Act or otherwise, the stabilization or manipulation of the price of

any security of the Company to facilitate the sale or resale of any of the Securities. Neither the Company nor any Subsidiary has incurred any liability for any finder's fees, brokerage commissions or similar payments in connection with the transactions herein contemplated (other than the Placement Agent).

- (g g) U.S. Real Property Holding Corporation. Neither the Company nor any of its Subsidiaries is, or has ever been a U.S. real property holding corporation within the meaning of Section 897 of the Code, and the Company and each Subsidiary shall so certify upon any Buyer's reasonable request.
- (h h) Registration Rights. Except as disclosed in the Registration Statement, no Person has any right to cause the Company or any Subsidiary to effect the registration under the 1933 Act of any securities of the Company or any Subsidiary.
- (i i) Transfer Taxes. On the Closing Date, all material stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with by the Company in all material respects.
- (j j) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). Neither the Company nor any of its Subsidiaries or affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.
- (k k) Shell Company Status. The Company is not a shell company (as defined in Rule 405 under the 1933 Act) and has not been a shell company for at least 12 calendar months previously and if it has been a shell company at any time previously, has filed current Form 10 information (as defined in General Instruction I.B.6 of Form S-3) or an equivalent thereof with the Commission at least 12 calendar months previously reflecting its status as an entity that is not a shell company.
- (l l) Money Laundering. (i) Neither the Company nor any Subsidiary (solely for purposes of this paragraph (ll), collectively, the "**Entity**") nor, to the Company's knowledge, any director, officer, employee, agent, affiliate or representative of the Entity, is a government, individual, or entity (solely for purposes of this paragraph (mm), "**Person**") that is, or is owned or controlled by a Person that is: (A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, His Majesty's

Treasury, or other relevant sanctions authority (collectively, “**Sanctions**”), nor (B) located, organized or resident in a country or territory that is the subject of Sanctions. (ii) The Entity will not, directly or indirectly, knowingly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person: (a) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or (b) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise). (iii) The Entity represents and covenants that, except as detailed in the Registration Statement and the Prospectus, for the past 5 years, it has not knowingly engaged in and is not now knowingly engaged in any dealing or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

- (mm) Stock Option Plans. Each stock option granted by the Company was granted (i) in accordance with the terms of the applicable stock option plan of the Company and (ii) with an exercise price at least equal to the fair market value of the shares of Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company’s stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.
- (nn) No Disagreements with Accountants and Lawyers. There are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company’s ability to perform any of its obligations under any of the Transaction Documents. In addition, on or prior to the date hereof, the Company had discussions with its accountants about its financial statements previously filed with the SEC. Based on those discussions, the Company has no reason to believe that it will need to restate any such financial statements or any part thereof.
- (oo) No Additional Agreements. The Company does not have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.
- (pp) Public Utility Holding Act. None of the Company nor any of its Subsidiaries is a “holding company,” or an “affiliate” of a “holding company,” as such terms are defined in the Public Utility Holding Act of 2005.

- (qq) Federal Power Act. None of the Company nor any of its Subsidiaries is subject to regulation as a “public utility” under the Federal Power Act, as amended.
- (rr) Cybersecurity. (i)(x) To the knowledge of Company, there has been no security breach or other compromise of any Company’s information technology and computer systems, networks, hardware, software, data (including the data of their respective customers, employees, suppliers, vendors and any third party data maintained by or on behalf of them), equipment or technology (collectively, “**IT Systems and Data**”) and (y) the Company has not been notified of, and has no knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to their IT Systems and Data; (ii) the Company is presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification, except as would not, in the case of this clause (ii), individually or in the aggregate, have a Material Adverse Effect; and (iii) the Company has implemented backup and disaster recovery technology consistent with industry standards and practices.
- (ss) Compliance with Data Privacy Laws. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) the Company and its Subsidiaries have complied and are presently in compliance with all internal and external privacy policies, contractual obligations, industry standards, applicable laws, statutes, judgments, orders, rules and regulations of any court or arbitrator or other governmental or regulatory authority and any other legal obligations, in each case, relating to the collection, use, transfer, import, export, storage, protection, disposal and disclosure by the Company or any of its Subsidiaries of personal, personally identifiable, household, sensitive, confidential or regulated data (“**Data Security Obligations**”); (ii) the Company has not received any notification of or complaint regarding and is unaware of any other facts that, individually or in the aggregate, would reasonably indicate non-compliance with any Data Security Obligation; and (iii) there is no action, suit or proceeding by or before any court or governmental agency, authority or body pending or, to the Company’s knowledge, threatened alleging non-compliance with any Data Security Obligation..
- (tt) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Buyers or their agents or counsel with any information that constitutes or would reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than (i) the existence of the transactions contemplated by this Agreement and the other Transaction Documents and a draft of the Company’s quarterly report on Form 10-Q for the quarterly period ended March 31, 2025, that the Company expects to publicly file on or about May 20, 2025, and (ii) any such information that shall be disclosed in accordance with Section 4(i). The Company understands and confirms that each of the Buyers will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to the Buyers regarding the Company and its Subsidiaries, their

businesses and the transactions contemplated hereby furnished by or on behalf of the Company or any of its Subsidiaries is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. Each press release issued by the Company or any of its Subsidiaries during the twelve (12) months preceding the date of this Agreement did not at the time of release contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. Other than with respect to the transactions contemplated by this Agreement and the other Transaction Documents, no event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by the Company but which has not been so publicly disclosed. The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

#### 4. Covenants.

- (a) Best Efforts. Each Buyer shall use its best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 6 of this Agreement. The Company shall use its best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 7 of this Agreement.
- (b) Underlying Shares. The Conversion Shares shall be issued free of legends. The Company shall use best efforts to keep a registration statement (including a Registration Statement) registering the issuance of the Conversion Shares effective during the term of this Agreement.
- (c) Reporting Status. From the date hereof until the date on which no shares of Series A Preferred Stock are outstanding or may become outstanding pursuant to the Transaction Documents (the “**Reporting Period**”), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination. As of their respective dates of filing, all such reports filed with the SEC shall comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of such reports, at the time they are filed with the SEC, shall contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates of filing, the financial statements of the Company included in such reports shall comply in all material respects

with applicable accounting requirements and comply as to form in all material respects with the published rules and regulations of the SEC with respect thereto, in each case, as in effect as of the time of filing. Such financial statements will be prepared in all material respects in accordance with GAAP, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto or as permitted by Regulation S-X, or (ii) in the case of unaudited financial statements, as permitted by the rules and regulations of the SEC) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the results of their operations and cash flows for the periods covered thereby (subject, in the case of unaudited financial statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate, and to the absences of notes).

- (d) Use of Proceeds. The Company shall use the proceeds from the sale of the Securities for general corporate purposes, which may include, without limitation: (i) the satisfaction of any indebtedness of the Company or any of its Subsidiaries, (ii) the redemption or repurchase of any securities of the Company or any of its Subsidiaries, or (iii) the settlement of any litigation.
- (e) Financial Information. The Company agrees to send the following to each Buyer during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, any other interim reports or any consolidated balance sheets, income statements, stockholders' equity statements and/or cash flow statements for any period other than any annual report filed with the SEC, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the 1933 Act, (ii) unless the following are either filed with the SEC through EDGAR or are otherwise widely disseminated via a recognized news release service (such as PR Newswire or Business Wire), on the same day as the release thereof, email copies of all press releases issued by the Company or any of its Subsidiaries and (iii) unless the following are filed with the SEC through EDGAR, copies of any notices and other information made available or given to the stockholders of the Company, as applicable, generally, contemporaneously with the making available or giving thereof to the stockholders.
- (f) Listing. To the extent required by the rules of the Principal Market, the Company shall promptly secure the listing or designation for quotation (as the case may be) of all of the Conversion Shares upon the Principal Market (subject to official notice of issuance) and shall maintain the listing or designation for quotation (as the case may be) of all of the Conversion Shares from time to time issuable under the terms of the Transaction Documents on an Eligible Market. The Company shall maintain the Common Stock's listing on an Eligible Market. Neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock from an Eligible Market, except upon the immediate transfer of the

listing thereof to another Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f).

- (g) Fees. The Company shall pay YA II PN, Ltd., a Cayman Islands exempt limited company (the “**Lead Buyer**”) a commitment fee (the “**Commitment Fee**”) equal to \$2,000,000 in the aggregate on or prior to the First Closing Date by the issuance to, of such number of shares of Common Stock that is equal to the Commitment Fee divided by the Nasdaq Official Closing Price of the Common Stock on the Trading Day immediately preceding the First Closing Date, rounded to the nearest whole share. The Company shall reimburse the Lead Buyer a non-accountable amount of \$90,000 for all costs and expenses incurred by it or its affiliates in connection with the structuring, documentation, negotiation and closing of the transactions contemplated by the Transaction Documents (including without limitation, as applicable, all reasonable legal fees of outside counsel and disbursements of Haynes & Boone LLP (“**Buyer Counsel**”), counsel to the Lead Buyer, any other reasonable fees and expenses in connection with the structuring, documentation, negotiation and closing of the transactions contemplated by the Transaction Documents and due diligence and regulatory filings in connection therewith) (the “**Transaction Expenses**”) and shall be withheld by the Lead Buyer from its Initial Purchase Price at the First Closing. The Company shall be responsible for the payment of any placement agent’s fees, financial advisory fees, transfer agent fees, DTC (as defined below) fees or broker’s commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby (including, without limitation, any fees or commissions payable to the Placement Agent). The Company shall pay, and the Company shall hold each Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys’ fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.
- (h) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by a Buyer in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a Buyer.
- (i) Disclosure of Transactions and Other Material Information.
- (i) Disclosure of Transaction. The Company shall no later than 5:30 p.m., New York City time, on the Business Day following the date of this Agreement, file a Current Report on Form 8-K with the SEC describing all the material terms of the



transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching all the material Transaction Documents (including, without limitation, this Agreement (and all schedules to this Agreement, to the extent material) and the form of Certificate of Designations) (including the attachments thereto, the “**8-K Filing**”). From and after the filing of the 8-K Filing and the First Quarter 10-Q (as defined below), the Company shall have publicly disclosed all material, non-public information (if any) provided to any of the Buyers by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the later of the filing of the 8-K Filing and the First Quarter 10-Q, the Company acknowledges and agrees that any and all confidentiality or similar obligations in effect with respect to the transactions contemplated by the Transaction Documents under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Buyers or any of their affiliates, on the other hand, including that certain Non-Disclosure Agreement, by and between the Company and Yorkville Advisors Global, LP, a Delaware limited partnership, dated as of March 12, 2025, shall terminate in their entirety and be of no further force or effect in any respect.

- (ii) Disclosure of Additional Closings. The Company shall no later than 5:30 p.m., New York City time, on the date of each Additional Closing, file a Current Report on Form 8-K describing the Additional Closing in the form required by the 1934 Act (each, an “**Additional 8-K Filing**”). From and after the filing of any such Additional 8-K Filing, the Company shall have publicly disclosed all material, non-public information (if any) provided to any of the Buyers by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with such Additional Closing.
- (iii) Limitations on Disclosure. The Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide any Buyer with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof without the express prior written consent of such Buyer (which may be granted or withheld in such Buyer’s sole discretion and, if granted, must include an agreement to keep such information confidential until publicly disclosed). In the event of a breach of the foregoing covenant by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees and agents (as determined in the reasonable good faith judgment of such Buyer), in addition to any other remedy provided herein or in the Transaction Documents, such Buyer shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such material, non-public information without the prior approval by the Company, any of its Subsidiaries, or any of its or their respective officers, directors,

employees or agents. No Buyer shall have any liability to the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees, affiliates, stockholders or agents, for any such disclosure. To the extent that the Company, directly or indirectly, delivers any material, non-public information to a Buyer without such Buyer's consent, the Company hereby covenants and agrees that such Buyer shall not have any duty of confidentiality with respect to, or a duty not to trade on the basis of, such material, non-public information. Subject to the foregoing, neither the Company, its Subsidiaries nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby other than the 8-K Filing and the Additional 8-K Filings; provided, however, the Company shall be entitled, without the prior approval of any Buyer, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and each Additional 8-K Filing and, in each case, contemporaneously therewith and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of the applicable Buyer (which may be granted or withheld in such Buyer's sole discretion), the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of such Buyer in any filing, announcement, release or otherwise, except as required by applicable law, legal process or regulatory request; provided that, prior to any such disclosure, the Company notifies such Buyer as soon as practicable of such requirement (except where prohibited by any such applicable law, legal process or regulatory request) so that the Buyer may seek a protective order or other appropriate remedy prior to such disclosure. Notwithstanding the foregoing, the Company may make disclosures to an auditor or governmental or regulatory authority pursuant to any routine investigation, inspection, examination or inquiry without providing the Buyers with any notification thereof, unless any such Buyer is the subject of any such investigation, inspection, examination or inquiry (in which case the preceding sentence shall govern). Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that no Buyer shall have (unless expressly agreed to by a particular Buyer on or after the date hereof in a written definitive and binding agreement executed by the Company and such particular Buyer (it being understood and agreed that no Buyer may bind any other Buyer with respect thereto)), any duty of confidentiality with respect to, or a duty not to trade on the basis of, any material, non-public information regarding the Company and/or any of its Subsidiaries from and after the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the 8-K Filing.

(j) [Reserved].

(k) **Short Sales.** Each Buyer hereby agrees on behalf of itself and its Affiliates, for so long as such Buyer owns Preferred Shares and provided this Agreement has not been terminated in accordance with the terms specified herein, such Buyer and its Affiliates shall not maintain a Short Position (as defined below). Notwithstanding the foregoing, in the case of a Buyer that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Buyer's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Buyer's assets, the agreements set forth in this Section 4(k) shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement, subject to the obligations of such Buyer and such other portfolio managers under applicable law. For purposes hereof, a "**Short Position**" by a Person means a position whereby such Person has executed one or more sales of shares of Common Stock that is marked as a Short Sale (but not including any sale marked "short exempt") and that is executed at a time when such Person or its Affiliates have no equivalent offsetting long position in the Common Stock (or is deemed to have a long position hereunder or otherwise in accordance with Regulation SHO of the 1934 Act); provided, that, for purposes of such calculations, any Short Sales either (x) consummated by such Person due to a Conversion Failure, (y) that is a result of a bona fide trading error on behalf of such Person or its Affiliates or (z) that would otherwise be marked as a "long" sale, but for the occurrence of any other breach by the Company (or its Affiliates or agents, including, without limitation, its transfer agent) of any Transaction Document in each case, shall be excluded from such calculations. For purposes of determining whether a Buyer or its Affiliates has an equivalent offsetting "long" position in shares of Common Stock (A) all Common Stock that is owned by such Buyer or its Affiliates shall be deemed held "long", (B) at any time a Conversion Notice is delivered by such Buyer to the Company, any shares of Common Stock issued or issuable to such Buyer (or its designee, if applicable) in connection therewith shall be deemed held "long" by such Buyer from and after the date of such Conversion Notice until such time as such Buyer shall no longer beneficially own such shares of Common Stock, and (C) at any other time the Company is required to issue Common Stock to such Buyer pursuant to the terms of the Certificate of Designation or any other Transaction Document, any shares of Common Stock issued or issuable to such Buyer (or their designee, if applicable) in connection therewith shall be deemed held "long" by such Buyer until such time as such Buyer shall no longer beneficially own such Ordinary Shares. In addition, each Buyer agrees that it shall not, and that it will cause its Affiliates not to, engage in any loans on the shares of Common Stock, except that Buyer may deposit shares of Common Stock in its prime brokerage accounts that are subject to customary margin and rehypothecation agreements. Each Buyer shall deliver to the Company on the last Trading Day of each week commencing on the first such date after the First Closing Date until such Buyer no longer owns any Preferred Shares, Conversion Shares or Dividend Shares, a trading report stating the number of shares of Common Stock sold during such week by such Buyer and the average sales price for such week.

- (l) Reservation of Shares. So long as any of the Preferred Shares remain outstanding or are issuable pursuant to the terms hereof, the Company shall at all times reserve out of its authorized and unissued Common Stock a number of shares of Common Stock equal to the sum of (i) 100% of the aggregate number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Preferred Shares then outstanding at the Floor Price (as defined in the Certificate of Designations) then in effect (without regard to any limitations on conversions set forth in the Certificate of Designations) and (ii) 100% of the aggregate number of shares of Common Stock that would be necessary to effect the conversion of that number of Dividend Shares equal to twelve (12) months of Dividends on the Preferred Shares then outstanding at the Floor Price then in effect (without regard to any limitations on the issuance of securities set forth in the Certificate of Designations) (collectively, the “**Required Reserve Amount**”); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 4(l) be reduced other than proportionally in connection with any conversion, exercise and/or redemption, as applicable, of the Preferred Shares. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company’s obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain stockholder approval of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.
- (m) Conduct of Business. The business of the Company and its Subsidiaries shall not be conducted in violation of any law, ordinance or regulation of any Governmental Entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.
- (n) Covenants. During the term of this Agreement, the Company and its Subsidiaries shall not, without the prior written consent of the Required Holders (as defined below), breach any of the covenants set forth in Section 15 of the Certificate of Designations.
- (o) Acknowledgment of Dilution. Without limiting, and in addition to the Company’s representations in Section 3(i), the Company acknowledges that the issuance of the Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Conversion Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Buyer and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

- (p) Acknowledgement Regarding Buyers. The Company hereby acknowledges and agrees that no Buyer is acting as an agent, financial advisor, placement agent or broker-dealer of the Company or any of its Affiliates.
- (q) [Reserved]
- (r) Corporate Existence. So long as any Buyer beneficially owns any Preferred Shares, the Company shall not be party to any Fundamental Transaction (as defined in the Certificate of Designations) unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Certificate of Designations.
- (s) Stock Splits. Until the Preferred Shares are no longer outstanding, the Company shall not effect any stock combination, reverse stock split or other similar transaction in respect of the Common Stock (or make any public announcement or disclosure with respect to any of the foregoing) without the prior written consent of the Required Holders; provided, however, that the Company may effect a stock combination, reverse stock split or other similar transaction in respect of the Common Stock if necessary to comply with the requirements of the Principal Market without the prior written consent of the Required Holders.
- (t) Conversion Procedures. The form of Conversion Notice (as defined in the Certificate of Designations) included in the Certificate of Designations sets forth the totality of the procedures required of the Buyers in order to convert the Preferred Shares. No additional legal opinion, other information or instructions shall be required of the Buyers to convert their Preferred Shares. The Company shall honor conversions of the Preferred Shares and shall deliver the Conversion Shares and the Dividend Shares in accordance with the terms, conditions and time periods set forth in the Certificate of Designations.
- (u) Regulation M. The Company will not take any action prohibited by Regulation M under the 1934 Act, in connection with the distribution of the Securities contemplated hereby.
- (v) Stockholder Approval. The Company shall provide each stockholder entitled to vote at an annual or special meeting of stockholders of the Company (the “**Stockholder Meeting**”), which the Company shall use its reasonable best efforts to hold no later than August 31, 2025 (the “**Stockholder Meeting Deadline**”), a proxy statement, at the expense of the Company, soliciting each such stockholder’s affirmative vote at the Stockholder Meeting for approval of resolutions (“**Stockholder Resolutions**”) providing for the issuance of the Securities in compliance with the rules and regulations of the Principal Market (including permission for the Company to issue Conversion Shares in excess of the Exchange Cap (as defined in the Certificate of Designations)) (the “**Stockholder Approval**”), and the date the Stockholder Approval is obtained, the “**Stockholder Approval Date**”), and the Company shall use its reasonable best efforts to solicit its stockholders’ approval of such resolutions and to cause the Board of Directors of the Company to recommend to the stockholders that they approve such resolutions. The Company shall be obligated to seek to obtain the Stockholder Approval by the Stockholder Meeting Deadline. If, despite the

Company's reasonable best efforts the Stockholder Approval is not obtained on or prior to the Stockholder Meeting Deadline, the Company shall cause an additional Stockholder Meeting to be held within 90 days later. If, despite the Company's reasonable best efforts the Stockholder Approval is not obtained after such subsequent stockholder meetings, the Company shall cause an additional Stockholder Meeting to be held semi-annually thereafter until such Stockholder Approval is obtained. Notwithstanding the above, the Company shall not be required to hold a Stockholder Meeting or seek Stockholder Approval any time following the time when the Preferred Shares are no longer outstanding.

- (w) Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act), or any person acting on behalf of the Company or such affiliate will sell, offer for sale, or solicit offers to buy any security (as defined in the 1933 Act) in a transaction which would be integrated with the offer and sale of the Securities for purposes of the 1933 Act or the rules and regulations of the Principal Market.
- (x) Books and Records. The Company will keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the asset and business of the Company and its Subsidiaries in accordance with GAAP.
- (y) Closing Documents. On or prior to twenty (20) calendar days after the Closing Date, the Company agrees to deliver, or cause to be delivered, to each Buyer and Buyer Counsel a complete closing set of the executed Transaction Documents (which may be delivered in electronic format), Securities and any other document required to be delivered to any party pursuant to Section 7 hereof or otherwise.

#### 5. Register; Transfer Agent Instructions; Legend.

- (a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Preferred Shares in which the Company shall record the name and address of the Person in whose name the Preferred Shares have been issued (including the name and address of each transferee), the number and stated value of the Preferred Shares held by such Person, the number of Conversion Shares issuable pursuant to the terms of the Preferred Shares, the number of Dividend Shares issuable with respect to the Preferred Shares held by such Person. The Company shall keep the register open and available at all times during business hours for inspection of any Buyer or its legal representatives.
- (b) Transfer Agent Instructions. On or prior to each Closing Date, the Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable, the "**Transfer Agent**") in a form acceptable to each of the Buyers (the "**Irrevocable Transfer Agent Instructions**") to issue book-entry statements or credit shares (to the extent unrestricted shares are issued) to the applicable balance accounts at The Depository Trust Company ("**DTC**"), registered in the name of each Buyer or its

respective nominee(s), for the Conversion Shares in such amounts as specified from time to time by each Buyer to the Company upon conversion of the Preferred Shares. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5(b) will be given by the Company to the Transfer Agent with respect to such Conversion Shares, and that, assuming the accuracy of each Buyer's representations and warranties hereunder, the Securities shall otherwise be freely transferable on the books and records of the Company, as applicable, to the extent provided in this Agreement and the other Transaction Documents. If a Buyer effects a sale, assignment or transfer of the Securities in accordance with this Agreement and the other Transaction Documents, the Company shall permit the transfer and shall promptly instruct the Transfer Agent to issue one or more book-entry statements or credit shares to the applicable balance accounts at DTC in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that a Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. The Company shall cause its counsel to issue the legal opinion referred to in the Irrevocable Transfer Agent Instructions to the Transfer Agent on the effective date of the Prospectus Supplement. Any fees (with respect to the Transfer Agent, counsel to the Company or otherwise) associated with the issuance of such opinion or the Securities shall be borne by the Company.

- ( c ) Legends. Assuming the accuracy of each Buyer's representations and warranties hereunder, book-entry statements and any other instruments evidencing the Conversion Shares shall not bear any restrictive or other legend.

#### **6. Conditions to the Company's Obligation to Sell.**

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

- (i) Such Buyer shall have executed each of the other Transaction Documents to which it is a party and delivered the same to the Company.
- (ii) Such Buyer and each other Buyer shall have delivered to the Company the Purchase Price (less, in the case of the Lead Buyer, the amounts withheld pursuant to Section 4(g)) for the Preferred Shares being purchased by such Buyer at the

Closing by wire transfer of immediately available funds in accordance with the wire instructions provided by the Company.

- (iii) The representations and warranties of such Buyer shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the First Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the First Closing Date.
- (iv) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

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

- (i) Such Buyer and each other Buyer shall have delivered to the Company the Additional Purchase Price for the Preferred Shares being purchased by such Buyer at the Additional Closing by wire transfer of immediately available funds in accordance with the wire instructions provided by the Company.
- (ii) The representations and warranties of such Buyer shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the Additional Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Additional Closing Date.
- (iii) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.



## **7. Conditions to Each Buyer's Obligation to Purchase.**

(a) First Closing. The obligation of each Buyer hereunder to purchase its Preferred Shares at the First Closing is subject to the satisfaction, at or before the First Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived only by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof; and provided further that, in the event any such conditions are not met and any Buyer other than Yorkville does not agree to waive such conditions, Yorkville may elect in its sole discretion to purchase such Buyer's pro rata share of the Preferred Shares to be issued and sold at the First Closing:

- (i) The Company shall have duly executed and delivered to such Buyer each of the Transaction Documents to which it is a party and the Company shall have duly delivered to such Buyer the Buyer Initial Shares Purchase Amount, as being purchased by such Buyer at the First Closing pursuant to this Agreement.
- (ii) The Company shall have paid the Commitment Fee to the Buyers.
- (iii) The average daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market during the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the First Closing Date, is no less than \$5,000,000 per Trading Day.
- (iv) The Closing Sale Price (as defined in the Certificate of Designations) of the Common Stock on each of the ten (10) consecutive Trading Days immediately preceding the First Closing Date shall be no less than to the greater of (i) \$1.00 per share of Common Stock and (ii) 150% of the Floor Price (as defined in the Certificate of Designations).
- (v) No Triggering Event (as defined in the Certificate of Designations) has occurred and is continuing or that, with notice, the passage of time or both, would occur, including, but not limited to, under Section 5(a)(vii) of the Certificate of Designations.
- (vi) Such Buyer shall have received the opinion of Orrick, Herrington & Sutcliffe LLP, the Company's counsel, dated as of the First Closing Date, addressed to each Buyer, in form and substance reasonably acceptable to such Buyer.
- (vii) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, which instructions shall have been delivered to and acknowledged in writing by the Transfer Agent.
- (viii) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company in its jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Closing Date.

- (ix) The Company shall have delivered to such Buyer a certified copy of the Certificate of Incorporation as certified by the Delaware Secretary of State as of a date within ten (10) days of the First Closing Date.
- (x) The Company shall have delivered to such Buyer a certificate, in form and substance reasonably acceptable to such Buyer, executed by the Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's board of directors in form and substance reasonably acceptable to such Buyer, (ii) the Certificate of Incorporation of the Company and (iii) the Bylaws of the Company as in effect at the Closing.
- (xi) The representations and warranties of the Company shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the First Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the First Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Closing Date, to the foregoing effect.
- (xii) The Company shall have delivered to such Buyer a letter from the Transfer Agent certifying the number of shares of Common Stock outstanding on the Trading Day immediately prior to the Closing Date.
- (xiii) The Common Stock (A) shall be designated for quotation or listed (as applicable) on the Principal Market and (B) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (I) in writing by the SEC or the Principal Market or (II) by falling below the minimum maintenance requirements of the Principal Market.
- (xiv) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Preferred Shares, including without limitation, those required by the Principal Market, if any.
- (xv) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

- (xvi) Since the date of execution of this Agreement, no event or series of events shall have occurred that has had or would reasonably be expected to have or result in a Material Adverse Effect.
- (xvii) The Company shall have obtained approval, if necessary, of the Principal Market to list or designate for quotation (as the case may be) the Conversion Shares.
- (xviii) Such Buyer shall have received the wire transfer instructions of the Company.
- (xix) A Registration Statement shall be effective and available for the issuance and sale of (x) the Initial Preferred Shares to be issued in the First Closing, (y) Preferred Shares in an amount equal to not less than twelve (12) months of Dividends on such Initial Preferred Shares and (z) the Conversion Shares issuable upon conversion thereof, and the Company shall have delivered (or made publicly available through EDGAR) to each Buyer the Prospectus and the Prospectus Supplement with respect thereto.
- (xx) The Company has an unrestricted cash and cash equivalents balance, inclusive of any unused commitments then available to be drawn under an asset backed revolving credit facility of the Company (“**Permitted ABL Facility**”), which may be guaranteed by Subsidiaries of the Company (and, for the avoidance of doubt, with availability limited by a customary borrowing base), and otherwise on customary terms reasonably satisfactory to the “Required Holders” as defined in the First Lien Indenture, of at least \$31,500,000 on the First Closing Date.
- (xxi) No default or event of default shall have occurred and be continuing under the First Lien Notes or the Second Lien Notes since the date of execution of this Agreement.
- (xxii) The Company shall have filed its quarterly report on Form 10-Q for the quarterly period ended March 31, 2025 (the “**First Quarter 10-Q**”) with the SEC within five (5) calendar days of the date hereof.
- (xxiii) Such Buyer shall have received a copy of a duly executed transaction support letter from the controlling stockholder of the Company, dated not later than the First Closing Date, addressed to the Company, in substantially the form provided by the Company to the Buyers prior to the date hereof.
- (xxiv) The Company shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

(b) Additional Closing. The obligation of each Buyer hereunder to purchase its Preferred Shares at each Additional Closing is subject to the satisfaction, at or before each Additional Closing Date, of each of the following conditions, provided that these conditions are for each

Buyer's sole benefit and may be waived only by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof; and provided further that, in the event any such conditions are not met in respect of any Additional Closing and any Buyer other than Yorkville does not agree to waive such conditions in respect of such Additional Closing, Yorkville may elect in its sole discretion to purchase such Buyer's pro rata share of the Preferred Shares to be issued and sold at such Additional Closing:

- (i) The Company shall have delivered to each a Buyer a written notice indicating the aggregate number of Additional Preferred Shares to be issued and sold by the Company at the applicable Additional Closing (the "**Additional Closing Tranche**") at least five (5), but no more than seven (7) Trading Days, prior to the desired Additional Closing Date, provided that the Additional Closing Tranche at such Additional Closing shall be no more than 35,000 Additional Preferred Shares.
- (ii) The Additional Closing Date may be no less than 60 calendar days after the immediately preceding Closing Date; provided that (A) if the number of Preferred Shares issued and sold at the immediately preceding Closing was greater than 25,000 Preferred Shares, then the succeeding Additional Closing Date may be no less than the earlier of (x) 90 calendar days after the immediately preceding Closing Date, and (y) such date after the immediately preceding Closing Date, and not less than 60 calendar days thereafter, as of which the Buyers no longer hold any Preferred Shares issued in the immediately preceding Closing Date and (B) with respect to the first Additional Closing Date following the First Closing, if any Preferred Shares are outstanding as of the Stockholder Approval Date, such first Additional Closing Date may be no less than the earlier of (x) 45 days after the Stockholder Approval Date and (y) such date after the Stockholder Approval Date as of which the Buyers no longer hold any Preferred Shares issued in the First Closing.
- (iii) The average daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market during the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Additional Closing Date, is no less than:
  - (A) \$5,000,000 per Trading Day, if the applicable Additional Closing Tranche is greater than 22,500 Additional Preferred Shares;
  - (B) \$4,500,000 per Trading Day, if the applicable Additional Closing Tranche is greater than 20,000 Additional Preferred Shares and less than or equal to 22,500 Additional Preferred Shares;
  - (C) \$4,000,000 per Trading Day, if the applicable Additional Closing Tranche is greater than 17,500 Additional Preferred Shares and less than or equal to 20,000 Additional Preferred Shares;

- (D) \$3,500,000 per Trading Day, if the applicable Additional Closing Tranche is greater than 15,000 Additional Preferred Shares and less than or equal to 17,500 Additional Preferred Shares;
  - (E) \$3,000,000 per Trading Day, if the applicable Additional Closing Tranche is greater than 12,500 Additional Preferred Shares and less than or equal to 15,000 Additional Preferred Shares;
  - (F) \$2,500,000 per Trading Day, if the applicable Additional Closing Tranche is greater than 10,000 Additional Preferred Shares and less than or equal to 12,500 Additional Preferred Shares; or
  - (G) \$2,000,000 per Trading Day, if the applicable Additional Closing Tranche is less than or equal to 10,000 Additional Preferred Shares.
- (iv) The Closing Sale Price (as defined in the Certificate of Designations) of the Common Stock on each of the ten (10) consecutive Trading Days immediately preceding the Additional Closing Date shall be no less than the greater of (i) \$1.00 per share of Common Stock and (ii) 150% of the Floor Price (as defined in the Certificate of Designations).
  - (v) (A) No Triggering Event as defined in Sections (i), (vii), (viii), (ix) or (x) of the Certificate of Designations has occurred since the date of the immediately preceding Closing Date or is continuing and (B) no other Triggering Event as defined in the Certificate of Designations has occurred and is continuing or that, in respect of any Triggering Event, with notice, the passage of time or both, would occur, including, but not limited to, under Section 5(a)(vii) of the Certificate of Designations.
  - (vi) Such Buyer shall have received the opinion of Orrick, Herrington & Sutcliffe LLP, the Company's counsel, dated as of the Additional Closing Date, addressed to each Buyer, in form and substance reasonably acceptable to such Buyer.
  - (vii) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, which instructions shall have been delivered to and acknowledged in writing by the Transfer Agent.
  - (viii) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company in its jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Additional Closing Date.
  - (ix) The representations and warranties of the Company shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) as of the date when made and as of the Additional Closing Date as

though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Additional Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer or Chief Financial Officer of the Company, dated as of the Closing Date, to the foregoing effect.

- (x) The Company shall have delivered to such Buyer a letter from the Transfer Agent certifying the number of shares of Common Stock outstanding on the Trading Day immediately prior to the Closing Date.
- (xi) The Common Stock (A) shall be designated for quotation or listed (as applicable) on the Principal Market and (B) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (I) in writing by the SEC or the Principal Market or (II) by falling below the minimum maintenance requirements of the Principal Market.
- (xii) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities, including without limitation, those required by the Principal Market, if any.
- (xiii) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.
- (xiv) Since the date of the immediately preceding Closing Date, no condition, event or series of events shall exist or have occurred that has had or would reasonably be expected to have or result in a Material Adverse Effect.
- (xv) The Company has duly and timely delivered all Conversion Shares required to be delivered upon the conversion of any of the outstanding Preferred Shares in accordance with the terms of the Certificate of Designation.
- (xvi) The Company has an unrestricted cash and cash equivalents balance, inclusive of any unused commitments then available to be drawn under a Permitted ABL Facility, of at least \$31,500,000 as of the Additional Closing Date.
- (xvii) A Registration Statement shall be effective and available for the issuance and sale of (x) the Additional Preferred Shares to be issued in the Additional Closing, (y) Preferred Shares in an amount equal to not less than twelve (12) months of Dividends on such Additional Preferred Shares and (z) the Conversion Shares

issuable upon conversion thereof, and the Company shall have delivered (or made publicly available through EDGAR) to each Buyer the Prospectus and the Prospectus Supplement with respect thereto.

- (xviii) The Company shall have obtained the Stockholder Approval prior to the Additional Closing Date.
- (xix) No default or event of default shall have occurred and be continuing under the First Lien Notes or the Second Lien Notes since the date of the immediately preceding Closing Date.
- (xx) The Company shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

## **8. Termination.**

This Agreement may be terminated by either the Company or the Buyers, if the First Closing shall not have occurred by May 26, 2025 (provided that no party shall have the right to terminate if they were the proximate cause of the failure to close by such date). Each Buyer may terminate its commitment to purchase Additional Preferred Shares at any Additional Closing by delivering a written notice to the Company (i) at any time after the later of (x) the date that is eighteen (18) months after the First Closing Date and (y) if the term of this Agreement has been extended pursuant to the last sentence of this Section 8, the date that is twenty-four (24) months after the First Closing Date, (ii) at any time, if the Company has breached the terms of this Agreement in a manner that would cause the failure of the conditions to closing applicable to the Company hereunder to be met (and such breach remains uncured or unwaived after 30 days' notice from such Buyer), or (iii) upon the occurrence and continuation of a Triggering Event for a consecutive period of twenty (20) days. This Agreement may be terminated by the Company in connection with any Company Redemption (as defined in the Certificate of Designations) provided that the Company has redeemed all (and not less than all) of the Preferred Shares then outstanding. Upon any termination in accordance with this Section 8 by a Buyer, such party shall have the right to terminate its obligations under this Agreement with respect to itself at any time on or after the close of business on such date (without liability of such Buyer to any other party); provided, however, the abandonment of the sale and purchase of the Preferred Shares by such Buyer shall be applicable only to such Buyer providing such written notice, provided further that no such termination by any party shall affect any obligation of the Company under this Agreement to reimburse the Lead Buyer for the expenses described in Section 4(g) above. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents that survive the termination hereof or thereof. Notwithstanding anything to the contrary in this Agreement or any other Transaction Document, if the Buyer Share Purchase Amount has not been purchased in its entirety by the Buyers prior to the date that is eighteen (18) months after the First Closing Date

and provided that this Agreement has not been previously terminated by each Buyer pursuant to clause (ii) or (iii) of the second sentence of this Section 8, the Company may elect, in its sole discretion, by notice to each Buyer not less than seven (7) Business Days prior to the date that is eighteen (18) months after the First Closing Date, for this Agreement to continue to remain in effect for an additional six (6) months after the date that is eighteen (18) months after the First Closing Date.

## 9. Miscellaneous.

- ( a ) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Buyer from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Buyer or to enforce a judgment or other court ruling in favor of such Buyer. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**
- ( b ) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile or electronic transmission (including DocuSign and similar) or by an email which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding



obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

- ( c ) Headings; Gender. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms “including,” “includes,” “include” and words of like import shall be construed broadly as if followed by the words “without limitation.” The terms “herein,” “hereunder,” “hereof” and words of like import refer to this entire Agreement instead of just the provision in which they are found.
- ( d ) Severability; Maximum Payment Amounts. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company and/or any of its Subsidiaries (as the case may be), or payable to or received by any of the Buyers, under the Transaction Documents (including without limitation, any amounts that would be characterized as “interest” under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to any Buyer, or collection by any Buyer pursuant the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Buyer, the Company and its Subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Buyer, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Buyer under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by such Buyer under any of the Transaction Documents or related thereto are held to be within the meaning of

“interest” or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

- (e) Entire Agreement; Amendments. This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between the Buyers, the Company, its Subsidiaries, their affiliates and Persons acting on their behalf with respect to the subject matter hereof, including, without limitation, any transactions by any Buyer with respect to the Securities, and the other matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Buyer has entered into with, or any instruments any Buyer has received from, the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Buyer in the Company, if any, or (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries, or any rights of or benefits to any Buyer or any other Person, in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Buyer, or any instruments any Buyer received from the Company and/or any of its Subsidiaries prior to the date hereof, if any, and, to the extent any such agreements or instruments have been entered into and are in full force and effect in accordance with the terms thereof, all such agreements and instruments shall continue in full force and effect. Except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Required Holders (as defined below), and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable; provided that no such amendment shall be effective to the extent that it (A) applies to less than all of the holders of the Securities then outstanding or (B) imposes any obligation or liability on any Buyer without such Buyer’s prior written consent (which may be granted or withheld in such Buyer’s sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the Required Holders may waive any provision of this Agreement, and any waiver of any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable, provided that no such waiver shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on any Buyer without such Buyer’s prior written consent (which may be granted or withheld in such Buyer’s sole discretion). No consideration (other than reimbursement of legal fees) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the

Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents or all holders of the Preferred Shares. From the date hereof and while any Preferred Shares are outstanding, the Company shall not be permitted to receive any consideration from a Buyer or a holder of Preferred Shares that is not otherwise contemplated by the Transaction Documents in order to, directly or indirectly, induce the Company or any Subsidiary (i) to treat such Buyer or holder of Preferred Shares in a manner that is more favorable than to other similarly situated Buyers or holders of Preferred Shares, or (ii) to treat any Buyer(s) or holder(s) of Preferred Shares in a manner that is less favorable than the Buyer or holder of Preferred Shares that is paying such consideration; provided, however, that the determination of whether a Buyer has been treated more or less favorably than another Buyer shall disregard any securities of the Company purchased or sold by any Buyer. The Company has not directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to the Company, any Subsidiary or otherwise. As a material inducement for each Buyer to enter into this Agreement, the Company expressly acknowledges and agrees that (x) no due diligence or other investigation or inquiry conducted by a Buyer, any of its advisors or any of its representatives shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (y) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase "except as disclosed in" (or similar disclosure qualification) the SEC Documents, the Registration Statement or the Prospectus, nothing contained in any of the SEC Documents, the Registration Statement or the Prospectus shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, Company's representations and warranties contained in this Agreement or any other Transaction Document. "**Required Holders**" means (I) prior to the First Closing Date, each Buyer entitled to purchase, in the aggregate, at least a majority of the number of Preferred Shares at the First Closing and (II) on or after the First Closing Date, holders of a majority of the Preferred Shares then outstanding, provided that such holders must include Yorkville Advisors Global LP or its Affiliates (collectively, "**Yorkville**") for so long as Yorkville beneficially owns any of the outstanding Preferred Shares or may be obligated to purchase additional Preferred Shares pursuant to the terms hereof.

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

addressed to the party to receive the same. The mailing addresses and email addresses for such communications shall be:

If to the Company:

Luminar Technologies, Inc.  
2603 Discovery Drive, Suite 100  
Orlando, FL 32826  
Attention: Tom Fennimore, CFO  
Email: tom@luminartech.com

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

legal.notices@luminartech.com

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

Orrick, Herrington & Sutcliffe LLP  
631 Wilshire Boulevard  
Santa Monica, CA 90401  
Attention: Daniel S. Kim  
Email: dan.kim@orrick.com

If to a Buyer, to its mailing address and email address set forth on the executed signature page of such Buyer, with copies to such Buyer's representatives as set forth on the executed signature page of such Buyer,

with a copy (for informational purposes only) to:

Haynes and Boone, LLP  
30 Rockefeller Plaza, 26th Floor  
New York, New York 10112  
Telephone: (212) 835 4819  
Attention: Greg Kramer and Matt Fry  
Email: greg.kramer@haynesboone.com and mfry@haynesboone.com

or to such other mailing address and/or email address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change, provided that Buyer Counsel shall only be provided copies of notices sent to the Lead Buyer. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's email containing the time, date and recipient's email or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by email or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

- (g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of any of the Preferred Shares. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Holders, including, without limitation, by way of a Fundamental Transaction (as defined in the Certificate of Designations) (unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Certificate of Designations). A Buyer may assign some or all of its rights hereunder without the consent of the Company in connection with the transfer of any of its Preferred Shares in accordance with the terms of this Agreement and the other Transaction Documents, in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights.
- (h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees referred to in Section 9(k) and the Placement Agent.
- (i) Survival. The representations, warranties, agreements and covenants shall survive each Closing. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.
- (j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.
- (k) Indemnification. In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and documented expenses reasonably incurred in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable and documented attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim

brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnitee that arises out of or results from (A) the execution, delivery, performance or enforcement of any of the Transaction Documents, (B) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, (C) any disclosure properly made by such Buyer pursuant to Section 4(i), or (D) the status of such Buyer either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief). To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

- (l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the shares of Common Stock shall be automatically adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions that occur with respect to the Common Stock after the date of this Agreement.
- (m) Remedies. Each Buyer shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such Buyers have been granted at any time under any other agreement or contract and all of the rights which such Buyers have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically, to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it or any Subsidiary fails to perform, observe, or discharge any or all of its or such Subsidiary's (as the case may be) obligations under the Transaction Documents, any remedy at law would inadequate relief to the Buyers. The Company therefore agrees that the Buyers shall be entitled to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).
- (n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer exercises a right, election, demand or option under a Transaction Document and the Company or any Subsidiary does not timely perform its related obligations within the

periods therein provided, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company or such Subsidiary (as the case may be), any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

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

(p) Judgment Currency.

- (i) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Agreement or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 9(p) referred to as the “**Judgment Currency**”) an amount due in U.S. Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:
- (1) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or
  - (2) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 9(p)(i)(2) being hereinafter referred to as the “**Judgment Conversion Date**”).

- (ii) If in the case of any proceeding in the court of any jurisdiction referred to in Section 9(p)(i)(2) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of U.S. Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.
- (iii) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement or any other Transaction Document.
- (q) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under the Transaction Documents are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and the Company each acknowledge that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Buyers are in any way acting in concert or as a group or entity, and the Company shall not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Buyers are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Buyer to purchase Securities pursuant to the Transaction Documents has been made by such Buyer independently of any other Buyer. Each Buyer acknowledges that no other Buyer has acted as agent for such Buyer in connection with such Buyer making its investment hereunder and that no other Buyer will be acting as agent of such Buyer in connection with monitoring such Buyer's investment in the Securities or enforcing its rights under the Transaction Documents. The Company and each Buyer confirms that each Buyer has independently participated with the Company and its Subsidiaries in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Securities contemplated hereby was solely in the control of the Company, not the action or decision of any Buyer, and was done solely for the convenience of the Company and its Subsidiaries and not because it was required or requested to do so by any Buyer. It is expressly understood and agreed that each provision contained in this Agreement and in



each other Transaction Document is between the Company and a Buyer, solely, and not between the Company, its Subsidiaries and the Buyers collectively and not between and among the Buyers.

*[Signature pages follow.]*

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

**COMPANY:**

**LUMINAR TECHNOLOGIES, INC.**

/s/ Thomas J. Fennimore

Name: Thomas J. Fennimore

Title: Chief Financial Officer

*[Signature Page to Securities Purchase Agreement]*

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

**BUYERS:**

**YA II PN, LTD.**

By: Yorkville Advisors Global, LP  
Its: Investment Manager

By: Yorkville Advisors Global II, LLC  
Its: General Partner

/s/ Matthew Beckman

Name: Matthew Beckman

Title: Manager

Address for Notice to Buyer:

[XXXXXX]

Address for Delivery of Shares to Buyer (if not same as address for notice):

[XXXXXX]

Email: [XXXXXX]

Initial Preferred Shares: [\*\*\*]

Initial Purchase Price: \$[\*\*\*]

Additional Preferred Shares: [\*\*\*]

Additional Purchase Price: \$[\*\*\*]

*[Signature Page to Securities Purchase Agreement]*

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Name:  
Title:

Address for Notice to Buyer:  
[XXXXXX]

Address for Delivery of Shares to Buyer (if not same as address for notice):  
[XXXXXX]

Email: [XXXXXX]

Initial Preferred Shares: [\*\*]

Initial Purchase Price: \$[\*\*]

Additional Preferred Shares: [\*\*]

Additional Purchase Price: \$[\*\*]

[Signature Page to Securities Purchase Agreement]

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**Exhibit A**

**Form of Certificate of Designations**

[Attached]

### Luminar Obtains \$200 Million Capital Commitment to Bolster Balance Sheet & Liquidity

**ORLANDO, Fla.** – May 21, 2025 – Luminar Technologies (NASDAQ: LAZR), a leading global automotive technology company, today announced it has entered into a definitive agreement with YA II PN, Ltd., an investment fund managed by Yorkville Advisors Global, and another accredited investor to issue up to \$200 million of convertible preferred stock to the investors in registered direct offerings over an 18-month period.

*“Today’s transaction provides us with additional financial flexibility and further strengthens our balance sheet,”* said Tom Fennimore, Chief Financial Officer of Luminar. *“We’ve made substantial progress in extending our liquidity runway with our restructuring efforts, and the additional capital available to us under this facility provides us with another tool to realize our long-term value.”*

Under the terms of the agreement, Luminar will issue \$35 million in stated value of convertible preferred stock to the investors at an initial closing, and may subsequently issue additional tranches of convertible preferred stock to the investors in amounts of up to \$35 million not more than every 60 days (or 90 days if the prior tranche was more than \$25 million), at a purchase price equal to 96% of the stated value of the convertible preferred stock. Issuances are subject to specified closing conditions, including certain conditions based on the trading price and volume of the company’s shares of common stock and the company’s continued compliance with the terms of the preferred stock. Luminar has no obligation to issue additional convertible preferred stock to the investors at any time after the initial closing. The proceeds from the initial \$35 million issuance are expected to be used for general corporate purposes and debt retirement.

The terms, rights, obligations, and preferences of the convertible preferred stock, including voluntary conversion and redemption provisions, as well as beneficial ownership and voting restrictions and share cap limitations, will be set forth in a certificate of designations to be filed with the Delaware Secretary of State prior to the initial closing. The convertible preferred stock will be convertible, at the holder’s option at any time, subject to certain exceptions as will be set forth in the certificate of designations, into shares of the company’s Class A common stock. The convertible preferred stock will rank junior to the company’s existing first and second lien senior secured and any unsecured debt. Under the terms of the certificate of designations for the convertible preferred stock, the company will be subject to covenants substantially consistent with those in the company’s senior secured debt, among other provisions.

D. Boral Capital LLC is acting as the exclusive placement agent for the placement of the convertible preferred stock.

Additional details regarding the transaction will be made available in a Form 8-K to be filed with the U.S. Securities and Exchange Commission.

This press release shall not constitute an offer to sell, or the solicitation of an offer to buy any of the securities described herein, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation, or sale would be unlawful, prior to registration or qualification under the securities laws of any such state or jurisdiction.

#### About Luminar

Luminar is a global automotive technology company ushering in a new era of vehicle safety and autonomy. For the past decade, Luminar has built an advanced hardware and software/AI platform to enable its various partners, ranging from Volvo Cars and Mercedes-Benz to NVIDIA and Mobileye, to develop and deploy the world’s most advanced passenger vehicles. Following the launch of the Volvo EX90 as the first global production vehicle to standardize its technology, Luminar is poised to lead the industry in enabling next-generation safety and autonomous capabilities for global production vehicles. For more information, please visit [www.luminartech.com](http://www.luminartech.com).

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## Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements generally are accompanied by words such as “aims,” “believe,” “may,” “will,” “estimate,” “set,” “continue,” “towards,” “anticipate,” “intend,” “expect,” “should,” “would,” “forward,” and similar expressions that predict or indicate future events or trends or that are not statements of historical matters. The forward-looking statements include statements relating to the completion and timing of the initial closing of the offering of the convertible preferred stock. Forward-looking statements are based on expectations and assumptions by our management and involve a number of risks, uncertainties, and other factors that could cause actual results to differ materially from those stated, including but not limited to whether we will consummate the financing on the expected terms or at all, , which could differ or change based upon market conditions or for other reasons. More information on these risks and other potential factors that could affect the Company's business is included in the Company's periodic filings with the SEC, including in the “Risk Factors” and “Management's Discussion and Analysis of Financial Condition and Results of Operations” sections of the Company's reports on Form 10-K and Form 10-Q, including the Company's Annual Report on Form 10-K for the year ended December 31, 2024 and subsequent reports filed with the SEC. The Company assumes no obligation to update any forward-looking statements, which speak only as of the date they are made.

## Contacts:

### Investor Relations:

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