

**PROSPECTUS SUPPLEMENT**  
**(To Prospectus dated June 19, 2020)**



**38,227,152 Shares of Common Stock**

This prospectus supplement supplements the prospectus dated June 19, 2020 (the “Prospectus”), which forms a part of our Registration Statement on Form S-1 (Registration Statement No. 333-238864). The Prospectus and this prospectus supplement relate to the offering and resale of up to 38,227,152 shares of our common stock by the selling stockholders identified in the Prospectus. We will not receive any proceeds from the sale of these shares by the selling stockholders.

This prospectus supplement is being filed to update and supplement the information in the Prospectus with the information contained in our Current Report on Form 8-K, as filed with the Securities and Exchange Commission on December 22, 2020 and the information contained in our Current Report on 8-K, as filed with the Securities and Exchange Commission on December 30, 2020 (together, the “Current Reports”). Accordingly, we have attached the Current Reports to this prospectus supplement.

This prospectus supplement should be read in conjunction with the Prospectus, which is to be delivered with this prospectus supplement. This prospectus supplement updates, amends and supplements the information included or incorporated by reference in the Prospectus. If there is any inconsistency between the information in the Prospectus and this prospectus supplement, you should rely on the information in this prospectus supplement.

This prospectus supplement is not complete without, and may not be delivered or utilized except in connection with, the Prospectus, including any amendments or supplements to it.

Our common stock is quoted on the OTCQB Market under the symbol “TGAN.”

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**We are an “emerging growth company” and “smaller reporting company” as defined under the federal securities laws, and, as such, are eligible for reduced public company reporting requirements. See “Prospectus Summary—Emerging Growth Company and Smaller Reporting Company” beginning on page 6 of the Prospectus.**

**Investing in our common stock involves a high degree of risk. Before making an investment decision, please read “Risk Factors” beginning on page 9 of the Prospectus and the risk factors contained in our other filings with the Securities and Exchange Commission.**

**You should rely only on the information contained in the Prospectus, this prospectus supplement or any prospectus supplement or amendment hereto. We have not authorized anyone to provide you with different information.**

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

The date of this prospectus supplement is December 30, 2020.

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

FORM 8-K

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

Date of Report (Date of earliest event reported): **December 22, 2020**

**Transphorm, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**000-55832**  
(Commission  
File Number)

**82-1858829**  
(I.R.S. Employer  
Identification No.)

**75 Castilian Drive**  
**Goleta, CA 93117**  
(Address of principal executive offices, including zip code)

**(805) 456-1300**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report)

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

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

Securities registered pursuant to Section 12(b) of the Act: **None**

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

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

**Item 1.01 Entry into a Material Definitive Agreement.***Pricing of Private Placement of Common Stock*

On December 22, 2020, Transphorm, Inc. (the “Company”) announced the pricing of a private placement to certain eligible investors of 5,000,000 shares of the Company’s common stock (the “Shares”) at a purchase price of \$3.00 per Share (the “Private Placement”).

On December 22, 2020, in connection with the pricing of the Private Placement, the Company entered into a Placement Agent Agreement with Loop Capital Markets LLC as representative of the placement agents listed on Schedule C thereto (the “Placement Agents”), pursuant to which the Placement Agents agreed to act as the Company’s placement agents for the Private Placement.

The Placement Agents did not purchase or sell any Shares, nor are they required to arrange the purchase or sale of any minimum number or dollar amount of Shares. The Placement Agents agreed to use their reasonable best efforts to arrange for the sale of all of the Shares being offered in the Private Placement. As compensation for their services, the Placement Agents will receive (a) a cash fee equal to 7% of the purchase price of the Shares sold in the Private Placement to investors that are not existing investors in the Company, subject to certain exclusions agreed between the Placement Agents and the Company, and (b) warrants to purchase that number of shares of the Company’s common stock equal to 3% of the aggregate number of Shares sold in the Private Placement, at an initial exercise price of \$3.30 per share, with an exercise period of five years. The Company has also agreed to reimburse certain expenses of the Placement Agents up to \$50,000.

The foregoing summary of the Placement Agent Agreement is qualified in its entirety by reference to the full text of the agreement, which is attached as Exhibit 1.1 hereto and incorporated herein by reference.

**Item 7.01 Regulation FD Disclosure.**

On December 22, 2020, the Company issued a press release announcing the pricing of the Private Placement. A copy of this press release is furnished herewith as Exhibit 99.1.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

| <b>Exhibit No.</b> | <b>Description</b>  |
|--------------------|---|
| 1.1                | <a href="#">Placement Agent Agreement between the Company and Loop Capital Markets LLC, dated December 22, 2020</a> |
| 99.1               | <a href="#">Press release dated December 22, 2020</a>   |
| 104                | Cover Page Interactive Data File (embedded within the Inline XBRL document)   |

**Signature**

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.

**Transphorm, Inc.**

Dated: December 22, 2020

By: /s/ Cameron McAulay  
Cameron McAulay  
Chief Financial Officer

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

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- 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: **None**

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

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

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

### *Subscription Agreements*

On December 23, 2020, Transphorm, Inc. (the “Company”) entered into subscription agreements (each, a “Subscription Agreement”) with certain accredited investors (the “Investors”), pursuant to which the Company issued and sold, on the same date, an aggregate of 5,000,000 shares of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”) to the Investors at a purchase price of \$3.00 per share, thereby completing the Company’s previously announced private placement offering of shares of Common Stock (the “Private Placement”). The Private Placement resulted in gross proceeds to the Company of \$15.0 million, before deducting placement agent, financial advisor and other offering expenses.

### *Placement Agent Warrants*

In connection with the closing of the Private Placement, the Company issued, on December 23, 2020, warrants to purchase an aggregate of 150,000 shares of Common Stock to the placement agents and their designees (the “Placement Agent Warrants”). The Placement Agent Warrants have an exercise price of \$3.30 per share, provide for a cashless exercisable feature, and are exercisable for a period of five years from the date of closing of the Private Placement.

### *Registration Rights Agreement*

On December 23, 2020, the Company entered into a registration rights agreement (the “Registration Rights Agreement”) with the Investors and holders of the Placement Agent Warrants, pursuant to which the Company agreed, subject to certain exceptions, to register the shares of Common Stock issued in the Private Placement and the shares of Common Stock issuable upon exercise of the Placement Agent Warrants (collectively, the “Registrable Securities”) for resale.

Under the terms of the Registration Rights Agreement, the Company is obligated, subject to certain exceptions, to (i) file or confidentially submit a registration statement with the Securities and Exchange Commission (the “Commission”) covering the resale or other disposition of the Registrable Securities no later than 30 days after the closing of the Private Placement, (ii) use its commercially reasonable efforts to cause the registration statement to become effective no later than 90 days after the registration statement is first filed with the Commission, and (iii) use its commercially reasonable efforts to keep such registration statement effective for up to three years after the date on which the registration statement is declared effective by the Commission.

In the event that the Company fails to file (or confidentially submit) and obtain and maintain effectiveness of the registration statement, or if certain events occur with respect to the listing or trading of the Registrable Securities (such events, the “Registration Events”), the Company, subject to certain exceptions, will make payments to each holder of Registrable Securities, as liquidated damages, a cash sum calculated at a rate equal to 12% per annum of the aggregate purchase price paid by such holder pursuant to the Subscription Agreement or upon exercise of Placement Agent Warrants (or in the case of unexercised Placement Agent Warrants, of the exercise price thereof) with respect to such holder’s Registrable Securities that are affected by such Registration Event for the period during which such Registration Event continues to affect such Registrable Securities, provided that the maximum amount of liquidated damages that may be paid by the Company to a holder pursuant to such liquidated damages provisions shall be the aggregate purchase price paid by such holder with respect to such Investor’s Registrable Securities that are affected by all Registration Events.

The foregoing summaries of the Subscription Agreements, Placement Agent Warrants and Registration Rights Agreement are qualified in their entirety by reference to the form of Subscription Agreement, form of Placement Agent Warrant, and the Registration Rights Agreement, which are filed as Exhibits 10.1, 10.2 and 4.1, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities.**

The information set forth in Item 1.01 above regarding the Private Placement and the Placement Agent Warrants is incorporated herein by reference.

The Common Stock issued in the Private Placement, the Placement Agent Warrants and the Common Stock issuable upon exercise of the Placement Agent Warrants have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or any state securities laws and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements. These securities were issued in reliance upon the exemptions from registration under the Securities Act provided by Section 4(a)(2) and Rule 506 of Regulation D promulgated thereunder as transactions not involving a public offering. The Investors and the holders of the Placement Agent Warrants are "accredited investors" as that term is defined in Rule 501 of Regulation D and acquired the securities for investment only and not with a present view toward, or for resale in connection with, the public sale or distribution thereof. The recipients had adequate access to information about the Company, and the issuance of the securities was made without any general solicitation or advertising.

On December 23, 2020, the Company issued an aggregate of 12,000 shares of Common Stock to certain consultants as consideration for services rendered or to be rendered to the Company. This issuance was exempt from the registration requirements of the Securities Act by virtue of Section 4(a)(2) thereof as a transaction not involving a public offering. The recipients of such shares represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof. The recipients had adequate access to information about the Company, and the issuance of the securities was made without any general solicitation or advertising.

**Item 7.01 Regulation FD Disclosure.**

On December 24, 2020, the Company issued a press release announcing the closing of the Private Placement. A copy of this press release is furnished herewith as Exhibit 99.1.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

| <b>Exhibit No.</b> | <b>Description</b>   |
|--------------------|--|
| 4.1                | <a href="#">Registration Rights Agreement, dated December 23, 2020, by and between the Company and the signatories thereto</a> |
| 10.1               | <a href="#">Form of Subscription Agreement, dated December 23, 2020</a>  |
| 10.2               | <a href="#">Form of Placement Agent Warrant, dated December 23, 2020</a>   |
| 99.1               | <a href="#">Press release dated December 24, 2020</a>  |
| 104                | Cover Page Interactive Data File (embedded within the Inline XBRL document)  |

**Signature**

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.

**Transphorm, Inc.**

Dated: December 30, 2020

By: /s/ Cameron McAulay  
Cameron McAulay  
Chief Financial Officer



## PLACEMENT AGENT AGREEMENT

December 22, 2020

Loop Capital Markets LLC  
As Representative of the Placement Agents  
set forth on Schedule C hereto  
111 W. Jackson Blvd.  
Suite 1901  
Chicago, IL 60604

Ladies and Gentlemen:

Subject to the terms and conditions herein (this "Agreement"), Transphorm, Inc., a Delaware corporation (the "Company"), hereby agrees to sell up to an aggregate of 5,000,000 shares of the Company's common stock, \$0.0001 par value per share (the "Common Stock") (such Common Stock sold in the Offering (as defined below), the "Securities") directly to various investors (each, an "Investor" and, collectively, the "Investors") through the placement agents set forth on Schedule C hereto (together, the "Placement Agents"). The documents executed and delivered by the Company and the Investors in connection with the Offering (as defined below), including, without limitation, a securities purchase agreement and registration rights agreement, shall be collectively referred to herein as the "Transaction Documents." The purchase price to the Investors for each Share is \$3.00. The Placement Agents may retain other brokers or dealers to act as sub-agents or selected-dealers on its behalf in connection with the Offering. Loop Capital Markets LLC is acting as the representative of the Placement Agents and in such capacity is hereinafter referred to as the "Representative."

The Company hereby confirms its agreement with the Placement Agents as follows:

**Section 1. Agreement to Act as Placement Agents.**

(a) On the basis of the representations, warranties and agreements of the Company herein contained, and subject to all the terms and conditions of this Agreement, the Placement Agents shall be the Placement Agents in connection with the offering and sale by the Company of the Securities in a transaction which is exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), with the terms of such offering (the "Offering") to be subject to market conditions and negotiations between the Company, the Placement Agents and the prospective Investors. The Placement Agents will act on a reasonable best efforts basis and the Company agrees and acknowledges that there is no guarantee of the successful placement of the Securities, or any portion thereof, in the prospective Offering. Under no circumstances will the Placement Agents or any of their "Affiliates" (as defined below) be obligated to underwrite or purchase any of the Securities for its own account or otherwise provide any financing. The Placement Agents shall act solely as the Company's agent and not as principal. The Placement Agents shall have no authority to bind the Company with respect to any prospective offer to purchase Securities and the Company shall have the sole right to accept offers to purchase Securities and may reject any such offer, in whole or in part. Subject to the terms and conditions hereof, payment of the purchase price for, and delivery of, the Securities shall be made at one or more closings (each a "Closing" and the date on which each Closing occurs, a "Closing Date"). As compensation for services rendered, on each Closing Date, the Company shall pay to the Placement Agents the fees and expenses set forth below, as agreed upon and as described in further detail in the Engagement Agreements (as defined below) previously entered into between each of the Placement Agents and the Company:

(i) A cash fee equal to 7.0% of the gross proceeds received by the Company from the sale of the Securities to the accounts not currently invested in the Company (such fee as apportioned between the Placement Agents as described in the Engagement Agreements), subject to certain exclusions agreed between the Placement Agents and the Company; provided, that the Representative will be entitled to a minimum fee of \$450,000;

(ii) Warrants issued to the Placement Agents equal to 3.0% of the aggregate number of Securities sold (such Warrants to be apportioned between the Placement Agents as described in the Engagement Agreements), at an initial exercise price of 110% of the price of Securities, with an exercise period of five years; provided, that, if the Offering includes warrants and such warrants are subject to an exercise period longer than five years, the warrants issued to each of the Placement Agents will be subject to the same exercise period as those warrants issued to investors in the Offering; and

(iii) Reasonable documented expenses of the Placement Agents up to a maximum of \$50,000.

(b) The term of the Placement Agents' engagement will be until the earlier of (i) May 21, 2021 and (ii) completion of the Offering; provided, however, that beginning on March 21, 2021, a party hereto may terminate this Agreement at any time upon 5 days written notice to the other parties. Notwithstanding anything to the contrary contained herein, the provisions concerning confidentiality, indemnification and contribution contained herein and the Company's obligations contained in the indemnification provisions will survive any expiration or termination of this Agreement, and the Company's obligation to pay fees actually earned and payable and to reimburse expenses actually incurred and reimbursable pursuant to Section 1 hereof and which are permitted to be reimbursed under FINRA Rule 5110(f)(2)(D), will survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to limit the ability of the Placement Agents or their Affiliates to pursue, investigate, analyze, invest in, or engage in investment banking, financial advisory or any other business relationship with Persons (as defined below) other than the Company, notwithstanding that such Persons may be engaged in a business which is similar to or competitive with the business of the Company, and notwithstanding that such Persons may have actual or potential operations, products, services, plans, ideas, customers or supplies similar or identical to the Company's, or may have been identified by the Company as potential merger or acquisition targets or potential candidates for some other business combination, cooperation or relationship. As used herein (i) "Persons" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind and (ii) "Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person as such terms are used in and construed under Rule 405 under the Securities Act.

**Section 2. Representations, Warranties and Covenants of the Company.** The Company hereby represents, warrants and covenants to the Placement Agents as of the date hereof, and as of each Closing Date, as follows, in each case, other than as set forth in the Exchange Act Documents (as defined below):

(a) Exchange Act Documents; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto, being collectively referred to herein as the "Exchange Act Documents") on a timely basis or has received a valid extension of such time of filing and has filed any such Exchange Act Document prior to the expiration of any such extension. As of their respective dates, the

Exchange Act Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and the rules and regulations (the “Rules and Regulations”) of the Securities and Exchange Commission (the “Commission”) promulgated thereunder, and none of the Exchange Act Documents, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the Exchange Act Documents comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“GAAP”), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments. Except for this Agreement, there are no documents required to be filed with the Commission in connection with the transaction contemplated hereby that (x) have not been filed as required pursuant to the Securities Act or (y) will not be filed within the requisite time period.

(b) Marketing and Roadshow Materials. The Company will be solely responsible for the contents of the marketing materials, any amendments or supplements thereto, any information incorporated by reference therein and any and all other written or oral communications (collectively, the “Marketing Materials”) that have been provided to any actual or potential Investor with the Company’s written approval. The Company represents and warrants that the Marketing Materials in the form approved in writing by the Company will not, as of the date of the offer or sale of the Securities or the Closing, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. If at any time prior to the completion of the offer and sale of the Securities the Company becomes aware of the occurrence of an event as a result of which the Marketing Materials (as then amended or supplemented) would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, the Company will notify the Placement Agents promptly of such event and the Placement Agents will have the right to suspend solicitations of potential investors until such time as the Company shall prepare (and if requested to do so by the Placement Agents, the Company agrees to prepare promptly) a supplement or amendment to the Marketing Materials which corrects such statement or omission. The Company authorizes the Placement Agents to provide the approved Marketing Materials to Investors as contemplated herein. The Company agrees that during the Offering and the Resale Registration Period (as defined below), it will not distribute or otherwise transmit the Marketing Materials to any potential investors without the prior approval of the Placement Agents.

(c) Securities Law Filings. Following the determination of pricing among the Company and the prospective Investors introduced to the Company by the Placement Agents, the Company will, within 30 days of the final Closing, subject to any exceptions set forth in the Transaction Documents (such period from the date of the final Closing to the 30<sup>th</sup> day following the final Closing, the “Resale Filing Period”) in connection with the Offering prepare and file with the Commission a Registration Statement on Form S-1 under the Securities Act covering the resale of all of the Securities for an offering to be made on a continuous basis pursuant to Rule 415 (such registration statement, at any given time, including the exhibits thereto filed at such time, as amended at such time, is hereinafter called the “Resale Registration Statement”). The Company shall use commercially reasonable efforts to cause the Resale Registration Statement to be declared effective under the Securities Act as promptly as possible after the Resale Filing Period but in any event no later than 90 days following the filing of the

Resale Registration Statement (such period from the final Closing until 90 days following filing of the Resale Registration Statement, the “Resale Registration Period”) and shall use commercially reasonable efforts to keep such Resale Registration Statement continuously effective under the Securities Act for the time period specified in the Transaction Documents. Any reference in this Agreement to the Resale Registration Statement shall be deemed to refer to and include the Exchange Act Documents incorporated by reference therein, if any, which were or are filed under the Exchange Act, at any given time, as the case may be; and any reference in this Agreement to the terms “amend,” “amendment” or “supplement” with respect to the Resale Registration Statement shall be deemed to refer to and include the filing of any document under the Exchange Act after the date of this Agreement and deemed to be incorporated therein by reference. All references in this Agreement to financial statements and schedules and other information which is “contained,” “included,” “described,” “referenced,” “set forth” or “stated” in the Resale Registration Statement shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Resale Registration Statement. Except for this Agreement and the Transaction Documents, there are no contracts or other documents required to be described in the Resale Registration Statement, or to be filed as exhibits or schedules to the Resale Registration Statement, which have not been, or will not be, described or filed as required.

(d) Depository. The Common Stock is currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation and the Company is current in payment of the fees to the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer.

(e) Offering Materials. Neither the Company nor any of its directors and officers has distributed and none of them will distribute, prior to each Closing Date, any offering material in connection with the Offering without the consent of the Representative.

(f) Organization and Qualification of the Company. The Company is a corporation in good standing under the laws of the State of Delaware, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted; and the Company is duly qualified to conduct business and is in good standing as a foreign corporation in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of this Agreement or any other agreement entered into between the Company and the Investors in connection with the Offering, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries (as defined below), taken as a whole, or (iii) a material adverse effect on the Company’s ability to perform in any material respect on a timely basis its obligations under this Agreement (any of (i), (ii) or (iii), a “Material Adverse Effect”) and no an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened (“Proceeding”) has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(g) Subsidiaries. All of the direct and indirect subsidiaries of the Company (the “Subsidiaries”) are listed on Exhibit 21.1 to the Company’s Registration Statement on Form S-1 filed with the Commission on June 2, 2020 (File No. 333-238864). The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any liens, charges, security interests, encumbrances, rights of first refusal, preemptive rights or other restrictions (collectively, “Liens”), and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. Each of the Subsidiaries is an entity duly incorporated or otherwise

organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite corporate or similar power and authority to own and use its properties and assets and to carry on its business as currently conducted and is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect.

(h) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery of each of this Agreement by the Company and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Company's Board of Directors (the "Board of Directors") or the Company's stockholders in connection therewith other than in connection with the Required Approvals (as defined below). This Agreement has been duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(i) No Conflicts. The execution, delivery and performance by the Company of this Agreement, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby to which it is a party do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect. Except as set forth in the Transaction Documents (including any disclosure schedules thereof), neither the entering into of this Agreement nor the consummation of the transactions contemplated herein will trigger any payment by the Company to a third party (including, but not limited to, any "tail" payments).

(j) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of this Agreement and the transactions contemplated hereby, other than: (i) the filing with the Commission of the Resale Registration Statement and (ii) such filings as are required to be made under applicable federal and state securities laws (collectively, the "Required Approvals").

(k) Issuance of the Securities; Registration. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Company has reserved from its duly authorized capital stock the maximum number of shares of Common Stock issuable pursuant to the transactions contemplated hereby.

(l) Capitalization. The capitalization of the Company is as set forth in the Exchange Act Documents. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans and pursuant to the conversion and/or exercise of securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time any Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock ("Common Stock Equivalents") outstanding as of the date of the most recently filed periodic report under the Exchange Act. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by this Agreement and the transactions contemplated hereby. Except as a result of the purchase and sale of the Securities, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock of the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. The issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Investors) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities, except that the issuance and sale of the Securities will obligate the Company to issue up to 12,000 shares of Common Stock to certain consultants to the Company (the "Consultants"). There are no outstanding securities or instruments of the Company of any Subsidiary that contain any redemption of similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The Company does not have any stock appreciation rights of "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized. All of the outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities in the Offering. There are no stockholder agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(m) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the Exchange Act Documents, except as specifically disclosed in a subsequent Exchange Act Document filed prior to the date hereof, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting except as required by GAAP, (iv) the Company has

not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated hereby, no event or development has occurred or is reasonably expected to occur with respect to the Company or its Subsidiaries or their respective businesses, properties, operations, assets or financial condition that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made.

(n) Litigation. There is no action, suit, inquiry, written notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an “Action”) which (i) adversely affects or challenges the legality, validity or enforceability of any of this Agreement and the transactions contemplated hereby or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor, to the knowledge of the Company, any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(o) Disqualification Event. With respect to the Securities to be offered and sold hereunder, none of the Company, any of its predecessors, any affiliated issuer, any director, general partner, managing member, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company’s outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an “Issuer Covered Person” and, together, “Issuer Covered Persons”) is subject to any of the “Bad Actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a “Disqualification Event”), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Placement Agents and the Investors a copy of any disclosures provided thereunder. The Company will notify the Placement Agents and the Investors in writing of any Disqualification Event relating to any Issuer Covered Person of which it becomes aware that was not previously disclosed to the Placement Agents or the Investors in accordance with this Section 2(o).

(p) Labor Relations. No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company’s or its Subsidiaries’ employees is a member of a union that relates to such employee’s relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. No executive officer of the Company or any Subsidiary, to the knowledge of the Company, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure

or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Compliance. Neither the Company nor any Subsidiary: (i) is in violation of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (iii) is in violation of any judgment, decree or order of any court, arbitrator or governmental authority, or (iv) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in the case of clauses (ii), (iii) and (iv) as could not have or reasonably be expected to result in a Material Adverse Effect.

(r) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(s) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the Exchange Act Documents, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any Subsidiary has received any written notice of proceedings relating to the revocation or modification of any Material Permit.

(t) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company



and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(u) Patents and Trademarks. The Company and the Subsidiaries have, have rights to use, or can acquire on reasonable terms, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or material for use in connection with their respective businesses as described in the Exchange Act Documents and which the failure to so have could have a Material Adverse Effect (collectively, the “Intellectual Property Rights”). None of, and neither the Company nor any Subsidiary has received written notice that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the Exchange Act Documents, a notice (written or otherwise) of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as would not have a Material Adverse Effect. The Company and its Subsidiaries have taken reasonable security measures to protect the confidentiality of all of their proprietary information, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(v) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business.

(w) Transactions with Affiliates and Employees. Except as set forth in the Exchange Act Documents, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of \$120,000 other than for: (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including equity compensation agreements under any equity compensation plan of the Company.

(x) Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date. The Company’s certifying officers have evaluated the effectiveness of the Company’s disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the Company’s most recently filed periodic report under the Exchange Act (such date, the “Evaluation Date”). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) of

the Company and its Subsidiaries that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(y) Certain Fees. Except as contemplated herein and except as disclosed to Investors in the Offering, no brokerage or finder's fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. The Investors shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by this Agreement.

(z) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(aa) Registration Rights. Other than each of the Investors and the Consultants, no Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiary.

(bb) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Investors as a result of the Investors and the Company fulfilling their obligations or exercising their rights under this Agreement and the transactions contemplated hereby, including without limitation as a result of the Company's issuance of the Securities and the Investors' ownership of the Securities.

(cc) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by this Agreement, the Company confirms that neither it nor any other Person acting on its behalf has provided any of the Investors or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information which is not otherwise disclosed in the Exchange Act Documents. The Company understands and confirms that the Investors will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Investors regarding the Company and, its Subsidiaries, their respective businesses and the transactions contemplated hereby, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading.

(dd) No Integrated Offering. Neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of any applicable shareholder approval provisions of the OTCQB (the "Current Trading Market"). The Company has no intention of making an offer or sale of the Securities for a period of six months after completion of the Offering contemplated herein under circumstances that would cause the Offering to be integrated with

such future offerings by the Company for purposes of any applicable shareholder approval provisions of the Current Trading Market.

(ee) Solvency. Based on the consolidated financial condition of the Company as of each Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder, (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from each Closing Date. The Exchange Act Documents incorporate as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in material default with respect to any Indebtedness.

(ff) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no reasonable basis for any such claim.

(gg) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law, or (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended.

(hh) Independent Accountants. Marcum LLP, who have expressed their opinion with respect to the financial statements and supporting schedules included or incorporated by reference in the Exchange Act Documents are independent registered public accountants as required by the 1933 Act, the 1933 Act Regulations, the 1934 Act, the 1934 Act Regulations and the Public Company Accounting Oversight Board, and any non-audit services provided by Marcum LLP to the Company or any of its subsidiaries have been approved by the Audit Committee of the Board of Directors of the Company.

(ii) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Placement Agents in connection with the placement of the Securities.

(jj) Office of Foreign Assets Control. Neither the Company nor any Subsidiary, to the Company's knowledge, any director, officer, or employee of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(kk) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended.

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

(mm) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance in all material respects with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(nn) Certificates. Any certificate signed by an officer of the Company and delivered to the Placement Agents or to counsel for the Placement Agents shall be deemed to be a representation and warranty by the Company to the Placement Agents as to the matters set forth therein.

(oo) Reliance. The Company acknowledges that the Placement Agents will rely upon the accuracy and truthfulness of the foregoing representations and warranties and hereby consents to such reliance.

(pp) Statistical or Market-Related Data. Any statistical, industry-related and market-related data included or incorporated by reference in the Exchange Act Documents, are based on or derived

from sources that the Company reasonably and in good faith believes to be reliable and accurate, and such data agree in all material respects with the sources from which they are derived.

(qq) FINRA Affiliations. There are no affiliations with any FINRA member firm among the Company's officers, directors or, to the knowledge of the Company, any five percent (5%) or greater stockholder of the Company.

**Section 3. Delivery and Payment.** Each Closing shall occur virtually or at the offices of The NBD Group, Inc. ("Placement Agent Counsel") (or at such other place as shall be agreed upon by the Placement Agents and the Company). Subject to the terms and conditions hereof, at each Closing payment of the purchase price for the Securities sold on such Closing Date shall be made by Federal Funds wire transfer, against delivery of such Securities, and such Securities shall be registered in such name or names and shall be in such denominations, as the Placement Agents may request at least one business day before the time of purchase (as defined below).

Deliveries of the documents with respect to the purchase of the Securities, if any, shall be made at the offices of Placement Agent Counsel. All actions taken at a Closing shall be deemed to have occurred simultaneously.

**Section 4. Covenants and Agreements of the Company.** The Company further covenants and agrees with the Placement Agents as follows:

(a) Registration Statement Matters. The Company will advise the Placement Agents promptly after it files the Resale Registration Statement and promptly after it receives notice of the time when any amendment to the Resale Registration Statement has been filed or becomes effective or any supplement has been filed and will furnish the Placement Agents with copies thereof (other than prospectus supplements or post-effective amendments filed by the Company pursuant to Rule 424(b)(3) solely for purposes of updating and supplementing the prospectus forming a part of the Resale Registration Statement with the information contained in the Company's periodic Exchange Act filings, with respect to which there shall be no requirement to notify the Placement Agents or provide copies thereof). The Company will file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 14 or 15(d) of the Exchange Act subsequent to the date hereof and until completion of the Resale Registration Period. The Company will advise the Placement Agents, promptly after it receives notice thereof (i) of any request by the Commission to amend the Resale Registration Statement or for additional information, and (ii) of the issuance by the Commission of any stop order suspending the effectiveness of the Resale Registration Statement or any order directed at any Exchange Act Document, if any, or any amendment or supplement thereto or any post-effective amendment to the Resale Registration Statement, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, of the institution or threatened institution of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Resale Registration Statement or for additional information. The Company shall use its best efforts to prevent the issuance of any such stop order or prevention or suspension of such use. If the Commission shall enter any such stop order or order or notice of prevention or suspension at any time, the Company will use its best efforts to obtain the lifting of such order at the earliest possible moment or will file a new registration statement and use its best efforts to have such new registration statement declared effective as soon as practicable. Additionally, the Company agrees that it shall comply with the provisions of Rules 424(b), 430A, 430B and 430C, as applicable, under the Securities Act, including with respect to the timely filing of documents thereunder, and will use its reasonable efforts to confirm that any filings made by the Company under such Rule 424(b) are received in a timely manner by the Commission.

(b) Amendments and Supplements and Other Matters. The Company will comply with the Securities Act and the Exchange Act, and the rules and regulations of the Commission thereunder, so as to permit the completion of the distribution of the Securities as contemplated in this Agreement, the Exchange Act Documents and the Resale Registration Statement. If during the Resale Registration Period, any event shall occur as a result of which, in the judgment of the Company or in the reasonable opinion of the Placement Agents or counsel for the Placement Agents, it becomes necessary to amend or supplement the Exchange Act Documents in order to make the statements therein, in the light of the circumstances under which they were made, as the case may be, not misleading, or if it is necessary at any time to amend or supplement the Exchange Act Documents or to file under the Exchange Act any Exchange Act Document to comply with any law, the Company will promptly prepare and file with the Commission, and furnish at its own expense to the Placement Agents and to dealers, an appropriate amendment to the Resale Registration Statement or the Exchange Act Documents that is necessary in order to make the statements in the Resale Registration Statement or the Exchange Act Documents as so amended or supplemented, in the light of the circumstances under which they were made, as the case may be, not misleading, or so that the Resale Registration Statement or the Exchange Act Documents, as so amended or supplemented, will comply with law. Before amending the Resale Registration Statement or supplementing the Exchange Act Documents in connection with the Offering, the Company will furnish the Placement Agents with a copy of such proposed amendment or supplement and will not file any such amendment or supplement to which the Placement Agents reasonably objects. For the avoidance of doubt, the Company shall not be required to furnish the Placement Agents with copies of, or notify the Placement Agents with regard to, prospectus supplements or post-effective amendments filed by the Company pursuant to Rule 424(b)(3) solely for purposes of updating and supplementing the prospectus forming a part of the Resale Registration Statement with the information contained in the Company's periodic Exchange Act filings.

(c) Transfer Agent. The Company will maintain, at its expense, a registrar and transfer agent for the Common Stock.

(d) Earnings Statement. As soon as practicable and in accordance with applicable requirements under the Securities Act, but in any event not later than 18 months after the last Closing Date, the Company will make generally available to its security holders and to the Placement Agents an earnings statement, covering a period of at least 12 consecutive months beginning after the last Closing Date, that satisfies the provisions of Section 11(a) and Rule 158 under the Securities Act.

(e) Periodic Reporting Obligations. The Company will duly file, on a timely basis, with the Commission and the Current Trading Market all reports and documents required to be filed within the time periods and in the manner required by the Commission or the Current Trading Market.

(f) Additional Documents. The Company will enter into any subscription, purchase or other customary agreements as the Placement Agents or the Investors deem necessary or appropriate to consummate the Offering, all of which will be in form and substance reasonably acceptable to the Company, the Placement Agents and the Investors.

(g) No Manipulation of Price. The Company will not take, directly or indirectly, any action designed to cause or result in the stabilization or manipulation of the price of any securities of the Company in violation of any applicable law.

(h) Acknowledgment. The Company acknowledges that any advice (written or oral) given by the Placement Agents to the Company is solely for the benefit and use of the Company. Other than to the extent required to be reflected in Board of Directors and committee meeting minutes, no advice (written or oral) of the Placement Agents hereunder shall be used, reproduced, disseminated, quoted or referred to at any time, in any manner, or for any purpose, nor shall any public references to the

Placement Agents be made by the Company (or such persons), without the Placement Agents' prior written consent.

(i) Announcement of Offering. The Company acknowledges and agrees that the Placement Agent may, subsequent to the Closing, make public its involvement with the Offering.

(j) Reliance on Others. The Company confirms that it will rely on its own counsel and accountants for legal and accounting advice.

(k) Research Matters. By entering into this Agreement, the Placement Agents do not provide any promise, either explicitly or implicitly, of favorable or continued research coverage of the Company and the Company hereby acknowledges and agrees that the selection of the Placement Agents for the Offering was in no way conditioned, explicitly or implicitly, on the Placement Agents providing favorable or any research coverage of the Company. In accordance with FINRA Rule 2241, the parties acknowledge and agree that the Placement Agents have not directly or indirectly offered favorable research, a specific rating or a specific price target, or threatened to change research, a rating or a price target, to the Company or inducement for the receipt of business or compensation.

**Section 5. Conditions of the Obligations of the Placement Agents.** The obligations of the Placement Agents hereunder shall be subject to the accuracy of the representations and warranties on the part of the Company set forth in Section 2 hereof, in each case as of the date hereof and as of each Closing Date as though then made, to the timely performance by each of the Company of its covenants and other obligations hereunder on and as of such dates, and to each of the following additional conditions:

(a) No Order. No order having the effect of ceasing or suspending the distribution of the Securities or any other securities of the Company shall have been issued by any securities commission, securities regulatory authority or stock exchange and no proceedings for that purpose shall have been instituted or shall be pending or, to the knowledge of the Company, contemplated by any securities commission, securities regulatory authority or stock exchange and all requests for additional information on the part of the Commission shall have been complied with.

(b) Corporate Proceedings. All corporate proceedings and other legal matters in connection with this Agreement, the Resale Registration Statement, and the registration, sale and delivery of the Securities, shall have been completed or resolved in a manner reasonably satisfactory to the Placement Agents' counsel, and such counsel shall have been furnished with such papers and information as it may reasonably have requested to enable such counsel to pass upon the matters referred to in this Section 5.

(c) No Material Adverse Effect. Subsequent to the execution and delivery of this Agreement and prior to each Closing Date, there shall not have occurred any Material Adverse Effect.

(d) Opinion of Counsel for the Company. The Placement Agents shall have received on the initial Closing Date the favorable opinion of Wilson Sonsini Goodrich & Rosati, P.C., US legal counsel to the Company, dated as of such Closing Date, in form and substance satisfactory to the Representative.

(e) Lock-Up Agreements. On the date hereof, the Placement Agents shall have received, and the Company shall have caused to be delivered to the Placement Agents, agreements from the persons set forth on Exhibit A hereto, addressed to the Placement Agents, dated as of the date hereof, in the form set forth on Exhibit B hereto.

(f) Officers' Certificate. The Placement Agents shall have received on each Closing Date a certificate of the Company, dated as of such Closing Date, signed by the Chief Executive Officer of the Company, to the effect that:

(i) The representations and warranties of the Company in this Agreement are true and correct, as if made on and as of such Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to such Closing Date;

(ii) No order having the effect of ceasing or suspending the distribution of the Securities or any other securities of the Company has been issued by any securities commission, securities regulatory authority or stock exchange in the United States and, to the knowledge of the Company, no proceedings for that purpose have been instituted or are pending or contemplated by any securities commission, securities regulatory authority or stock exchange in the United States;

(iii) At the time of sale, and at all times subsequent thereto up to the delivery of such certificate, the Exchange Act Documents, if any, when such documents became effective or were filed with the Commission, contained all material information required to be included therein by the Securities Act and the Exchange Act and the applicable rules and regulations of the Commission thereunder, as the case may be, and in all material respects conformed to the requirements of the Securities Act and the Exchange Act and the applicable rules and regulations of the Commission thereunder, as the case may be, and the Exchange Act Documents, did not and do not include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and, there has occurred no event required by the Securities Act and the rules and regulations of the Commission thereunder to be set forth in the Exchange Act Documents which has not been so set forth; and

(iv) Subsequent to the respective dates as of which information is given in the Exchange Act Documents, there has not been any Material Adverse Effect.

(g) CFO Certificate. On each Closing Date, there shall be furnished to the Placement Agents a certificate, dated the date of its delivery, signed by the Chief Financial Officer of the Company with respect to certain financial data contained in the Exchange Act Documents, providing “management comfort” with respect to such information, in form and substance reasonably satisfactory to the Representative.

(h) Payment of Fees. On each Closing Date, all fees payable to the Placement Agents and Placement Agent Counsel pursuant to Section 1(a) herein, shall have been paid prior to delivery of the Securities.

(i) Additional Documents. On or before each Closing Date, the Placement Agents and counsel for the Placement Agents shall have received such information and documents as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

If any condition specified in this Section 5 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Placement Agents by notice to the Company at any time on or prior to a Closing Date, which termination shall be without liability on the part of any party to any other party, except that Section 6 (Payment of Expenses), Section 7 (Indemnification and Contribution) and Section 8 (Representations and Indemnities to Survive Delivery) shall at all times be effective and shall survive such termination.



**Section 6. Payment of Expenses.** Subject in all cases to the limitations set forth in Section 1(a) herein, the Company agrees to pay all costs, fees and expenses incurred by the Company in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including, without limitation: (i) all expenses incident to the issuance, delivery and qualification of the Securities (including all printing and engraving costs); (ii) all fees and expenses of the registrar and transfer agent of the Common Stock; (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Securities; (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors; (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Resale Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), and all amendments and supplements thereto, and this Agreement; (vi) all filing fees, reasonable attorneys' fees and expenses incurred by the Company or the Placement Agents in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Securities for offer and sale under the state securities or blue sky laws or the securities laws of any other country, and, if requested by the Placement Agents, preparing and printing a Blue Sky Survey or other memorandum, and any supplements thereto, advising the Placement Agents of such qualifications, registrations and exemptions; (vii) if applicable, the filing fees incident to the review and approval by FINRA of the Placement Agents' participation in the offering and distribution of the Securities; (viii) all costs and expenses incident to the roadshow (including travel and accommodation of the Company's and the Placement Agents' employees); (ix) all costs and expenses set forth in Section 1(a) herein; (x) all costs of background investigations; and (xi) all other fees, costs and expenses referred to in Part II of the Resale Registration Statement.

**Section 7. Indemnification and Contribution.**

(a) The Company agrees to indemnify and hold harmless the Placement Agents, its affiliates and each person controlling the Placement Agents (within the meaning of Section 15 of the Securities Act), and the directors, officers, agents and employees of the Placement Agents, its affiliates and each such controlling person (the Placement Agents, and each such entity or person, an "Indemnified Person") from and against any losses, claims, damages, judgments, assessments, costs and other liabilities (or actions, including shareholder actions, in respect thereof) (collectively, the "Liabilities"), joint or several, to which such Indemnified Person may become subject under any applicable federal or state law, or otherwise, which are related to or result from the performance by the Placement Agents of the services contemplated by or the engagement of the Placement Agents pursuant to, this Agreement and shall promptly reimburse each Indemnified Person for all reasonable fees and expenses (including the reasonable fees and expenses of counsel for all Indemnified Persons, except as otherwise expressly provided herein) (collectively, the "Expenses") as they are incurred by an Indemnified Person in investigating, preparing, pursuing or defending any Actions, whether or not any Indemnified Person is a party thereto and whether or not such claim, action or proceeding is initiated or brought by the Company; provided, however, that, the Company shall not be responsible for any Liabilities or Expenses of any Indemnified Person that are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Indemnified Person's fraud, willful misconduct or gross negligence. The Company also agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company or its security holders or creditors related to or arising out of the engagement of the Placement Agents pursuant to, or the performance by the Placement Agents of the services contemplated by, this Agreement except to the extent that any liability is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted primarily from fraud, willful misconduct or gross negligence of the Placement Agents.

(b) Promptly after receipt by an Indemnified Person of notice of any intention or threat to commence an action, suit or proceeding or notice of the commencement of any action, suit or proceeding, such Indemnified Person will, if a claim in respect thereof is to be made against the Company pursuant hereto, promptly notify the Company in writing of the same. In case any such action

is brought against any Indemnified Person and such Indemnified Person notifies the Company of the commencement thereof, the Company may elect to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Person, and an Indemnified Party may employ counsel to participate in the defense of any such action provided, that the employment of such counsel shall be at the Indemnified Person's own expense, unless (i) the employment of such counsel has been authorized in writing by the Company, (ii) the Indemnified Person has reasonably concluded (based upon advice of counsel to the Indemnified Person) that there may be legal defenses available to it or other Indemnified Persons that are different from or in addition to those available to the Company, or that a conflict or potential conflict exists (based upon advice of counsel to the Indemnified Person) between the Indemnified Person and the Company that makes it impossible or inadvisable for counsel to the Indemnifying Person to conduct the defense of both the Company and the Indemnified Person (in which case the Company will not have the right to direct the defense of such action on behalf of the Indemnified Person), or (iii) the Company has not in fact employed counsel reasonably satisfactory to the Indemnified Person to assume the defense of such action within a reasonable time after receiving notice of the action, suit or proceeding, in each of which cases the reasonable fees, disbursements and other charges of such counsel will be at the expense of the Company; provided, further, that in no event shall the Company be required to pay fees and expenses for more than one firm of attorneys (in addition to local counsel) representing Indemnified Persons unless the defense of one Indemnified Person is unique or separate from that of another Indemnified Person subject to the same claim or action. Any failure or delay by an Indemnified Person to give the notice referred to in this paragraph shall not affect such Indemnified Person's right to be indemnified hereunder, except to the extent that such failure or delay causes actual harm to the Company, or prejudices its ability to defend such action, suit or proceeding on behalf of such Indemnified Person.

(c) In the event that the foregoing indemnity is unavailable to an Indemnified Person other than in accordance with this Agreement, the Company shall contribute to the Liabilities and Expenses paid or payable by such Indemnified Person in such proportion as is appropriate to reflect (i) the relative benefits to the Company, on the one hand, and to the Placement Agents and any other Indemnified Person, on the other hand, of the matters contemplated by this Agreement whether or not the Offering is consummated or (ii) if the allocation provided by the immediately preceding clause is not permitted by applicable law or for any reason unenforceable or unavailable, not only such relative benefits but also the relative fault of the Company, on the one hand, and the Placement Agents and any other Indemnified Person, on the other hand, in connection with the matters as to which such Liabilities or Expenses relate, as well as any other relevant equitable considerations; provided that in no event shall the Company contribute less than the amount necessary to ensure that all Indemnified Persons, in the aggregate, are not liable for any Liabilities and Expenses in excess of the amount of fees actually received by the Placement Agents pursuant to this Agreement. For purposes of this paragraph, the relative benefits to the Company, on the one hand, and to the Placement Agents on the other hand, of the matters contemplated by this Agreement shall be deemed to be in the same proportion as (a) the total value paid or contemplated to be paid to or received or contemplated to be received by the Company in the transaction or transactions that are within the scope of this Agreement, whether or not any such transaction is consummated, bears to (b) the fees paid to the Placement Agents under this Agreement. Notwithstanding the above, no person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the Securities Act, as amended, shall be entitled to contribution from a party who was not guilty of fraudulent misrepresentation. Notwithstanding the foregoing, the Company expressly agrees that the Placement Agents shall not be required to contribute any amount in excess of the amount by which fees paid the Placement Agents hereunder (excluding reimbursable expenses), exceeds the amount of any damages which the Placement Agents has otherwise been required to pay.

(d) The Company also agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company for or in connection with advice or services rendered or to be rendered by any Indemnified Person pursuant to this Agreement, the

transactions contemplated thereby or any Indemnified Person's actions or inactions in connection with any such advice, services or transactions except for Liabilities (and related Expenses) of the Company that are finally judicially determined to have resulted from such Indemnified Person's fraud, gross negligence or willful misconduct in connection with any such advice, actions, inactions or services.

(e) The Company agrees that without the Representative's prior written consent, which shall not be unreasonably withheld, it will not settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification or contribution could be sought under the provisions of this Agreement, unless such settlement, compromise or consent includes an unconditional release of each Indemnified Person from all liability arising out of such claim, action or proceeding.

(f) In the event that an Indemnified Person is requested or required to appear as a witness in any action brought by or on behalf of or against the Company in which such Indemnified Person is not named as a defendant, the Company agrees to promptly reimburse the Placement Agents on a monthly basis for all reasonable, documented, out-of-pocket expenses incurred by it in connection with such Indemnified Person's appearing and preparing to appear as such a witness, including, without limitation, the reasonable fees and disbursements of its legal counsel. If multiple claims are brought with respect to at least one of which indemnification is permitted under applicable law and provided for under this Agreement, the Company agrees that any judgment or arbitration award shall be conclusively deemed to be based on claims as to which indemnification is permitted and provided for, except to the extent the judgment or arbitration award expressly states that it, or any portion thereof, is based solely on a claim as to which indemnification is not available.

(g) The reimbursement, indemnity and contribution obligations of the Company set forth herein shall apply to any modification of this Agreement and shall remain in full force and effect regardless of any termination of, or the completion of any Indemnified Person's services under or in connection with, this Agreement.

**Section 8. Representations and Indemnities to Survive Delivery.** The respective indemnities, agreements, representations, warranties and other statements of the Company or any person controlling the Company, of its officers, and of the Placement Agents set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Placement Agents, the Company, or any of its or their partners, officers or directors or any controlling person, as the case may be, and will survive delivery of and payment for the Securities sold hereunder and any termination of this Agreement. A successor to a Placement Agent, or to the Company, its directors or officers or any person controlling the Company, shall be entitled to the benefits of the indemnity, contribution and reimbursement agreements contained in this Agreement.

**Section 9. Notices.** All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Placement Agents to the address set forth above, attention: Cecil Brown email: Cecil.Brown@loopcapital.com.

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

The NBD Group, Inc.  
350 N. Glendale Avenue, Suite B522  
Glendale, California 91206  
Email: st@nbdpro.com  
Attention: Sara Terheggen

If to the Company:

Transphorm, Inc.  
975 Castilian Drive  
Goleta, California 93117  
Email: [cmcaulay@transphormusa.com](mailto:cmcaulay@transphormusa.com)  
Attention: Cameron McAulay

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

Wilson Sonsini Goodrich & Rosati, P.C.  
650 Page Mill Road  
Palo Alto, California 94304  
Email: [jreigel@wsgr.com](mailto:jreigel@wsgr.com) and [emuhl@wsgr.com](mailto:emuhl@wsgr.com)  
Attention: Julia Reigel and Erika Muhl

Any party hereto may change the address for receipt of communications by giving written notice to the others.

**Section 10. Successors.** This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 7 hereof, and to their respective successors, and personal representative, and no other person will have any right or obligation hereunder.

**Section 11. Partial Unenforceability.** The invalidity or unenforceability of any section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

**Section 12. Governing Law Provisions.** This Agreement shall be deemed to have been made and delivered in New York City and both this Agreement and the transactions contemplated hereby shall be governed as to validity, interpretation, construction, effect and in all other respects by the internal laws of the State of New York, without regard to the conflict of laws principles thereof. Each of the Placement Agents and the Company: (i) agrees that any legal suit, action or proceeding arising out of or relating to this Agreement and/or the transactions contemplated hereby shall be instituted exclusively in New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York, (ii) waives any objection which it may have or hereafter to the venue of any such suit, action or proceeding, and (iii) irrevocably consents to the jurisdiction of the New York Supreme Court, County of New York, and the United States District Court for the Southern District of New York in any such suit, action or proceeding. Each of the Placement Agents and the Company further agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York and agrees that service of process upon the Company mailed by certified mail to the Company's address shall be deemed in every respect effective service of process upon the Company, in any such suit, action or proceeding, and service of process upon the Placement Agents mailed by certified mail to the Placement Agents' address shall be deemed in every respect effective service process upon the Placement Agents, in any such suit, action or proceeding. Notwithstanding any provision of this Agreement to the contrary, the Company agrees that neither the Placement Agents nor their affiliates, and the respective officers, directors, employees, agents and representatives of the Placement Agents, its affiliates and each other person, if any, controlling the Placement Agents or any of its affiliates, shall have any liability (whether direct or indirect, in contract or tort or otherwise)

to the Company for or in connection with the engagement and transaction described herein except for any such liability for losses, claims, damages or liabilities incurred by us that are finally judicially determined to have resulted from the fraud, willful misconduct or gross negligence of such individuals or entities. If either party shall commence an action or proceeding to enforce any provision of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorney's fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

### **Section 13. General Provisions.**

(a) This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. Notwithstanding anything herein to the contrary, the (i) Engagement Agreement, dated November 22, 2020, between the Company and the Representative and (ii) Engagement Agreement, dated November 30, 2020, between the Company and Spartan Capital Securities, LLC (together, the "Engagement Agreements"), each shall continue to be effective and the terms therein shall continue to survive and be enforceable by the respective Placement Agent in accordance with its terms, provided that, in the event of a conflict between the terms of an Engagement Agreement and this Agreement, the terms of this Agreement shall prevail. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

(b) The Company acknowledges that in connection with the offering of the Securities: (i) the Placement Agents have acted at arms length, are not agents of, and owe no fiduciary duties to the Company or any other person, (ii) the Placement Agents owe the Company only those duties and obligations set forth in this Agreement and (iii) the Placement Agents may have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Placement Agents arising from an alleged breach of fiduciary duty in connection with the offering of the Securities.

*[The remainder of this page has been intentionally left blank.]*

If the foregoing is in accordance with your understanding of our agreement, please sign below whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,  
**TRANSPHORM, INC.**

By: /s/ Mario Rivas  
Name: Mario Rivas  
Title: Chief Executive Officer

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.  
**LOOP CAPITAL MARKETS LLC**

By: /s/ Cecil Brown  
Name: Cecil Brown  
Title: SVP

**SCHEDULE C**

Loop Capital Markets LLC  
Spartan Capital Securities, LLC

## **EXHIBIT A**

1. Mario Rivas
2. Cameron McAulay
3. Umesh Mishra
4. Primit Parikh
5. Brittany Bagley
6. David Kerko
7. Eiji Yatagawa
8. Julian Humphreys
9. KKR Phorm Investors L.P.
10. Nexperia B.V.
11. Yaskawa Electric Corporation



**EXHIBIT B**  
**FORM OF LOCK-UP AGREEMENT**

[\_\_\_\_], 2020  
Loop Capital Markets LLC  
As Representative of the Placement Agents  
set forth on Schedule C hereto  
111 W. Jackson Blvd.  
Suite 1901  
Chicago, IL 60604

Re: Transphorm, Inc. – Restriction on Sales of Securities

Dear Ladies & Gentleman:

The undersigned, a holder of common stock, par value \$0.0001 (“Common Stock”), or rights to acquire Common Stock, of Transphorm, Inc., a Delaware corporation (the “Company”), understands that Loop Capital Markets LLC is the lead placement agent (the “Placement Agent”) that is party to that certain placement agent agreement (the “Placement Agent Agreement”) by and between the placement agents and the Company, providing for the offering (the “Offering”) of Common Stock. Capitalized terms used herein and not otherwise defined shall have the meanings set forth for them in the Placement Agent Agreement.

The undersigned recognizes that it is in the best financial interests of the undersigned, as an officer or director, or an owner of Common Stock, options, warrants, performance units or other securities convertible into or exchangeable for Common Stock of the Company (the “Company Securities”), that the undersigned not sell Company Securities in the public market for a reasonable period following the Offering.

The undersigned further recognizes that the Company Securities held by the undersigned are, or may be, subject to certain restrictions on transferability, including those imposed by United States federal securities laws. Notwithstanding these restrictions, the undersigned has agreed to enter into this letter agreement to further assure the Placement Agent that the Company Securities of the undersigned, now held or hereafter acquired, will not enter the public market at a time that might impair the underwriting effort.

Therefore, as an inducement to the Placement Agent to execute the Placement Agent Agreement, the undersigned hereby acknowledges and agrees that the undersigned will not, without the prior written consent of the Placement Agent, (1) offer, sell, contract to sell, pledge, grant any option to purchase or otherwise dispose of (collectively, a “Disposition”) any Company Securities or any securities convertible into or exercisable or exchangeable for, or any rights to purchase or otherwise acquire, any Company Securities held by the undersigned or acquired by the undersigned after the date hereof, or that may be deemed to be beneficially owned by the undersigned (collectively, the “Lock-Up Shares”), pursuant to the Rules and Regulations promulgated under the Securities Act of 1933, as amended (the “Act”), and the Securities Exchange Act of 1934, as amended (the “Exchange Act”), for a period commencing on the date hereof and ending 180 days after the date of the Placement Agent Agreement, inclusive (the “Lock-Up Period”), (2) during the Lock-Up Period, exercise or seek to exercise or effectuate in any manner any rights of any nature that the undersigned has or may have hereafter to require the Company to register under the Act the undersigned’s Disposition of any of the Lock-Up Shares held by the undersigned, or (3) engage in any hedging, collar (whether or not for any consideration) or other transaction that is designed

to or reasonably expected to lead to or result in a Disposition of Lock-Up Shares during the Lock-Up Period, even if such Lock-Up Shares would be disposed of by someone other than such holder, and such prohibited hedging or other transactions would include any short sale or any purchase, sale or grant of any right (including any put or call option or reversal or cancellation thereof) with respect to any Lock-Up Shares or with respect to any security (other than a broad-based market basket or index) that includes, relates to or derives any significant part of its value from Lock-Up Shares.

Notwithstanding the agreement not to make any Disposition during the Lock-Up Period, the Placement Agent has agreed that the foregoing restrictions shall not apply to:

- (1) any Disposition or transfer of Lock-Up Shares to a family member, trust, or entity in which more than fifty percent of the voting interests are owned by the undersigned or the undersigned's immediate family members (as defined in General Instruction A.1(a)(5) to Form S-8 under the Act);
- (2) any bona fide gift;
- (3) any Disposition or transfer of Lock-Up Shares by will, intestate succession or by operation of law pursuant to a qualified domestic order or in connection with a divorce settlement;
- (4) any transfer of Lock-Up Shares solely to cover applicable withholding taxes due upon the vesting of stock-based awards under the Company's equity compensation plans;
- (5) the conversion or exchange of convertible or exchangeable Company Securities outstanding as of the date of this letter agreement;
- (6) the forfeiture or surrender to the Company of Lock-Up Shares for failure to achieve vesting requirements associated with such Lock-Up Shares;
- (7) Dispositions or forfeiture of Lock-Up Shares of the undersigned or the retention of Lock-Up Shares by the Company (A) to satisfy tax withholding obligations in connection with the exercise of options to purchase Shares, the vesting of restricted stock units or performance shares or the settlement of deferred stock units of the Company or (B) in payment of the exercise or purchase price with respect to the exercise of options to purchase Shares, the vesting of restricted stock units or performance shares or the settlement of deferred stock units of the Company;
- (8) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of Lock-Up Shares;
- (9) the Disposition or transfer of Lock-Up Shares pursuant to a trading plan established pursuant to Rule 10b5-1 under the Exchange Act prior to the date of this letter agreement;
- (10) any Disposition or transfer of Lock-Up Shares pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction that is approved by the board of directors of the Company, made to all holders of the Company Securities involving a Change of Control (as defined below) (including any support or voting agreement entered into in connection therewith), *provided* that in the event that the tender offer, merger, consolidation or other such transaction is not completed, the Lock-up Shares of the undersigned shall remain subject to the restrictions contained in this letter agreement; or

- (11) distributions, transfers or dispositions of Lock-up Shares (i) to another corporation, partnership, limited liability company, trust or other business entity that is an affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the undersigned, or to any investment fund or other entity controlled or managed by the undersigned or affiliates of the undersigned (collectively, "Affiliates"), or (ii) as part of a distribution, transfer or disposition without consideration by the undersigned to its stockholders, current or former partners (general or limited), members, beneficiaries, or other equity holders, or to the estates of such stockholders, partners, members, beneficiaries or other equity holders;

*provided* that in the case of any transfer, gift or other disposition pursuant to the immediately preceding clauses (1) or (2), except in the case of a bona fide gift to a charitable organization, the transferee, trust, donee or other recipient agrees to be bound in writing by the terms of this letter agreement prior to such transfer and no filing by any party (donor, donee, transferor or transferee) under the Exchange Act shall be required or shall be voluntarily made in connection with such transfer (other than required filings under Section 16(a) and Section 13(d) or 13(g) of the Exchange Act and any filings made after the expiration of the Lock-Up Period). For purposes of clause (10) above, "Change of Control" shall mean any bona fide third-party tender offer, merger, amalgamation, consolidation or other similar transaction the result of which would be that any "person" (as defined in Section 13(d)(3) of the Exchange Act), or group of persons, other than the Company, becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 of the Exchange Act) of more than 50% of the total voting power of the voting stock of the Company.

Furthermore, the undersigned may, during the Lock-Up Period, sell shares of Common Stock purchased by the undersigned on the open market following the closing of the Offering if and only if (i) such sales are not required to be reported in any public report or filing under the Exchange Act and (ii) the undersigned does not otherwise voluntarily effect any public report or filing regarding such sales.

The undersigned understands that, if the Placement Agent Agreement does not become effective prior to December 31, 2020, or if the Placement Agent Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Securities to be sold thereunder, the undersigned shall be released from all obligations under this Lock-Up Agreement.

The undersigned, whether or not participating in the Offering, understands that the Placement Agent is entering into the Placement Agent Agreement and proceeding with the Offering in reliance upon this Lock-Up Agreement.

This Lock-Up Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof. Delivery of a signed copy of this Lock-Up Agreement by facsimile or e-mail/.pdf transmission shall be effective as the delivery of the original hereof.

Very truly yours,

By: \_\_\_\_\_  
Print Name:

## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this “**Agreement**”) is made and entered into effective as of December 23, 2020, among Transphorm, Inc., a Delaware corporation (the “**Company**”) and the persons who have purchased the Shares (as defined below) and have executed omnibus or counterpart signature page(s) hereto (each, a “**Purchaser**” and collectively, the “**Purchasers**”) and the persons or entities identified on Schedule 1 hereto holding Placement Agent Warrants (as defined below) (collectively, the “**Brokers**”). Capitalized terms used herein shall have the meanings ascribed to them in Section 1 below or in the Subscription Agreements (as defined below).

### **RECITALS:**

**WHEREAS**, the Company has offered and sold in compliance with Section 4(a)(2) of the Securities Act and/or Rule 506 of Regulation D promulgated under the Securities Act to accredited investors in a private placement offering (the “**Offering**”) shares of the common stock of the Company, par value \$0.0001 per share, pursuant to those certain Subscription Agreements entered into by and between the Company and each of the Purchasers for the Shares thereunder (the “**Subscription Agreement**”); and

**WHEREAS**, the Company has agreed to enter into a registration rights agreement with each of the Purchasers in the Offering who purchased the Shares and the Brokers who hold Placement Agent Warrants.

**Now, Therefore**, in consideration of the mutual promises, representations, warranties, covenants, and conditions set forth herein, the parties mutually agree as follows:

1. **Certain Definitions.** As used in this Agreement, the following terms shall have the following respective meanings:

“**Approved Market**” means any market operated by the OTC Markets Group, the Nasdaq Stock Market, the New York Stock Exchange or the NYSE American.

“**Blackout Period**” means, with respect to a registration, a period during which the Company, in the good faith judgment of its board of directors, determines (because of the existence of, or in anticipation of, any acquisition, financing activity, material corporate development or other material transaction involving the Company, or the unavailability for reasons beyond the Company’s control of any required financial statements, disclosure of material information which is in its best interest not to publicly disclose, or any other event or condition of similar material significance to the Company) that the registration of the Registrable Securities (as defined below) to be covered by such registration statement, if any, or the filing of an amendment to such registration statement in the circumstances described in Section 4(h) below, would be detrimental to the Company and its stockholders, in each case commencing on the day the Company notifies the Holders (such notice shall be made to such Holder’s email address set forth on the signature page hereto) that they are required, because of the determination described above, to suspend offers and sales of Registrable Securities and ending on the earlier of (1) the date upon which the material non-public information resulting in the Blackout Period is disclosed to the public or, in the good faith discretion of the Company, ceases to be material and (2) such time as the Company notifies the selling Holders (as defined below) that sales pursuant to such Registration Statement or a new or amended Registration Statement may resume; provided, however, that no Blackout Period shall extend for a period of more than thirty (30) consecutive Trading Days (as defined below) and aggregate Blackout Periods shall not exceed sixty (60) Trading Days in any twelve (12) month period.

**“Business Day”** means any day of the year, other than a Saturday, Sunday, or other day on which banks in the State of New York are required or authorized to close.

**“Commission”** means the U.S. Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

**“Common Stock”** means the common stock, par value \$0.0001 per share, of the Company and any and all shares of capital stock or other equity securities of: (i) the Company which are added to or exchanged or substituted for the Common Stock by reason of the declaration of any stock dividend or stock split, the issuance of any distribution or the reclassification, readjustment, recapitalization or other such modification of the capital structure of the Company; and (ii) any other corporation, now or hereafter organized under the laws of any state or other governmental authority, with which the Company is merged, which results from any consolidation or reorganization to which the Company is a party, or to which is sold all or substantially all of the shares or assets of the Company, if immediately after such merger, consolidation, reorganization or sale, the Company or the stockholders of the Company own equity securities having in the aggregate more than 50% of the total voting power of such other corporation.

**“Effective Date”** means the Closing Date, as defined in the Subscription Agreements.

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

**“Family Member”** means (a) with respect to any individual, such individual’s spouse, any descendants (whether natural or adopted), any trust all of the beneficial interests of which are owned by any of such individuals or by any of such individuals together with any organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, the estate of any such individual, and any corporation, association, partnership or limited liability company all of the equity interests of which are owned by those above described individuals, trusts or organizations and (b) with respect to any trust, the owners of the beneficial interests of such trust.

**“Holder”** means (i) each Purchaser or any of such Purchaser’s respective successors and Permitted Assignees who acquire rights in accordance with this Agreement with respect to any Registrable Securities directly or indirectly from a Purchaser or from any Permitted Assignee and (ii) each Broker or any of such Broker’s respective successors and Permitted Assignees who acquire rights in accordance with this Agreement with respect to any Registrable Securities directly or indirectly from a Broker or from any Permitted Assignee.

**“Majority Holders”** means, at any time, Holders of a majority of the Registrable Securities then outstanding.

**“Permitted Assignee”** means (a) with respect to a partnership, its partners, former partners or any affiliate, including employees of such partnership or affiliate, (b) with respect to a corporation, its stockholders in accordance with their interest in the corporation, (c) with respect to a limited liability company, its members or former members in accordance with their interest in the limited liability company, (d) with respect to an individual party, any Family Member of such party, (e) an entity or trust that is controlled by, controls, or is under common control with a transferor, or (f) a party to this Agreement.

**“Placement Agent Warrants”** shall have the meaning set forth in the Subscription Agreements.

The terms “**register**,” “**registered**,” and “**registration**” refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

“**Registrable Securities**” means (a) the Shares and (b) the shares of Common Stock issuable upon exercise of the Placement Agent Warrants; but, in each case, excluding any otherwise Registrable Securities that (i) have been sold or otherwise transferred other than to a Permitted Assignee, or (ii) may be sold at the time under the Securities Act without restriction, including manner of sale, current information requirements or volume limitations either pursuant to Rule 144 of the Securities Act or otherwise during any ninety (90) day period, or (iii) are at the time subject to an effective registration statement under the Securities Act.

“**Registration Default Period**” means the period during which any Registration Event occurs and is continuing.

“**Registration Effectiveness Date**” means the date that is ninety (90) calendar days after the Registration Statement is first filed with the Commission.

“**Registration Event**” means the occurrence of any of the following events:

(a) the Company fails to file with, or confidentially submit to, the Commission the Registration Statement on or before the Registration Filing Date;

(b) the Registration Statement is not declared effective by the Commission on or before the Registration Effectiveness Date;

(c) after the SEC Effective Date, the Registration Statement ceases for any reason to remain continuously effective or the Holders are otherwise not permitted to utilize the prospectus therein to resell the Registrable Securities for a period of more than fifteen (15) consecutive Trading Days, except for Blackout Periods permitted herein and except for suspension of the use of the Registration Statement in connection with its post-effective amendment in connection with the filing of the Company’s Annual Report on Form 10-K for the time reasonably required to respond to any comments from the staff of the Commission (the “**Staff**”) on the Company’s Annual Report on Form 10-K, and as excused pursuant to Section 3(a) below; or

(d) the Registrable Securities, if issued and outstanding, are not listed or included for quotation on an Approved Market, or trading of the Common Stock is suspended or halted on the Approved Market, which at the time constitutes the principal market for the Common Stock, for more than three (3) full, consecutive Trading Days; provided, however, a Registration Event shall not be deemed to occur if all or substantially all trading in equity securities of all companies (including the Common Stock) is suspended or halted on the Approved Market for any length of time.

“**Registration Filing Date**” means the date that is thirty (30) calendar days after the Effective Date.

“**Registration Statement**” means the registration statement that the Company is required to file pursuant to Section 3(a) of this Agreement to register the Registrable Securities.

“**Rule 144**” means Rule 144 promulgated by the Commission under the Securities Act, as such rule may be amended or supplemented from time to time, or any similar successor rule that may be promulgated by the Commission.

“**Rule 145**” means Rule 145 promulgated by the Commission under the Securities Act, as such rule may be amended or supplemented from time to time, or any similar successor rule that may be promulgated by the Commission.

“**Rule 415**” means Rule 415 promulgated by the Commission under the Securities Act, as such rule may be amended or supplemented from time to time, or any similar successor rule that may be promulgated by the Commission.

“**Securities Act**” means the Securities Act of 1933, as amended, or any similar federal statute promulgated in replacement thereof, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

“**SEC Effective Date**” means the date the Registration Statement is declared effective by the Commission.

“**Shares**” means the shares of Common Stock issued to the Purchasers pursuant to the Subscription Agreements and any shares of Common Stock issued or issuable with respect to such shares upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing.

“**Trading Day**” means any day on which each Approved Market is open for general trading of securities.

2. **Term.** This Agreement shall terminate with respect to each Holder on the earlier of: (i) the date that is three (3) years from the SEC Effective Date; (ii) the date on which all Registrable Securities held by such Holder have been transferred other than to a Permitted Assignee; or (iii) the date on which all Registrable Securities held by such Holder may be sold under Rule 144 without restriction (including, without limitation, volume restrictions) during any ninety (90) day period (the “**Term**”). Notwithstanding the foregoing, Section 3(b), Section 6, Section 8, Section 9 and Section 10 shall survive the termination of this Agreement.

3. **Registration.**

(a) **Registration on Form S-1.** The Company shall file with the Commission a Registration Statement on Form S-1, or any other form for which the Company then qualifies or which counsel for the Company shall deem appropriate and which form shall be available for the resale by the Holders of all of the Registrable Securities, and the Company shall (i) make the initial filing, or confidential submission, of the Registration Statement with the Commission no later than the Registration Filing Date; provided, however, that the Company shall not be required to file the Registration Statement during a Blackout Period, (ii) use its commercially reasonable efforts to cause such Registration Statement to be declared effective no later than the Registration Effectiveness Date and (iii) use its commercially reasonable efforts to keep such Registration Statement effective for a period of three (3) years after the SEC Effective Date or for such shorter period ending on the earlier to occur of: (x) the date on which all Registrable Securities have been transferred other than to a Permitted Assignee and (y) the date as of which all Holders may sell all of the Registrable Securities without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) within a ninety (90) day period (the “**Effectiveness Period**”); provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance pursuant to this Section 3(a), or keep such registration effective pursuant to the terms hereunder, in any particular jurisdiction in which the Company would be required to qualify to do business as a foreign corporation or as a dealer in securities under the securities laws of such

jurisdiction or to execute a general consent to service of process in effecting such registration, qualification or compliance, in each case where it has not already done so. The Company shall be entitled to suspend the effectiveness of the Registration Statement at any time prior to the expiration of the Effectiveness Period during a Blackout Period for the reasons and time periods set forth in the definition thereof. Notwithstanding the foregoing, in the event that the staff (the “**Staff**”) of the Commission should limit the number of Registrable Securities that may be sold pursuant to the Registration Statement, the Company may remove from the Registration Statement such number of Registrable Securities as specified by the Commission (such Registrable Securities, the “**Reduction Securities**”) on behalf of all of the holders of Registrable Securities first from the shares of Common Stock issuable upon exercise of the Placement Agent Warrants, on a pro-rata basis among the holders thereof (and on an as-exercised basis with respect to any Placement Agent Warrants not then exercised), and second from the other Registrable Securities, on a pro rata basis among the holders thereof. In such event, the Company shall give the applicable holders of Registrable Securities prompt notice of the number of Registrable Securities excluded from the Registration Statement. The Company shall, at the first opportunity that is permitted by the Commission, register for resale the Reduction Securities (pro rata among the Holders of such Reduction Securities) using one or more registration statements that it is then entitled to use; provided, however, that the Company shall not be required to register such Reduction Securities during a Blackout Period. The Company shall use its commercially reasonable efforts to cause each such registration statement to be declared effective under the Securities Act as soon as possible, and shall use its commercially reasonable efforts to keep such registration statement continuously effective under the Securities Act during the entire Effectiveness Period. No liquidated damages shall accrue or be payable to any Holder pursuant to Section 3(b) below with respect to any Registrable Securities that are excluded by reason of (i) the Staff limiting the number of Registrable Securities that may be sold pursuant to a registration statement (provided that the Company continues to use commercially reasonable efforts to register such Reduction Securities for resale by other available means) or (ii) such Holder failing to provide to the Company information concerning the Holder and the manner of distribution of the Holder’s Registrable Securities that is required by SEC Rules to be disclosed in a registration statement utilized in connection with the registration of registrable securities. Notwithstanding anything herein to the contrary, if the Commission limits the Company’s ability to file or confidentially submit, or prohibits or delays the filing of a new registration statement, the Company’s compliance with such limitation, prohibition or delay solely to the extent of such limitation, prohibition or delay shall not be deemed a failure by the Company to use commercially reasonable efforts as set forth above or elsewhere in this Agreement and shall not require the payment of any liquidated damages by the Company under this Agreement.

(b) Liquidated Damages. If a Registration Event occurs, then the Company will make payments to each Holder of Registrable Securities, as liquidated damages to such Holder by reason of the Registration Event, a cash sum calculated at a rate of twelve percent (12%) per annum of the aggregate purchase price paid by such Holder pursuant to the Subscription Agreements or upon exercise of Placement Agent Warrants (or in the case of unexercised Placement Agent Warrants, of the exercise price thereof) with respect to such Holder’s Registrable Securities that are affected by such Registration Event, but only with respect to such Holder’s Registrable Securities that are affected by such Registration Event and only for the period during which such Registration Event continues to affect such Registrable Securities. Notwithstanding the foregoing, the maximum amount of liquidated damages that may be paid by the Company to a Holder pursuant to this Section 3(b) shall be an amount equal to the aggregate purchase price paid by such Holder pursuant to the Subscription Agreement with respect to such Holder’s Registrable Securities that are affected by all Registration Events. Each payment of liquidated damages pursuant to this Section 3(b) shall be due and payable in cash in arrears within five (5) days after the end of each full 30-day period of the Registration Default Period until the termination of the Registration Default Period and within five (5) days after such termination. Such payments shall constitute the Holder’s exclusive remedy for any Registration Event. The Registration Default Period shall terminate upon the earlier of such time as the Registrable Securities that are affected by the Registration Event cease



to be Registrable Securities or (i) the filing or confidential submission of the Registration Statement in the case of clause (a) of the definition of Registration Event, (ii) the SEC Effective Date in the case of clause (b) of the definition of Registration Event, (iii) the ability of the Holders to effect sales pursuant to the Registration Statement in the case of clause (c) of the definition of Registration Event, and (iv) the listing or inclusion and/or trading of the Common Stock on an Approved Market, as the case may be, in the case of clause (d) of the definition of Registration Event; provided, that in the event of a cure of one or more of the Registration Events described in clauses (i)-(iv) above when a separate Registration Event shall be continuing, the Registration Default Period shall continue until all such Registration Events have ceased. The amounts payable as liquidated damages pursuant to this Section 3(b) shall be payable in lawful money of the United States.

(c) Other Limitations. Notwithstanding the provisions of Section 3(b) above, if the Commission does not declare the Registration Statement effective on or before the Registration Effectiveness Date, and the reason for the Commission's determination is that (i) the offering of any of the Registrable Securities constitutes a primary offering of securities by the Company, (ii) Rule 415 may not be relied upon for the registration of the resale of any or all of the Registrable Securities, and/or (iii) a Holder of any Registrable Securities must be named as an underwriter and such Holder does not consent to be so named in the Registration Statement, the Holders shall not be entitled to liquidated damages with respect to the Registrable Securities not registered; provided that the Company continues to use its commercially reasonable efforts at the first opportunity that is permitted by the Commission to register for resale all such Registrable Securities, using one or more registration statements that it is then entitled to use. The Company shall use its commercially reasonable efforts to cause each such registration statement to be declared effective under the Securities Act as soon as reasonably possible, and shall use its commercially reasonable efforts to keep such registration statement continuously effective under the Securities Act during the entire Effectiveness Period.

(d) If the Company receives a written notice from the Holders of at least 20% of the Registrable Securities then outstanding that they desire to distribute the Registrable Securities held by them (or a portion thereof) by means of an underwritten offering or a block trade, the Company shall use commercially reasonable efforts to promptly engage one or more underwriter(s) or investment bank(s) to conduct such an offering of the Registrable Securities (a "Secondary Offering"). The underwriter(s) or investment bank(s) will be selected by the Holders of a majority of the Registrable Securities held by all Holders providing such notice and reasonably acceptable to the Company. All Holders proposing to distribute their securities through such Secondary Offering shall enter into an underwriting agreement or other agreement(s), including any lock-up or market standoff agreements, in customary form with the underwriter(s) or investment bank(s) selected for such Secondary Offering as may be mutually agreed upon among the Company, the underwriter(s) or investment bank(s) and Holders of a majority of the Registrable Securities to be offered in such Secondary Offering. In connection with a Secondary Offering, the Company shall enter into and perform its obligations under an underwriting agreement or other agreement(s), in usual and customary form as may be mutually agreed upon among the Company, the underwriter(s) or investment bank(s) and the Holders of a majority of the Registrable Securities to be included in such Secondary Offering. Notwithstanding any other provision of this Section 3(d), if the underwriter(s) or investment bank(s) advise(s) such Holders that marketing factors require a limitation on the number of shares to be offered in the Secondary Offering, then the number of shares, including the Registrable Securities, that may be included in such Secondary Offering shall be allocated among such Holders of Registrable Securities, and any other holders of shares, as follows: (i) first to such Holders of Registrable Securities in proportion (as nearly as practicable) to the number of Registrable Securities owned by each such Holder or in such other proportion as shall mutually be agreed to by all such selling Holders; and (ii) second to all other holders of securities included in the Secondary Offering.

4. Registration Procedures. The Company will keep each Holder reasonably advised as to the filing and effectiveness of the Registration Statement. At its expense with respect to the Registration Statement, the Company will use its commercially reasonable efforts to:

(a) prepare and file with the Commission with respect to the Registrable Securities, a Registration Statement in accordance with Section 3(a) hereof, and use its commercially reasonable efforts to cause such Registration Statement to become effective and to remain effective for the Effectiveness Period;

(b) not name any Holder in the Registration Statement as an underwriter without that Holder's prior written consent;

(c) if the Registration Statement is subject to review by the Commission, promptly respond to all comments, diligently pursue resolution of any comments to the satisfaction of the Commission and file all amendments and supplements to such Registration Statement as may be required to respond to comments from the Commission and otherwise to enable such Registration Statement to be declared effective;

(d) prepare and file with the Commission such amendments and supplements to such Registration Statement and prospectus used in connection with such Registration Statement as may be necessary to effect a Secondary Offering, comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement and keep such Registration Statement effective during the Effectiveness Period;

(e) not less than four (4) Trading Days prior to filing a Registration Statement or any related prospectus or any amendment or supplement thereto, the Company shall furnish to the Holders that hold at least 1,500,000 shares of Registrable Securities (appropriately adjusted for any stock split, dividend, combination or other recapitalization) copies of, or a link to, all such documents proposed to be filed (other than those incorporated by reference) and duly consider any comments received by the Holders;

(f) furnish, without charge, to each Holder of Registrable Securities covered by such Registration Statement (i) a reasonable number of copies of such Registration Statement (including any exhibits thereto other than exhibits incorporated by reference), each amendment and supplement thereto as such Holder may reasonably request, (ii) such number of copies of the prospectus included in such Registration Statement (including each preliminary prospectus and any other prospectus filed under Rule 424 of the Securities Act) as such Holders may reasonably request, in conformity with the requirements of the Securities Act, and (iii) such other documents as such Holder may reasonably require to consummate the disposition of the Registrable Securities owned by such Holder, but only during the Effectiveness Period; provided that the Company shall have no obligation to furnish any document pursuant to this clause that is available on the Electronic Data Gathering, Analysis, and Retrieval ("**EDGAR**") system;

(g) use its reasonable best efforts to register or qualify the securities covered by such Registration Statement under such other applicable securities laws of such jurisdictions within the United States, including Blue Sky laws, as any Holder of Registrable Securities covered by such Registration Statement reasonably requests and as may be reasonably necessary for the marketability of the Registrable Securities (such request to be made by the time the applicable Registration Statement is deemed effective by the Commission) and do any and all other acts and things reasonably necessary to enable such Holder to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Holder; provided, that the Company shall not be required to (i) qualify generally to do

business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph or (ii) consent to general service of process in any such jurisdiction where it has not already done so;

(h) promptly as practicable after becoming aware of any event, notify each Holder of Registrable Securities at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event that will, after the occurrence of such event, cause the prospectus included in such Registration Statement, if not amended or supplemented, to contain an untrue statement of a material fact or an omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and the Company shall promptly thereafter prepare and furnish to such Holder a supplement or amendment to such prospectus (or prepare and file appropriate reports under the Exchange Act) so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, unless suspension of the use of such prospectus otherwise is authorized herein or in the event of a Blackout Period, in which case no supplement or amendment need be furnished (or Exchange Act filing made) until the termination of such suspension or Blackout Period; provided that any and all information provided to the Holder pursuant to such notification shall remain confidential to each Holder until such information otherwise becomes public, unless disclosure by a Holder is required by law;

(i) comply, and continue to comply during the Effectiveness Period, in all material respects with the Securities Act and the Exchange Act and with all applicable rules and regulations of the Commission with respect to the disposition of all securities covered by such Registration Statement;

(j) as promptly as practicable after becoming aware of such event, notify each Holder of Registrable Securities being offered or sold pursuant to the Registration Statement of the issuance by the Commission or any other federal or state governmental authority of any stop order or other suspension of effectiveness of the Registration Statement or the initiation of any proceedings for that purpose;

(k) use its commercially reasonable efforts to furnish, or cause to be furnished, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters and (ii) a “comfort” letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(l) provide a transfer agent and registrar, which may be a single entity, for the shares of Common Stock at all times and cooperate with the Holders to facilitate the timely preparation and delivery of the Registrable Securities to be delivered to a transferee pursuant to the Registration Statement (whether electronically or in certificated form) which Registrable Securities shall be free, to the extent permitted by (and solely to the extent the Holders comply with the requirements of) the Subscription Agreements, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may request;

(m) cooperate with the Holders of Registrable Securities being offered pursuant to the Registration Statement to issue and deliver, or cause its transfer agent to issue and deliver, certificates representing Registrable Securities to be offered pursuant to the Registration Statement within a reasonable time after the delivery of certificates representing the Registrable Securities to the transfer

agent or the Company, as applicable, and enable such certificates to be in such denominations or amounts as the Holders may reasonably request and registered in such names as the Holders may request;

(n) during the Effectiveness Period, refrain from bidding for or purchasing any Common Stock or any right to purchase Common Stock or attempting to induce any person to purchase any such security or right if such bid, purchase or attempt would in any way limit the right of the Holders to sell Registrable Securities by reason of the limitations set forth in Regulation M of the Exchange Act;

(o) use its commercially reasonable efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment;

(p) cooperate with any broker-dealer through which a Holder proposes to resell its Registrable Securities in effecting a filing with the FINRA Corporate Financing Department pursuant to FINRA Rule 5110, as requested by any such Holder, and the Company shall pay the filing fee required by such filing within two (2) Trading Days of the request therefor; and

(q) take all other commercially reasonable actions necessary to enable, expedite or facilitate the Holders to dispose of the Registrable Securities by means of the Registration Statement during the Term.

##### 5. Obligations of the Holders.

(a) Each Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 4(h) hereof or of the commencement of a Blackout Period, such Holder shall discontinue the disposition of Registrable Securities included in the Registration Statement until such Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 4(h) hereof or notice of the end of the Blackout Period.

(b) The Holders of the Registrable Securities shall provide such information as may reasonably be requested by the Company in connection with the preparation of any registration statement, including amendments and supplements thereto, in order to effect the registration of any Registrable Securities under the Securities Act pursuant to Section 3(a) of this Agreement and in connection with the Company's obligation to comply with federal and applicable state securities laws, including a completed questionnaire in the form attached to the Subscription Agreements as Annex A (a "**Selling Securityholder Notice and Questionnaire**") or any update thereto not later than three (3) Business Days following a request therefore from the Company.

(c) Each Holder, by its acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Holder has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement.

(d) Each Holder of 5% or more of the Registrable Securities, regardless of its participation in a Secondary Offering, agrees to execute a lock-up or market standoff agreement on the terms and for the same period (both pre- and post-effectiveness) as is approved by the Holders of a majority of the Registrable Securities to be included in such Secondary Offering entered into in connection with such Secondary Offering, in customary form with the underwriter(s) or investment bank(s) selected for such Secondary Offering.

6. Registration Expenses. The Company shall pay all expenses in connection with any registration obligation provided herein, including, without limitation, all registration, filing, stock exchange fees, printing expenses, any FINRA filing fees, all fees and expenses of complying with applicable securities laws, and the fees and disbursements of counsel for the Company and of the Company's independent accountants, and reasonable fees and disbursements of a single counsel of the Holders selected by the Holders of at least a majority of the Registrable Securities and reasonably acceptable to the Company, in an amount not to exceed \$15,000; provided, however, that in connection with any and all Secondary Offerings and Piggy-Back Registrations contemplated herein, the Company shall also pay for the reasonable fees and disbursements of a single counsel of the Holders selected by the Holders of at least a majority of the Registrable Securities and reasonably acceptable to the Company, in an aggregate amount not to exceed \$100,000; provided, further, that, in any underwritten registration, the Company shall have no obligation to pay any underwriting discounts, selling commissions or transfer taxes attributable to the Registrable Securities being sold by the Holders thereof, which underwriting discounts, selling commissions and transfer taxes shall be borne by such Holders. Except as provided in Section 6 and Section 8 of this Agreement or otherwise agreed to by the Company, the Company shall not be responsible for the expenses of any attorney or other advisor employed by a Holder or for any other fees, disbursements and expenses incurred by Holders not specifically agreed to in this Agreement.

7. Assignment of Rights. No Holder may assign its rights under this Agreement to any party without the prior written consent of the Company; provided, however, that any Holder may assign its rights under this Agreement without such consent (a) to a Permitted Assignee as long as (i) such transfer or assignment is effected in accordance with applicable securities laws; (ii) such transferee or assignee agrees in writing to become bound by and subject to the terms of this Agreement; and (iii) such Holder notifies the Company in writing of such transfer or assignment, stating the name and address of the transferee or assignee and identifying the Registrable Securities with respect to which such rights are being transferred or assigned; or (b) as otherwise permitted under the Subscription Agreements. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Holders of a majority of the Registrable Securities.

8. Indemnification.

(a) In the event of the offer and sale of Registrable Securities under the Securities Act, the Company shall, and hereby does, indemnify and hold harmless, to the fullest extent permitted by law, each Holder, its directors, officers, stockholders, members, partners, employees and agents and each other person, if any, who controls or is under common control with such Holder within the meaning of Section 15 of the Securities Act (collectively, the "Holder Indemnified Parties"), against any losses, claims, damages or liabilities, joint or several, and expenses to which the Holder Indemnified Parties may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages, liabilities or expenses (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any registration statement prepared and filed by the Company under which Registrable Securities were registered under the Securities Act, any preliminary prospectus, free writing prospectus as defined under Rule 433(d) of the Securities Act ("Free Writing Prospectus"), any "testing-the-water" communication that is a written communication within the meaning of Rule 405 under the Securities Act ("Testing the Water Communication"), any road show communication as defined in Rule 433(h) under the Securities Act ("Road Show Communication"), final prospectus or summary prospectus contained therein, or any amendment or supplement thereto, or arise out of or are based upon any omission or alleged omission to state therein a material fact required to be stated or necessary to make the statements therein in light of the circumstances in which they were made not misleading, and the Company shall reimburse the Holder Indemnified Parties for any legal or any other expenses reasonably incurred by them in connection with investigating, defending or settling any such loss, claim, damage, liability, action or proceeding; provided,

however, that the Company shall not be liable in any such case (i) to the extent, but only to the extent, that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (x) an untrue statement in or omission from such registration statement, any such preliminary prospectus, Free Writing Prospectus, Testing the Water Communication, Road Show Communication, final prospectus, summary prospectus, amendment or supplement in reliance upon and in conformity with written information furnished by a Holder or its representative (acting on such Holder's behalf) to the Company expressly for use in the preparation thereof or (y) the failure of a Holder to comply with the covenants and agreements contained in Section 5 hereof respecting the sale of Registrable Securities. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Holder Indemnified Parties and shall survive the transfer of such shares by the Holder.

(b) As a condition to including Registrable Securities in any registration statement filed pursuant to this Agreement, each Holder agrees, severally and not jointly, to be bound by the terms of this Section 8 and to indemnify and hold harmless, to the fullest extent permitted by law, the Company, each of its directors, officers, partners, and each underwriter, if any, and each other person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities, joint or several, to which the Company or any such director or officer or controlling person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any untrue statement of a material fact contained in any registration statement, any preliminary prospectus, Free Writing prospectus, Testing the Water Communication, Road Show Communication, final prospectus, summary prospectus, amendment or supplement thereto, or arise out of or are based upon the omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, to the extent, but only to the extent, that such untrue statement or omission is included or omitted in reliance upon and in conformity with written information furnished by the Holder or its representative (acting on such Holder's behalf) to the Company expressly for use in the preparation thereof, and such Holder shall reimburse the Company, and its directors, officers, partners, and any such controlling persons for any legal or other expenses reasonably incurred by them in connection with investigating, defending, or settling any such loss, claim, damage, liability, action, or proceeding; provided, however, that the indemnity obligation contained in this Section 8(b) shall in no event exceed the amount of the net proceeds received by such Holder as a result of the sale of such Holder's Registrable Securities pursuant to such registration statement. Such indemnity shall remain in full force and effect, regardless of any investigation made by or on behalf of the Company or any such director, officer or controlling person and shall survive the transfer by any Holder of such shares.

(c) Promptly after receipt by an indemnified party of notice of the commencement of any action or proceeding involving a claim referred to in this Section 8 (including any governmental action), such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the indemnifying party of the commencement of such action; provided, however, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under this Section 8, except to the extent that the indemnifying party is actually prejudiced by such failure to give notice in any material respect. In case any such action is brought against an indemnified party, unless in the reasonable judgment of counsel to such indemnified party a conflict of interest between such indemnified party and indemnifying parties may exist or the indemnified party may have defenses not available to the indemnifying party in respect of such claim, the indemnifying party shall be entitled to participate in and to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in

connection with the defense thereof, unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties arises in respect of such claim or the indemnified party may have defenses not available to the indemnifying party in respect of such claim after the assumption of the defenses thereof or the indemnifying party fails to defend such claim in a diligent manner, other than reasonable costs of investigation. Neither an indemnified party nor an indemnifying party shall be liable for any settlement of any action or proceeding effected without its consent (which shall not be unreasonably withheld or delayed). No indemnifying party shall, without the consent of the indemnified party, consent to entry of any judgment or enter into any settlement, which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. Notwithstanding anything to the contrary set forth herein, and without limiting any of the rights set forth above, in any event any party shall have the right to retain, at its own expense, counsel with respect to the defense of a claim. Each indemnified party shall furnish such information regarding itself or the claim in question as an indemnifying party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If an indemnifying party does not or is not permitted to assume the defense of an action pursuant to Section 8(c) or in the case of the expense reimbursement obligation set forth in Sections 8(a) and 8(b), the indemnification required by Sections 8(a) and 8(b) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or expenses, losses, damages, or liabilities are incurred.

(e) If the indemnification provided for in Sections 8(a) and 8(b) is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense (i) in such proportion as is appropriate to reflect the proportionate relative fault of the indemnifying party on the one hand and the indemnified party on the other (determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission relates to information supplied by the indemnifying party or the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission), or (ii) if the allocation provided by clause (i) above is not permitted by applicable law or provides a lesser sum to the indemnified party than the amount hereinafter calculated, then in such proportion as is appropriate to reflect not only the proportionate relative fault of the indemnifying party and the indemnified party, but also the relative benefits received by the indemnifying party on the one hand and the indemnified party on the other, as well as any other relevant equitable considerations. Notwithstanding any other provision of this Section 8(e), no Holder shall be required to contribute any amount in excess of the amount by which the net proceeds received by such Holder from the sale of the Registrable Securities pursuant to the Registration Statement exceeds the amount of damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement of a material fact or omission, except in the case of fraud or willful misconduct. No indemnified party guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any indemnifying party who was not guilty of such fraudulent misrepresentation.

(f) The indemnity and contribution agreements contained in this Section 8 are in addition to any liability that the indemnifying parties may have to the indemnified parties and are not in diminution or limitation of the indemnification provisions under the Subscription Agreements.

9. Rule 144. The Company shall timely file all reports required to be filed by the Company after the date hereof under the Exchange Act and the rules and regulations adopted by the Commission

thereunder, and if the Company is not required to file reports pursuant to such sections, it will prepare and furnish to the Purchasers and make publicly available in accordance with Rule 144(c) such information as is required for the Purchasers to sell shares of Common Stock under Rule 144.

#### 10. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of New York, both substantive and remedial, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Any judicial proceeding brought against either of the parties to this Agreement or any dispute arising out of this Agreement or any matter related hereto shall be brought in the state or federal courts located in the State of New York and, by its execution and delivery of this Agreement, each party to this Agreement accepts the jurisdiction of such courts. The foregoing consent to jurisdiction shall not be deemed to confer rights on any person other than the parties to this Agreement. Remedies. Except as otherwise specifically set forth herein with respect to a Registration Event, in the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Except as otherwise specifically set forth herein with respect to a Registration Event, the Company and each Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations; Prohibition on Filing Other Registration Statements. Except for the Registrable Securities and up to 135,501 shares of Common Stock held by consultants to the Company who have existing registration rights with respect to such shares, neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in any Registration Statements. The Company shall not file any other registration statements, other than on Forms S-4 or S-8 or their then equivalents, until all Registrable Securities are registered pursuant to a Registration Statement that is declared effective by the Commission, provided that this Section 10(b) shall not prohibit the Company from filing amendments to registration statements filed prior to the date of this Agreement.

(c) Piggy-Back Registrations. If, at any time during the Effectiveness Period, there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans (any such registration, a "**Piggy-Back Registration**"), then the Company shall deliver to each Holder a written notice of such determination and, if within fifteen days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered (the "**Piggy-Back Securities**"); provided, however, that the Company shall not be required to register any Registrable Securities pursuant to this Section 10(c) after the Term or that are eligible for resale pursuant to Rule 144 (without volume restrictions or current public information requirements) promulgated by the Commission pursuant to the Securities Act or that are the subject of a then effective Registration Statement that is



available for resales or other dispositions by such Holder or otherwise cease to be deemed “Registrable Securities.” If the Piggy-Back Registration relates to an underwritten public offering and the managing underwriter of such proposed public offering advises the Company and the Holders in writing that, in its reasonable opinion, the number of Registrable Securities requested to be included in the Piggy-Back Registration in addition to the securities being registered by the Company or any other security holder would be greater than the total number of securities which can reasonably be sold in the offering without having a material adverse effect on the distribution of such securities or otherwise having a material adverse effect on the marketability thereof (the “**Maximum Number of Securities**”), then (i) in the event the Company initiated the Piggy-Back Registration, the Company shall include in such Piggy-Back Registration first, the securities the Company proposes to register, second, the Piggy-Back Securities, in an amount that together with the securities the Company proposes to register, shall not exceed the Maximum Number of Securities, such amount to be allocated among the Holders of the Piggy-Back Securities on a pro rata basis (based on the number of securities of the Company held by each such Holder), and third, the securities of all other selling security holders, in an amount that together with the securities the Company proposes to register and the Piggy-Back Securities, shall not exceed the Maximum Number of Securities, such amount to be allocated among such other selling security holders on a pro rata basis (based on the number of securities of the Company held by each such selling security holder); and (ii) in the event any holder of securities of the Company initiated the Piggy-Back Registration, the Company shall include in such Piggy-Back Registration first, the Piggy-Back Securities in an amount that shall not exceed the Maximum Number of Securities (with such amount to be allocated among the Holders of the Piggy-Back Securities on a pro rata basis based on the number of securities of the Company held by each such Holder), second, the securities such initiating security holder proposes to register, in an amount that together with the Piggy-Back Securities, shall not exceed the Maximum Number of Securities, third, the securities of any other selling security holders, in an amount that together with the Piggy-Back Securities and the securities the initiating security holder proposes to register, shall not exceed the Maximum Number of Securities, such amount to be allocated among such other selling security holders on a pro rata basis (based on the number of securities of the Company held by each such selling security holder), and fourth, any securities the Company proposes to register, in an amount that together with Piggy-Back Securities, the securities the initiating security holder and the other selling security holders propose to register, shall not exceed the Maximum Number of Securities.

(d) Subsequent Registration Rights. Until the Registration Statement required hereunder is declared effective by the Commission, the Company shall not enter into any agreement granting any registration rights with respect to any of its securities to any person without the written consent of Holders representing at least a majority of the outstanding Registrable Securities.

(e) Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, Permitted Assignees, executors and administrators of the parties hereto.

(f) No Inconsistent Agreements. The Company has not entered, as of the date hereof, and shall not enter, on or after the date of this Agreement, into any agreement with respect to its securities that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof.

(g) Entire Agreement. This Agreement and the documents, instruments and other agreements specifically referred to herein or delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof.

(h) Notices, etc. All notices, consents, waivers, and other communications which are required or permitted under this Agreement shall be in writing will be deemed given to a party (a) upon

receipt, when personally delivered; (b) one (1) Business Day after deposit with a nationally recognized overnight courier service with next day delivery specified, costs prepaid on the date of delivery, if delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (c) the date of transmission if sent by e-mail with confirmation of transmission by the transmitting equipment if such notice or communication is delivered prior to 5:00 P.M., New York City time, on a Trading Day, or the next Trading Day after the date of transmission, if such notice or communication is delivered on a day that is not a Trading Day or later than 5:00 P.M., New York City time, on any Trading Day, provided confirmation of 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 recipients email server that such e-mail could not be delivered to such recipient; (d) the date received or rejected by the addressee, if sent by certified mail, return receipt requested, postage prepaid; or (e) seven (7) days after the placement of the notice into the mails (first class postage prepaid), to the party at the address or e-mail address furnished by the such party,

If to the Company, to:

Transphorm, Inc.  
75 Castilian Drive  
Goleta, CA 93117  
Attn: Primit Parikh and Cameron McAulay  
Email: pparikh@transphormusa.com and cmcaulay@transphormusa.com

with copy to:

Wilson Sonsini Goodrich and Rosati P.C.  
650 Page Mill Road  
Palo Alto, CA 94304  
Attn: Julia Reigel and Erika Muhl  
Email: jreigel@wsgr.com and emuhl@wsgr.com

if to a Holder, to:

such Holder at the address set forth on the signature page hereto or in the Company's records;

or at such other address as any party shall have furnished to the other parties in writing in accordance with this Section 10(h).

(i) Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any Holder, upon any breach or default of the Company under this Agreement, shall impair any such right, power or remedy of such Holder nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereunder occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Holder of any breach or default under this Agreement, or any waiver on the part of any Holder of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, or by law or otherwise afforded to any holder, shall be cumulative and not alternative.

(j) Counterparts. This Agreement may be executed in any number of counterparts, and with respect to any Purchaser, by execution of an Omnibus Signature Page to this Agreement and the Subscription Agreements, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument. In the event that any signature is delivered by an e-mail, which contains a copy of an executed signature page such as a portable document

format (.pdf) file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such e-mail of an executed signature page such as a .pdf signature page were an original thereof.

(k) Severability. In the case any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be replaced with a valid, legal and enforceable provision that as closely as possible reflects the parties' intent with respect thereto, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(l) Amendments. Except as otherwise provided herein, the provisions of this Agreement may be amended at any time and from time to time, and particular provisions of this Agreement may be waived, with and only with an agreement or consent in writing signed by the Company and the Majority Holders; provided that this Agreement may not be amended and the observance of any term hereof may not be waived with respect to any Holder without the written consent of such Holder if such amendment or waiver on its face materially and adversely affects the rights of such Holder under this Agreement in a manner that is different than the other Holders and provided, further, that with respect to any Secondary Offering the provisions of this Agreement may be amended or waived with an agreement or consent in writing signed by the Company and the Holders of a majority of the Registrable Securities to be offered in such Secondary Offering. The Holders acknowledge that by the operation of this Section 10(l), the Majority Holders may have the right and power to diminish or eliminate all rights of the Holders under this Agreement.

(m) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Except as expressly provided herein, each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained herein was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. Except as expressly provided herein, it is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

**[COMPANY SIGNATURE PAGE FOLLOWS]**

This Registration Rights Agreement is hereby executed as of the date first above written.

**THE COMPANY:**

TRANSPHORM, INC.

By: /s/ Mario Rivas  
Name: Mario Rivas  
Title: Chief Executive Officer

**BROKERS:**

LOOP CAPITAL MARKETS LLC

By: /s/ Cecil Brown  
Name: Cecil Brown  
Title: SVP

SPARTAN CAPITAL SECURITIES, LLC

By: /s/ Jason Diamond  
Name: Jason Diamond  
Title: Managing Director

**PURCHASERS:**

See Omnibus Signature Pages to Subscription Agreement (Purchasers do not sign here)

**Schedule 1**

| <b>Broker</b>                   | <b>Number of Placement Agent Warrants Received</b> |
|---------------------------------|--|
| Loop Capital Markets LLC        | 82,500   |
| Spartan Capital Securities, LLC | 67,500   |

## SUBSCRIPTION AGREEMENT

This Subscription Agreement (this “**Agreement**”) has been executed by the purchaser set forth on the signature page hereof (the “**Purchaser**”) and Transphorm, Inc., a Delaware corporation (the “**Company**” or “**Transphorm**”) in connection with the private placement offering (the “**Offering**”) by the Company of shares (the “**Shares**”) of the Company’s common stock, par value \$0.0001 per share (“**Common Stock**”), at a purchase price of \$3.00 per share (the “**Purchase Price**”).

### RECITALS

A. The Shares subscribed for pursuant to this Agreement have not been registered under the Securities Act of 1933, as amended (the “**Securities Act**”). The Offering is being made on a best efforts basis to “accredited investors,” as defined in Regulation D under the Securities Act in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act and/or Rule 506 of Regulation D.

B. The undersigned acknowledges receipt of a copy of the Registration Rights Agreement, substantially in the form of Exhibit A hereto (the “**Registration Rights Agreement**”).

C. Any term sheet, disclosure schedule or other information document, delivered to the Purchaser prior to the Purchaser’s execution of this Agreement, and any such document delivered to the Purchaser after the Purchaser’s execution of this Agreement and prior to the Closing (as defined below) of the Purchaser’s subscription hereunder are collectively referred to as the “**Disclosure Materials**.”

### AGREEMENT

The Company and the Purchaser hereby agree as follows:

#### 1. **Subscription.**

##### 1.1 Purchase and Sale of the Shares.

(a) Subject to the terms and conditions of this Agreement, the undersigned Purchaser agrees to purchase, and the Company agrees to sell and issue to the Purchaser, that number of Shares set forth on the Omnibus Signature Page attached hereto at the Purchase Price, for a total aggregate Purchase Price as set forth on such Omnibus Signature Page.

(b) This Agreement is one of a series of subscription agreements executed by the Company and other purchasers of Shares (the “**Other Purchasers**”) in connection with the Offering with the same terms and conditions set forth in this Agreement (collectively, the “**Other Subscription Agreements**”).

##### 1.2 Subscription Procedure; Closing.

(a) Closing. Subject to the terms and conditions of this Agreement (including Sections 5 and 6), the purchase and sale of the Shares shall take place remotely via the exchange of documents and signatures on the date hereof (the “**Closing Date**”) at such time and place as mutually agreed to by the Company and the Placement Agents (as defined in Section 2) (the “**Closing**”). If requested by the Purchaser prior to the Closing, the Company shall, within five (5) business days following the Closing, deliver a duly-executed stock certificate to the Purchaser or its designee

evidencing the Purchaser's ownership of the number of Shares set forth on the Omnibus Signature Page attached hereto.

(b) Subscription Procedure. To complete a subscription for the Shares, the Purchaser must fully comply with the subscription procedure provided in paragraphs (i) through (ii) of this Section 1.2(c) on or before the Closing:

(i) Subscription Documents. At or before the Closing, the Purchaser shall review, complete and execute the Omnibus Signature Page to this Agreement and the Registration Rights Agreement, the Investor Profile, Selling Securityholder Notice and Questionnaire and Accredited Investor Certification, attached hereto following the Omnibus Signature Page (collectively, the "Subscription Documents"), and deliver the Subscription Documents and such additional forms and questionnaires to the party indicated thereon at the address set forth under the caption "*How to subscribe for Shares in the private offering of Transphorm, Inc.*," below. Executed documents may be delivered to such party by facsimile or .pdf (or similar format) sent by electronic mail (e-mail).

(ii) Purchase Price. Simultaneously with the delivery of the Subscription Documents as provided herein, and in any event at or prior to the Closing, the Purchaser shall deliver to the Bank of New York Mellon, in its capacity as escrow agent (the "Escrow Agent"), under an escrow agreement among the Company, the Placement Agents and the Escrow Agent (the "Escrow Agreement"), the full Purchase Price set forth on the Purchaser's Omnibus Signature Page attached hereto, by wire transfer of immediately available funds, pursuant to the instructions set forth under the caption "*How to subscribe for Shares in the private offering of Transphorm, Inc.*," below. Such funds will be held for the Purchaser's benefit in the escrow account established for the Offering (the "Escrow Account").

2. Placement Agents and Financial Advisors. Loop Capital Markets LLC, a U.S.-registered broker-dealer ("Loop Capital"), has been engaged by Transphorm as lead placement agent, and Spartan Capital Securities, LLC, a U.S.-registered broker-dealer ("Spartan Capital"), is acting as co-placement agent, on a best efforts basis, for the Offering. Transphorm, subject to its agreements with Loop Capital and Spartan Capital, may engage additional placement agents (Loop Capital and Spartan Capital, together with any such additional placement agents, the "Placement Agents"). The Company has also retained as financial advisors, B. Riley Securities, Inc. ("B. Riley") and Craig-Hallum Capital Group LLC ("Craig Hallum" and together with B. Riley, the "Financial Advisors"). As compensation for their services, the Placement Agents will receive warrants to purchase Common Stock with an exercise price per share equal to 110% of the Purchase Price of Shares sold in the Offering (the "Placement Agent Warrants"), and the Placement Agents and the Financial Advisors will be paid the fees outlined in the Disclosure Schedules. Transphorm will also pay certain expenses of the Placement Agents and B. Riley in connection with the Offering.

3. Representations and Warranties of the Company. Except (i) as set forth in the disclosure schedule delivered to the Purchaser concurrently with the execution of this Agreement (the "Disclosure Schedules") or (ii) as expressly disclosed in the SEC Reports (as defined below) (but excluding any disclosures contained under the heading "Risk Factors" and any disclosure of risks included in any "forward-looking statements" disclaimer or in any other section to the extent they are forward-looking statements or cautionary, predictive or forward-looking in nature), the Company hereby represents and warrants to the Purchaser, as of the Closing, the following:

a. Organization and Qualification. The Company and each of its subsidiaries is a corporation or other business entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and has the requisite corporate power to own its properties and to carry on its business as now being conducted. The Company and each of its subsidiaries is duly qualified

as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have, or reasonably be expected to have, any material adverse effect on (i) the business, properties, assets, liabilities, operations or financial condition of the Company and its subsidiaries taken as a whole, (ii) the transactions contemplated hereby or in the other Transaction Documents (as defined below) or by the agreements and instruments to be entered into in connection herewith or therewith or (iii) the authority or ability of the Company to perform its obligations under the Transaction Documents (in each case, a “**Material Adverse Effect**”). For purposes of this Agreement, none of the following, either alone or in combination, will constitute, or be considered in determining whether there has been, a Material Adverse Effect for purposes of clause (i) of the definition thereof: any event, change, circumstance, effect or other matter resulting from or related to (1) any outbreak or escalation of war or major hostilities or any act of terrorism, (2) changes in Laws, GAAP or enforcement or interpretation thereof, (3) changes that generally affect the industries and markets in which the Company operates, or (4) changes in financial markets, general economic conditions (including prevailing interest rates, exchange rates, commodity prices and fuel costs) or political conditions, except, in each case, to the extent such event, change, circumstance, effect or other matter has had, or would be reasonably expected to have, a disproportionate effect on the business, properties, assets, liabilities, operations or financial condition of the Company and its subsidiaries, taken as a whole, compared to other participants in the industries in which the Company operates.

b. Authorization, Enforcement, Compliance with Other Instruments. (i) The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Registration Rights Agreement and the Escrow Agreement (the “**Transaction Documents**”) and to issue the Shares, in accordance with the terms hereof and thereof; (ii) the execution and delivery by the Company of each of the Transaction Documents and the consummation by it of the transactions contemplated hereby and thereby, including the issuance of the Shares, have been, or will be at the time of execution of each such Transaction Document, duly authorized by the Company’s Board of Directors, and no further consent or authorization is, or will be at the time of execution of each such Transaction Document, required by the Company, its Board of Directors or its stockholders; (iii) each of the Transaction Documents will be duly executed and delivered by the Company; and (iv) the Transaction Documents, when executed, will constitute the valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors’ rights and remedies and, with respect to any rights to indemnity or contribution contained in the Transaction Documents, as such rights may be limited by state or federal laws or public policy underlying such laws.

c. Capitalization. The authorized capital stock of the Company consists of 750,000,000 shares of Common Stock and 5,000,000 shares of preferred stock, par value \$0.0001 per share (the “**Preferred Stock**”). As of immediately before the Closing, the Company has 35,229,363 shares of Common Stock and no shares of Preferred Stock issued and outstanding. All of the outstanding shares of Common Stock and of the capital stock of each of the Company’s subsidiaries have been duly authorized, validly issued and are fully paid and nonassessable. No shares of capital stock of the Company or any of its subsidiaries are subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company. There are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company or any of its subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its subsidiaries. There are no outstanding debt securities of the Company or any of its subsidiaries. Other than pursuant to the Registration Rights Agreement, there are no agreements or arrangements under which the Company or

any of its subsidiaries is obligated to register the sale of any of their securities under the Securities Act. There are no registration statements that have been filed with the Securities and Exchange Commission (the “**SEC**”) but are not yet effective relating to securities of the Company, and there are no outstanding comment letters from the SEC or any other regulatory agency. There are no securities or instruments of the Company or any of its subsidiaries containing anti-dilution or similar provisions, including the right to adjust the exercise, exchange or reset price under such securities, that will be triggered by the issuance of the Shares as described in this Agreement. No co-sale right, right of first refusal or other similar right exists with respect to the Shares or the issuance and sale thereof.

d. Issuance of Shares. The Shares that are being issued to the Purchaser hereunder, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, will be duly and validly issued, fully paid and nonassessable, and free of restrictions on transfer other than restrictions on transfer under the Transaction Documents, applicable state and federal securities laws and liens or encumbrances created by or imposed by the Purchaser.

e. No Conflicts. The execution, delivery and performance of each of the Transaction Documents by the Company, and the consummation by the Company of the transactions contemplated hereby and thereby including the issuance and sale of the Shares in accordance with this Agreement will not (i) result in a violation of the Certificate of Incorporation or the Bylaws (or equivalent constitutive documents) of the Company or any of its subsidiaries, (ii) violate or conflict with, or result in a breach of any provision of, 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, credit agreement or instrument to which the Company or any subsidiary is a party, except for those which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including U.S. federal and state securities laws and regulations) applicable to the Company or any subsidiary or by which any property or asset of the Company or any subsidiary is bound or affected, except for those which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Neither the Company nor any subsidiary is in violation of or in default under, any provision of its constitutive documents. Neither the Company nor any subsidiary is in violation of any term of or in default under any contract, agreement, mortgage, indebtedness, indenture, instrument, judgment, decree or order or any statute, rule or regulation applicable to the Company or any subsidiary, except for any such violation or default that has not had or would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Except as specifically contemplated by this Agreement and as required under the Securities Act and any applicable state securities laws, neither the Company nor any of its subsidiaries is required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under or contemplated by this Agreement or the other Transaction Documents in accordance with the terms hereof or thereof other than (i) the filings required pursuant to Section 9(h), (ii) the filing of the registration statement contemplated by the Registration Rights Agreement, and (iii) the filing of a Notice of Exempt Offering of Securities on Form D with the SEC under Regulation D. Neither the execution and delivery by the Company of the Transaction Documents, nor the consummation by the Company of the transactions contemplated hereby or thereby, will require any notice, consent or waiver under any contract 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 their assets is subject, except for any notice, consent or waiver the absence of which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. All consents, authorizations, orders, filings and registrations which the Company or any of its subsidiaries is required to obtain pursuant to the preceding two sentences have been or will be obtained or effected on or prior to the Closing.



f. Absence of Litigation. There is no action, suit, claim, inquiry, notice of violation, proceeding (including any partial proceeding such as a deposition) or investigation before or by any court, public board, governmental or administrative agency, self-regulatory organization, arbitrator, regulatory authority, stock market, stock exchange or trading facility (an “Action”) now pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its subsidiaries or any of their respective officers or directors, which would be reasonably likely to have, individually or in the aggregate, a Material Adverse Effect. For the purpose of this Agreement, the knowledge of the Company means the knowledge of the executive officers of the Company (both actual or knowledge that they would have had upon reasonable inquiry of their direct reports responsible for the applicable subject matter). Neither the Company nor any of its subsidiaries is subject to any judgment, decree, or order which has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

g. Acknowledgment Regarding Purchaser’s Purchase of the Shares. The Company acknowledges and agrees that the Purchaser 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. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by the Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchaser’s purchase of the Shares.

h. No General Solicitation. Neither the Company, nor any of its Affiliates (as defined below), nor, to the knowledge of the Company, any person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Shares. “Affiliate” means, with respect to any person, any other person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such person, as such terms are used in and construed under Rule 144 under the Securities Act (“Rule 144”). Any investment fund or managed account that is managed on a discretionary basis by the same investment manager as the Purchaser will be deemed to be an Affiliate of the Purchaser.

i. No Integrated Offering. Neither the Company, nor any of its Affiliates, nor to the knowledge of the Company, any person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, other than the transactions contemplated hereby, under circumstances that would require registration of the Shares under the Securities Act or cause this offering of the Shares to be integrated with prior offerings by the Company for purposes of the Securities Act.

j. Employee Relations. Neither the Company nor any subsidiary is involved in any labor dispute nor, to the knowledge of the Company, is any such dispute threatened. Neither the Company nor any subsidiary is party to any collective bargaining agreement. The Company’s and/or its subsidiaries’ employees are not members of any union, and the Company believes that its and its subsidiaries’ relationship with their respective employees is good.

k. Intellectual Property Rights. The Company and each of its subsidiaries owns, possesses, or has rights to use, all Intellectual Property (as defined below) necessary for the conduct of the Company’s and its subsidiaries’ business as now conducted and disclosed to be owned, possessed or used by the Company or its subsidiaries in the SEC Reports, except for such failure to own, possess or have such rights that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, and, there are no unreleased liens or security interests which have been filed, or which the

Company has received notice of, against any of the patents owned by the Company. Furthermore, (A) there is no infringement, misappropriation or violation by third parties of any such Intellectual Property, except as such infringement, misappropriation or violation would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; (B) there is no pending or, to the Company's knowledge, threatened, Action by others challenging the Company's or any of its subsidiaries' rights in or to any such Intellectual Property, except for such failure to own, possess or have such rights that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; (C) the Intellectual Property owned by the Company and its subsidiaries, and to the Company's knowledge, the Intellectual Property licensed to the Company and its subsidiaries, has not been adjudged invalid or unenforceable, in whole or in part, and there is no pending or, to the Company's knowledge, threatened Action by others challenging the validity, enforceability or scope of any such Intellectual Property; (D) there is no pending or, to the Company's knowledge, threatened Action by others that the Company or any of its subsidiaries infringes, misappropriates or otherwise violates any Intellectual Property or other proprietary rights of others, neither the Company nor any of its subsidiaries has received any written notice of such Action; and (E) to the Company's knowledge, no employee of the Company or any of its subsidiaries is in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company or any of its subsidiaries or actions undertaken by the employee while employed with the Company or any of its subsidiaries, except such violation as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (1) the Company and its subsidiaries have disclosed to the U.S. Patent and Trademark Office ("**USPTO**") all information known to the Company to be relevant to the patentability of its inventions in accordance with 37 C.F.R. Section 1.56, and (2) neither the Company nor any of its subsidiaries made any misrepresentation or concealed any information from the USPTO in any of the patents or patent applications owned or licensed to the Company, or in connection with the prosecution thereof, in violation of 37 C.F.R. Section 1.56. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (x) there are no facts that are reasonably likely to provide a basis for a finding that the Company or any of its subsidiaries does not have clear title to the patents or patent applications purportedly owned or licensed to the Company or other proprietary information rights as purportedly owned by the Company or any of its subsidiaries and (y) no valid issued U.S. patent would be infringed by the activities of the Company or any of its subsidiaries relating to products currently or proposed to be manufactured, used or sold by the Company or any of its subsidiaries. "**Intellectual Property**" shall mean all patents, patent applications, trade and service marks, trade and service mark registrations, trade names, copyrights, licenses, inventions, trade secrets, domain names, technology and know-how.

1. **Environmental Laws.** The Company and each subsidiary have complied with all applicable Environmental Laws (as defined below), except for violations of Environmental Laws that, individually or in the aggregate, have not had and would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. There is no pending or, to the knowledge of the Company, threatened civil or criminal litigation, written notice of violation, formal administrative proceeding, or investigation, inquiry or information request, relating to any Environmental Law involving the Company or any subsidiary, except for litigation, notices of violations, formal administrative proceedings or investigations, inquiries or information requests that, individually or in the aggregate, have not had and would not reasonably be expected individually or in the aggregate, to have a Material Adverse Effect. For purposes of this Agreement, "**Environmental Law**" means any national, state, provincial or local law, statute, rule or regulation or the common law relating to the environment or occupational health and safety, including any statute, regulation, administrative decision or order pertaining to (i) treatment, storage, disposal, generation and transportation of industrial, toxic or

hazardous materials or substances or solid or hazardous waste; (ii) air, water and noise pollution; (iii) groundwater and soil contamination; (iv) the release or threatened release into the environment of industrial, toxic or hazardous materials or substances, or solid or hazardous waste, including emissions, discharges, injections, spills, escapes or dumping of pollutants, contaminants or chemicals; (v) the protection of wild life, marine life and wetlands, including all endangered and threatened species; (vi) storage tanks, vessels, containers, abandoned or discarded barrels, and other closed receptacles; (vii) health and safety of employees and other persons; and (viii) manufacturing, processing, using, distributing, treating, storing, disposing, transporting or handling of materials regulated under any law as pollutants, contaminants, toxic or hazardous materials or substances or oil or petroleum products or solid or hazardous waste. As used above, the terms “release” and “environment” shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. To the knowledge of the Company, there is no material environmental liability with respect to any solid or hazardous waste transporter or treatment, storage or disposal facility that has been used by the Company or any subsidiary.

m. Authorizations; Regulatory Compliance. The Company and each of its subsidiaries holds, and is operating in compliance with, all authorizations, licenses, permits, approvals, clearances, registrations, exemptions, consents, certificates and orders of any federal, state, local or foreign governmental or regulatory authority (each, a “**Governmental Authority**”) and supplements and amendments thereto (collectively, “**Authorizations**”) required for the conduct of its business as currently conducted in all applicable jurisdictions and all such Authorizations are valid and in full force and effect, except for Authorizations the absence of which, and the failure to comply with, would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries is in material violation of any terms of any such Authorizations, except, in each case, such as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received written notice of any revocation or modification of any such Authorization, or written notice that such revocation or modification is being considered, except to the extent that any such revocation or modification would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority or third party alleging that any product operation or activity is in material violation of any Authorizations. Neither the Company nor any of its subsidiaries is a party to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, or similar agreements, or has any reporting obligations pursuant to any such agreement, plan or correction or other remedial measure entered into with any Governmental Authority.

n. Title. Neither the Company nor any of its subsidiaries owns any real property. Each of the Company and its subsidiaries has good and marketable title to all of its personal property and assets (i) purportedly owned or used by them as reflected in the SEC Reports, as of their respective dates, or (ii) necessary for the conduct of their business as currently conducted, free and clear of any restriction, mortgage, deed of trust, pledge, lien, security interest or other charge, claim or encumbrance, except for such restriction, mortgage, deed of trust, pledge, lien, security interest or other charge, claim or encumbrance that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. With respect to properties and assets it leases, each of the Company and its subsidiaries is in compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances, except for such liens, claims or encumbrances which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

o. Tax Status. The Company and each subsidiary has (i) made and filed (taking into account any valid extensions) all federal and state income and other material tax returns, reports and

declarations required to be filed, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes that are material in amount for periods subsequent to the periods to which such returns, reports or declarations apply. To the knowledge of the Company, there are no unpaid taxes in any material amount claimed to be due from the Company or any subsidiary by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

p. Certain Transactions. None of the officers, directors and, to the Company's knowledge, none of the employees of the Company or any subsidiary is presently a party to any transaction with the Company or any subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any corporation, partnership, trust or other entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner, in each case in excess of \$120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option and restricted stock agreements under any equity compensation plan of the Company.

q. Rights of First Refusal. The Company is not obligated to offer the Shares offered hereunder on a right of first refusal basis or otherwise to any third parties including, but not limited to, current or former stockholders of the Company, underwriters, brokers, agents or other third parties.

r. Insurance. The Company and its subsidiaries have insurance policies of the type and in amounts customarily carried by organizations conducting businesses or owning assets similar to those of the Company and its subsidiaries. There is no material claim pending under any such policy as to which coverage has been questioned, denied or disputed by the underwriter of such policy.

s. SEC Reports. The Company has timely filed or furnished, as applicable, all reports, proxy statements, schedules, forms, statements, certifications and other documents (including exhibits and all other information incorporated by reference therein) required to be filed by the Company under the Securities Exchange Act of 1934, as amended (the "Exchange Act," and such reports, proxy statements, schedules, forms, statements, certifications and other documents, the "SEC Reports"), for the two (2) years preceding the date hereof (or such shorter period since the Company was first required by law or regulation to file such material). The SEC Reports at the time they were filed complied, in all material respects, with the requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act as applicable. There are no contracts, agreements or other documents that are required to be described in the SEC Reports and/or to be filed as exhibits thereto that are not described, in all material respects, and/or filed as required. There has not been any material change or amendment to, or any waiver of any material right under, any such contract or agreement that has not been described in and/or filed as an exhibit to the SEC Reports. As of the date hereof, there are no outstanding or unresolved comments in comment letters received from the SEC staff with respect to the SEC Reports. None of the SEC Reports is the subject of an ongoing SEC review. There are no SEC inquiries or investigations, other governmental inquiries or investigations or internal investigations pending or threatened, in each case regarding any accounting practice of the Company.

t. Financial Statements. The audited consolidated financial statements and unaudited interim consolidated financial statements (including, in each case, the notes thereto) of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of

filing. Such financial statements have been prepared in accordance with GAAP applied on a consistent basis during the periods involved, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated subsidiaries taken as a whole as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, year-end audit adjustments.

u. Material Changes. Except for the transactions contemplated hereby, since the date of the latest balance sheet of the Company included in the financial statements contained within the SEC Reports, (i) there have been no events, changes, occurrences or developments that have had or would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect with respect to the Company, (ii) neither the Company nor any subsidiary has incurred any material liabilities (contingent or otherwise) other than (A) trade payables, accrued expenses and other liabilities incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the financial statements of the Company pursuant to GAAP or to be disclosed in the SEC Reports, (iii) neither the Company nor any subsidiary has materially altered its method of accounting or the manner in which it keeps its accounting books and records, and (iv) neither the Company or any subsidiary has declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock (other than in connection with repurchases of unvested stock issued to employees of the Company). The Company and its subsidiaries, individually and 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 Insolvent (as defined below). For purposes of this Section 3(u), “**Insolvent**” means, with respect to the Company, on a consolidated basis with its subsidiaries, (i) the present fair saleable value of the Company’s and its subsidiaries’ assets is less than the amount required to pay the Company’s and its subsidiaries’ total indebtedness, (ii) 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 (iii) 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.

v. Sarbanes-Oxley. The Company is in compliance in all material respects with all of the provisions of the Sarbanes-Oxley Act of 2002 which are applicable to it.

w. Off-Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any subsidiary and an unconsolidated or other off-balance sheet entity that is required to be disclosed by the Company in its SEC Reports and is not so disclosed and that has had or would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

x. Foreign Corrupt Practices. Neither the Company and its subsidiaries, nor to the Company’s knowledge, any agent or other person acting on behalf of the Company or its subsidiaries, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended.

y. Office of Foreign Assets Control. Neither the Company nor any subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department.

z. Money Laundering. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any subsidiary, threatened.

aa. Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Shares, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Shares, or (iii) paid or agreed to pay to any person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Placement Agents, B. Riley or Craig Hallum in connection with the placement of the Shares.

bb. Brokers' Fees. Neither of the Company nor any of its subsidiaries has any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement, except for the payment of fees to the Placement Agents as described in Section 2 above.

cc. Disclosure Materials. The SEC Reports and the Disclosure Materials taken as a whole do not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein (in the case of the SEC Reports) or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

dd. Private Placements. Assuming the accuracy of the Purchaser's representations and warranties set forth in Section 4, no registration under the Securities Act is required for the offer and sale of the Shares by the Company to the Purchaser as contemplated hereby.

ee. Investment Company. The Company is not required to be registered as, and is not an Affiliate of, and immediately following the Closing will not be required to register as, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

ff. Reliance. The Company acknowledges that the Purchaser is relying on the representations and warranties (as modified by the Disclosure Schedules or the SEC Reports (but excluding any disclosures contained under the heading "Risk Factors," any disclosures of risks included in any "forward looking statements" or disclosures that are cautionary, predictive or forward-looking in nature)) made by the Company hereunder and that such representations and warranties (as modified by the Disclosure Schedules or the SEC Reports (but excluding any disclosures contained under the heading "Risk Factors," any disclosures of risks included in any "forward looking statements" or disclosures that are cautionary, predictive or forward-looking in nature)) are a material inducement to the Purchaser purchasing the Shares. The Company further acknowledges that without such representations and warranties of the Company made hereunder, the Purchaser would not enter into this Agreement with the Company.

gg. Use of Proceeds. The Company intends to use the net proceeds from the Offering to fund business growth across applications, together with funding working capital and for general corporate purposes.

hh. Bad Actor Disqualification. No “bad actor” disqualifying event described in Rule 506(d)(1)(i)-(viii) of the Securities Act (a “**Disqualification Event**”) is applicable to the Company or, to the Company’s knowledge, any Company Covered Person, except for a Disqualification Event as to which Rule 506(d)(2)(ii-iv) or (d)(3), is applicable. “**Company Covered Person**” means, with respect to the Company as an “issuer” for purposes of Rule 506 promulgated under the Securities Act, any person listed in the first paragraph of Rule 506(d)(1).

ii. Anti-Dilution. There are no securities or instruments issued by or to which the Company is a party as of the date hereof containing anti-dilution or similar provisions that will be triggered by the issuance of Shares in connection with the Offering or pursuant to this Agreement that have not been or will not be validly waived.

jj. Lock-Up Agreements. All officers and directors of the Company and all beneficial owners of more than 5% of the Company’s Common Stock (each a “**Restricted Holder**” and, collectively, the “**Restricted Holders**”) entered into agreements with the Placement Agents for a term of 180 days, whereby they agreed to certain restrictions on the sale or disposition (including pledge) of all of the Company’s Common Stock held by (or issuable to) them on the Closing Date, excluding any Shares purchased by them in the Offering and subject to customary transfer exceptions.

kk. Other Purchasers. The Company has not entered into any side letter or other agreement with respect to the Officering other than this Agreement, the Other Subscription Agreements and the Transaction Documents. The Other Subscription Agreements are on substantially the same terms as this Agreement.

ll. Minimum Offering. The Company has agreed to receive subscriptions for Shares under this Agreement and the Other Subscription Agreements for an aggregate purchase price of no less than \$14,000,000.

4. Representations, Warranties and Agreements of the Purchaser. The Purchaser, severally and not jointly with any other Purchaser, represents and warrants to, and agrees with, the Company, as of the Closing, the following:

a. The Purchaser has the knowledge and experience in financial and business matters necessary to evaluate the merits and risks of its prospective investment in the Company, and has carefully reviewed and understands the risks of, and other considerations relating to, the purchase of Shares and the tax consequences of the investment. The Purchaser has adequate means of providing for its current and anticipated financial needs and contingencies, and is able to bear the economic risks of the investment for an indefinite period of time and has no need for liquidity of the investment in the Shares. The Purchaser can afford the loss of his, her or its entire investment.

b. The Purchaser is acquiring the Shares for investment for his, her or its own account and not with the view to, or for resale in connection with, any distribution thereof. The Purchaser understands and acknowledges that the Offering and sale of the Shares have not been registered under the Securities Act or any state securities laws, by reason of a specific exemption from the registration provisions of the Securities Act and applicable state securities laws, which depends upon, among other things, the bona fide nature of the investment intent as expressed herein. The Purchaser further represents

that he, she or it does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participation to any third person with respect to any of the Shares, other than with respect to an Affiliate of the Purchaser. The Purchaser is an “accredited investor” as defined in Rule 501 of Regulation D as promulgated by the SEC under the Securities Act, for the reason(s) specified on the **Accredited Investor Certification** attached hereto as completed by Purchaser, and Purchaser shall submit to the Company such further assurances of such status as may be reasonably requested by the Company. If the Purchaser is an individual, then the Purchaser resides in the jurisdiction identified in the address of the Purchaser set forth on the Purchaser’s Omnibus Signature Page to this Agreement; if the Purchaser is a partnership, corporation, limited liability company or other entity, then the office or offices of the Purchaser in which its principal place of business is identified in the address or addresses of the Purchaser set forth on such Purchaser’s Omnibus Signature Page to this Agreement. The Purchaser has not taken any of the actions set forth in, and is not subject to, the disqualification provisions of Rule 506(d)(1) of the Securities Act.

c. The Purchaser (i) if a natural person, represents that he or she is the greater of (A) 21 years of age or (B) the age of legal majority in his or her jurisdiction of residence, and has full power and authority to execute and deliver this Agreement and all other related agreements or certificates and to carry out the provisions hereof and thereof; (ii) if a corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization or other entity, represents that such entity was not formed for the specific purpose of acquiring the Shares, such entity is duly organized, validly existing and in good standing under the laws of the state or jurisdiction of its organization, the consummation of the transactions contemplated hereby is authorized by, and will not result in a violation of applicable law or its charter or other organizational documents, such entity has full power and authority to execute and deliver this Agreement and all other related agreements or certificates and to carry out the provisions hereof and thereof and to purchase and hold the Shares, the execution and delivery of this Agreement has been duly authorized by all necessary action, this Agreement has been duly executed and delivered on behalf of such entity and is a legal, valid and binding obligation of such entity; or (iii) if executing this Agreement in a representative or fiduciary capacity, represents that he, she or it has full power and authority to execute and deliver this Agreement in such capacity and on behalf of the subscribing individual, ward, partnership, trust, estate, corporation, or limited liability company or partnership, or other entity for whom the Purchaser is executing this Agreement, and such individual, partnership, ward, trust, estate, corporation, or limited liability company or partnership, or other entity has full right and power to perform pursuant to this Agreement and make an investment in the Company, and represents that this Agreement constitutes a legal, valid and binding obligation of such entity. The execution and delivery of this Agreement does not violate or conflict with any order, judgment, injunction, agreement or controlling document to which the Purchaser is a party or by which it is bound.

d. The Purchaser understands that the Shares are being offered and sold to him, her or it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Purchaser’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of the Purchaser to acquire such securities. The Purchaser further acknowledges and understands that the Company is relying on the representations and warranties made by the Purchaser hereunder and that such representations and warranties are a material inducement to the Company to sell the Shares to the Purchaser. The Purchaser further acknowledges that without such representations and warranties of the Purchaser made hereunder, the Company would not enter into this Agreement with the Purchaser.

e. The Purchaser understands that, other than as expressly provided in the Registration Rights Agreement, the Company does not currently intend to register the Shares under the



Securities Act at any time in the future; and the undersigned will not immediately be entitled to the benefits of Rule 144 with respect to the Shares. The Purchaser understands that there can be no assurance that any public market for the Common Stock will exist or continue to exist. The Company makes no representation or warranty with respect to the continued quotation of the Common Stock on the OTC Markets QB tier or listing on any other market or exchange.

f. The Purchaser has received, reviewed and understood the information about the Company, including all Disclosure Materials provided to it by the Company and/or the Placement Agents (at the Company's direction), and has had an opportunity to discuss the Company's business, management and financial affairs with the Company's management. The Purchaser understands that such discussions, as well as any Disclosure Materials provided by the Company and/or the Placement Agents (at the Company's direction), were intended to describe the aspects of the Company's business and prospects and the Offering which the Company believes to be material, but were not necessarily a thorough or exhaustive description, and except as expressly set forth in this Agreement, the Company makes no representation or warranty with respect to the completeness of such information and makes no representation or warranty of any kind with respect to any information provided by any entity other than the Company and the Placement Agents. Some of such information may include projections as to the future performance of the Company, which projections may not be realized, may be based on assumptions which may not be correct and may be subject to numerous factors beyond the Company's control. The Purchaser acknowledges that he, she or it is not relying upon any person or entity, other than the Company and its officers and directors, in making its investment or decision to invest in the Company. Additionally, the Purchaser understands and represents that he, she or it is purchasing the Shares notwithstanding the fact that the Company may disclose in the future certain material information the Purchaser has not received, including financial statements of the Company for the current or prior fiscal periods, and any subsequent period financial statements that will be filed with the SEC, that he, she or it is not relying on any such information in connection with his, her or its purchase of the Shares and that he, she or it waives any right of action with respect to the nondisclosure to him, her or it prior to his, her or its purchase of the Shares of any such information, in each case, without waiving or otherwise limiting any right or claim the Purchaser may have hereunder. The Purchaser has sought such accounting, legal and tax advice as the Purchaser has considered necessary to make an informed investment decision with respect to his, her or its acquisition of the Shares.

g. The Purchaser acknowledges that none of the Company or the Placement Agents is acting as a financial advisor or fiduciary of the Purchaser (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and no investment advice has been given by the Company, the Placement Agents or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby. The Purchaser further represents to the Company that the Purchaser's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Purchaser and the Purchaser's representatives and the representations and warranties made by the Company in Section 3 hereof.

h. As of any Closing in which the Purchaser participates, all actions on the part of Purchaser, and its officers, directors and partners, if applicable, necessary for the authorization, execution and delivery of this Agreement and the Registration Rights Agreement and the performance of all obligations of the Purchaser hereunder and thereunder shall have been taken, and this Agreement and the Registration Rights Agreement, assuming due execution by the parties hereto and thereto, constitute valid and legally binding obligations of the Purchaser, enforceable in accordance with their respective terms, subject to: (i) judicial principles limiting the availability of specific performance, injunctive relief, and other equitable remedies and (ii) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect generally relating to or affecting creditors' rights.

i. The Purchaser represents that neither it nor, to its knowledge, any person or entity controlling, controlled by or under common control with it, nor any person having a beneficial interest in the Purchaser, nor any person on whose behalf the Purchaser is acting: (i) is a person listed in the Annex to Executive Order No. 13224 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism); (ii) is named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control; (iii) is a non-U.S. shell bank or is providing banking services indirectly to a non-U.S. shell bank; (iv) is a senior non-U.S. political figure or an immediate family member or close associate of such figure; or (v) is otherwise prohibited from investing in the Company pursuant to applicable U.S. anti-money laundering, anti-terrorist and asset control laws, regulations, rules or orders (categories (i) through (v)), each a “**Prohibited Purchaser**”). The Purchaser (i) agrees to provide the Company, promptly upon request, all information that the Company reasonably deems necessary or appropriate to comply with applicable U.S. anti-money laundering, anti-terrorist and asset control laws, regulations, rules and orders and (ii) consents to the disclosure to U.S. regulators and law enforcement authorities by the Company and its Affiliates and agents of such information about the Purchaser as the Company reasonably deems necessary or appropriate to comply with applicable U.S. anti-money laundering, anti-terrorist and asset control laws, regulations, rules and orders. If the Purchaser is a financial institution that is subject to the USA Patriot Act, the Purchaser represents that it has met all of its obligations under the USA Patriot Act. The Purchaser acknowledges that if, following its investment in the Company, the Company reasonably determines that the Purchaser is a Prohibited Purchaser, the Company has the right or may be obligated to prohibit additional investments and segregate the assets constituting the investment in accordance with applicable regulations. The Purchaser further acknowledges that neither the Purchaser nor any of the Purchaser’s Affiliates or agents will have any claim against the Company for any form of damages as a result of any of the foregoing actions.

j. If the Purchaser is an Affiliate of a non-U.S. banking institution (a “**Foreign Bank**”), or if the Purchaser receives deposits from, makes payments on behalf of, or handles other financial transactions related to a Foreign Bank, the Purchaser represents and warrants to the Company that: (1) the Foreign Bank has a fixed address, other than solely an electronic address, in a country in which the Foreign Bank is authorized to conduct banking activities; (2) the Foreign Bank maintains operating records related to its banking activities; (3) the Foreign Bank is subject to inspection by the banking authority that licensed the Foreign Bank to conduct banking activities; and (4) the Foreign Bank does not provide banking services to any other Foreign Bank that does not have a physical presence in any country and that is not a regulated Affiliate.

k. The Purchaser or its duly authorized representative realizes that because of the inherently speculative nature of businesses of the kind conducted and contemplated by the Company, the Company’s future financial results may be expected to fluctuate from month to month and from period to period and will, generally, involve a high degree of financial and market risk that could result in substantial or, at times, even total losses for investors in securities of the Company. The Purchaser has carefully read the risk factors and other information (including the financial statements of the Company) included in the SEC Reports. The Purchaser has carefully considered such risk factors before deciding to invest in the Shares.

l. The Purchaser is not subscribing for Shares as a result of or subsequent to any advertisement, article, notice or other communication, published in any newspaper, magazine or similar media or broadcast over television, radio, or the internet, or presented at any seminar or meeting, or any solicitation of a subscription by a person not previously known to the Purchaser in connection with investments in securities generally.

m. The Purchaser acknowledges that no U.S. federal or state agency or any other government or governmental agency has passed upon the Shares or made any finding or determination as to the fairness, suitability or wisdom of any investments therein.

n. Other than consummating the transactions contemplated hereunder, the Purchaser has not directly or indirectly, nor has any individual or entity acting on behalf of or pursuant to any understanding with the Purchaser, executed any purchases or sales, including Short Sales (as defined below), of the securities of the Company during the period commencing at the time Purchaser was first contacted by the Company or any other individual or entity representing the Company (including one or more of the Placement Agents) regarding the transactions contemplated hereunder. Notwithstanding the foregoing, in the case the Purchaser is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of the Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by, the portfolio managers managing other portions of the Purchaser's assets, the representation set forth above shall only apply with respect to the portion of assets managed by, the portfolio manager that made the investment decision to purchase the Shares covered by this Agreement. Other than to other individuals or entities party to this Agreement, the Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect Short Sales or similar transactions in the future. For purposes of this Agreement, "**Short Sales**" means all "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

o. The Purchaser is aware that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of the Shares and other activities with respect to the Shares by the Purchaser, and will comply with such anti-manipulation rules of Regulation M.

p. All of the information concerning the Purchaser set forth herein, and any other information furnished by the Purchaser in writing to the Company or a Placement Agent for use in connection with the transactions contemplated by this Agreement, is true, correct and complete in all material respects as of the date of this Agreement, and, if there should be any material change in such information prior to the Purchaser's purchase of the Shares, the Purchaser will promptly furnish revised or corrected information to the Company.

q. The Purchaser has reviewed with its own tax advisors the U.S. federal, state, local and foreign tax consequences of this investment and the transactions contemplated by the Transaction Documents. With respect to such matters, the Purchaser relies solely on such advisors and not on any statements or representations of the Company or any of its agents, written or oral. The Purchaser understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment or the transactions contemplated by the Transaction Documents.

r. If the Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), the Purchaser hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Shares or any use of this Agreement, including (a) the legal requirements within its jurisdiction for the purchase of the Shares; (b) any foreign exchange restrictions applicable to such purchase; (c) any governmental or other consents that may need to be obtained; and (d) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Shares. The Purchaser's subscription and payment for and continued beneficial ownership of the Shares will not violate any applicable securities or other laws of the Purchaser's jurisdiction.

s. The Purchaser is not a “foreign person” for purposes of Section 721 of the Defense Production Act of 1950 (as amended) or the rules or regulations promulgated thereunder (including 31 C.F.R. Part 800 and 31 C.F.R. part 801); provided, however, that if the Purchaser is a “foreign person” for such purposes agrees that it will not (i) obtain any control rights over the Company, including the ability to determine, direct, or decide important matters affecting the Company; (ii) have access to any material nonpublic technical information in the possession of the company; (iii) obtain membership or observer rights on the Board of Directors or the right to nominate an individual to a position on the Board of Directors; or (iv) have any involvement, other than through voting of shares, in substantive decision making of the Company regarding the use, development, acquisition or release of the Company’s technology.

t. **(For any Purchaser that is an ERISA plan only)** The fiduciary of the Employee Retirement Income Security Act of 1974 (“**ERISA**”) plan (the “**Plan**”) represents that such fiduciary has been informed of and understands the Company’s investment objectives, policies and strategies, and that the decision to invest “plan assets” (as such term is defined in ERISA) in the Company is consistent with the provisions of ERISA that require diversification of plan assets and impose other fiduciary responsibilities. The Purchaser fiduciary or Plan (a) is responsible for the decision to invest in the Company; (b) is independent of the Company or any of its Affiliates; (c) is qualified to make such investment decision; and (d) in making such decision, the Purchaser fiduciary or Plan has not relied primarily on any advice or recommendation of the Company or any of its Affiliates.

u. Neither the Purchaser nor, to the knowledge of the Purchaser, any of its directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members is subject to any Disqualification Events, except for Disqualification Events covered by Rule 506(d)(2)(ii) or (iii) under the Securities Act, and disclosed reasonably in advance of the Closing in writing in reasonable detail to the Company.

v. The Purchaser understands that there are substantial restrictions on the transferability of the Shares and that the certificates or book-entry positions representing the Shares shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such certificates or other instruments):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE OR BOOK-ENTRY POSITION HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR ANY STATE SECURITIES LAWS, AND NEITHER SUCH SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS (1) A REGISTRATION STATEMENT WITH RESPECT THERETO IS EFFECTIVE UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR (2) AN EXEMPTION FROM SUCH REGISTRATION EXISTS AND THE COMPANY RECEIVES AN OPINION OF COUNSEL, WHICH COUNSEL AND OPINION ARE REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR TRANSFERRED IN THE MANNER CONTEMPLATED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAWS OR (3) SOLD PURSUANT TO RULE 144 UNDER THE SECURITIES ACT.

In addition, if the Purchaser is an Affiliate of the Company, certificates or book-entry positions evidencing the Shares issued to the Purchaser may bear a customary “Affiliates” legend.

The Company shall be obligated to promptly reissue unlegended certificates upon the request of any holder thereof (x) at such time as the holding period under Rule 144 or another applicable exemption from the registration requirements of the Securities Act has been satisfied or (y) at such time as a registration statement is available for the transfer of the Shares. The Company is entitled to request from any holder requesting unlegended certificates under clause (x) of the foregoing sentence an opinion of counsel reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be so disposed of without registration, qualification or legend.

w. **The Purchaser understands that until February 12, 2020, the Company was a “shell company” as defined in Rule 12b-2 under the Exchange Act. Pursuant to Rule 144(i), securities issued by a current or former shell company (that is, the Shares) that otherwise meet the holding period and other requirements of Rule 144 nevertheless cannot be sold in reliance on Rule 144 until one year after the Company (a) is no longer a shell company; and (b) has filed current “Form 10 information” (as defined in Rule 144(i)) with the SEC reflecting that it is no longer a shell company, and provided that at the time of a proposed sale pursuant to Rule 144, the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and has filed all reports and other materials required to be filed by Section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports and materials), other than Form 8-K reports. As a result, the restrictive legends on certificates or book-entry positions for the Shares cannot be removed except in connection with an actual sale meeting the foregoing requirements or pursuant to an effective registration statement.**

x. To effectuate the terms and provisions hereof, the Purchaser hereby appoints Loop Capital as its attorney-in-fact (and Loop Capital hereby accepts such appointment) for the purpose of carrying out the provisions of the Escrow Agreement, including taking any action on behalf of, or at the instruction of, the Purchaser and executing any release notices required under the Escrow Agreement and taking any action and executing any instrument that Loop Capital may deem necessary or advisable (and lawful) to accomplish the purposes hereof. All acts done under the foregoing authorization are hereby ratified and approved and neither Loop Capital nor any designee nor agent thereof shall be liable for any acts of commission or omission, for any error of judgment, for any mistake of fact or law except for acts of gross negligence or willful misconduct. This power of attorney, being coupled with an interest, is irrevocable while the Escrow Agreement remains in effect.

5. **Conditions to Company’s Obligations at the Closing.** The Company’s obligation to complete the sale and issuance of the Shares and deliver the Shares to the Purchaser at the Closing shall be subject to the following conditions to the extent not waived by the Company:

a. **Receipt of Payment.** The Escrow Agent shall have received payment, in accordance with Section 1.2(b)(ii), in the full amount of the purchase price for the number of Shares being purchased by the Purchaser at the Closing.

b. **Representations and Warranties.** The representations and warranties made by the Purchaser in Section 4 hereof, shall be true and correct in all respects when made, and shall be true and correct in all respects on the Closing Date with the same force and effect as if they had been made on and as of said date.

c. Performance. The Purchaser shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the Closing.

6. **Conditions to the Purchaser's Obligations at the Applicable Closing**. The Purchaser's obligation to accept delivery of the Shares and to pay for the Shares at the Closing shall be subject to the following conditions to the extent not waived by the Purchaser at the Closing:

a. Representations and Warranties. The representations and warranties made by the Company in Section 3 hereof (as modified by the Disclosure Schedules or the SEC Reports (but excluding any disclosures contained under the heading "Risk Factors" and any disclosure of risks included in any "forward-looking statements" disclaimer or in any other section to the extent they are forward-looking statements or cautionary, predictive or forward-looking in nature)) shall be true and correct in all respects as of, and as if made on, the date of this Agreement and as of the Closing Date (except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct in all respects as of such earlier date) except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitations as to "materiality" or "Material Adverse Effect" set forth therein) does not have, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

b. Performance. The Company shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the Closing.

c. Receipt of Executed Transaction Documents. The Company shall have executed and delivered to the Purchaser and the Placement Agents the Registration Rights Agreement and the Escrow Agreement.

d. Certificate. The Chief Executive Officer of the Company shall execute and deliver or cause to be delivered to the Purchaser and the Placement Agents a certificate addressed to the Purchaser, each Other Purchaser and the Placement Agents to the effect as provided in Sections 6(a) and (b) above.

e. Judgments. No judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any Governmental Authority, shall have been issued, and no action or proceeding shall have been instituted by any Governmental Authority, enjoining or preventing the consummation of the transactions contemplated hereby.

f. Legal Opinion. Legal counsel for the Company delivered the opinion with respect to the transactions contemplated by this Agreement and the Other Subscription Agreements to the Purchaser, the Other Purchasers and the Placement Agents, dated as of the date hereof.

g. Issuance in Compliance with Laws. The sale and issuance of the Shares shall be legally permitted by all laws and regulations to which the Company is subject.

7. **Indemnification**.

a. The Purchaser agrees to indemnify and hold harmless the Company, the Placement Agents and any other broker, agent or finder engaged by the Company for the Offering, and their respective directors, officers, shareholders, members, partners, employees and agents (and any other persons with a functionally equivalent role of a person holding such titles notwithstanding a lack of such title or any other title), each person who controls such indemnified person (within the meaning of Section

15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, stockholders, agents, members, partners or employees (and any other persons with a functionally equivalent role of a person holding such titles notwithstanding a lack of such title or any other title) of such controlling person from and against all losses, liabilities, claims, damages, costs, fees and expenses whatsoever (including any and all expenses incurred in investigating, preparing or defending against any litigation commenced or threatened) based upon or arising out of the Purchaser's breach of any representation, warranty or covenant contained herein; provided, however, that the Purchaser will not be liable in any such case to the extent and only to the extent that any such loss, liability, claim, damage, cost, fee or expense arises out of or is based upon the inaccuracy of any representations made by the Company in this Agreement, or the failure of the Company to comply with its covenants and agreements contained herein. The liability of the Purchaser under this paragraph shall not exceed the total Purchase Price paid by the Purchaser for the Shares hereunder.

b. The Company agrees to indemnify and hold harmless the Purchaser, and its directors, officers, stockholders, members, partners, employees and agents (and any other persons with a functionally equivalent role of a person holding such titles notwithstanding a lack of such title or any other title), each person who controls the Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, stockholders, agents, members, partners or employees (and any other persons with a functionally equivalent role of a person holding such titles notwithstanding a lack of such title or any other title) of such controlling person (collectively, the "**Purchaser Indemnitees**"), from and against all losses, liabilities, claims, damages, costs, fees and expenses whatsoever (including any and all expenses incurred in investigating, preparing or defending against any litigation commenced or threatened) based upon or arising out of the Company's breach of any representation, warranty or covenant contained herein; provided, however, that the Company will not be liable in any such case to the extent and only to the extent that any such loss, liability, claim, damage, cost, fee or expense arises out of or is based upon the inaccuracy of any representations made by such indemnified party in this Agreement, or the failure of such indemnified party to comply with the covenants and agreements contained herein. The liability of the Company under this paragraph shall not exceed the total Purchase Price paid by the Purchaser for the Shares hereunder.

c. Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any Action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 7, notify the indemnifying party promptly in writing of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party under this Section 7 except to the extent the indemnified party is actually prejudiced by such omission. In case any such Action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and to the extent that it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof, with counsel satisfactory to such indemnified party; provided, however, if the defendants in any such Action include both the indemnified party and the indemnifying party and either (i) the indemnifying party or parties and the indemnified party or parties mutually agree or (ii) representation of both the indemnifying party or parties and the indemnified party or parties by the same counsel is inappropriate under applicable standards of professional conduct due to actual or potential differing interests between them, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such Action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election so to assume the defense of such Action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 7 for any reasonable legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed counsel in connection with

the assumption of legal defenses in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel in such circumstance), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the Action or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party. No indemnifying party shall (i) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld), settle or compromise or consent to the entry of any judgment with respect to any pending or threatened Action in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such Action) unless such settlement, compromise or consent requires only the payment of money damages, does not subject the indemnified party to any continuing obligation or require any admission of criminal or civil responsibility, and includes an unconditional release of each indemnified party from all liability arising out of such Action, or (ii) be liable for any settlement of any such Action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment of the plaintiff in any such Action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment.

d. The Purchaser acknowledges on behalf of itself and each Purchaser Indemnitee that, other than for actions seeking specific performance of the obligations under this Agreement, the sole and exclusive remedy of the Purchaser and the Purchaser Indemnitees with respect to any and all claims relating to this Agreement shall be pursuant to the indemnification provisions (including the limitations thereof) set forth in this Section 7.

**8. Binding Effect.** The Purchaser hereby acknowledges and agrees that this Agreement shall survive the death or disability of the Purchaser and shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and permitted assigns. If an individual Purchaser is more than one person, the obligations of the Purchaser hereunder shall be joint and several and the agreements, representations, warranties and acknowledgments herein shall be deemed to be made by and be binding upon each such person and such person's heirs, executors, administrators, successors, legal representatives and permitted assigns.

**9. Miscellaneous.**

a. **Modification.** This Agreement shall not be amended, modified or waived except by an instrument in writing signed by the Company and the Purchaser. The Company shall not agree to any amendment, modification or waiver of any Other Subscription Agreement in favor of any Other Purchaser unless it offers an equivalent amendment, modification or waiver of this Agreement in favor of the Purchaser. Any amendment, modification or waiver effected in accordance with this Section 9(a) shall be binding upon the Purchaser and each transferee of the Shares, each future holder of all such Shares, and the Company.

b. **Third-Party Beneficiary.** The Placement Agents and Financial Advisors shall be express third party beneficiaries of the representations and warranties of the Company and the Purchaser included in this Agreement. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other person, except as otherwise set forth in Section 7 and this Section 9(c).

c. **Notices.** Any notice, consents, waivers or other communication required or permitted to be given hereunder shall be in writing and will be deemed to have been delivered: (i) upon receipt, when personally delivered; (ii) upon receipt when sent by certified mail, return receipt requested,



postage prepaid; (iii) when sent, if by e-mail, (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient); or (iv) one (1) Business Day after deposit with a nationally recognized overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and email addresses for such communications shall be:

(a) if to the Company, at

Transphorm, Inc.  
75 Castilian Drive  
Goleta, CA 93117  
Attn: Primit Parikh and Cameron McAulay  
Email: pparikh@transphormusa.com and cmcaulay@transphormusa.com

with copies (which shall not constitute notice) to:  
Wilson Sonsini Goodrich and Rosati P.C.  
650 Page Mill Road  
Palo Alto, CA 94304  
Attn: Julia Reigel and Erika Muhl  
Email: jreigel@wsgr.com and emuhl@wsgr.com

or

(b) if to the Purchaser, at the addresses set forth on the Omnibus Signature Page hereof

(or, in either case, to such other address as the party shall have furnished in writing in accordance with the provisions of this Section).

d. Assignability. This Agreement and the rights, interests and obligations hereunder are not transferable or assignable by the Purchaser, and the transfer or assignment of the Shares shall be made only in accordance with all applicable laws.

e. Applicable Law. This Agreement shall be governed by and construed in accordance with the 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.

f. Venue. Any judicial proceeding brought against either of the parties to this Agreement or any dispute arising out of this Agreement or any matter related hereto shall be brought in the courts of the State of New York, New York County, or in the United States District Court for the Southern District of New York and, by its execution and delivery of this Agreement, each party to this Agreement accepts the jurisdiction of such courts. The foregoing consent to jurisdiction shall not be deemed to confer rights on any person other than the parties to this Agreement.

g. Form D; Blue Sky Qualification. The Company agrees to timely file a Form D with respect to the Shares and to provide a copy thereof, promptly upon request of the Purchaser. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Shares for, sale to the Purchaser at the Closing under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of the Purchaser.

h. Listings or Quotation. The Company shall use its commercially reasonable efforts to maintain the listing or quotation of its Common Stock upon the OTCQB tier of the OTC marketplace.

i. Use of Pronouns. All pronouns and any variations thereof used herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require.

j. Securities Law Disclosure; Publicity. By 9:00 a.m., New York City time, on the trading day immediately following the Closing, the Company shall issue a press release (the "**Press Release**") disclosing all material terms of the Offering. Notwithstanding the foregoing, the Company shall not publicly disclose the name of the Purchaser or an Affiliate of the Purchaser, or include the name of the Purchaser or an Affiliate of the Purchaser in any press release or filing with the SEC (other than the Registration Statement) or any regulatory agency or principal trading market, without the prior written consent of the Purchaser, except (i) as required by federal securities law in connection with (A) any registration statement contemplated by the Registration Rights Agreement and (B) the filing of final Transaction Documents with the SEC or (ii) to the extent such disclosure is required by law, request of the staff of the SEC or of any regulatory agency or principal trading market regulations, in which case the Company shall provide the Purchaser with prior written notice of such disclosure permitted under this sub-clause (ii). The Purchaser shall not be in possession of any material, non-public information received from the Company or any of its respective officers, directors, employees or agents in connection with the Offering that is not disclosed in the SEC Reports unless the Purchaser shall have executed a written agreement regarding the confidentiality and use of such information or is otherwise subject to confidentiality restrictions. The Purchaser covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company as described in this Section 9, the Purchaser will maintain the confidentiality of all disclosures made to it in connection with such transactions (including the existence and terms of such transactions). In addition, the Purchaser acknowledges that it is aware that the United States securities laws generally prohibit any person who is in possession of material nonpublic information about a public company such as the Company from purchasing or selling securities of such company. The provisions of this Section 9 are in addition to and not in replacement of any other confidentiality agreement between the Company and the Purchaser.

k. Non-Public Information. Except for information (including the terms of this Agreement and the transactions contemplated hereby) that is or will be disclosed in the SEC Reports, the Company shall not and shall cause each of its officers, directors, employees and agents, not to, provide the Purchaser with any material, non-public information regarding the Company without the express written consent of the Purchaser.

l. Entire Agreement. This Agreement, together with the Registration Rights Agreement, and all exhibits, schedules and attachments hereto and thereto and any confidentiality agreement between the Purchaser and the Company, constitute the entire agreement between the Purchaser and the Company with respect to the Offering and supersede all prior oral or written agreements and understandings, if any, relating to the subject matter hereof.

m. Share Certificates. If the Shares are certificated and any certificate or instrument evidencing any Shares is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company and the Company's transfer agent of such loss, theft or destruction and the execution by the holder thereof of a customary lost certificate affidavit of that fact and an agreement to indemnify and hold

harmless the Company and its transfer agent for any losses in connection therewith or, if required by such transfer agent, a bond in such form and amount as is required by the transfer agent. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Shares. If a replacement certificate or instrument evidencing any Shares is requested due to a mutilation thereof, the Company may require delivery of such mutilated certificate or instrument as a condition precedent to any issuance of a replacement.

n. Expenses. Each of the parties hereto shall pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) in connection with this Agreement and the transactions contemplated hereby, whether or not the transactions contemplated hereby are consummated. The Company shall pay all expenses and fees of its counsel in connection with the issuance of an opinion to the Company's transfer agent for the removal of any legend on the Shares.

o. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages that contain copies of an executed signature page such as in .pdf format shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes.

p. Severability. Each provision of this Agreement shall be considered separable and, if for any reason any provision or provisions hereof are determined to be invalid or contrary to applicable law, such invalid or contrary provision shall be replaced with a valid provision that as closely as possible reflects the parties' intent with respect thereto, and invalidity or illegality shall not impair the operation of or affect the remaining portions of this Agreement.

q. Interpretation. Paragraph titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text. For the purposes of this Agreement, "Business Day" means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business. Wherever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

r. Additional Information. The Purchaser hereby agrees to furnish the Company such other information as the Company may request prior to the Closing with respect to its subscription hereunder.

s. Survival. The representations and warranties of the Company and the Purchaser contained in this Agreement shall survive the execution and delivery of this Agreement for a period of one (1) year from the date of the Closing and shall in no way be affected by any investigation or knowledge of the subject matter thereof made by or on behalf of the Purchaser or the Company.

t. Omnibus Signature Page. This Agreement is intended to be read and construed in conjunction with the Registration Rights Agreement. Accordingly, pursuant to the terms and conditions of this Agreement and the Registration Rights Agreement, it is hereby agreed that the execution by the Purchaser of this Agreement, in the place set forth on the Omnibus Signature Page below, shall constitute agreement to be bound by the terms and conditions hereof and the terms and conditions of the Registration Rights Agreement, with the same effect as if each of such separate but related agreement were separately signed.

u. Public Disclosure. The Purchaser shall not make or issue any press releases or otherwise make any public statements or make any disclosures to any third person or entity with respect to the transactions contemplated herein without the Company's express prior approval (which may not be unreasonably withheld) except to the extent such disclosure is required by law, request of the staff of the SEC or of any regulatory agency or principal trading market regulations.

v. Potential Conflicts. The Placement Agents, their sub-agents, legal counsel to the Company or the Placement Agents and/or their respective Affiliates, principals, representatives or employees may now or hereafter own shares of the Company.

w. Independent Nature of Each Purchaser's Obligations and Rights. For avoidance of doubt, the obligations of the Purchaser under this Agreement are several and not joint with the obligations of any Other Purchaser, and the Purchaser shall not be responsible in any way for the performance of the obligations of any Other Purchaser under any Other Subscription Agreement. Nothing contained herein and no action taken by the Purchaser or any Other Purchasers shall be deemed to constitute the Purchaser and the Other Purchasers as a partnership, an association, a joint venture, or any other kind of entity, or create a presumption that the Purchaser and the Other Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement and any Other Subscription Agreements. Except as specifically set forth herein, the Purchaser shall be entitled to independently protect and enforce its rights, including the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

x. Waiver of Conflicts. Each party to this Agreement acknowledges that Wilson Sonsini Goodrich and Rosati P.C. ("**WSGR**"), counsel to the Company, has in the past performed and may continue to perform legal services for the Purchaser or certain of the Other Purchasers in matters unrelated to the transactions described in this Agreement, including financings and other matters. Accordingly, each party to this Agreement hereby (a) acknowledges that they have had an opportunity to ask for information relevant to this disclosure; (b) acknowledges that WSGR represents the Company in the transaction contemplated by this Agreement and has not represented any individual Purchaser in connection with such transaction; and (c) gives its informed consent to WSGR's representation of the Purchaser or certain of the Other Purchasers in such unrelated matters and to WSGR's representation of the Company, as applicable, in connection with this Agreement and the transactions contemplated hereby.

*[Signature page follows.]*

IN WITNESS WHEREOF, the Company has duly executed this Agreement as of the 23rd day of December, 2020.

TRANSPHORM, INC.

By:  
Name:  
Title:

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**How to subscribe for Shares in the private offering of  
Transphorm, Inc.**

1. **Complete, Sign and Date** the Omnibus Signature Page for the Subscription Agreement and Registration Rights Agreement.
2. **Initial** the Accredited Investor Certification in the appropriate place or places.
3. **Complete and sign** the Investor Profile.
4. **Review** the Anti Money Laundering Requirements summary.
5. **Complete and sign** the Selling Securityholder Notice and Questionnaire attached hereto as Annex A.
6. **Email** all completed forms to your broker.
7. **Paying the Purchase Price by wire transfer**, you should send a wire transfer for the exact dollar amount of the Purchase Price for the number of Shares you are purchasing according to the attached instructions.

**NOTE THAT ALL WIRES SHOULD INCLUDE PURCHASER'S NAME.**

**TRANSPHORM, INC.**  
**OMNIBUS SIGNATURE PAGE TO**  
**SUBSCRIPTION AGREEMENT AND REGISTRATION RIGHTS AGREEMENT**

The undersigned, desiring to: (i) enter into the Subscription Agreement, dated as of December 23, 2020 (the “**Subscription Agreement**”), between the undersigned, **Transphorm, Inc.**, a Delaware corporation (the “**Company**”), and the other parties thereto, in or substantially in the form furnished to the undersigned, (ii) enter into the Registration Rights Agreement (the “**Registration Rights Agreement**”), among the undersigned, the Company and the other parties thereto, in or substantially in the form furnished to the undersigned and (iii) purchase the Shares of the Company’s securities as set forth in the Subscription Agreement and below, hereby agrees to purchase such Shares from the Company and further agrees to join the Subscription Agreement and the Registration Rights Agreement as a party thereto, with all the rights and privileges appertaining thereto, and to be bound in all respects by the terms and conditions thereof. The undersigned specifically acknowledges having read the representations section in the Subscription Agreement entitled “Representations and Warranties of the Purchaser” and hereby represents that the statements contained therein are complete and accurate with respect to the undersigned as the Purchaser.

IN WITNESS WHEREOF, the Purchaser hereby executes the Subscription Agreement and the Registration Rights Agreement.

Dated: \_\_\_\_\_  
\_\_\_\_\_ X \$3.00 = \$ \_\_\_\_\_  
Number of Shares Purchase Price per Share Total Purchase Price

**PURCHASER(individual)**

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Signature (if Joint Tenants or Tenants in Common)  
Address of Principal Residence:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Social Security Number(s)  
\_\_\_\_\_  
Telephone Number:  
\_\_\_\_\_  
Facsimile Number  
\_\_\_\_\_  
E-mail Address:  
\_\_\_\_\_

**PURCHASER (entity)**

\_\_\_\_\_  
Name of Entity  
\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address of Executive Offices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
IRS Tax Identification Number:  
\_\_\_\_\_  
Telephone Number:  
\_\_\_\_\_  
Facsimile Number  
\_\_\_\_\_  
E-mail Address:  
\_\_\_\_\_

**TRANSPHORM, INC.**  
**ACCREDITED INVESTOR CERTIFICATION**  
**For Individual Investors Only**  
**(all Individual Investors must INITIAL where appropriate):**

\_\_\_\_\_ I have a net worth of at least US\$1 million either individually or through aggregating my individual holdings and those in which I have a joint, community property or other similar shared ownership interest with my spouse. *(For purposes of calculating your net worth under this paragraph, (a) your primary residence shall not be included as an asset; (b) indebtedness secured by your primary residence, up to the estimated fair market value of your primary residence at the time of your purchase of the securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of your purchase of the securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of your primary residence, the amount of such excess shall be included as a liability); and (c) indebtedness that is secured by your primary residence in excess of the estimated fair market value of your primary residence at the time of your purchase of the securities shall be included as a liability.)*

\_\_\_\_\_ I have had an annual gross income for the past two years of at least US\$200,000 (or US\$300,000 jointly with my spouse) and expect my income (or joint income, as appropriate) to reach the same level in the current year.

\_\_\_\_\_ I am a director or executive officer of **Transphorm, Inc.**

**For Non-Individual Investors (Entities)**  
**(all Non-Individual Investors must INITIAL where appropriate):**

\_\_\_\_\_ The investor certifies that it is a partnership, corporation, limited liability company or business trust that is 100% owned by persons who meet at least one of the criteria for Individual Investors set forth above (in which case each such person must complete the Accreditor Investor Certification for Individuals above as well the remainder of this questionnaire).

\_\_\_\_\_ The investor certifies that it is a partnership, corporation, limited liability company or business trust that has total assets of at least US\$5 million and was not formed for the purpose of investing in the Company.

\_\_\_\_\_ The investor certifies that it is an employee benefit plan whose investment decision is made by a plan fiduciary (as defined in ERISA §3(21)) that is a bank, savings and loan association, insurance company or registered investment advisor.

\_\_\_\_\_ The investor certifies that it is an employee benefit plan whose total assets exceed US\$5,000,000 as of the date of this Agreement.

\_\_\_\_\_ The undersigned certifies that it is a self-directed employee benefit plan whose investment decisions are made solely by persons who meet at least one of the criteria for Individual Investors.

\_\_\_\_\_ The investor certifies that it is a U.S. bank, U.S. savings and loan association or other similar U.S. institution acting in its individual or fiduciary capacity.



\_\_\_\_\_The undersigned certifies that it is a broker-dealer registered pursuant to §15 of the Securities Exchange Act of 1934.

\_\_\_\_\_ The investor certifies that it is an organization described in §501(c)(3) of the Internal Revenue Code with total assets exceeding US\$5,000,000 and not formed for the specific purpose of investing in the Company.

\_\_\_\_\_The investor certifies that it is a trust with total assets of at least US\$5,000,000, not formed for the specific purpose of investing in the Company, and whose purchase is directed by a person with such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of the prospective investment.

\_\_\_\_\_The investor certifies that it is a plan established and maintained by a state or its political subdivisions, or any agency or instrumentality thereof, for the benefit of its employees, and which has total assets in excess of US\$5,000,000.

\_\_\_\_\_The investor certifies that it is an insurance company as defined in §2(13) of the Securities Act of 1933, or a registered investment company.

**Transphorm, Inc.**  
**Investor Profile (Must be completed by Investor)**  
**Section A - Personal Investor Information**

Investor Name(s): \_\_\_\_\_  
Individual executing Profile or Trustee: \_\_\_\_\_  
Social Security Numbers / Federal I.D. Number: \_\_\_\_\_

Investment Experience (Years): \_\_\_\_\_  
Annual Income: \_\_\_\_\_  
Net Worth\*: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State & Zip Code: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Outside Broker/Dealer: \_\_\_\_\_

**Section B – Ownership Statement/Stock Certificate Delivery Instructions**

\_\_\_\_\_ Please deliver a statement of book-entry position for the Shares.  
\_\_\_\_\_ Please deliver a stock certificate for the Shares.  
  
\_\_\_\_\_ to the following physical address: \_\_\_\_\_  
\_\_\_\_\_ to the following email address: \_\_\_\_\_

**Section C – Form of Payment –Wire Transfer**

\_\_\_\_\_ Wire funds from my outside account according to instructions of the Subscription Agreement.  
\_\_\_\_\_ The funds for this investment are rolled over, tax deferred from \_\_\_\_\_ within the allowed 60 day window.

Please check if you are a FINRA member or affiliate of a FINRA member firm: \_\_\_\_\_

\_\_\_\_\_  
Investor Signature(s)                      Date

**\* For purposes of calculating your net worth in this form, (a) your primary residence shall not be included as an asset; (b) indebtedness secured by your primary residence, up to the estimated fair market value of your primary residence at the time of your purchase of the securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of your purchase of the securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of your primary residence, the amount of such excess shall be included as a liability); and (c) indebtedness that is secured by your primary residence in excess of the estimated fair market value of your primary residence at the time of your purchase of the securities shall be included as a liability.**

**ANTI MONEY LAUNDERING REQUIREMENTS**

**The USA PATRIOT Act**

The USA PATRIOT Act is designed to detect, deter, and punish terrorists in the United States and abroad. The Act imposes new anti-money laundering requirements on brokerage firms and financial institutions.

Since April 24, 2002 all brokerage firms have been required to have new, comprehensive anti-money laundering programs.

To help you understand these efforts, we want to provide you with some information about money laundering and our steps to implement the USA PATRIOT Act.

**What is money laundering?**

Money laundering is the process of disguising illegally obtained money so that the funds appear to come from legitimate sources or activities. Money laundering occurs in connection with a wide variety of crimes, including illegal arms sales, drug trafficking, robbery, fraud, racketeering, and terrorism.

**How big is the problem and why is it important?**

The use of the U.S. financial system by criminals to facilitate terrorism or other crimes could well taint our financial markets. According to the U.S. State Department, one recent estimate puts the amount of worldwide money laundering activity at \$1 trillion a year.

**What are we required to do to eliminate money laundering?**

Under rules required by the USA PATRIOT Act, our anti-money laundering program must designate a special compliance officer, set up employee training, conduct independent audits, and establish policies and procedures to detect and report suspicious transaction and ensure compliance with such laws. As part of our required program, we may ask you to provide various identification documents or other information. Until you provide the information or documents we need, we may not be able to effect any transactions for you.

**EXHIBIT A**  
**Form of Registration Rights Agreement**

TRANSPHORM, INC.

Selling Securityholder Notice and Questionnaire

The undersigned beneficial owner of Registrable Securities of Transphorm, Inc., a Delaware corporation (the “**Company**”), understands that the Company has filed or intends to file with the U.S. Securities and Exchange Commission a registration statement (the “**Registration Statement**”) for the registration and resale under Rule 415 of the Securities Act of 1933, as amended, of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the “**Registration Rights Agreement**”) to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling security holder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling security holder in the Registration Statement and the related prospectus.

**NOTICE**

The undersigned beneficial owner (the “**Selling Securityholder**”) of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

**QUESTIONNAIRE**

**1. Name:**

(a) Full Legal Name of Selling Securityholder

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(b) Full Legal Name of Registered Holder (holder of record) (if not the same as (a) above) through which Registrable Securities are held:

---

---

(c) If you are not a natural person, full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

---

---

**2. Address for Notices to Selling Securityholder:**

\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**3. Broker-Dealer Status:**

(a) Are you a broker-dealer?

Yes  No

(b) If “yes” to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes  No

Note: If “no” to Section 3(b), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes  No

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes  No

Note: If “no” to Section 3(d), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

**4. Beneficial Ownership of Securities of the Company Owned by the Selling Securityholder:**

*Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company.*

(a) Please list the type (common stock, warrants, etc.) and amount of all securities of the Company (including any Registrable Securities) beneficially owned<sup>1</sup> by the Selling Securityholder:

\_\_\_\_\_

**5. Relationships with the Company:**

Except as set forth below, neither you nor (if you are a natural person) any member of your immediate family, nor (if you are not a natural person) any of your affiliates<sup>2</sup>, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

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<sup>1</sup> **Beneficially Owned:** A “beneficial owner” of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares (i) **voting power**, including the power to direct the voting of such security, or (ii) **investment power**, including the power to dispose of, or direct the disposition of, such security. In addition, a person is deemed to have “beneficial ownership” of a security of which such person has the right to acquire beneficial ownership at any time within 60 days, including, but not limited to, any right to acquire such security: (i) through the exercise of any option, warrant or right, (ii) through the conversion of any security or (iii) pursuant to the power to revoke, or the automatic termination of, a trust, discretionary account or similar arrangement.

It is possible that a security may have more than one “beneficial owner,” such as a trust, with two co-trustees sharing voting power, and the settlor or another third party having investment power, in which case each of the three would be the “beneficial owner” of the securities in the trust. The power to vote or direct the voting, or to invest or dispose of, or direct the investment or disposition of, a security may be indirect and arise from legal, economic, contractual or other rights, and the determination of beneficial ownership depends upon who ultimately possesses or shares the power to direct the voting or the disposition of the security.

The final determination of the existence of beneficial ownership depends upon the facts of each case. You may, if you believe the facts warrant it, disclaim beneficial ownership of securities that might otherwise be considered “beneficially owned” by you.

<sup>2</sup> **Affiliate:** An “affiliate” is a company or person that directly, or indirectly through one or more intermediaries, controls you, or is controlled by you, or is under common control with you.

The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Selling Securityholder Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

**BENEFICIAL OWNER** (individual)      **BENEFICIAL OWNER** (entity)

\_\_\_\_\_  
Signature                      Name of Entity

\_\_\_\_\_  
Print Name                      Signature

\_\_\_\_\_  
Signature (if Joint Tenants or Tenants in Common)      Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PLEASE E-MAIL A COPY OF THE COMPLETED AND EXECUTED SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE TO:**

Wilson Sonsini Goodrich and Rosati P.C.  
Attn: Arjun Adusumilli  
Email: aadusumilli@wsgr.com

THIS WARRANT AND THE SECURITIES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD IN ACCORDANCE WITH RULE 144 UNDER SUCH ACT.

WARRANT NO. [●]

NUMBER OF SHARES: [●]

DATE OF ISSUANCE: December 23, 2020

(subject to adjustment hereunder)

EXPIRATION DATE: December 23, 2025

WARRANT TO PURCHASE SHARES  
OF COMMON STOCK OF

TRANSPHORM, INC.

This Warrant is issued to [●], or its registered assigns (including any successors or assigns, the “**Warrantholder**”), in connection with that certain Placement Agent Agreement, dated as of December 22, 2020, by and among Transphorm, Inc. (f/k/a Peninsula Acquisition Corporation), a Delaware corporation (the “**Company**”), and Loop Capital Markets LLC, as representative of the placement agents set forth therein (the “**Placement Agent Agreement**”). The Warrant Shares (as defined below) are entitled to the benefits, and subject to the obligations, set forth in that certain Registration Rights Agreement, dated as of December 23, 2020, among the Company, the Warrantholder and the other parties thereto (the “**Registration Rights Agreement**”).

1. EXERCISE OF WARRANT.

(a) Number and Exercise Price of Warrant Shares; Expiration Date. Subject to the terms and conditions set forth herein and set forth in the Placement Agent Agreement, the Warrantholder is entitled to purchase from the Company up to [●] shares of the Company’s common stock, \$0.0001 par value per share (the “**Common Stock**”) (as adjusted from time to time pursuant to the provisions of this Warrant) (the “**Warrant Shares**”), at a purchase price of \$3.30 per share (the “**Exercise Price**”), on or before 5:00 p.m. New York City time on December 23, 2025 (the “**Expiration Date**”) (subject to earlier termination of this Warrant as set forth herein).

(b) Method of Exercise. While this Warrant remains outstanding and exercisable in accordance with Section 1(a) above, the Warrantholder may exercise this Warrant in accordance with Section 6 herein, by either:

(i) wire transfer to the Company or cashier’s check drawn on a United States bank made payable to the order of the Company, or

(ii) exercising of the right to credit the Exercise Price against the Fair Market Value (as defined below) of the Warrant Shares on the date of exercise (the “**Net Exercise**”) pursuant to Section 1(c).

Notwithstanding anything herein to the contrary, the Warrantholder shall not be required to physically surrender this Warrant to the Company until the Warrantholder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case,



the Warrantholder shall surrender this Warrant to the Company for cancellation within three trading days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Warrantholder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases.

(c) Net Exercise. If the Company shall receive written notice from the Warrantholder at the time of exercise of this Warrant that the holder elects to Net Exercise the Warrant, the Company shall deliver to such Warrantholder (without payment by the Warrantholder of any exercise price in cash) that number of Warrant Shares computed using the following formula:

$$X = \frac{Y (A - B)}{A}$$

Where

X = The number of Warrant Shares to be issued to the Warrantholder.

Y = The number of Warrant Shares purchasable under this Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being cancelled (at the date of such calculation).

A = The Fair Market Value of one share of Common Stock (at the date of such calculation).

B = The Exercise Price (as adjusted hereunder to the date of such calculations).

The "Fair Market Value" of one share of Common Stock as of a particular date shall be determined as follows: (i) if traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the Common Stock on such exchange over the thirty (30) day period ending two business days prior to the date of Net Exercise; (ii) if traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) of the Common Stock over the thirty (30) day period ending two business days prior to the Net Exercise; or (iii) if fair market value cannot be calculated as of such date on either of the foregoing bases, the price determined in good faith by the Company's Board of Directors.

(d) Deemed Exercise. In the event that immediately prior to the close of business on the Expiration Date, the Fair Market Value of one share of Common Stock (as determined in accordance with Section 1(c) above) is greater than the then applicable Exercise Price, this Warrant shall be deemed to be automatically exercised on a net exercise issue basis pursuant to Section 1(c) above, and the Company shall deliver the applicable number of Warrant Shares to the Warrantholder pursuant to the provisions of Section 1(c) above and this Section 1(d).

## 2. CERTAIN ADJUSTMENTS.

(a) Adjustment of Number of Warrant Shares and Exercise Price. The number and kind of Warrant Shares purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as follows:

(i) Subdivisions, Combinations and Other Issuances. If the Company shall at any time after the Date of Issuance but prior to the Expiration Date subdivide its shares of

capital stock of the same class as the Warrant Shares, by split-up or otherwise, or combine such shares of capital stock, or issue additional shares of capital stock as a dividend with respect to any shares of such capital stock, the number of Warrant Shares issuable on the exercise of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination. Appropriate adjustments shall also be made to the Exercise Price payable per share, but the aggregate Exercise Price payable for the total number of Warrant Shares purchasable under this Warrant (as adjusted) shall remain the same. Any adjustment under this Section 2(a)(i) shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

(ii) Reclassification, Reorganizations and Consolidation. In case of any reclassification, capital reorganization or change in the capital stock of the Company (other than as a result of a subdivision, combination or stock dividend provided for in Section 2(a)(i) above) that occurs after the Date of Issuance, then, as a condition of such reclassification, reorganization or change, lawful provision shall be made, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the Warrantholder, so that the Warrantholder shall thereafter have the right at any time prior to the expiration of this Warrant to purchase, at a total price equal to that payable upon the exercise of this Warrant, the kind and amount of shares of stock and/or other securities or property (including, if applicable, cash) receivable in connection with such reclassification, reorganization or change by a holder of the same number and type of securities as were purchasable as Warrant Shares by the Warrantholder immediately prior to such reclassification, reorganization or change. In any such case appropriate provisions shall be made with respect to the rights and interest of the Warrantholder so that the provisions hereof shall thereafter be applicable with respect to any shares of stock or other securities or property deliverable upon exercise hereof, and appropriate adjustments shall be made to the Exercise Price payable hereunder, provided the aggregate Exercise Price shall remain the same (and, for the avoidance of doubt, this Warrant shall be exclusively exercisable for such shares of stock and/or other securities or property from and after the consummation of such reclassification or other change in the capital stock of the Company).

(b) Statement of Adjustment. Whenever the Exercise Price or number or type of securities issuable upon exercise of this Warrant is adjusted, as herein provided, the Company shall, at its expense, promptly deliver to the Warrantholder a certificate of an officer of the Company setting forth the nature of such adjustment and showing in reasonable detail the facts upon which such adjustment is based.

3. NO FRACTIONAL SHARES. No fractional Warrant Shares or scrip representing fractional shares will be issued upon exercise of this Warrant. In lieu of any fractional shares which would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the Fair Market Value of one Warrant Share.
4. NO STOCKHOLDER RIGHTS. Until the exercise of this Warrant or any portion of this Warrant, the Warrantholder shall not have, nor exercise, any rights as a stockholder of the Company (including without limitation the right to notification of stockholder meetings or the right to receive any notice or other communication concerning the business and affairs of the Company).

5. **RESERVATION OF STOCK.** The Company covenants that during the period this Warrant is exercisable, the Company will reserve from its authorized and unissued Common Stock a sufficient number of shares of Common Stock (or other securities, if applicable) to provide for the issuance of Warrant Shares (or other securities) upon the exercise of this Warrant.

6. **MECHANICS OF EXERCISE.** This Warrant may be exercised by the holder hereof, in whole or in part, by delivering to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Warrantholder at the address of the Warrantholder appearing on the books of the Company) a completed and duly executed copy of the Notice of Exercise in the form attached hereto as Exhibit A by mail or email attachment together with payment in full of the Exercise Price (unless the Warrantholder has elected to Net Exercise) then in effect with respect to the number of Warrant Shares as to which the Warrant is being exercised. This Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of the delivery to the Company of the Notice of Exercise as provided above, and the person entitled to receive the Warrant Shares issuable upon such exercise shall be treated for all purposes as the holder of such shares of record as of the close of business on such date. Warrant Shares purchased hereunder shall be transmitted by the Company's transfer agent to the holder by crediting the account of the holder's prime broker with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("**DWAC**") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the holder or (B) the shares are eligible for resale by the holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery to the address specified by the holder in the Notice of Exercise by the end of the day on the date that is three trading days from the delivery to the Company of the Notice of Exercise and payment of the aggregate Exercise Price (unless exercised by means of a cashless exercise pursuant to Section 1(c)). The Warrant Shares shall be deemed to have been issued, and the holder or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Warrant has been exercised, with payment to the Company of the Exercise Price (or by Net Exercise) and all taxes required to be paid by the holder, if any, prior to the issuance of such shares, having been paid.

7. **COMPLIANCE WITH SECURITIES LAWS.**

(a) The Warrantholder hereby represents: (a) that this Warrant and any securities to be acquired by the Warrantholder on exercise of the Warrant will be acquired for investment for the Warrantholder's own account and not with a view to the resale or distribution of any part thereof, and (b) that the Warrantholder is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the "**Securities Act**"). In addition, as a condition of its delivery of certificates for the Common Stock, the Company will require the Warrantholder to deliver to the Company representations regarding the Warrantholder's sophistication, investor status, investment intent, acquisition for its own account and such other matters as are reasonable and customary for purchasers of securities in an unregistered private offering as set forth in the form of Notice of Exercise attached hereto as Exhibit A.

(b) The Warrantholder understands that this Warrant and the Warrant Shares are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations this Warrant and the Warrant Shares may be resold without registration under the Securities Act only in certain limited circumstances. In this connection, the

Warrantholder represents that it is familiar with Rule 144 under the Securities Act, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

(c) Prior and as a condition to the sale or transfer of the Warrant Shares issuable upon exercise of this Warrant, the Warrantholder shall furnish to the Company such certificates, representations, agreements and other information, including an opinion of counsel, as the Company or the Company's transfer agent reasonably may require to confirm that such sale or transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, unless such Warrant Shares are being sold or transferred pursuant to an effective registration statement.

(d) The Warrantholder acknowledges that the Company may place a restrictive legend on the Warrant Shares issuable upon exercise of this Warrant in order to comply with applicable securities laws, in substantially the following form and substance:

“THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THE SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF OTHER JURISDICTIONS AND, IN THE CASE OF A TRANSACTION EXEMPT FROM REGISTRATION, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT AND SUCH OTHER APPLICABLE LAWS.”

8. REPLACEMENT OF WARRANT. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of any such loss, theft or destruction of this Warrant, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of any such mutilation, on surrender and cancellation of such Warrant, the Company at its expense will execute and deliver, in lieu thereof, a new Warrant of like tenor.

9. TRANSFERS; EXCHANGES.

(a) Subject to compliance with applicable federal and state securities laws and Section 7 hereof, this Warrant may be transferred by the Warrantholder with respect to any or all of the Warrant Shares purchasable hereunder. For a transfer of this Warrant as an entirety by the Warrantholder, upon surrender of this Warrant to the Company, together with the Notice of Assignment in the form attached hereto as Exhibit B duly completed and executed on behalf of the Warrantholder, the Company shall issue a new Warrant of the same denomination to the assignee. For a transfer of this Warrant with respect to a portion of the Warrant Shares purchasable hereunder, upon surrender of this Warrant to the Company, together with the Notice of Assignment in the form attached hereto as Exhibit B duly completed and executed on behalf of the Warrantholder, the Company shall issue a new Warrant to the assignee, in such denomination as shall be requested by the Warrantholder, and shall issue to the Warrantholder a new Warrant covering the number of shares in respect of which this Warrant shall not have been transferred.

(b) This Warrant is exchangeable, without expense, at the option of the Warrantholder, upon presentation and surrender hereof to the Company for other warrants of different denominations entitling the holder thereof to purchase in the aggregate the same number of shares of Common Stock purchasable hereunder. This Warrant may be divided or combined with other warrants that carry the same rights upon presentation hereof at the principal office of the Company together with a written notice specifying the denominations in which new warrants are to be issued to the Warrantholder and signed by the Warrantholder hereof. The term "Warrants" as used herein includes any warrants into which this Warrant may be divided or exchanged.

10. **APPLICABLE LAW.** This Warrant shall be governed by and construed in accordance with the internal laws of the State of California, without the application of principles of conflicts of laws that would result in any law other than the laws of the State of California.
11. **NOTICE.** Any notices required or permitted to be given hereunder will be in writing and may be served personally or by mail, including by email; and if served will be addressed as follows:

If to the Company: Transphorm, Inc.  
75 Castilian Drive  
Goleta, CA 93117  
Attn: Primit Parikh and Cameron McAulay  
Email: [pparikh@transphormusa.com](mailto:pparikh@transphormusa.com) and [cmcaulay@transphormusa.com](mailto:cmcaulay@transphormusa.com)

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

Wilson Sonsini Goodrich & Rosati P.C.  
650 Page Mill Road  
Palo Alto, CA 94304  
Attn: Julia Reigel and Erika Muhl  
Email: [jreigel@wsgr.com](mailto:jreigel@wsgr.com) and [emuhl@wsgr.com](mailto:emuhl@wsgr.com)

If to the Warrantholder: [●]  
[●]  
[●]  
Attn: [●]  
Email: Email:

Any notice so given by mail will be deemed effectively given 48 hours after mailing when deposited in the United States mail, registered or certified mail, return receipt requested, postage prepaid and addressed as specified above. Any notice given by email must be accompanied by confirmation of receipt, and will be deemed effectively given upon confirmation of such receipt. Any party may by written notice to the other specify a different address for notice purposes.

IN WITNESS WHEREOF, this Warrant is issued effective as of the date first set forth above.

**TRANSPHORM, INC.**  
By:  
Name:  
Title:

**EXHIBIT A**

NOTICE OF EXERCISE  
(To be signed only upon exercise of Warrant)

To: Transphorm, Inc.

1. The undersigned, the Warrantholder of the attached Warrant No. [●], hereby irrevocably elects to exercise the purchase right represented by such Warrant for, and to purchase thereunder, shares of Common Stock of Transphorm, Inc. as follows (choose one):  
  
 Exercise for Cash. Pursuant to Section 1(b)(i) of the Warrant, the Warrantholder hereby elects to exercise the Warrant for cash and tenders payment herewith (or has made a wire transfer) to the order of Transphorm, Inc. in the amount of \$\_\_\_\_\_.  
 Net Exercise. Pursuant to Section 1(b)(ii) of the Warrant, the Warrantholder hereby elects to Net Exercise the Warrant.
  
2. The undersigned requests that the certificates or book entry position evidencing the shares to be acquired pursuant to such exercise be issued in the name of, and delivered to, the following:  
  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
SSN: \_\_\_\_\_
  
3. The undersigned understands, agrees and recognizes that:  
  
(a) No federal or state agency has made any finding or determination as to the fairness of the investment or any recommendation or endorsement of the securities.  
  
(b) All certificates or book entry positions evidencing the shares of Common Stock may bear a legend substantially similar to the legend set forth in Section 7 of the Warrant regarding resale restrictions.
  
4. By its signature below the undersigned hereby represents and warrants that it is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended, and agrees to be bound by the terms and conditions of the attached Warrant as of the date hereof.

Dated: \_\_\_\_\_

(Signature must conform in all respects to name of the Warrantholder as specified on the face of the Warrant)

Signature: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT B**

NOTICE OF ASSIGNMENT FORM

FOR VALUE RECEIVED, [\_\_\_\_\_] (the “**Assignor**”) hereby sells, assigns and transfers all of the rights of the undersigned Assignor under the attached Warrant with respect to the number of shares of Common Stock of Transphorm, Inc. (the “**Company**”) covered thereby set forth below, to the following “**Assignee**” and, in connection with such transfer, represents and warrants to the Company that the transfer is in compliance with Section 7 of the Warrant and applicable federal and state securities laws:

|                         |                    |
|-------------------------|--------------------|
| NAME OF ASSIGNEE        | ADDRESS/FAX NUMBER |
| Number of shares: _____ | Signature: _____   |
| Dated: _____            | Witness: _____     |

ASSIGNEE ACKNOWLEDGMENT

The undersigned Assignee acknowledges that it has reviewed the attached Warrant and by its signature below it hereby represents and warrants that it is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended, and agrees to be bound by the terms and conditions of the Warrant as of the date hereof, including Section 7 thereof.

Signature: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Transphorm Announces Pricing of \$15 Million Private Placement of Common Stock

**GOLETA, Calif.—December 22, 2020—Transphorm, Inc.** (OTCQB: TGAN)—a pioneer in and global supplier of high reliability, high performance gallium nitride (GaN) power conversion products—today announced the pricing of a private placement of 5,000,000 shares of its common stock at a price of \$3.00 per share, for expected gross proceeds to Transphorm of \$15.0 million, before deducting placement agent commissions, financial advisor fees and other offering expenses.

The closing of the private placement is expected to occur on or about December 22, 2020, subject to the satisfaction of customary closing conditions. Transphorm intends to utilize the net proceeds to scale the continued ramp of new design-ins and volume shipments of GaN products for the fast charging power adapter, server, power supply and other markets, expanded sampling and qualification of products for EV automotive applications, growth of its epi wafer business as well as working capital to support general operations.

The securities to be sold in the private placement have not been registered under the Securities Act of 1933, as amended (the "Securities Act") or any state or other jurisdiction's securities laws, and may not be resold absent registration under, or exemption from registration under, the Securities Act. Transphorm has agreed to file a registration statement with the Securities and Exchange Commission registering the resale of the shares of common stock to be issued and sold in the private placement within 30 days of the closing of the private placement.

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

Loop Capital Markets LLC and Spartan Capital Securities, LLC acted as placement agents for the private placement. B. Riley Securities, Inc. and Craig-Hallum Capital Group LLC acted as financial advisors for the private placement.

### About Transphorm

Transphorm, Inc., a global leader in the GaN revolution, designs and manufactures high performance and high reliability GaN semiconductors for high voltage power conversion applications. Having one of the largest Power GaN IP portfolios of more than 1,000 owned or licensed patents, Transphorm produces the industry's first JEDEC and AEC-Q101 qualified high voltage GaN semiconductor devices. The Company's vertically integrated device business model allows for innovation at every development stage: design, fabrication, device, and application support. Transphorm's innovations are moving power electronics beyond the limitations of silicon to achieve over 99% efficiency, 40% more power density and 20% lower system cost. Transphorm is headquartered in Goleta, California and has manufacturing operations in Goleta and Aizu, Japan. For more information, please visit [www.transphormusa.com](http://www.transphormusa.com). Follow us on Twitter @transphormusa.

### Forward-Looking Statements

All statements in this press release that are not historical are forward-looking statements, including, among other things, statements relating to the Company's expectations regarding the expected gross proceeds from, and the timing of the expected closing of, the private placement. These statements are not historical facts but rather are based on the Company's current expectations, estimates, and projections regarding its business, operations and other similar or related factors. Words such as "may,"



“will,” “could,” “would,” “should,” “anticipate,” “predict,” “potential,” “continue,” “expect,” “intend,” “plan,” “project,” “believe,” “estimate,” and other similar or related expressions are used to identify these forward-looking statements, although not all forward-looking statements contain these words. You should not place undue reliance on forward-looking statements because they involve known and unknown risks, uncertainties, and assumptions that are difficult or impossible to predict and, in some cases, beyond the Company’s control. Actual results may differ materially from those in the forward-looking statements as a result of a number of factors, including those described in the Company’s filings with the Securities and Exchange Commission. The Company undertakes no obligation to revise or update information in this release to reflect events or circumstances in the future, even if new information becomes available.

**Investor Contacts:**

Shelton Group

Brett Perry | Leanne Sievers

1-214-272-0070 | 1-949-224-3874

[sheltonir@sheltongroup.com](mailto:sheltonir@sheltongroup.com)**Company Contact:**

Cameron McAulay

Chief Financial Officer

1-805-456-1300 ext. 140

[cmcaulay@transphormusa.com](mailto:cmcaulay@transphormusa.com)

## Transphorm Announces Closing of \$15 Million Private Placement of Common Stock

*Positioned to Capitalize on Significant Market Opportunities and Growing Adoption of GaN Power Conversion Devices*

**GOLETA, Calif.—December 24, 2020—Transphorm, Inc.** (OTCQB: TGAN)—a pioneer in and global supplier of high reliability, high performance gallium nitride (GaN) power conversion products—today announced the closing of a common stock only private placement of 5,000,000 shares at a price of \$3.00 per share, resulting in gross proceeds to Transphorm of \$15.0 million, before deducting placement agent commissions, financial advisor fees and other offering expenses.

“We are very pleased with the strong support from the financial community for Transphorm’s vision and the representative growth opportunities for our high-voltage GaN power devices,” stated Mario Rivas, Chief Executive Officer. “In addition to strengthening Transphorm’s overall financial position, completion of this funding enables us to aggressively ramp production in support of secured designs for fast charging power adapter applications, while simultaneously expanding the sampling and qualification of our Gen IV and Gen V SuperGaN® products for EV automotive applications. Entering 2021, we are well positioned to benefit from industry megatrends, such as 5G communications and vehicle electrification, due to the increasing demand for high reliability, high performance GaN power conversion devices that can deliver the features and functionality required by a growing cross-section of strategic partners and customers.”

Transphorm intends to utilize the net proceeds to scale volume shipments of GaN products for the fast charging power adapter, server, communication and gaming power supply markets as well as converters/inverters for industrial and renewable applications, expanded sampling and qualification in EV automotive applications, growth of its epi wafer business, as well as working capital to support general operations.

The securities sold in the private placement have not been registered under the Securities Act of 1933, as amended (the “Securities Act”) or any state or other jurisdiction’s securities laws, and may not be resold absent registration under, or exemption from registration under, the Securities Act. Transphorm has agreed to file a registration statement with the Securities and Exchange Commission registering the resale of the shares of common stock issued and sold in the private placement within 30 days of the closing of the private placement.

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

Loop Capital Markets LLC and Spartan Capital Securities, LLC acted as placement agents for the private placement. B. Riley Securities, Inc. and Craig-Hallum Capital Group LLC acted as financial advisors for the private placement.

### **About Transphorm**

Transphorm, Inc., a global leader in the GaN revolution, designs and manufactures high performance and high reliability GaN semiconductors for high voltage power conversion applications. Having one of the

largest Power GaN IP portfolios of more than 1,000 owned or licensed patents, Transphorm produces the industry's first JEDEC and AEC-Q101 qualified high voltage GaN semiconductor devices. The Company's vertically integrated device business model allows for innovation at every development stage: design, fabrication, device, and application support. Transphorm's innovations are moving power electronics beyond the limitations of silicon to achieve over 99% efficiency, 40% more power density and 20% lower system cost. Transphorm is headquartered in Goleta, California and has manufacturing operations in Goleta and Aizu, Japan. For more information, please visit [www.transphormusa.com](http://www.transphormusa.com). Follow us on Twitter [@transphormusa](https://twitter.com/transphormusa).

**Forward-Looking Statements**

All statements in this press release that are not historical are forward-looking statements, including, among other things, statements relating to Transphorm's expectations regarding its positioning heading into 2021. These statements are not historical facts but rather are based on the company's current expectations, estimates, and projections regarding its business, operations and other similar or related factors. Words such as "may," "will," "could," "would," "should," "anticipate," "predict," "potential," "continue," "expect," "intend," "plan," "project," "believe," "estimate," and other similar or related expressions are used to identify these forward-looking statements, although not all forward-looking statements contain these words. You should not place undue reliance on forward-looking statements because they involve known and unknown risks, uncertainties, and assumptions that are difficult or impossible to predict and, in some cases, beyond the company's control. Actual results may differ materially from those in the forward-looking statements as a result of a number of factors, including those described in the company's filings with the Securities and Exchange Commission. Transphorm undertakes no obligation to revise or update information in this release to reflect events or circumstances in the future, even if new information becomes available.

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