

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
 For the Quarterly Period Ended September 30, 2024

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
 Commission File Number 001-37906

ORGANOGENESIS HOLDINGS INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of  
Incorporation or Organization)

98-1329150

(I.R.S. Employer  
Identification No.)

85 Dan Road

Canton

,

MA

(Address of principal executive offices)

02021

(Zip Code)

( 781 ) 575-0775

(Registrant's Telephone Number, Including Area Code)

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock, \$0.0001 par value	ORGO	Nasdaq Capital Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Non-accelerated filer ☐

Smaller reporting company ☐

Emerging growth company ☐

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The number of shares of the registrant's Class A common stock outstanding as of November 5, 2024 was

132,576,502

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Organogenesis Holdings Inc.  
Quarterly Report on Form 10-Q  
For the Quarterly Period Ended September 30, 2024

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#### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (this “Form 10-Q”) contains forward-looking statements. These statements may relate to, but are not limited to, expectations of our future results of operations, business strategies and operations, financing plans, potential growth opportunities, clinical development and commercialization of our product candidates, potential market opportunities and the effects of competition, as well as assumptions relating to the foregoing. Forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified. These risks and other factors include, but are not limited to, those listed under “Risk Factors.” In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “could,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “intend,” “potential,” “might,” “would,” “continue” or the negative of these terms or other comparable terminology. These forward-looking statements are based on our management’s current expectations, estimates, forecasts and projections about our business and the industry in which we operate and our management’s beliefs and assumptions. These forward-looking statements are not guarantees of future performance or development and involve known and unknown risks, uncertainties and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this Form 10-Q may turn out to be inaccurate. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under “Risk Factors” and discussed elsewhere in this Form 10-Q and in “Part I, Item 1A—Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2023. These forward-looking statements speak only as of the date of this Form 10-Q. Except as required by law, we assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future. You should, however, review the factors and risks we describe in the reports we will file from time to time with the U.S. Securities and Exchange Commission (the “SEC”) after the date of this Form 10-Q.

As used herein, except as otherwise indicated by context, references to “we,” “us,” “our,” “the Company,” “Organogenesis” and “ORGO” will refer to Organogenesis Holdings Inc. and its subsidiaries.

**PART I—FINANCIAL INFORMATION**
**Item 1. Unaudited Condensed Consolidated Financial Statements.**

**ORGANOGENESIS HOLDINGS INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(unaudited)  
(amounts in thousands, except share and per share data)

	September 30, 2024	December 31, 2023
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 94,340	\$ 103,840
Restricted cash	586	498
Accounts receivable, net	101,272	81,999
Inventories, net	27,036	28,253
Prepaid expenses and other current assets	15,275	10,454
Total current assets	238,509	225,044
Property and equipment, net	89,868	116,228
Intangible assets, net	13,302	15,871
Goodwill	28,772	28,772
Operating lease right-of-use assets, net	34,943	40,118
Deferred tax asset, net	35,889	28,002
Other assets	5,013	5,990
Total assets	\$ 446,296	\$ 460,025
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Current portion of term loan	\$ 5,964	\$ 5,486
Current portion of finance lease obligations	1,147	1,081
Current portion of operating lease obligations - related party	6,172	8,413

Current portion of operating lease obligations	3,926	4,731
Accounts payable	23,971	30,724
Accrued expenses and other current liabilities	36,101	30,074
Total current liabilities	77,281	80,509
Term loan, net of current portion	56,153	60,745
Finance lease obligations, net of current portion	1,019	1,888
Operating lease obligations, net of current portion - related party	9,217	11,954
Operating lease obligations, net of current portion	22,785	25,053
Other liabilities	1,294	1,213
Total liabilities	167,749	181,362
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Preferred stock, \$		
0.0001		
par value;		
1,000,000		
shares authorized;		
none		
issued	—	—
Common stock, \$		
0.0001		
par value;		
400,000,000		
shares authorized;		
133,305,050		
and		
132,044,944		
shares issued;		
132,576,502		
and		
131,316,396	13	13
shares outstanding at September 30, 2024 and December 31, 2023, respectively		

Additional paid-in capital	326,317	319,621
Accumulated deficit	( 47,783 )	( 40,971 )
Total stockholders' equity	278,547	278,663
Total liabilities and stockholders' equity	446,296	460,025
	<u>\$</u>	<u>\$</u>

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

**ORGANOGENESIS HOLDINGS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)**  
(unaudited)  
(amounts in thousands, except share and per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Net revenue				
	\$ 115,177	\$ 108,531	\$ 355,387	\$ 333,489
Cost of goods sold				
	26,796	25,789	84,690	78,712
Gross profit				
	88,381	82,742	270,697	254,777
Operating expenses:				
Selling, general and administrative				
	71,795	64,222	220,657	208,373
Research and development				
	10,344	10,470	38,741	32,610
Impairment of property and construction				
	—	—	18,842	—
Write down of capitalized internal-use software costs				
	—	—	3,959	—
Total operating expenses				
	82,139	74,692	282,199	240,983
Income (loss) from operations			(	
	6,242	8,050	11,502	13,794
Other expense, net:			)	
Interest expense, net	(	(	(	(
	471	444	1,605	1,688
	)	)	)	)
Other income, net				
	52	31	47	82
Total other expense, net	(	(	(	(
	419	413	1,558	1,606
	)	)	)	)
Net income (loss) before income taxes			(	
	5,823	7,637	13,060	12,188
			)	
Income tax benefit (expense)		(		(
	6,508	4,470	6,248	6,675
		)		)
Net income (loss) and comprehensive income (loss)			(	
	12,331	3,167	6,812	5,513
	\$	\$	\$	\$
Net income (loss) per share:				
Basic			(	
	0.09	0.02	0.05	0.04
	\$	\$	\$	\$



Diluted			(	
	0.09	0.02	0.05	0.04
	\$	\$	\$	\$
Weighted-average common shares outstanding			)	
Basic				
	132,575,301	131,312,483	132,342,203	131,230,882
Diluted				
	133,926,755	133,417,721	132,342,203	132,790,296

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

**ORGANOGENESIS HOLDINGS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(unaudited)  
(amounts in thousands, except share data)

	Common Stock Shares	Amount	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
				(	
<b>Balance as of December 31, 2023</b>	131,316,396	\$ 13	\$ 319,621	\$ 40,971 )	\$ 278,663
Exercise of stock options	152,250	—	180	—	180
			(		(
Vesting of RSUs, net of shares surrendered to pay taxes	1,070,694	—	1,120 )	—	1,120 )
Stock-based compensation expense	—	—	2,407	—	2,407
				(	(
Net loss	—	—	—	2,100 )	2,100 )
				(	
<b>Balance as of March 31, 2024</b>	132,539,340	\$ 13	\$ 321,088	\$ 43,071 )	\$ 278,030
			(		(
Vesting of RSUs, net of shares surrendered to pay taxes	34,898	—	54 )	—	54 )
Stock-based compensation expense	—	—	2,568	—	2,568
				(	(
Net loss	—	—	—	17,043 )	17,043 )
				(	
<b>Balance as of June 30, 2024</b>	132,574,238	\$ 13	\$ 323,602	\$ 60,114 )	\$ 263,501
Exercise of stock options	1,500	—	4	—	4
			(		(
Vesting of RSUs, net of shares surrendered to pay taxes	764	—	1 )	—	1 )
Stock-based compensation expense	—	—	2,712	—	2,712
Net income	—	—	—	12,331	12,331

				(	
	132,576,502	13	326,317	47,783	278,547
<b>Balance as of September 30, 2024</b>	<u></u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
			Additional	Accumulat	Total
	Common Stock	Amount	Paid-in	ed	Stockholders' Equity
	Shares		Capital	Deficit	
				(	(
<b>Balance as of December 31, 2022</b>	130,919,129	13	310,957	45,301	265,669
	\$	\$	\$	\$	\$
				(	(
Cumulative-effect adjustment from adoption of ASU 2016-13, net of tax (Note 2)	—	—	—	615	615
			(	)	)
				(	(
Vesting of RSUs, net of shares surrendered to pay taxes	307,258	—	298	—	298
			)	—	)
			1,914	—	1,914
Stock-based compensation expense	—	—		(	(
				(	(
Net loss	—	—	—	2,969	2,969
				)	)
				(	(
<b>Balance as of March 31, 2023</b>	131,226,387	13	312,573	48,885	263,701
	\$	\$	\$	)	\$
			(		(
Vesting of RSUs, net of shares surrendered to pay taxes	85,465	—	34	—	34
			)	—	)
			2,299	—	2,299
Stock-based compensation expense	—	—		—	
Net income	—	—	—	5,316	5,316
				(	(
<b>Balance as of June 30, 2023</b>	131,311,852	13	314,838	43,569	271,282
	\$	\$	\$	)	\$
			(		(
Vesting of RSUs, net of shares surrendered to pay taxes	764	—	1	—	1
			)	—	)
			2,417	—	2,417
Stock-based compensation expense	—	—		—	
Net income	—	—	—	3,167	3,167
				(	(
<b>Balance as of September 30, 2023</b>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
	131,312,616	13	317,254	40,402	276,865

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



**ORGANOGENESIS HOLDINGS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(unaudited, in thousands)

	2024	Nine Months Ended September 30, 2023
<b>Cash flows from operating activities:</b>		
Net income (loss)	(	(
	6,812	5,513
	\$ )	\$ )
<b>Adjustments to reconcile net income (loss) to net cash provided by operating activities:</b>		
Depreciation and amortization	10,008	7,466
Amortization of intangible assets	2,569	3,688
Reduction in the carrying value of right-of-use assets	6,377	5,964
Non-cash interest expense	313	321
Deferred interest expense	274	367
Provision recorded for credit losses	3,723	1,320
Deferred tax benefit	(	—
	7,887	)
Loss on disposal of property and equipment	444	104
Adjustment for excess and obsolete inventories	5,884	4,351
Stock-based compensation	7,687	6,630
Impairment of property and construction (Note 6)	18,842	—
Write down of capitalized internal-use software costs (Note 6)	3,959	—
<b>Changes in operating assets and liabilities:</b>		
Accounts receivable	(	(
	22,996	1,761
	)	)
Inventories	(	(
	5,749	7,473
	)	)
Prepaid expenses and other current assets and other assets	(	(
	4,052	4,491
	)	)
Operating leases	(	(
	9,253	6,282
	)	)

Accounts payable	(	(
	6,022	3,661
	)	)
Accrued expenses and other current liabilities		
	5,882	8,179
Other liabilities		
	80	68
Net cash provided by operating activities		
	3,271	20,303
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	(	(
	6,671	21,040
	)	)
Net cash used in investing activities	(	(
	6,671	21,040
	)	)
<b>Cash flows from financing activities:</b>		
Payments of term loan under the 2021 Credit Agreement	(	(
	4,219	3,281
	)	)
Principal repayments of finance lease obligations	(	(
	804	114
	)	)
Payments of withholding taxes in connection with RSUs vesting	(	(
	1,173	333
	)	)
Proceeds from the exercise of stock options		
	184	—
Net cash used in financing activities	(	(
	6,012	3,728
	)	)
<b>Change in cash, cash equivalents and restricted cash</b>	(	(
	9,412	4,465
	)	)
Cash, cash equivalents, and restricted cash, beginning of period		
	104,338	103,290
Cash, cash equivalents, and restricted cash, end of period		
	94,926	98,825
	\$	\$
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest		\$
	4,105	3,896
	\$	
Cash paid for income taxes		\$
	5,493	3,021
	\$	
<b>Supplemental disclosure of non-cash investing and financing activities:</b>		
Cumulative effect adjustment for adoption of ASU No. 2016-13		\$
	—	615
	\$	
Change in purchases of property and equipment included in accounts payable and accrued expenses and other current liabilities	(	
	222	4,146
	\$	\$
Right-of-use assets obtained through operating lease obligations		
	1,201	5,138
	\$	\$

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



ORGANOGENESIS HOLDINGS INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(amounts in thousands, except share and per share data)

**1. Nature of Business and Basis of Presentation**

Organogenesis Holdings Inc. (ORGO or the Company) is a leading regenerative medicine company focused on the development, manufacture, and commercialization of solutions for the Advanced Wound Care and Surgical & Sports Medicine markets. Several of the existing and pipeline products in the Company's portfolio have Premarket Application (PMA) approval, or Premarket Notification 510(k) clearance from the United States Food and Drug Administration (FDA). The Company's customers include hospitals, wound care centers, government facilities, ambulatory surgery centers (ASCs) and physician offices. The Company has

one

operating and reportable segment.

***Unaudited Interim Financial Information***

The accompanying unaudited condensed consolidated financial statements have been prepared by management in accordance with generally accepted accounting principles in the United States (GAAP), pursuant to the rules and regulations of the Securities and Exchange Commission (SEC) for interim financial statements. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. However, the Company believes that the disclosures are adequate to make the information presented not misleading. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto, for the year ended December 31, 2023, included in the Company's annual report on Form 10-K for the fiscal year ended December 31, 2023, which was filed with the SEC on February 29, 2024 (the Annual Report). The results for the nine months ended September 30, 2024 are not necessarily indicative of the results to be expected for the year ending December 31, 2024, any other interim periods, or any future years or periods.

**2. Summary of Significant Accounting Policies**

The Company's significant accounting policies are described in the Company's audited consolidated financial statements as of and for the year ended December 31, 2023, and the notes thereto, which are included in the Annual Report. There have been no material changes to the significant accounting policies previously disclosed in the Annual Report, with the exception of those detailed below.

These unaudited condensed consolidated financial statements include the accounts and results of operations of Organogenesis Holdings Inc. and its wholly-owned subsidiaries, Organogenesis Inc., Organogenesis GmbH (a Switzerland corporation) and Prime Merger Sub, LLC. All intercompany balances and transactions have been eliminated in consolidation.

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board (FASB) or other standard setting bodies that the Company adopts as of the specified effective date. Unless otherwise discussed below, the Company does not believe that the adoption of recently issued standards have had or may have a material impact on its condensed consolidated financial statements or disclosures.

***Nonrecurring Fair Value Measurements of Nonfinancial Assets***

The Company estimates fair value to perform impairment tests on long-lived asset groups when required. The methodologies used to determine fair value in these circumstances are primarily based upon discounted cash flow models and the inputs to such models are classified within Level 3 of the fair value hierarchy. If impaired, these assets or asset groups are measured and recorded at fair value within the accompanying unaudited condensed consolidated financial statements.

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported results of operations during the reporting periods. In preparing the condensed consolidated financial statements, the estimates and assumptions that management considers to be significant and that present the greatest amount of uncertainty include: revenue recognition; sales returns and credit losses; inventory reserve; recognition and measurement of current and deferred income tax assets and liabilities; the assessment of recoverability of long-lived assets, including impairment and write-downs; and the valuation and recognition of stock-based compensation. Actual results and outcomes may differ significantly from those estimates and assumptions.



### Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentration of credit risk consist of cash and cash equivalents. The Company invests its cash equivalents in highly rated money market funds. Deposits may exceed federally insured limits, and the Company is exposed to credit risk on deposits in the event of default by the financial institutions to the extent account balances exceed the amount insured by the Federal Deposit Insurance Corporation (FDIC). However, the Company sweeps cash daily overnight and diversifies among financial institutions to reduce such exposure.

### Recently Issued Accounting Pronouncements Not Yet Adopted

In November 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which requires public entities to disclose information about their reportable segments' significant expenses and other segment items on an interim and annual basis. Public entities with a single reportable segment are required to apply the disclosure requirements in ASU 2023-07, as well as all existing segment disclosures and reconciliation requirements in ASC 280. ASU 2023-07 is effective for fiscal years beginning after December 15, 2023, and for interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted. The Company is currently evaluating the impact of adopting ASU 2023-07 and does not expect it to have a material impact on its presentation and disclosure.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which requires public entities to disclose specific categories in the effective tax rate reconciliation, as well as additional information for reconciling items that exceed a quantitative threshold. ASU 2023-09 also requires all entities to disclose income taxes paid disaggregated by federal, state and foreign taxes, and further disaggregated for specific jurisdictions that exceed 5% of total income taxes paid, among other expanded disclosures. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024, with early adoption permitted. The Company is currently evaluating the impact of adopting ASU 2023-09.

### Correction of Immaterial Classification Error

Subsequent to the issuance of the consolidated financial statements as of and for the year ended December 31, 2023, the Company determined that as of December 31, 2023, it had incorrectly classified \$

5,273

of accrued but unpaid lease obligations as current portion of operating lease obligations instead of as current portion of operating lease obligations - related party. As a result, the Company also incorrectly classified \$

5,273

of operating lease obligations, net of current portion as operating lease obligations, net of current portion - related party. These misclassifications have been corrected in the accompanying condensed consolidated balance sheets and conform to the current period presentation of operating lease obligations. These reclassifications had no impact on reported results of operations, stockholders' equity, cash flows, total current liabilities, or total liabilities.

### 3. Revenue from Contracts with Customers

The Company generates revenue through the sale of Advanced Wound Care and Surgical & Sports Medicine products. There is a single performance obligation in all of the Company's contracts, which is the Company's promise to transfer the Company's products to customers based on specific payment and shipping terms in the arrangement. Product revenue is recognized when a customer obtains control of the Company's products which occurs at a point in time and may be upon shipment, procedure date, or delivery, based on the terms of the contract. Revenue is recorded net of a reserve for returns, discounts and Group Purchasing Organization (GPO) rebates, which represent a direct reduction to the revenue recognized. These reductions are accrued at the time revenue is recognized, based upon historical experience and specific circumstances. For the three and nine months ended September 30, 2024 and 2023, the Company recorded GPO fees of \$

1,476

, \$

4,499

, \$

1,393

and \$

4,282

, respectively, as a direct reduction of revenue.

The following tables set forth revenue by product category:

	Three Months Ended September 30,	
	2024	2023
Advanced Wound Care		
	\$ 107,953	\$ 101,357
Surgical & Sports Medicine		
	7,224	7,174
Total net revenue	\$ 115,177	\$ 108,531



	Nine Months Ended September 30,	
	2024	2023
Advanced Wound Care		
	\$ 335,054	\$ 312,349
Surgical & Sports Medicine		
	20,333	21,140
Total net revenue		
	\$ 355,387	\$ 333,489

For all periods presented, net revenue generated outside the United States represented less than

1  
% of total net revenue.

#### 4. Accounts Receivable, Net

Accounts receivable consisted of the following:

	September 30, 2024	December 31, 2023
Accounts receivable		
	\$ 111,002	\$ 88,859
Less — allowance for credit losses	( 9,730 )	( 6,860 )
	\$ 101,272	\$ 81,999

The Company's allowance for credit losses is comprised of the following:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Balance at beginning of period				
	\$ 8,512	\$ 6,651	\$ 6,860	\$ 6,362
Cumulative effect of adopting ASU 2016-13				615
Provision for expected credit losses	1,693	1,130	3,728	1,320
Write-offs	( 475 )	( 228 )	( 858 )	( 744 )
Balance at end of period	\$ 9,730	\$ 7,553	\$ 9,730	\$ 7,553

#### 5. Inventories

Inventories, net of related reserves for excess and obsolescence, consisted of the following:

	September 30, 2024	December 31, 2023
Raw materials	\$ 13,015	\$ 12,988

Work in process	1,024	810
Finished goods	12,997	14,455
	27,036	\$ 28,253
	\$	

Raw materials include various components used in the Company's manufacturing process. The Company's excess and obsolete inventory review process includes analysis of sales forecasts and historical sales as compared to inventory level, and working with operations to maximize recovery of excess inventory. During the three and nine months ended September 30, 2024 and 2023, the Company charged \$

1,415  
, \$

5,884  
, \$

887  
and \$

4,351  
, respectively, for inventory excess and obsolescence to cost of goods sold within the condensed consolidated statements of operations and comprehensive income (loss).

## 6. Property and Equipment, Net

Property and equipment consisted of the following:

	September 30, 2024	December 31, 2023
Building and leasehold improvements	\$ 75,630	\$ 65,762
Internal use software	11,202	4,625
Furniture, computers and equipment	57,596	59,960
	144,428	130,347
Accumulated depreciation and amortization	( 75,166 )	( 73,186 )
Construction in progress	20,606	59,067
Total	<u>\$ 89,868</u>	<u>\$ 116,228</u>

Depreciation and amortization expense was \$

3,570  
, \$

10,008  
, \$

2,544  
, and \$

7,466

for the three and nine months ended September 30, 2024 and 2023, respectively.

During the second quarter of 2024, the Company placed certain modules of its enterprise resource planning (ERP) system into service, the costs of which had previously been capitalized as construction in progress and will be expensed over their anticipated useful life, currently estimated to be five years. At such time, the Company determined that certain other modules within the ERP system and other internal-use software had no future use, and accordingly the Company recorded a write down of \$

3,959

of costs related to this internal-use software.

During the second quarter of 2024, the Company decided to pursue the potential sale of a purchased building, located on the Company's Canton, Massachusetts campus, on which it had previously paused construction work. The Company identified this change in expectation regarding the use of the building as an impairment indicator. The Company determined the asset group to be comprised of the building and associated construction, and performed the impairment assessment at the asset group level. The Company determined the impairment charge by comparing the fair value of the asset group to its book value and recorded an impairment charge of \$

18,842

related to the building and associated unfinished construction work, allocated to each asset class within the asset group based on its relative carrying value. See Note 14, *Fair Value Measurements*.

During the second quarter of 2024, the Company determined that the factors above constituted an impairment trigger relating to its remaining company-wide asset group. The Company performed a recoverability test in accordance with ASC 360, *Property, Plant and Equipment*. The estimated undiscounted cash flows directly attributable to the asset group exceeded its carrying value, and accordingly the Company did not record any impairment related to this asset group. The Company did

no

t record any impairment relating to its long-lived asset groups during the three months ended September 30, 2024.

## 7. Goodwill and Intangible Assets

Goodwill was \$

28,772

as of September 30, 2024 and December 31, 2023. There was

no

impairment of goodwill recorded during the three and nine months ended September 30, 2024 and 2023.

Intangible assets consisted of the following as of September 30, 2024:

	Original Cost	Accumulated Amortization	Net Book Value
Developed technology		(	
	32,620	26,214	6,406
	\$	\$	\$
Customer relationships		(	
	10,690	4,321	6,369
		)	
Patent		(	
	7,623	7,623	—
		)	
Independent sales agency network		(	
	4,500	4,500	—
		)	
Trade names and trademarks		(	
	2,080	1,697	383
		)	
Non-compete agreements		(	
	1,010	866	144
		)	
Total		(	
	58,523	45,221	13,302
	\$	\$	\$

Intangible assets consisted of the following as of December 31, 2023:

	Original Cost	Accumulated Amortization	Net Book Value
Developed technology		(	
	32,620	24,666	7,954
	\$	\$	\$
Customer relationship		(	
	10,690	3,519	7,171
		)	
Patent		(	
	7,623	7,623	—
		)	
Independent sales agency network		(	
	4,500	4,500	—
		)	
Trade names and trademarks		(	
	2,080	1,590	490
		)	
Non-compete agreements		(	
	1,010	754	256
		)	
Total		(	
	58,523	42,652	15,871
	\$	\$	\$

Amortization of intangible assets, calculated on a straight-line basis or using an accelerated method, was \$

834  
, \$

2,569  
, \$

1,229  
, and \$

3,688

for the three and nine months ended September 30, 2024 and 2023, respectively. The weighted average remaining useful lives for developed technology, trade names and trademarks, customer relationship, and non-compete agreements are 3.8 years, 3.7 years, 6.0 years, and 1.0 year, respectively, as of September 30, 2024.

## 8. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following:

	September 30, 2024	December 31, 2023
Personnel costs	\$ 22,840	\$ 18,287
Royalties	7,724	3,075
Interest on accrued but unpaid lease obligations (Note 13)	1,285	2,326
Accrued milestone payment (Note 15)	2,500	2,500
Accrued taxes	166	2,799

Other		1,586	1,087
Total	\$	36,101	\$ 30,074

## 9. Restructuring

In order to reduce the Company's cost structure and improve operating efficiency, the Company has consolidated its manufacturing operations in various locations into Massachusetts facilities.

On February 3, 2023, the Company committed to a plan to restructure its workforce to increase productivity and enhance profitability. The reduction in force reduced the Company's headcount by

71  
employees, or approximately

7  
% of all employees. The Company incurred a total charge of \$

1,609  
in the nine months ended September 30, 2023 in connection with the restructuring, primarily consisting of severance payments. It was substantially completed as of March 31, 2023.

As a result of the restructuring activities, the Company recorded a pre-tax adjustment of \$

95  
and a pre-tax charge of \$

1,878  
during the three and nine months ended September 30, 2023, respectively. These charges are included in selling, general and administrative expenses in the condensed consolidated statements of operations and comprehensive loss. The liability related to the restructuring activities was \$

0  
and \$

904  
as of September 30, 2024 and December 31, 2023, respectively, and was included in accrued expenses and other current liabilities in the condensed consolidated balance sheets. The following tables provide a roll-forward of the restructuring liabilities.

	Total
Liability balance as of December 31, 2023	904
	\$
Cash disbursements and other adjustments	(
	904
	)
Liability balance as of September 30, 2024	—
	\$



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	Employee	Other	Total
Liability balance as of December 31, 2022			
	\$ 1,010	\$ 182	\$ 1,192
Expenses			
	1,609	269	1,878
Cash disbursements and other adjustments	(	(	(
	2,605	451	3,056
	)	)	)
Liability balance as of September 30, 2023			
	14	—	14
	\$	\$	\$

## 10. Debt Obligations

Debt obligations consisted of the following:

	September 30, 2024	December 31, 2023
Revolving Facility	\$ —	\$ —
Term loan	62,344	66,563
Less debt discount and debt issuance cost	( 227)	( 332)
Term loan, net of debt discount and debt issuance cost	\$ 62,117	\$ 66,231

### 2021 Credit Agreement

In August 2021, the Company, as borrower, its subsidiaries, as guarantors, and Silicon Valley Bank (SVB), and the several other lenders thereto (collectively, the Lenders) entered into a credit agreement, as amended (the 2021 Credit Agreement), providing for a term loan facility not to exceed \$

75,000

(the Term Loan Facility) and a revolving credit facility not to exceed \$

125,000

(the Revolving Facility and, together with the Term Loan Facility, the Facilities). The Company's obligations to the Lenders are secured by substantially all of the Company's assets, including intellectual property. Capitalized terms used herein and not otherwise defined are defined as set forth in the 2021 Credit Agreement.

Advances made under the 2021 Credit Agreement may be either SOFR Loans or ABR Loans, at the Company's option. For SOFR Loans, the interest rate is a per annum interest rate equal to the Adjusted Term SOFR plus an Applicable Margin between

2.00

% to

3.25

% based on the Total Net Leverage Ratio. For ABR Loans, the interest rate is equal to (1) the highest of (a) the Wall Street Journal Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the Adjusted Term SOFR rate plus 1.0%, plus (2) an Applicable Margin between

1.00

% to

2.25

% based on the Total Net Leverage Ratio. On September 30, 2024, the applicable interest rate for outstanding borrowings is

7.56

%.

The 2021 Credit Agreement requires the Company to make consecutive quarterly installment payments equal to the following: (a) from September 30, 2021 through and including June 30, 2022, \$

469

; (b) from September 30, 2022 through and including June 30, 2023, \$

938

; (c) from September 30, 2023 through and including June 30, 2025, \$

1,406

and (d) from September 30, 2025 and the last day of each quarter thereafter until August 6, 2026 (the Term Loan Maturity Date), \$

1,875

. The remaining principal balance of \$

50,625

is also due on the Term Loan Maturity Date. The Company may prepay the Term Loan Facility. Once repaid, amounts borrowed under the Term Loan Facility may not be re-borrowed.

The Company must pay in arrears, on the first day of each quarter prior to August 6, 2026 (the Revolving Termination Date) and on the Revolving Termination Date, a fee for the Company's non-use of available funds (the Commitment Fee). The Commitment Fee rate is between

0.25

% to

0.45

% based on the Total Net Leverage Ratio. The Company may elect to reduce or terminate the Revolving Facility in its entirety at any time by repaying all outstanding principal and unpaid accrued interest.

Under the 2021 Credit Agreement, the Company is required to comply with certain financial covenants including the Consolidated Fixed Charge Coverage Ratio and Consolidated Total Net Leverage Ratio, tested quarterly. In addition, the Company is also required to make representations and warranties and comply with certain non-financial covenants that are customary in loan agreements of this type, including restrictions on the payment of dividends, repurchase of stock, incurrence of indebtedness, dispositions and acquisitions.

The Company recorded debt issuance costs and related fees of \$ 604 in connection with entering into the Term Loan Facility, which are recorded as a reduction of the carrying value of the term loan on the accompanying condensed consolidated balance sheets. In connection with entering into the Revolving Facility, the Company recorded debt issuance costs and related fees of \$ 1,223 , which are recorded as other assets. Both of these costs are being amortized to interest expense through the maturity date of the Facilities. As of September 30, 2024 and December 31, 2023, the Company had outstanding borrowings of \$ 62,344 and \$ 66,563 under the Term Loan Facility, respectively, and \$ 0 under the Revolving Facility with \$ 125,000 available for future revolving borrowings.

The future payments due under the Term Loan Facility as of September 30, 2024, are as follows for the calendar years ending December 31:

2024 (remaining three months)	1,406
2025	6,563
2026	54,375
	\$
Total	62,344

**11. Stockholders' Equity and Stock-Based Compensation**

**Common Stock**

As of September 30, 2024, the issued shares of Class A common stock include 728,548 treasury shares that were reacquired in connection with the redemption of redeemable shares in March 2019.

**Stock Incentive Plans**

On November 28, 2018, the Board of Directors of the Company adopted, and on December 10, 2018 the Company's stockholders approved, the Organogenesis 2018 Equity Incentive Plan (the 2018 Plan). At the adoption of the 2018 Plan, a total of 9,198,996 shares of Class A common stock was authorized to be issued (subject to adjustment in the case of any stock dividend, stock split, reverse stock split, or similar change in capitalization of the Company). In June 2022, the 2018 Plan was amended to increase the number of shares of Class A common stock reserved for issuance by 7,826,970 shares. In June 2024, the 2018 Plan was amended to increase the number of shares of Class A common stock reserved for issuance by 15,900,000 shares.

The Organogenesis 2003 Stock Incentive Plan (the 2003 Plan), provided for the Company to issue restricted stock awards, or to grant incentive stock options or non-statutory stock options. Effective December 10, 2018, no additional awards may be made under the 2003 Plan.

**Stock-Based Compensation Expense**

Stock options awarded under the stock incentive plans expire 10 years after the grant date and typically vest over four or five years . Restricted stock units awarded typically vest over four years.

Stock-based compensation expense was \$ 2,712 , \$

7,687  
, \$

2,417  
, and \$

6,630

for the three and nine months ended September 30, 2024 and 2023, respectively. The total amount of stock-based compensation expense was included within selling, general and administrative expenses on the condensed consolidated statements of operations and comprehensive income (loss).

***Restricted Stock Units (RSUs)***

The Company granted

1,914,335  
and

3,192,372

time-based restricted stock units to its employees, executives and members of the Board of Directors in the nine months ended September 30, 2024 and 2023, respectively. Each restricted stock unit represents the contingent right to receive one share of the Company's Class A common stock. A majority of the restricted stock units will vest in four equal annual installments. The fair value of the restricted stock units was based on the fair market value of the Company's stock on the date of grant.

The activity of restricted stock units is set forth below:

	Number of RSUs	Weighted Average Grant Date Fair Value
Unvested at December 31, 2023	3,898,331	\$ 3.54
Granted	1,914,335	3.39
Vested	( 1,431,029)	3.65
Canceled/forfeited	( 83,876)	4.12
Unvested at September 30, 2024	4,297,761	\$ 3.42

As of September 30, 2024, the total unrecognized compensation cost related to unvested restricted stock units expected to vest was \$ 8,935 and the weighted average remaining recognition period for unvested awards was 2.47 years.

#### Stock Options

The following table summarizes the Company's stock option activity since December 31, 2023:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding as of December 31, 2023	9,340,046	\$ 4.60	6.66	\$ 10,267
Granted	2,640,601	3.43	—	—
Exercised	( 153,750)	1.19	—	254
Canceled/forfeited	( 166,831)	3.65	—	166
Outstanding as of September 30, 2024	11,660,066	\$ 4.39	6.83	\$ 3,306
Options exercisable as of September 30, 2024	5,516,061	\$ 4.93	4.80	\$ 2,389

	10,637,244	\$	4.48	6.64	\$	3,156
Options vested or expected to vest as of September 30, 2024						

The stock options granted during the nine months ended September 30, 2024 and 2023 were  
 2,640,601  
 and  
 3,554,528  
 , respectively.

The aggregate intrinsic value of stock options is calculated as the difference between the exercise price of the stock options and the fair value of the Company's Class A common stock for those stock options that have exercise prices lower than the fair value of the Company's Class A common stock.

The weighted-average grant-date fair value per share of stock options granted during the nine months ended September 30, 2024 and 2023 was \$  
 1.89  
 and \$  
 1.32  
 , respectively. The total fair value of options vested during the nine months ended September 30, 2024 and 2023 was \$  
 4,136  
 and \$  
 3,117  
 , respectively.

As of September 30, 2024, the total unrecognized stock compensation expense related to unvested stock options expected to vest was \$  
 7,464  
 and was expected to be recognized over a weighted-average period of 2.48 years.

## 12. Earnings per Share (EPS)

Basic EPS is calculated by dividing net income (loss) by the weighted-average number of shares outstanding during the period. Diluted EPS is calculated by dividing net income by the weighted-average number of shares outstanding plus the dilutive effect, if any,

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of outstanding equity awards using the treasury stock method which includes consideration of unrecognized compensation expenses as additional proceeds.

Basic and diluted net income (loss) attributable to the Class A common stockholders was calculated as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
<b>Numerator:</b>				
Net income (loss)			(	
	\$ 12,331	\$ 3,167	\$ 6,812	\$ 5,513
<b>Denominator:</b>				
Weighted average common shares outstanding —basic	132,575,301	131,312,483	132,342,203	131,230,882
Dilutive effect of restricted stock units	636,493	1,179,376	—	700,693
Dilutive effect of options	714,961	925,862	—	858,721
Weighted-average common shares outstanding — diluted	133,926,755	133,417,721	132,342,203	132,790,296
Net income (loss) per share—basic	\$ 0.09	\$ 0.02	\$ 0.05	\$ 0.04
Net income (loss) per share—diluted	\$ 0.09	\$ 0.02	\$ 0.05	\$ 0.04

The Company's potentially dilutive securities include restricted stock units and stock options to purchase shares of Class A common stock. The anti-dilutive potential common stock equivalents of

1,324,165

for the three months ended September 30, 2024 were excluded from the computation of diluted net income per share attributable to common stockholders because those stock options to purchase common stock and restricted stock units had an anti-dilutive impact due to the assumed proceeds per share using the treasury stock method being greater than the average fair value of the Company's common shares for such period. The anti-dilutive potential common stock equivalents of

15,957,827

for the nine months ended September 30, 2024, were excluded from the computation of diluted net loss per share attributable to common stockholders because those options to purchase common stock and unvested restricted stock units had an anti-dilutive impact as the Company reported a net loss attributable to common stockholders for such period. The anti-dilutive potential common stock equivalents of

8,615,405

for the three and nine months ended September 30, 2023, respectively, were excluded from the computation of diluted net income per share attributable to common stockholders because those stock options to purchase common stock and restricted stock units had an anti-dilutive impact due to the assumed proceeds per share using the treasury stock method being greater than the average fair value of the Company's common shares for those periods.

### 13. Leases

The Company's leases consist primarily of real estate, equipment and vehicle leases.

On January 1, 2013, the Company entered into finance lease arrangements with 65 Dan Road SPE, LLC, 85 Dan Road Associates, LLC, Dan Road Equity I, LLC and 275 Dan Road SPE, LLC for office and laboratory space in Canton, Massachusetts (the Related-Party Leases). 65 Dan Road SPE, LLC, 85 Dan Road Associates, LLC, Dan Road Equity I, LLC and 275 Dan Road SPE, LLC are related parties as the owners of these entities are also directors, former directors and / or stockholders of the Company.

Effective April 1, 2019, the Company agreed to accrue interest on accrued but unpaid lease obligations owed for rent in arrears to the owners of the buildings subject to the Related-Party Leases, at an interest rate equal to the rate charged under the 2019 Credit Agreement. In the first quarter of 2024, the Company agreed to repay the remaining accrued but unpaid lease obligations and associated accrued interest in installments throughout 2024. The accrued but unpaid lease obligations as well as the related accrued interest with respect to the three Related-Party Leases are shown below:

	September 30, 2024	December 31, 2023
Principal portion of rent in arrears	\$ 2,636	\$ 5,273
Accrued interest on accrued but unpaid lease obligations	\$ 1,285	\$ 2,326

The accrued but unpaid lease obligations owed for rent in arrears on the Related-Party Leases was included in current portion of operating lease obligations on the accompanying condensed consolidated balance sheets, as of September 30, 2024 and December 31, 2023. The accrued interest on the accrued but unpaid lease obligations was included in accrued expenses and other current liabilities on the condensed consolidated balance sheets as of September 30, 2024 and December 31, 2023.

#### 14. Fair Value Measurements



During the second quarter of 2024, the Company determined that a purchased building and unfinished construction work had been impaired and recorded an impairment charge of \$

18,842

to record the building and unfinished construction work at fair value for impairment purposes. The Company determined the fair value of the building by estimating rental income, net of expenses to maintain the building over an anticipated lease term, as well as costs estimated to complete construction prior to commencement of the lease; these cash flows were then discounted over an anticipated lease term. For more information, see Note 6, *Property and Equipment, Net*.

## 15. Commitments and Contingencies

### *License and Manufacturing Agreement*

In November 2023, the Company entered into a trademark license and manufacturing agreement with Vivex Biologics, Inc. (Vivex) to sell its CYGNUS Dual (Dual) and CYGNUS Matrix (Matrix) products, with the option to license the VIA Matrix (VIA) products. In March 2024, the Company exercised the option to license VIA, and accordingly in July 2024, entered into the first amendment to the trademark license and manufacturing agreement (together with the original agreement, the Vivex Agreement).

The Company paid an upfront licensing fee to Vivex to sell Dual and Matrix, and also agreed to pay a fixed milestone payment for Dual in the event that its average sales price (ASP) is published by certain government agencies for a specified period of time. The Company remitted the option payment for VIA in April 2024. Additionally, the Company is required to pay a low double-digit royalty on the Net Sales of Dual and VIA, and a high single-digit royalty on the Net Sales of Matrix, respectively, during the royalty term, as defined in the Vivex Agreement. The royalty term is commensurate with the initial term of the contract and will continue for each subsequent renewal period. The initial term of the agreement expires on December 31, 2026 and can be renewed for up to five additional one-year terms.

The Company recorded \$

5,000  
and \$

2,500

in prepaid and other current assets and other assets for the payment of the upfront licensing fee and the VIA option payment, respectively, each of which is recognized as expense on a straight-line basis over the estimated life of the arrangement beginning at the time of payment and ending on December 31, 2026. In December 2023, the Company recorded \$

2,500

in prepaid and other current assets, other assets, and accrued expenses and other current liabilities for the milestone payment, as the Company determined it is probable of owing such payment to Vivex.

### *Royalties*

The Company entered into a license agreement with a university for certain patent rights related to the development, use, and production of one of its advanced wound care products. Under this agreement, the Company incurred a royalty based on a percentage of net product sales, for the use of these patents until the patents expired, which was in November 2006.

In October 2017, the Company entered into a license agreement with a third party. Under the license agreement, the Company is required to pay royalties based on a percentage of net sales of the licensed product that occur, after December 31, 2017, through the expiration of the underlying patent in October 2026, subject to minimum royalty payment provisions.

The Company recorded total royalty expense of \$

6,125  
, \$

18,489  
, \$

1,262  
, and \$

4,294

during the three and nine months ended September 30, 2024 and 2023, respectively, within selling, general and administrative expenses on the condensed consolidated statements of operations and comprehensive income (loss).

### *Legal Matters*

In conducting its activities, the Company, from time to time, is subject to various claims and also has claims against others. In management's opinion, the ultimate resolution of such claims would not have a material effect on the financial position, operating results or cash flows of the Company. The Company accrues for these claims when amounts due are probable and estimable.

## 16. Related Party Transactions

Lease obligations to affiliates, including accrued but unpaid lease obligations, purchase of an asset under a finance lease with an affiliate, and renewal of leases with affiliates are further described in Note 13, *Leases*.

## 17. Taxes

The Company is principally subject to taxation in the United States. The Company has a history of net operating losses both federally and in various states and began utilizing those losses to offset current taxable income in 2020. As net operating loss carryovers become limited or are fully utilized, the Company will accrue current federal and state income tax expense. The Company's wholly owned Swiss subsidiary, Organogenesis GmbH, is subject to taxation in Switzerland and has a transfer pricing arrangement in place with Organogenesis Inc., its U.S. parent.



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The income tax rate for the nine months ended September 30, 2024 was (

49

)%, a decrease from the U.S. statutory rate of

21

% primarily due to research and development tax credit incentives, partially offset by tax adjustments related to executive compensation, and other nondeductible expenses. The income tax benefit for the three and nine months ended September 30, 2024 was \$

6,508

and \$

6,248

, respectively. The income tax expense for the three and nine months ended September 30, 2023 was \$

4,470

, and \$

6,675

, respectively.

## 18. Subsequent Events

### ***Subscription Agreement and Certificate of Designation***

On November 12, 2024, the Company entered into a subscription agreement (Subscription Agreement) with Avista Healthcare Partners III, L.P. (Avista Onshore) and AHP III Orchestra Holdings, L.P. (together with Avista Onshore, the Investors, and each an Investor) pursuant to which the Investors purchased

130,000

shares of the Company's newly-created Series A Convertible Preferred Stock, par value \$

0.0001

per share (Convertible Preferred Stock), for a purchase price of \$

1,000

per share, or aggregate gross proceeds of \$

130,000

to the Company, prior to deduction of commissions, fees and expenses (Offering). The net proceeds will be used to fund strategic growth initiatives including, but not limited to, operating and commercial activities, clinical development programs, working capital, capital expenditures, debt repayment and for general corporate purposes. In addition, approximately \$

23,500

of the net proceeds will be used to fund the repurchase of an aggregate of

7,421,731

shares of Class A common stock from certain existing stockholders of the Company, including certain of its directors and their affiliates, at a price per share equal to \$

3.1597

, which represents the 10-day trailing volume weighted average price of the Common Stock as of market close on November 11, 2024, pursuant to stock repurchase agreements entered into on November 12, 2024 between the Company and such stockholders (Stock Repurchase Agreements and each stock repurchase thereunder, a Repurchase).

Pursuant to the Certificate of Designations of Series A Convertible Preferred Stock (Certificate of Designation), each share of Convertible Preferred Stock is initially convertible into

263.7358

shares of Common Stock, subject to adjustment as provided therein. The Convertible Preferred Stock ranks senior to shares of Class A common stock with respect to payment of dividends and the distribution of assets upon a liquidation, dissolution or winding up of the Company. The Convertible Preferred Stock will initially have a liquidation preference of \$

1,000

per share; provided that the liquidation preference upon a change of control on or before November 12, 2026 will be increased to be no less than \$

1,500

per share. Holders of the Convertible Preferred Stock will be entitled to a regular dividend at the rate of

8.0

% per annum, compounding and payable quarterly in kind or in cash, at the Company's election, subject to the

19.99

% ownership limitations described below. Any accrued but unpaid dividends will become part of the liquidation preference of such share, as set forth in the Certificate of Designation.

Until the Company receives stockholder approval, as contemplated by Nasdaq listing rules, with respect to the issuance of shares of Class A common stock upon conversion of the Convertible Preferred Stock in excess of the limitations imposed by such rules, holders of Convertible Preferred Stock (Preferred Stock Holders) the Investors cannot convert the Convertible Preferred Stock into a number of shares of Common Stock in excess of

26,502,042

shares, which represents

19.99

% of the outstanding shares of Common Stock at the time of signing the Subscription Agreement, or to the extent such conversion will result in a Preferred Stock Holder beneficially owning greater than

19.99

% of the Company's then-outstanding shares. If, prior to receipt of the stockholder approval, a Preferred Stock Holder elects to convert any Convertible Preferred Stock that would result in the issuance, when aggregated with the number of shares previously issued upon conversion of the Convertible Preferred Stock, of more than

19.99

% of the outstanding shares of Common Stock at the time of signing the Subscription Agreement, then the Company will, in lieu of issuing shares of Common Stock, pay the Preferred Stock Holder a cash amount equal to the product of the number of shares of Common Stock that could not be issued due to such limitation and the 10-day trailing volume weighted average price of the Common Stock as of the trading day immediately prior to the conversion date (Cash-in-Lieu Payments), which Cash-in-Lieu Payments shall be paid no later than November 4, 2026, together with accrued interest of

10

% per annum, to the extent an earlier cash payment is prohibited pursuant to the terms of the Credit Agreement.

The Convertible Preferred Stock is subject to certain transfer restrictions, and contain terms regarding anti-dilution, liquidation preference, and preemptive rights, and its holders will vote together with the Class A common stock on an as-converted basis. The Convertible Preferred Stock is redeemable at the option of the Preferred Stock Holders at any time after November 12, 2031, and is convertible at the option of the Company after the second anniversary of issuance if the closing price of the Company's common stock equals or exceeds

200

% of the conversion price for twenty trading days out of a period of thirty consecutive trading days. The Preferred Stock Holders are entitled to elect one member and one observer to the Company's Board of Directors, subject to the terms of the Convertible Preferred Stock.

#### ***Repurchase Agreements***

On November 12, 2024, the Company entered into the Stock Repurchase Agreements with certain existing stockholders, including certain directors and affiliates of the Company, pursuant to which the Company will repurchase shares of Common Stock from the Selling Stockholders for a purchase price of \$

3.1597

per share. The Repurchase was funded by proceeds from the Offering and is expected to close on or around November 13, 2024 .

***Third Amendment to Credit Agreement***

On November 12, 2024, in connection with the Offering, the Company entered into a Third Amendment to the 2021 Credit Agreement (Third Amendment). The Third Amendment updated certain covenants in the Credit Agreement to permit the issuance of the Convertible Preferred Stock in connection with the Offering, the payment of dividends on such Convertible Preferred Stock, and the Repurchase.

The Third Amendment also provides that, in connection with the Offering, the Company is required to pay in full the outstanding principal amount of the term loan outstanding under the Term Loan Facility within one business day following the issuance of the Convertible Preferred Stock.

The Third Amendment allows for the payment of cash to settle conversion obligations of the Convertible Preferred Stock provided that, (1) immediately before and immediately after giving effect to such payment, no Default or Event of Default (each as defined in the Third Amendment) shall have occurred and be continuing, (2) immediately after giving effect to such payment, (A) the Company and its subsidiaries shall be in pro forma compliance specified payments and (B) the pro forma Consolidated Total Net Leverage Ratio (as defined in the Credit Agreement) shall not exceed the ratio that is

0.25

x less than the applicable covenant level, in each case, as of the last day of the most recent fiscal quarter for which financial statements have been delivered, (3) immediately after giving effect to such payment, Liquidity (as defined in the Credit Agreement) shall be at least \$

100,000

, and (4)

no

proceeds of any Loans (as defined in the Credit Agreement) may be used for such payment.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.**

*The following discussion and analysis should be read in conjunction with our financial statements and accompanying notes included in this Form 10-Q and the financial statements and accompanying notes thereto and Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, filed with the SEC, on February 29, 2024. Please refer to our cautionary note regarding forward-looking statements on page 3 of this Form 10-Q, which is incorporated herein by this reference.*

**Overview**

We are a leading regenerative medicine company focused on the development, manufacture, and commercialization of solutions for the Advanced Wound Care and Surgical & Sports Medicine markets. Our products have been shown through clinical and scientific studies to support and in some cases accelerate tissue healing and improve patient outcomes. We are advancing the standard of care in each phase of the healing process through multiple breakthroughs in tissue engineering and cell therapy. Our solutions address large and growing markets driven by aging demographics and increases in comorbidities such as diabetes, obesity, and cardiovascular and peripheral vascular disease. We offer our differentiated products and in-house customer support to a wide range of health care customers including hospitals, wound care centers, government facilities, ambulatory surgery centers (ASCs) and physician offices. Our mission is to provide integrated healing solutions that substantially improve medical outcomes and the lives of patients while lowering the overall cost of care.

We offer a comprehensive portfolio of products in the markets we serve that address patient needs across the continuum of care. We have and intend to continue to generate data from clinical trials, real-world outcomes and health economics research that validate the clinical efficacy and value proposition offered by our products. Several of our existing and pipeline products in our portfolio have PMA approval, or 510(k) clearance from the FDA. Given the extensive time and cost required to conduct clinical trials and receive FDA approvals, we believe that our data and regulatory approvals provide us with a strong competitive advantage. Our product development expertise and multiple technology platforms provide a robust product pipeline, which we believe will drive future growth.

In the Advanced Wound Care market, we focus on the development and commercialization of advanced wound care products for the treatment of chronic and acute wounds in various treatment settings. We have a comprehensive portfolio of regenerative medicine products, capable of supporting patients from early in the wound healing process through wound closure regardless of wound type. Our Advanced Wound Care products include Apligraf for the treatment of venous leg ulcers (VLUs) and diabetic foot ulcers (DFUs); Dermagraft for the treatment of DFUs (manufacturing and distribution currently suspended pending transition to a new manufacturing facility or engagement of a third-party manufacturer); PuraPly AM and PuraPly XT as antimicrobial barriers and native, cross-linked extracellular matrix (ECM) scaffolds for a broad variety of wound types; and Affinity, Novachor, NuShield, and CYGNUS placental allografts to address a variety of wound sizes and types as a protective barrier and ECM scaffold. We have a highly trained and specialized direct wound care sales force paired with comprehensive customer support services.

In the Surgical & Sports Medicine market, we are leveraging our broad regenerative medicine capabilities to address chronic and acute surgical wounds and tendon and ligament injuries. Our Sports Medicine products include NuShield for surgical applications in targeted soft tissue repairs; and Affinity, Novachor, PuraPly AM, PuraPly MZ, and PuraPly SX for management of open wounds in the surgical setting. We currently sell these products through independent agencies and our direct sales force.

In May 2024, we announced that our Phase 3 randomized control trial (RCT) evaluating the safety and efficacy of ReNu, a cryopreserved amniotic suspension allograft (ASA) for the management of symptoms associated with knee osteoarthritis (OA), achieved its primary endpoint upon the analysis of positive top line data. Specifically, as previously announced, the first Phase 3 RCT achieved the pre-defined requirements - statistically significant reduction in knee pain ( $p=0.0177$ ) and statistically significant maintenance of function ( $p<0.0001$ ), at six months.

We completed a Type-B meeting with the FDA on July 25, 2024. The FDA typically requires two well-controlled Phase 3 clinical trials to support regulatory approval. The FDA indicated that a second Phase 3 study would be needed to support biologics license application (BLA) submission. We recently completed enrollment in the second Phase 3 multi-center RCT evaluating the safety and efficacy of ReNu with 594 patients, outperforming enrollment expectations. We expect to receive the outcome of the pre-specified interim analysis of the first 50% of the required patients by the end of November, and are still on track to submit the BLA by the end of 2025.

**Dermagraft**

As previously disclosed, we have not manufactured or sold Dermagraft since 2022. During this time, we have successfully leveraged our highly differentiated broad cellular and tissue-based products (CTPs), including Apligraf and Affinity, as substitutes for Dermagraft. Accordingly, the suspension of Dermagraft sales has not had a material impact on our net revenue. We currently plan to transition our Dermagraft manufacturing to a new facility, which we expect will result in substantial long-term cost savings. If we do

not realize these expected substantial long-term cost savings or if recommencement of manufacture and sale of Dermagraft is significantly delayed, our net revenue and results of operations could be adversely impacted.

#### **Local Coverage Determinations**

In August 2023, three Medicare Administrative Contractors (MACs) issued local coverage determinations (LCDs) eliminating coverage for DFUs and VLUs for over 130 products, including five of our commercially marketed products. The LCDs were scheduled to take effect on September 17, 2023, and subsequently delayed to October 1, 2023. Given the potential adverse impact these LCDs could have on patients and on our business, we worked with our advisors to convince the MACs to withdraw the LCDs and incurred legal expenses and compensation expenses related to retention for impacted sales employees. On September 28, 2023, the three MACs withdrew the LCDs. Notwithstanding the ultimate withdrawal of the LCDs, we believe that some of our customers elected to purchase covered products from our competitors, reducing our revenue for the third and fourth quarters of the year ended December 31, 2023.

On April 25, 2024, seven MACs published proposed LCDs for skin substitute grafts/CTPs for the treatment of DFUs and VLUs in the Medicare population, that propose to cover three of our products, and to non-cover five of our commercially marketed product lines. We have engaged with the MACs, reiterated our support of the evidence-based approach reflected in the draft LCDs and requested that the final LCD include certain of our products for which we have provided clinical evidence, demonstrating their efficacy for the treatment of DFUs and VLUs, as covered products. There is no guarantee that the MACs will agree to cover these products in the final LCDs.

#### **License And Manufacturing Agreement**

In November 2023, we entered into a trademark license and manufacturing agreement with Vivex Biologics, Inc. (Vivex) to sell its CYGNUS Dual (Dual) and CYGNUS Matrix (Matrix) products, with the option to license the VIA Matrix (VIA) products. In March 2024, we exercised the option to license VIA, and accordingly in July 2024, entered into the first amendment to the trademark license and manufacturing agreement (together with the original agreement, the Vivex Agreement).

We paid an upfront licensing fee to Vivex to sell Dual and Matrix, and also agreed to pay a fixed milestone payment for Dual in the event that its average sales price (ASP) is published by certain government agencies for a specified period of time. We remitted the option payment for VIA in April 2024. Additionally, we are required to pay a low double-digit royalty on the Net Sales of Dual and VIA, and a high single-digit royalty on the Net Sales of Matrix, respectively, during the royalty term, as defined in the Vivex Agreement. The royalty term is commensurate with the initial term of the contract and will continue for each subsequent renewal period. The initial term of the agreement expires on December 31, 2026 and can be renewed for up to five additional one-year terms.

#### **Components of Our Condensed Consolidated Results of Operations**

In assessing the performance of our business, we consider a variety of performance and financial measures. We believe the items discussed below provide insight into the factors that affect these key measures.

##### **Revenue**

We derive our net revenue from our portfolio of Advanced Wound Care and Surgical & Sports Medicine products. We primarily sell our Advanced Wound Care products through direct sales representatives who manage and maintain the sales relationships with hospitals, wound care centers, government facilities, ASCs and physician offices. We primarily sell our Surgical & Sports Medicine products through third party agencies. As of September 30, 2024, we had approximately 262 direct sales representatives and approximately 161 independent agencies.

We recognize revenue from sales of our Advanced Wound Care and Surgical & Sports Medicine products when the customer obtains control of our product, which occurs at a point in time and may be upon procedure date, shipment, or delivery, based on the contractual terms of a contract. We record revenue net of a reserve for returns, discounts and Group Purchasing Organization (GPO) rebates, which represent a direct reduction to the revenue we recognize.

Several factors affect our reported revenue in any period, including product, payer and geographic sales mix, operational effectiveness, pricing realization, marketing and promotional efforts, the timing of orders and shipments, regulatory actions including healthcare reimbursement scenarios, competition and business acquisitions.

##### **Cost of goods sold and gross profit**

Cost of goods sold includes personnel costs, product testing costs, quality assurance costs, raw materials and product costs, manufacturing costs, and the costs associated with our manufacturing and warehouse facilities. The changes in our cost of goods sold correspond with the changes in sales units and are also affected by product mix.

Gross profit is calculated as net revenue less cost of goods sold and generally increases as revenue increases. Our gross profit is affected by product and geographic sales mix, realized pricing of our products, the efficiency of our manufacturing operations, and the costs of materials used and fees charged by third-party manufacturers to produce our products. Regulatory actions, including healthcare reimbursement scenarios, which may require costly expenditures or result in pricing pressures, may decrease our gross profit.

***Selling, general and administrative expenses***

Selling, general and administrative expenses generally include personnel costs for sales, marketing, sales support, customer support, and general and administrative personnel, sales commissions, incentive compensation, insurance, professional fees, depreciation, amortization, bad debt expense, royalties, information systems costs, gain or loss on disposal of long-lived assets, and costs associated with our administrative facilities. We generally expect our selling, general and administrative expenses to continue to increase due to increased investments in market development and the geographic expansion of our sales forces as we drive for continued revenue growth.

***Research and development expenses***

Research and development expenses include expenses for clinical trials, personnel costs for our research and development personnel, expenses related to improvements in our manufacturing processes, enhancements to our currently available products, and additional investments in our product and platform development pipeline. We expense research and development costs as incurred. We generally expect that research and development expenses will increase as we continue to conduct clinical trials on new and existing products, move products through the regulatory pathway (e.g., seek biologics license application approval), add personnel to support product enhancements as well as to bring new products to market, and enhance our manufacturing process and procedures.

***Impairment and write down expenses***

Impairment of property and construction relates to the potential sale of one of our buildings located on our Canton, Massachusetts campus and consists of the building and associated unfinished construction costs. Write down of capitalized internal-use software costs consists of the development costs for certain modules of our ERP system that were determined to have no future value.

***Other expense, net***

Other expense, net consists primarily of interest expense, which is interest on our outstanding indebtedness, including amortization of debt discount and debt issuance costs, net of interest income recognized.

***Income taxes***

We account for income taxes using an asset and liability approach. Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Valuation allowances are provided when necessary to reduce net deferred tax assets to an amount that is more likely than not to be realized.

In determining whether a valuation allowance for deferred tax assets is necessary, we analyze both positive and negative evidence related to the realization of deferred tax assets including projected future taxable income, recent financial results and estimates of future reversals of deferred tax assets and liabilities. We expect to realize the benefit of our federal and state deferred tax assets, and accordingly have not recorded a valuation allowance for these deferred tax assets as of September 30, 2024 or December 31, 2023.

We account for uncertainty in income taxes recognized in the condensed consolidated financial statements by applying a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination by the taxing authorities. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the condensed consolidated financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50% likelihood of being realized upon ultimate settlement. The provision for income taxes includes the effects of any resulting tax reserves, or unrecognized tax benefits, that are considered appropriate as well as the related net interest and penalties.



## Results of Operations

The following table sets forth, for the periods indicated, our results of operations:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
	(Unaudited, in thousands)			
Net revenue	\$ 115,177	\$ 108,531	\$ 355,387	\$ 333,489
Cost of goods sold	26,796	25,789	84,690	78,712
Gross profit	88,381	82,742	270,697	254,777
Operating expenses:				
Selling, general and administrative	71,795	64,222	220,657	208,373
Research and development	10,344	10,470	38,741	32,610
Impairment of property and construction	—	—	18,842	—
Write down of capitalized internal-use software costs	—	—	3,959	—
Total operating expenses	82,139	74,692	282,199	240,983
Income (loss) from operations	6,242	8,050	(11,502)	13,794
Other expense, net:				
Interest expense, net	(471)	(444)	(1,605)	(1,688)
Other income, net	52	31	47	82
Total other expense, net	(419)	(413)	(1,558)	(1,606)
Net income (loss) before income taxes	5,823	7,637	(13,060)	12,188
Income tax benefit (expense)	6,508	(4,470)	6,248	(6,675)
Net income (loss) and comprehensive income (loss)	<u>\$ 12,331</u>	<u>\$ 3,167</u>	<u>\$ (6,812)</u>	<u>\$ 5,513</u>

## EBITDA and Adjusted EBITDA

Our management uses financial measures that are not in accordance with generally accepted accounting principles in the United States (non-GAAP), in addition to financial measures in accordance with generally accepted accounting principles in the United States (GAAP) to evaluate our operating results. These non-GAAP financial measures should be considered supplemental to, and not a substitute for, our reported financial results prepared in accordance with GAAP. Our management uses Adjusted EBITDA to evaluate our operating performance and trends and make planning decisions. Our management believes Adjusted EBITDA helps identify underlying trends in our business that could otherwise be masked by the effect of the items that we exclude. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results, enhancing the overall understanding of our past performance and future prospects, and allowing for greater transparency with respect to key financial metrics used by our management in its financial and operational decision-making.

The following is a reconciliation of GAAP net income (loss) to non-GAAP EBITDA and non-GAAP Adjusted EBITDA for each of the periods presented:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
	(Unaudited, in thousands)			
Net income (loss)	\$ 12,331	\$ 3,167	\$ (6,812)	\$ 5,513
Interest expense, net	471	444	1,605	1,688
Income tax benefit (expense)	(6,508)	4,470	(6,248)	6,675
Depreciation and amortization	3,570	2,544	10,008	7,466
Amortization of intangible assets	834	1,229	2,569	3,688
EBITDA	10,698	11,854	1,122	25,030
Stock-based compensation expense	2,712	2,417	7,687	6,630
Restructuring charge (1)	—	95	—	1,878
Legal fees (2)	—	1,182	—	1,182
Sales retention (3)	—	422	—	422
Impairment of building and improvements (4)	—	—	18,842	—
Write-down of capitalized software costs (5)	—	—	3,959	—
Adjusted EBITDA	<u>\$ 13,410</u>	<u>\$ 15,970</u>	<u>\$ 31,610</u>	<u>\$ 35,142</u>

(1) Amounts reflect employee severance, retention and benefits as well as other exit costs associated with the Company's restructuring activities. See Note 9, *Restructuring*, to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

(2) Amount represents the legal fees incurred related to the issued and subsequently withdrawn LCDs. See *Local Coverage Determinations* above.

(3) Amount represents the compensation expenses related to retention for those sales employees impacted by the issued and subsequently withdrawn LCDs. See *Local Coverage Determinations* above.

(4) Amount reflects the impairment of a purchased building and associated unfinished construction work. See Note 6, *Property and Equipment, Net*, to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

(5) Amount reflects the write-down of costs previously capitalized as construction in progress in the development of internal-use software, that the Company determined have no future value. See Note 6, *Property and Equipment, Net*, to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

### Comparison of Three and Nine Months Ended September 30, 2024 and 2023

#### Revenue

	Three Months Ended September 30,		Change	
	2024	2023	\$	%
	(in thousands, except for percentages)			
Advanced Wound Care	\$ 107,953	\$ 101,357	\$ 6,596	7%
Surgical & Sports Medicine	7,224	7,174	50	1%
Net revenue	<u>\$ 115,177</u>	<u>\$ 108,531</u>	<u>\$ 6,646</u>	<u>6%</u>

	Nine Months Ended September 30,		Change	
	2024	2023	\$	%
	(in thousands, except for percentages)			
Advanced Wound Care	\$ 335,054	\$ 312,349	\$ 22,705	7%
Surgical & Sports Medicine	20,333	21,140	(807)	(4%)
Net revenue	<u>\$ 355,387</u>	<u>\$ 333,489</u>	<u>\$ 21,898</u>	<u>7%</u>

Net revenue from our Advanced Wound Care products increased by \$6.6 million, or 7%, to \$108.0 million in the three months ended September 30, 2024, from \$101.4 million in the three months ended September 30, 2023. Net revenue from our Advanced Wound Care products increased by \$22.7 million, or 7%, to \$335.1 million in the nine months ended September 30, 2024, from \$312.3 million in the nine months ended September 30, 2023. The increase in Advanced Wound Care net revenue was primarily attributable to an increase in product sales of certain of our products to our existing and new customers.

Net revenue from our Surgical & Sports Medicine products remained relatively consistent at \$7.2 million in the three months ended September 30, 2024 and in the three months ended September 30, 2023. Net revenue from our Surgical & Sports Medicine products decreased by \$0.8 million, or 4% to \$20.3 million in the nine months ended September 30, 2024 from \$21.1 million in the nine months ended September 30, 2023. The decrease in Surgical & Sports Medicine net revenue was primarily due to a decrease in certain customer buying patterns.

#### Cost of goods sold and gross profit

	Three Months Ended September 30,		Change	
	2024	2023	\$	%
	(in thousands, except for percentages)			
Cost of goods sold	\$ 26,796	\$ 25,789	\$ 1,007	4%
Gross profit	<u>\$ 88,381</u>	<u>\$ 82,742</u>	<u>\$ 5,639</u>	<u>7%</u>

	Nine Months Ended September 30,		Change	
	2024	2023	\$	%
	(in thousands, except for percentages)			
Cost of goods sold	\$ 84,690	\$ 78,712	\$ 5,978	8%
Gross profit	\$ 270,697	\$ 254,777	\$ 15,920	6%

Cost of goods sold increased by \$1.0 million, or 4%, to \$26.8 million in the three months ended September 30, 2024, from \$25.8 million in the three months ended September 30, 2023. Cost of goods sold increased by \$6.0 million, or 8%, to \$84.7 million in the nine months ended September 30, 2024, from \$78.7 million in the nine months ended September 30, 2023. The increase in cost of goods sold was primarily due to an increase in sales volume as well as a shift in product mix.

Gross profit increased by \$5.6 million to \$88.4 million in the three months ended September 30, 2024 from \$82.7 million in the three months ended September 30, 2023. Gross profit increased by \$15.9 million to \$270.7 million in the nine months ended September 30, 2024 from \$254.8 million in the nine months ended September 30, 2023. The increase in gross profit was primarily due to a shift in product mix.

#### ***Selling, General and Administrative Expenses***

	Three Months Ended September 30,		Change	
	2024	2023	\$	%
	(in thousands, except for percentages)			
Selling, general and administrative	\$ 71,795	\$ 64,222	\$ 7,573	12%

	Nine Months Ended September 30,		Change	
	2024	2023	\$	%
	(in thousands, except for percentages)			
Selling, general and administrative	\$ 220,657	\$ 208,373	\$ 12,284	6%

Selling, general and administrative expenses increased by \$7.6 million, or 12%, to \$71.8 million in the three months ended September 30, 2024 from \$64.2 million in the three months ended September 30, 2023. The increase in selling, general and administrative expenses was primarily due to an increase in royalty expense of \$4.8 million, an increase in travel-related expenses of \$1.1 million, an increase in facilities and supplies expense of \$1.1 million, and an increase in our allowance for expected credit losses of \$0.6 million.

Selling, general and administrative expenses increased by \$12.3 million, or 6%, to \$220.7 million in the nine months ended September 30, 2024 from \$208.4 million in the nine months ended September 30, 2023. The increase in selling, general and administrative expenses was primarily due to an increase in royalty expense of \$14.0 million, an increase in our allowance for expected credit losses of \$2.5 million, an increase in building and other facilities expenses of \$3.8 million, and an increase in consulting expenses of \$2.2 million; partially offset by a decrease of \$8.1 million in salaries, restructuring, and other headcount-related expenses, and a decrease of \$2.1 million in other marketing expenses.

#### ***Research and Development Expenses***

	Three Months Ended September 30,		Change	
	2024	2023	\$	%
	(in thousands, except for percentages)			
Research and development	\$ 10,344	\$ 10,470	\$ (126)	(1%)

	Nine Months Ended September 30,		Change	
	2024	2023	\$	%
	(in thousands, except for percentages)			
Research and development	\$ 38,741	\$ 32,610	\$ 6,131	19%

Research and development expenses decreased by approximately \$0.1 million, or 1%, to \$10.3 million in the three months ended September 30, 2024 from \$10.5 million in the three months ended September 30, 2023. Research and development expenses increased by \$6.1 million, or 19%, to \$38.7 million in the nine months ended September 30, 2024 from \$32.6 million in the nine months ended September 30, 2023. Research and development expenses were generally consistent in the three months ended September 30, 2024 from the three months ended September 30, 2023, and the increase in research and development expenses in the nine months ended September 30, 2024 from the nine months ended September 30, 2023 was primarily due to expenses associated with clinical research and trials, primarily related to ReNu, and support of Biologics License Application (BLA) efforts.

#### Impairment and Write Down Expenses

During the nine months ended September 30, 2024, we recorded a \$4.0 million write down of costs related to internal-use software and an \$18.8 million impairment of a purchased building and associated unfinished construction work. There were no such costs recorded in the three months ended September 30, 2024, or in the three and nine months ended September 30, 2023. See Note 6, *Property and Equipment, Net*, to our condensed consolidated financial statements included in this Quarterly Report.

#### Income Tax Benefit (Expense)

	Three Months Ended September 30,		Change	
	2024	2023	\$	%
	(in thousands, except for percentages)			
Income tax benefit (expense)	\$ 6,508	\$ (4,470)	\$ 10,978	(246%)

	Nine Months Ended September 30,		Change	
	2024	2023	\$	%
	(in thousands, except for percentages)			
Income tax benefit (expense)	\$ 6,248	\$ (6,675)	\$ 12,923	(194%)

Income tax expense decreased by \$11.0 million, or approximately 246%, to a benefit of \$6.5 million in the three months ended September 30, 2024 from expense of \$4.5 million in the three months ended September 30, 2023. Income tax expense decreased by \$12.9 million, or approximately 194%, to a benefit of \$6.2 million in the nine months ended September 30, 2024 from expense of \$6.7 million in the nine months ended September 30, 2023. The decrease in the income tax expense is primarily attributable to a lower estimated effective tax rate for the twelve months ended December 31, 2024 due to our research and development tax credits, as well as a reduction in expected pre-tax income in 2024 compared to 2023.

#### Liquidity and Capital Resources

As of September 30, 2024, we had working capital of \$161.2 million, which included \$94.3 million in cash and cash equivalents. We also have \$125.0 million available for future revolving borrowings under our Revolving Facility (see Note 10, *Long-Term Debt Obligations* to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q). We expect that our cash on hand and other components of working capital as of September 30, 2024, availability under the 2021 Credit Agreement, proceeds received in connection with our offering of Series A Convertible Preferred Stock, par value \$0.0001 per share, which closed on November 12, 2024, plus net cash flows from product sales, will be sufficient to fund our operating expenses, capital expenditure requirements and debt service payments for at least 12 months beyond the filing date of this quarterly report.

Our primary uses of cash are working capital requirements, capital expenditure and debt service payments. Additionally, from time to time, we may use capital for acquisitions and other investing and financing activities. Working capital is used principally for our personnel as well as manufacturing costs related to the production of our products and research and development costs. Our working capital requirements vary from period to period depending on manufacturing volumes, the timing of shipments and the payment cycles of our customers and payers. Our capital expenditures consist primarily of building improvements, manufacturing equipment, and computer hardware and software.

To the extent additional funds are necessary to meet our long-term liquidity needs as we continue to execute on our business

strategy, we anticipate that they will be obtained through additional equity or debt financings, other strategic transactions or a combination of these potential sources of funds. There can be no assurance that we will be able to obtain additional funds on terms acceptable to us, on a timely basis, or at all.

### Cash Flows

The following table summarizes our cash flows for each of the periods presented:

	Nine Months Ended September 30,	
	2024	2023
	(in thousands)	
Net cash provided by operating activities	\$ 3,271	\$ 20,303
Net cash used in investing activities	(6,671)	(21,040)
Net cash used in financing activities	(6,012)	(3,728)
Net change in cash, cash equivalents, and restricted cash	<u>\$ (9,412)</u>	<u>\$ (4,465)</u>

#### Operating Activities

During the nine months ended September 30, 2024, net cash provided by operating activities was \$3.3 million, resulting from our net loss of \$6.8 million and net cash used in connection with changes in our operating assets and liabilities of \$42.1 million, offset by net non-cash charges of \$52.2 million. Changes in our operating assets and liabilities included an increase in accounts receivable of \$23.0 million, an increase in inventories of \$5.7 million, an increase in prepaid expenses and other current assets and other assets of \$4.1 million, a decrease in operating lease liabilities of \$9.3 million, and a decrease in accounts payable of \$6.0 million, partially offset by an increase in accrued expenses and other current liabilities of \$5.9 million, and an increase in other liabilities of \$0.1 million.

During the nine months ended September 30, 2023, net cash provided by operating activities was \$20.3 million, resulting from our net income of \$5.5 million and non-cash charges of \$30.2 million, partially offset by net cash used in connection with changes in our operating assets and liabilities of \$15.4 million. Net cash used in changes in our operating assets and liabilities included an increase in inventory of \$7.5 million, an increase in prepaid expenses and other current assets of \$4.5 million, an increase in accounts receivable of \$1.8 million, a decrease in operating lease liabilities of \$6.3 million, and a decrease in accounts payable of \$3.7 million, partially offset by an increase in accrued expenses and other liabilities of \$8.2 million.

#### Investing Activities

During the nine months ended September 30, 2024, we used \$6.7 million of cash in investing activities consisting exclusively of capital expenditures.

During the nine months ended September 30, 2023, we used \$21.0 million of cash in investing activities consisting exclusively of capital expenditures.

#### Financing Activities

During the nine months ended September 30, 2024, net cash used in financing activities was \$6.0 million. This consisted of the principal payment on our term loan of \$4.2 million, principal payments on finance lease obligations of \$0.8 million, and net cash payments associated with our stock awards activities of \$1.0 million.

During the nine months ended September 30, 2023, net cash used in financing activities was \$3.7 million. This consisted of the payment of our term loan of \$3.3 million, payment of the finance lease obligations and the stock awards activities of \$0.3 million, and principal repayments of finance lease obligations of \$0.1 million.

### Indebtedness

#### 2021 Credit Agreement

In August 2021, we and our subsidiaries entered into a credit agreement with SVB and several other lenders, which we refer to as the 2021 Credit Agreement. The 2021 Credit Agreement, as amended, provides for a term loan facility not to exceed \$75.0 million (the Term Loan Facility) and a revolving credit facility not to exceed \$125.0 million (the Revolving Facility).

Advances made under the 2021 Credit Agreement may be either SOFR Loans or ABR Loans, at our option. For SOFR Loans, the interest rate is a per annum interest rate equal to the Adjusted Term SOFR plus an Applicable Margin between 2.00% to 3.25% based on the Total Net Leverage Ratio. For ABR Loans, the interest rate is equal to (1) the highest of (a) the Wall Street Journal Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the Adjusted Term SOFR rate plus 1.0%, plus (2) an Applicable Margin between

1.00% to 2.25% based on the Total Net Leverage Ratio. On September 30, 2024, the applicable interest rate for outstanding borrowings is 7.56%.

The 2021 Credit Agreement requires us to make consecutive quarterly installment payments equal to the following: (a) from September 30, 2021 through and including June 30, 2022, \$0.5 million; (b) from September 30, 2022 through and including June 30, 2023, \$0.9 million; (c) from September 30, 2023 through and including June 30, 2025, \$1.4 million and (d) from September 30, 2025 and the last day of each quarter thereafter until August 6, 2026 (the Term Loan Maturity Date), \$1.9 million. The remaining principal balance of \$50.6 million is also due on the Term Loan Maturity Date. We may prepay the Term Loan Facility. Once repaid, amounts borrowed under the Term Loan Facility may not be re-borrowed.

We must pay in arrears, on the first day of each quarter prior to August 6, 2026 (the Revolving Termination Date) and on the Revolving Termination Date, a fee for our non-use of available funds (the Commitment Fee). The Commitment Fee rate is between 0.25% to 0.45% based on the Total Net Leverage Ratio. We may elect to reduce or terminate the Revolving Facility in its entirety at any time by repaying all outstanding principal and unpaid accrued interest.

Under the 2021 Credit Agreement, we are required to comply with certain financial covenants including the Consolidated Fixed Charge Coverage Ratio and Consolidated Total Net Leverage Ratio, tested quarterly. In addition, we are also required to make representations and warranties and comply with certain non-financial covenants that are customary in loan agreements of this type, including restrictions on the payment of dividends, repurchase of stock, incurrence of indebtedness, dispositions and acquisitions.

As of September 30, 2024, we were in compliance with the covenants under the 2021 Credit Agreement. We had outstanding borrowings of \$62.3 million under our Term Loan Facility and no borrowings outstanding under our Revolving Facility with \$125.0 million available for future revolving borrowings, respectively.

### **Critical Accounting Policies and Significant Judgments and Estimates**

Our unaudited condensed consolidated financial statements have been prepared in accordance with GAAP. The preparation of unaudited condensed consolidated financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts of assets, liabilities, and the disclosure at the date of the unaudited condensed consolidated financial statements, as well as revenue and expenses recorded during the reporting periods. Management bases its estimates, assumptions and judgments on historical experience and on various other factors that it believes to be reasonable under the circumstances. Different assumptions and judgments would change the estimates used in the preparation of our unaudited condensed consolidated financial statements, which, in turn, could materially change our results from those reported. Management evaluates its estimates, assumptions and judgments on an ongoing basis. Historically, our critical accounting estimates have not differed materially from actual results. However, if our assumptions change, we may need to revise our estimates, or take other corrective actions, either of which may also have a material adverse effect on our condensed consolidated statements of operations and comprehensive income (loss), liquidity and financial condition. See also our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, for information about these accounting policies as well as a description of our other significant accounting policies.

### **Off-Balance Sheet Arrangements**

We did not have, during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

### **Recently Issued Accounting Pronouncements**

We have reviewed all recently issued standards as disclosed in Note 2, *Summary of Significant Accounting Policies* to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

During the nine months ended September 30, 2024, there were no material changes to our market risk disclosures as set forth in Part II, Item 7A, *Quantitative and Qualitative Disclosures About Market Risk* in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023.

## Item 4. Controls and Procedures

### Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2024. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act), means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms promulgated by the SEC. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on that evaluation, our management, including our principal executive officer and principal financial officer, concluded that, as of September 30, 2024, our disclosure controls and procedures were ineffective because, as disclosed in the Company’s Annual Report for the fiscal year ended December 31, 2023, we did not design and maintain effective controls over information technology general controls and proper segregation of duties to support the proper initiation and recording of transactions and the resulting impact on business process controls and applications that rely on such data.

Management assessed the effectiveness of the Company’s internal control over financial reporting based on the criteria established in the SEC guidance on conducting such assessments as of the end of the period covered by this report. Management conducted the assessment based on certain criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013 (COSO framework). Although it has made progress in remediating the remaining material weakness, as a result of its assessment, management concluded that as of September 30, 2024, our internal control over financial reporting was ineffective based on the criteria of the COSO framework, and the continued existence of the material weakness described above.

### Plans for Remediation of Material Weakness

Management has taken actions to remediate the deficiencies in its internal controls over financial reporting and implemented additional processes and controls designed to address the underlying causes associated with the above-mentioned material weakness. Management’s internal control remediation efforts include the following:

- During the second quarter of 2024, we completed the implementation of certain modules in a new company-wide enterprise resource planning (ERP) system to provide additional systematic controls and segregation of duties for our accounting processes. We have implemented additional controls to mitigate existing risks of proper segregation and change configurations.
- An outside firm will continue to assist management with performing control operating effectiveness testing throughout the year.
- We regularly reported the results of control testing to the key stakeholders across our organization, including our audit committee, on testing progress and defined corrective actions, and we monitored and reported on the results of control remediation. We have strengthened our internal policies, processes, and reviews through these actions.
- We have continued working on documenting and remediating weaknesses and structuring the Company’s processes to meet Sarbanes-Oxley (SOX) 404(b) requirements.

We believe the appropriate controls have been implemented in remediating the remaining material weakness. Until the controls have been operating for a sufficient period of time during 2024 and management has concluded, through testing, that these controls are executed consistently and operating effectively, the material weakness described above will continue to exist.

### Changes in Internal Control Over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting other than those described above related to remediation efforts of the remaining material weakness. As the implementation of the remaining modules of the new ERP system continues, and management continues to test its aforementioned new controls throughout 2024, we will change our processes and procedures, which in turn, could result in changes to our internal control over financial reporting. As such changes occur, we will evaluate quarterly whether such changes materially affect our internal control over financial reporting.

## **PART II – OTHER INFORMATION**

### **Item 1. Legal Proceedings**

We are not a party to any material legal proceedings. From time to time, we may become involved in litigation or other legal proceedings relating to claims arising from the ordinary course of business. These matters may include intellectual property, employment and other general claims. With respect to our outstanding legal matters, based on our current knowledge, we believe that the amount or range of reasonably possible loss will not, either individually or in the aggregate, have a material adverse effect on our business, consolidated financial position, results of operations, or cash flows. However, the outcome of such legal matters is inherently unpredictable and subject to significant uncertainties.

### **Item 1A. Risk Factors**

Investing in our Class A common stock involves a high degree of risk. Our Annual Report on Form 10-K for the year ended December 31, 2023, includes a detailed discussion of our risk factors under the heading *Part I, Item 1A—Risk Factors*. Except as set forth below, there have been no material changes from such risk factors during the quarter ended September 30, 2024. You should consider carefully the risk factors discussed in our Annual Report on Form 10-K for the year ended December 31, 2023, and all other information contained in or incorporated by reference in this Quarterly Report on Form 10-Q before making an investment decision. If any of the risks discussed in the Annual Report on Form 10-K for the year ended December 31, 2023, or herein actually occur, they may materially harm our business, financial condition, operating results, cash flows or growth prospects. As a result, the market price of our Class A common stock could decline, and you could lose all or part of your investment. Additional risks and uncertainties that are not yet identified or that we think are immaterial may also materially harm our business, financial condition, operating results, cash flows or growth prospects and could result in a complete loss of your investment.

***Seven MACs published new proposed LCDs, for skin substitute grafts/CTPs for the treatment of DFUs and VLUs in the Medicare population that list certain of our products as non-covered. If the final LCDs include this non-coverage determination, it could, at least in the near term, have a material adverse effect on utilization of these products, our business and our revenue.***

On April 25, 2024, seven MACs (CGS, WPS, NGS, Palmetto, Novitas, First Coast Services, and Noridian) published new proposed LCDs for skin substitute grafts/CTPs for the treatment of DFUs and VLUs in the Medicare population. While our Affinity, Apligraf and Dermagraft products remain covered, the proposed LCDs classify our PuraPly, Novachor, TransCyte, NuShield, Dual, and Matrix products as “non-covered.” If the final LCDs do not include coverage for these products, it would present a significant amount of uncertainty, at least in the near term, regarding future revenue for these products. Although we have engaged with the MACs and provided clinical evidence for certain of these non-covered products demonstrating their efficacy for the treatment of DFUs and VLUs, there is no guarantee that the MACs will agree to cover these products in the final LCDs. If these products are not covered in the final LCDs, it could, at least in the near term, materially and adversely impact utilization of these products, our business and our revenue.

### **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None.

### **Item 3. Defaults Upon Senior Securities**

None.

### **Item 4. Mine Safety Disclosures**

Not Applicable.

### **Item 5. Other Information**

During the three months ended September 30, 2024, no director or officer of the Company adopted or terminated a “Rule 10b5-1 trading arrangement” or “non-rule 10b5-1 trading arrangement,” as each term is defined in item 408(a) of Regulation S-K.



**Item 6. Exhibits**

Exhibit number	Description
3.1	<a href="#">Certificate of Incorporation of Organogenesis Holdings Inc. (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-3/A (File No. 333-233621) filed with the SEC on September 16, 2019)</a>
3.2	<a href="#">Certificate of Amendment of Certificate of Incorporation of Organogenesis Holdings Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-37906) filed with the SEC on June 27, 2022)</a>
3.3	Certificate of Designation of Series A Convertible Preferred Stock of Organogenesis Holdings Inc.
3.4	<a href="#">Bylaws of Organogenesis Holdings Inc. (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-3/A (File No. 333-233621) filed with the SEC on September 16, 2019)</a>
31.1†	<a href="#">Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
31.2†	<a href="#">Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
32.1†	<a href="#">Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS†	Inline XBRL Instance Document XBRL
101.SCH†	Inline XBRL Taxonomy Extension Schema Document
101.CAL†	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF†	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB†	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE†	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104†	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

† Filed herewith

**SIGNATURES**

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

Dated: November 12, 2024

**Organogenesis Holdings Inc.**

(Registrant)

/s/ David Francisco

**David Francisco**  
**Chief Financial Officer**

**(Principal Financial and Accounting Officer)**

**Organogenesis Holdings Inc.**  
**Certificate of Designations**  
**Series A Convertible Preferred Stock**  
**November 12, 2024**

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#### Exhibits

Exhibit A: Form of Preferred Stock Certificate A-1

Exhibit B: Form of Restricted Stock Legend B-1

## Certificate of Designations

### Series A Convertible Preferred Stock

On November 12, 2024, the Board of Directors of Organogenesis Holdings Inc., a Delaware corporation (the “**Company**”), adopted the following resolution designating and creating, out of the authorized and unissued shares of preferred stock of the Company, 130,000 authorized shares of a series of preferred stock of the Company titled the “Series A Convertible Preferred Stock”:

**RESOLVED** that, pursuant to the Certificate of Incorporation, the Bylaws and applicable law, a series of preferred stock of the Company titled the “Series A Convertible Preferred Stock,” and having a par value of \$0.0001 per share and an initial number of authorized shares equal to 130,000, is hereby designated and created out of the authorized and unissued shares of preferred stock of the Company, which series has the rights, designations, preferences, voting powers and other provisions set forth below:

#### SECTION 1. DEFINITIONS.

“**10-Day VWAP**” means the volume weighted average price of the Common Stock in composite transactions for the principal U.S. national or regional securities exchange on which the shares of Common Stock are then listed as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)) (or a similar organization or agency succeeding to its functions of reporting prices) for the ten (10) consecutive full Trading Days prior to and including such determination date.

“**Affiliate**” has the meaning set forth in Rule 144.

“**Board Observer**” has the meaning set forth in **Section 8(e)(ii)**.

“**Board of Directors**” means the Company's board of directors or a committee of such board duly authorized to act on behalf of such board.

“**Business Day**” means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

“**Buy-In**” has the meaning set forth in **Section 9(e)(iv)**.

“**Capital Stock**” of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

“**Cash In Lieu Amount**” has the meaning set forth in **Section 9(i)**.

“**Certificate**” means any Physical Certificate or Electronic Certificate.

**“Certificate of Designations”** means this Certificate of Designations, as amended or supplemented from time to time.

**“Certificate of Incorporation”** means the Company’s Certificate of Incorporation dated September 13, 2019, as amended by the Certificate of Amendment of Certificate of Incorporation, dated June 23, 2022, as the same may be further amended, supplemented or restated.

**“Change of Control”** means any of the following events:

(a) a “person” or “group” (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company, its Wholly Owned Subsidiaries or a Holder (together with its Affiliates), has become the direct or indirect “beneficial owner” (as defined below) of shares of the Company’s common equity representing at least fifty percent (50%) of the voting power of all of the Company’s then-outstanding common equity; or

(b) the consummation of (i) any sale, lease, transfer, exclusive license or other disposition, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property; *provided, however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly “beneficially owned” (as defined below) all classes of the Company’s common equity immediately before such transaction directly or indirectly “beneficially own,” immediately after such transaction, at least fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, will be deemed not to be a Change of Control pursuant to this **clause (b)**.

For the purposes of this definition, (x) any transaction or event described in both **clause (a)** and in **clause (b)(i)** or **(ii)** above (without regard to the proviso in **clause (b)**) will be deemed to occur solely pursuant to **clause (b)** above (subject to such proviso); and (y) whether a Person is a “**beneficial owner**” and whether shares are “**beneficially owned**” will be determined in accordance with Rule 13d-3 under the Exchange Act.

**“Close of Business”** means 5:00 p.m., New York City time.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Common Stock”** means the Class A common stock, \$0.0001 par value per share, of the Company, subject to **Section 9(j)**.

**“Common Stock Change Event”** has the meaning set forth in **Section 9(j)(i)**.

**“Common Stock Liquidity Conditions”** will be satisfied with respect to a Forced Conversion or Redemption if:

(a) either (i) each share of Common Stock to be issued upon such Forced Conversion of any share of Convertible Preferred Stock or that may be issued upon conversion of any share of Convertible Preferred Stock that is subject to such Redemption would be eligible to be offered, sold or otherwise transferred by the Holder of such share of Convertible Preferred Stock pursuant to Rule 144 under the Securities Act (or any successor rule thereto), without any requirements as to volume, manner of sale, availability of current public information (whether or not then satisfied) or notice; or (ii) the offer and sale of such share of Common Stock by such Holder are registered pursuant to an effective registration statement under the Securities Act and such registration statement is reasonably expected by the Company to remain effective and usable, by the Holder to sell such share of Common Stock, continuously during the period from, and including, the date the related Forced Conversion Notice or Redemption Notice Date, as applicable, is sent to, and including, the thirtieth (30th) calendar day after the date such share of Common Stock is issued; *provided, however*, that each Holder will supply all information reasonably requested by the Company for inclusion, and required to be included, in any registration statement or prospectus supplement related to the resale of the Common Stock issuable upon conversion of the Convertible Preferred Stock; *provided further, however*, that if a Holder fails to provide such information to the Company within fifteen (15) calendar days following any such request, then this **clause (a)(ii)** will automatically be deemed to be satisfied with respect to such Holder;

(b) each share of Common Stock referred to in **clause (a)** above (i) will, when issued (or, in the case of **clause (a)(ii)**, when sold or otherwise transferred pursuant to the registration statement referred to in such **clause**) (1) be admitted for book-entry settlement through the Depositary with an “unrestricted” CUSIP number; and (2) not be represented by any certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (ii) will, when issued, be listed and admitted for trading, without suspension or material limitation on trading, on any of The New York Stock Exchange, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors);

(c) (i) the Company has not received any written threat or notice of delisting or suspension by the applicable exchange referred to in **clause (b)(ii)** above with a reasonable prospect of delisting, after giving effect to all applicable notice and appeal periods; and (ii) no such delisting or suspension is reasonably likely to occur or is pending based on the Company falling below the minimum listing maintenance requirements of such exchange;

(d) the number of shares of Common Stock issuable upon conversion of the Convertible Preferred Stock, together with the shares of Common Stock previously issued upon conversion of the Convertible Preferred Stock, does not exceed the Share Cap, unless the Requisite Stockholder Approval has been obtained; and

(e) with respect to any Holder that is not an Affiliate of the Company, the Company shall not have provided such Holder information that, at the time such Common Stock Liquidity Condition is determined, constitutes material non-public information under the U.S. federal securities laws regarding the Company.

**“Common Stock Participating Dividend”** has the meaning set forth in **Section 5(b)(i)**.



**“Company”** means Organogenesis Holdings Inc., a Delaware corporation.

**“Consolidated Total Net Leverage Ratio”** means “Consolidated Total Net Leverage Ratio” as defined in the Credit Agreement as of the date hereof and calculated in a manner consistent therewith.

**“Conversion Consideration”** means, with respect to the conversion of any Convertible Preferred Stock, the type and amount of consideration payable to settle such conversion, determined in accordance with **Section 9**.

**“Conversion Date”** means an Optional Conversion Date or a Forced Conversion Date.

**“Conversion Notice”** means a notice substantially in the form of the “Conversion Notice” set forth in **Exhibit A**.

**“Conversion Price”** means, as of any time, an amount equal to (a) the Initial Liquidation Preference per share of Convertible Preferred Stock *divided by* (b) the Conversion Rate in effect at such time.

**“Conversion Rate”** initially means 263.7358 shares of Common Stock per one thousand dollars (\$1,000.00) of Liquidation Preference of the Convertible Preferred Stock; *provided, however*, that the Conversion Rate is subject to adjustment pursuant to **Sections 9(f)** and **9(g)**. Each reference in this Certificate of Designations or the Convertible Preferred Stock to the Conversion Rate as of a particular date without setting forth a particular time on such date will be deemed to be a reference to the Conversion Rate immediately before the Close of Business on such date.

**“Conversion Share”** means any share of Common Stock issued or issuable upon conversion of any Convertible Preferred Stock.

**“Convertible Preferred Stock”** has the meaning set forth in **Section 3(a)**.

**“Credit Agreement”** means the Credit Agreement, dated and effective as of August 6, 2021, among the Company, as borrower, Organogenesis Inc. and Prime Merger Sub, LLC, as guarantors, and Silicon Valley Bank, as Administrative Agent, Lead Arranger, Bookrunner, Issuing Lender and Swingline Lender, and Silicon Valley Bank and the several other lenders from time to time party thereto, collectively as Lenders, as amended as of the date hereof.

**“Degressive Issuance”** has the meaning set forth in **Section 9(f)(i)(2)**.

**“Depository”** means The Depository Trust Company or its successor.

**“Designation Right Conditions”** has the meaning set forth in **Section 8(e)(v)**.

**"DGCL"** means the Delaware General Corporation Law.

**"Dividend"** means any Regular Dividend or Participating Dividend.

**"Dividend Junior Stock"** means any class or series of the Company's Capital Stock whose terms do not expressly provide that such class or series will rank senior to, or equally with, the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). As of the Initial Issue Date, the Common Stock is the only Dividend Junior Stock.

**"Dividend Parity Stock"** means any class or series of the Company's Capital Stock (other than the Convertible Preferred Stock) whose terms expressly provide that such class or series will rank equally with the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). As of the Initial Issue Date, no shares of Dividend Parity Stock are issued or outstanding.

**"Dividend Payment Date"** means each Regular Dividend Payment Date with respect to a Regular Dividend and each date on which any declared Participating Dividend is scheduled to be paid on the Convertible Preferred Stock.

**"Dividend Senior Stock"** means any class or series of the Company's Capital Stock whose terms expressly provide that such class or series will rank senior to the Convertible Preferred Stock with respect to the payment of dividends (without regard to whether or not dividends accumulate cumulatively). As of the Initial Issue Date, no shares of Dividend Senior Stock are issued or outstanding.

**"Effective Price"** has the following meaning with respect to the issuance or sale of any shares of Common Stock or any Equity-Linked Securities:

(a) in the case of the issuance or sale of shares of Common Stock, the value of the consideration received or receivable by (or at the direction of) the Company or any of its Affiliates for such shares, expressed as an amount per share of Common Stock; and

(b) in the case of the issuance or sale of any Equity-Linked Securities, an amount equal to a fraction whose:

(i) numerator is equal to sum, without duplication, of (x) the value of the aggregate consideration received by the Company for the issuance or sale of such Equity-Linked Securities; and (y) the value of the minimum aggregate additional consideration, if any, payable to purchase or otherwise acquire shares of Common Stock pursuant to such Equity-Linked Securities; and

(ii) denominator is equal to the maximum number of shares of Common Stock underlying such Equity-Linked Securities;

*provided, however, that:*

(w) for purposes of **clauses (a) and (b)(i)** above, all underwriting commissions, placement agency commissions or similar commissions paid to any broker-dealer by the Company or any of its Affiliates in connection with such issuance or sale (excluding any other fees or expenses incurred by the Company or any of its Affiliates) will be added to the aggregate consideration referred to in such **clause**;

(x) for purposes of **clause (b)** above, if such minimum aggregate consideration, or such maximum number of shares of Common Stock, is not determinable at the time such Equity-Linked Securities are issued or sold, then (1) the initial consideration payable under such Equity-Linked Securities, or the initial number of shares of Common Stock underlying such Equity-Linked Securities, as applicable, will be used; and (2) at each time thereafter when such amount of consideration or number of shares becomes determinable or is otherwise adjusted (including pursuant to “anti-dilution” or similar provisions), there will be deemed to occur, for purposes of **Section 9(f)(i)(2)** and without affecting any prior adjustments theretofore made to the Conversion Rate, an issuance of additional Equity-Linked Securities;

(y) for purposes of **clause (b)** above, the surrender, extinguishment, maturity or other expiration of any such Equity-Linked Securities will be deemed not to constitute consideration payable to purchase or otherwise acquire shares of Common Stock pursuant to such Equity-Linked Securities; and

(z) the “value” of any such consideration will be the fair value thereof, as of the date such shares or Equity-Linked Securities, as applicable, are issued or sold, determined in good faith by the Board of Directors (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

“**Electronic Certificate**” means any electronic book-entry maintained by the Transfer Agent that represents any share(s) of Convertible Preferred Stock.

“**Entitled Stockholder**” has the meaning set forth in **Section 11(a)**.

“**Equity-Linked Securities**” means any rights, options or warrants to purchase or otherwise acquire (whether immediately, during specified times, upon the satisfaction of any conditions or otherwise) any shares of Common Stock.

“**Ex-Dividend Date**” means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended.

**“Exempt Issuance”** means (a) the Company’s issuance of any securities as full or partial consideration in connection with a merger, acquisition, consolidation or purchase of all or substantially all of the securities or assets of a corporation or other entity; (b) the Company’s issuance or grant of shares of Common Stock, options to purchase shares of Common Stock, or any other form of equity-based or equity-related awards (including restricted stock units), to employees, prospective employees who have accepted an offer of employment, directors or consultants of the Company or any of its Subsidiaries pursuant to plans that have been approved by a majority of the members of the Board of Directors or that exist as of the Initial Issue Date; (c) the Company’s issuance of securities upon the exercise, exchange or conversion of any securities that are exercisable or exchangeable for, or convertible into, shares of Common Stock and are outstanding as of the Initial Issue Date, *provided* that such exercise, exchange or conversion is effected pursuant to the terms of such securities as in effect on the Initial Issue Date; (d) the Company’s issuance of the Convertible Preferred Stock and any shares of Common Stock upon conversion of the Convertible Preferred Stock; (e) the Company’s issuance or sale of shares of Common Stock or Equity-Linked Securities in connection with sponsored research, collaboration, technology license, development, marketing or other similar agreements or strategic partnerships approved by a majority of the members of the Board of Directors; and (f) the Company’s issuance of securities pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by a majority of the members of the Board of Directors; provided, however, that the aggregate number of shares of Common Stock or Equity-Linked Securities issued pursuant to clauses (a), (e) and (f) shall not exceed 19.99% of the total number of shares of Common Stock issued and outstanding. For purposes of this definition, “consultant” means a consultant that may participate in an “employee benefit plan” in accordance with the definition of such term in Rule 405 under the Securities Act.

**“Forced Conversion”** has the meaning set forth in **Section 9(c)(i)**.

**“Forced Conversion Date”** means a Conversion Date designated with respect to any Convertible Preferred Stock pursuant to **Section 9(c)(i)** and **9(c)(ii)**.

**“Forced Conversion Notice”** has the meaning set forth in **Section 9(c)(iv)**.

**“Forced Conversion Notice Date”** means, with respect to a Forced Conversion, the date on which the Company sends the Forced Conversion Notice for such Forced Conversion pursuant to **Section 9(c)(iv)**.

**“Forced Conversion Right”** has the meaning set forth in **Section 9(c)(iv)**.

**“Forced Conversion Threshold Price Percentage”** means two hundred percent (200%).

**“Holder”** means a person in whose name any Convertible Preferred Stock is registered in the Register.

**“Holder Optional Redemption”** has the meaning set forth in **Section 7(a)**.

**“Holder Redemption Exercise Date”** has the meaning set forth in **Section 7(c)**.

**“Holder Redemption Notice”** has the meaning set forth in **Section 7(c)**.

**“Initial Issue Date”** means November 12, 2024.

**“Initial Liquidation Preference”** means one thousand dollars (\$1,000.00) per share of Convertible Preferred Stock.

**“Investor Director”** has the meaning set forth in **Section 8(e)(i)**.

**“Last Reported Sale Price”** of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of the Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from each of at least three nationally recognized independent investment banking firms the Company selects.

**“Liquidated Regular Dividends”** has the meaning set forth in **Section 5(a)(ii)(2)**.

**“Liquidation Junior Stock”** means any class or series of the Company’s Capital Stock whose terms do not expressly provide that such class or series will rank senior to, or equally with, the Convertible Preferred Stock with respect to the distribution of assets upon the Company’s liquidation, dissolution or winding up. As of the Initial Issue Date, the Common Stock is the only Liquidation Junior Stock.

**“Liquidation Parity Stock”** means any class or series of the Company’s Capital Stock (other than the Convertible Preferred Stock) whose terms expressly provide that such class or series will rank equally with the Convertible Preferred Stock with respect to the distribution of assets upon the Company’s liquidation, dissolution or winding up. As of the Initial Issue Date, no shares of Liquidation Parity Stock are issued or outstanding.

**“Liquidation Preference”** means, with respect to the Convertible Preferred Stock, from time to time, the Initial Liquidation Preference per share of Convertible Preferred Stock, as it may have been increased in accordance with **Section 5(a)(ii)(1)**.

**“Liquidation Senior Stock”** means any class or series of the Company’s Capital Stock whose terms expressly provide that such class or series will rank senior to the Convertible Preferred Stock with respect to the distribution of assets upon the Company’s liquidation,

dissolution or winding up. As of the Initial Issue Date, no shares of Liquidation Senior Stock are issued or outstanding.

**"Market Disruption Event"** means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

**"Nasdaq"** means The Nasdaq Stock Market LLC.

**"National Securities Exchange"** means an exchange registered with the SEC under Section 6(a) of the Exchange Act.

**"New Securities"** has the meaning set forth in **Section 11(a)**.

**"New Securities Offering Deadline"** has the meaning set forth in **Section 11(b)**.

**"Offer Notice"** has the meaning set forth in **Section 11(b)**.

**"Offeree"** has the meaning set forth in **Section 11(a)**.

**"Officer"** means the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Assistant Secretary or any Vice-President of the Company.

**"Open of Business"** means 9:00 a.m., New York City time.

**"Optional Conversion"** means the conversion of any Convertible Preferred Stock other than a Forced Conversion.

**"Optional Conversion Date"** means, with respect to the Optional Conversion of any Convertible Preferred Stock, the first Business Day on which the requirements set forth in **Section 9(d)(ii)** for such conversion are satisfied.

**"Ownership Limitation"** has the meaning set forth in **Section 9(h)(i)**.

**"Participating Dividend"** has the meaning set forth in **Section 5(b)(i)**.

**"Person"** or **"person"** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited

liability company, limited partnership or trust will constitute a separate “person” under this Certificate of Designations.

“**Physical Certificate**” means any certificate (other than an Electronic Certificate) representing any share(s) of Convertible Preferred Stock, which certificate is substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such share(s) and duly executed by the Company and countersigned by the Transfer Agent.

“**Preferred Designation Right Condition**” has the meaning set forth in **Section 8(e)(i)**.

“**Record Date**” means, with respect to any dividend or distribution on, or issuance to holders of, Convertible Preferred Stock or Common Stock, the date fixed (whether by law, contract or the Board of Directors or otherwise) to determine the Holders or the holders of Common Stock, as applicable, that are entitled to such dividend, distribution or issuance.

“**Redemption**” means the repurchase of any Convertible Preferred Stock by the Company pursuant to **Section 7**.

“**Redemption Date**” means the date fixed, pursuant to **Section 7(c)**, for the settlement of the repurchase of the Convertible Preferred Stock by the Company pursuant to a Redemption.

“**Redemption Notice**” has the meaning set forth in **Section 7(c)**.

“**Redemption Notice Date**” means, with respect to a Redemption of the Convertible Preferred Stock, the date on which the Company sends the related Redemption Notice pursuant to **Section 7(c)**.

“**Redemption Price**” means the consideration payable by the Company to repurchase any Convertible Preferred Stock upon its Redemption, calculated pursuant to **Section 7(b)**.

“**Reference Property**” has the meaning set forth in **Section 9(j)(i)**.

“**Reference Property Unit**” has the meaning set forth in **Section 9(j)(i)**.

“**Register**” has the meaning set forth in **Section 3(e)**.

“**Regular Dividend Payment Date**” means, with respect to any share of Convertible Preferred Stock, each January 1, April 1, July 1 and October 1 of each year, beginning on January 1, 2025 (or beginning on such other date specified in the Certificate representing such share).

“**Regular Dividend Period**” means each period from, and including, a Regular Dividend Payment Date (or, in the case of the first Regular Dividend Period, from, and including, the Initial Issue Date) to, but excluding, the next Regular Dividend Payment Date.

“**Regular Dividend Rate**” means eight percent (8%) per annum.

**“Regular Dividends”** has the meaning set forth in **Section 5(a)(i)(1)**.

**“Requisite Stockholder Approval”** means the stockholder approval contemplated by the Nasdaq listing rules with respect to the issuance of shares of Common Stock upon conversion of the Convertible Preferred Stock in excess of the limitations imposed by such rule; *provided, however*, that the Requisite Stockholder Approval will be deemed to be obtained if, due to any amendment or binding change in the interpretation of the applicable listing standards of Nasdaq, such stockholder approval is no longer required for the Company to settle all conversions of the Convertible Preferred Stock in shares of Common Stock without regard to **Section 5(a)(i)(1)**.

**“Resale Registration Statement”** means a registration statement or registration statements of the Company filed under the Securities Act pursuant to Section 17 of the Subscription Agreement, and shall include any preliminary prospectus, final prospectus, exhibit or amendment included in or relating to such registration statements.

**“Restricted Stock Legend”** means a legend substantially in the form set forth in **Exhibit B**.

**“Rule 144”** means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

**“Scheduled Trading Day”** means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then “Scheduled Trading Day” means a Business Day.

**“SEC”** means the U.S. Securities and Exchange Commission.

**“Securities Act”** means the U.S. Securities Act of 1933, as amended.

**“Security”** means any Convertible Preferred Stock or Conversion Share.

**“Settlement Amount”** has the meaning set forth in **Section 7(b)**.

**“Share Cap”** means 26,502,042 shares of Common Stock, subject to adjustment in the manner set forth in **Section 9(f)(i)(1)**.

**“Share Delivery Date”** has the meaning set forth in **Section 9(e)(iii)**.

**“Standard Settlement Period”** means the standard settlement period, expressed in a number of Trading Days, for the Company’s primary trading market or quotation system with respect to the Common Stock that is in effect on the Conversion Date, which as of the Initial Issue Date was “T+1.”

**“Stockholder Voting Power”** means the aggregate number of votes entitled to be cast generally at a meeting of the Company’s stockholders held for the election of directors, with the



calculation of such aggregate number of votes being conclusively made for all purposes under this Certificate of Designations and the Certificate of Incorporation, absent manifest error, by the Company based on the Company's review of the Register, the Company's other books and records, each Holder's public filings pursuant to Section 13 or Section 16 of the Exchange Act and any other written evidence satisfactory to the Company regarding any Holder's beneficial ownership of any securities of the Company.

**"Subscribers"** shall have the meaning set forth in the Subscription Agreement.

**"Subscription Agreement"** means the Subscription Agreement, dated as of November 12, 2024, by and among the Company and the Subscribers named therein, as the same may be amended, supplemented or restated in accordance with its terms.

**"Subscriber Designation Right"** has the meaning set forth in **Section 8(e)(v)**.

**"Subscriber Designation Right Condition"** has the meaning set forth in **Section 8(e)(v)**.

**"Subsidiary"** means, with respect to any Person, (a) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than 50% of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (b) any partnership or limited liability company where (x) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (y) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

**"Successor Person"** has the meaning set forth in **Section 9(j)(iii)**.

**"Tax Treatment"** has the meaning set forth in **Section 12**.

**"Trading Day"** means any day on which (a) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (b) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

**"Transfer Agent"** means Continental Stock Transfer & Trust Company or its successor.

**“Transfer-Restricted Security”** means any Security that constitutes a “restricted security” (as defined in Rule 144); *provided, however*, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(a) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(b) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a “restricted security” (as defined in Rule 144); and

(c) (i) such Security is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice; and (ii) the Company has received such certificates or other documentation or evidence as the Company may reasonably require to determine that the security is eligible for resale pursuant to **clause (i)** and the Holder, holder or beneficial owner of such Security is not, and that has not been during the immediately preceding three (3) months, an Affiliate of the Company.

**“Weighted Average Issuance Price”** for purposes of calculating the adjustment to the Conversion Rate in the event of a Degressive Issuance, will be equal to:

$$\frac{(CP \times OS) + (EP \times X)}{OS + X}$$

where:

CP = the Conversion Price in effect immediately before giving effect to the adjustment required by **Section 9(f)(i)(2)**.

OS = the number of shares of Common Stock outstanding immediately before such Degressive Issuance.

EP = the Effective Price per share of Common Stock in such Degressive Issuance.

X = the sum, without duplication, of (x) the total number of shares of Common Stock issued or sold in such Degressive Issuance, and (y) the maximum number of shares of Common Stock underlying such Equity-Linked Securities issued or sold in such Degressive Issuance.

**“Wholly Owned Subsidiary”** of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

SECTION 2. RULES OF CONSTRUCTION. For purposes of this Certificate of Designations:

(a) “or” is not exclusive;

(b) “including” means “including without limitation”;

(c) “will” expresses a command;

(d) the “average” of a set of numerical values refers to the arithmetic average of such numerical values;

(e) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;

(f) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;

(g) “herein,” “hereof” and other words of similar import refer to this Certificate of Designations as a whole and not to any particular Section or other subdivision of this Certificate of Designations, unless the context requires otherwise;

(h) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise; and

(i) the exhibits, schedules and other attachments to this Certificate of Designations are deemed to form part of this Certificate of Designations.

SECTION 3. THE CONVERTIBLE PREFERRED STOCK.

(a) *Designation; Par Value*. A series of stock of the Company titled the “Series A Convertible Preferred Stock” (the “**Convertible Preferred Stock**”) is hereby designated and created out of the authorized and unissued shares of preferred stock of the Company. The par value of the Convertible Preferred Stock is \$0.0001 per share.

(b) *Number of Authorized Shares*. The total authorized number of shares of Convertible Preferred Stock is one hundred thirty thousand (130,000); *provided, however* that, by resolution of the Board of Directors, the total number of authorized shares of Convertible Preferred Stock may hereafter be reduced to a number that is not less than the number of shares of Convertible Preferred Stock then outstanding.

(c) *Form, Dating and Denominations.*

(i) *Form and Date of Certificates Representing Convertible Preferred Stock.* Each Certificate representing any Convertible Preferred Stock will bear the legends required by **Section 3(f)** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the Depositary.

(ii) *Certificates.*

(1) *Generally.* The Convertible Preferred Stock, including any Convertible Preferred Stock issued pursuant to **Section 5(a)(ii)**, will be originally issued initially in the form of one or more Electronic Certificates. Electronic Certificates may be exchanged for Physical Certificates, and Physical Certificates may be exchanged for Electronic Certificates, upon request by the Holder thereof pursuant to customary procedures.

(2) *Electronic Certificates; Interpretation.* For purposes of this Certificate of Designations, (A) each Electronic Certificate will be deemed to include the text of the stock certificate set forth in **Exhibit A**; (B) any legend or other notation that is required to be included on a Certificate will be deemed to be included in any Electronic Certificate notwithstanding that such Electronic Certificate may be in a form that does not permit affixing legends thereto; (C) any reference in this Certificate of Designations to the “delivery” of any Electronic Certificate will be deemed to be satisfied upon the registration of the electronic book-entry representing such Electronic Certificate in the name of the applicable Holder; (D) upon satisfaction of any applicable requirements of the Delaware General Corporation Law, the Certificate of Incorporation and the Bylaws of the Company, and any related requirements of the Transfer Agent, in each case for the issuance of Convertible Preferred Stock in the form of one or more Electronic Certificates, such Electronic Certificates will be deemed to be executed by the Company and countersigned by the Transfer Agent.

(iii) *No Bearer Certificates.* The Convertible Preferred Stock will be issued only in registered form.

(iv) *Registration Numbers.* Each Certificate representing any Convertible Preferred Stock will bear a unique registration number that is not affixed to any other Certificate representing any other outstanding share of Convertible Preferred Stock.

(d) *Method of Payment; Delay When Payment Date is Not a Business Day.*

(i) *Method of Payment.* The Company will pay all cash amounts due on any Convertible Preferred Stock by wire transfer of immediately available funds to an account of such Holder within the United States designated in writing by such Holder to the Company.

(ii) *Delay of Payment when Payment Date is Not a Business Day.* If the due date for a payment on any Convertible Preferred Stock as provided in this Certificate of Designations is not a Business Day, then, notwithstanding anything to the contrary in this Certificate of Designations, such payment may be made on the immediately following Business Day and no interest, dividend or other amount will accrue or accumulate on such payment as a result of the related delay. Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a “Business Day.”

(e) *Register.* The Company will, or will retain another Person (who may be the Transfer Agent) to act as registrar who will, keep a record (the “**Register**”) of the names and addresses of the Holders, the number of shares of Convertible Preferred Stock held by each Holder and the transfer, exchange, repurchase, Redemption and conversion of the Convertible Preferred Stock. Absent manifest error, the entries in the Register will be conclusive, and the Company and the Transfer Agent may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly. The Company will promptly provide a copy of the Register to any Holder upon its request.

(f) *Legends.*

(i) *Restricted Stock Legend.*

(1) Each Certificate representing any share of Convertible Preferred Stock that is a Transfer-Restricted Security will bear the Restricted Stock Legend.

(2) If any share of Convertible Preferred Stock is issued in exchange for, in substitution of, or to effect a partial conversion of, any other share(s) of Convertible Preferred Stock (such other share(s) being referred to as the “old share(s)” for purposes of this **Section 3(f)(i)(2)**), including pursuant to **Section 3(h)** or **3(j)**, then the Certificate representing such share will bear the Restricted Stock Legend if the certificate representing such old share(s) bore the Restricted Stock Legend at the time of such exchange or substitution, or on the related Conversion Date with respect to such conversion, as applicable; *provided, however*, that the Certificate representing such share need not bear the Restricted Stock Legend if such share does not constitute a Transfer-Restricted Security immediately after such exchange or substitution, or as of such Conversion Date, as applicable.

(ii) *Other Legends.* The Certificate representing any Convertible Preferred Stock may bear any other legend or text, not inconsistent with this Certificate of Designations, as may be required by applicable law or by any securities exchange or automated quotation system on which such Convertible Preferred Stock is traded or quoted or as may be otherwise reasonably determined by the Company to be appropriate.

(iii) *Legends on Conversion Shares.*

(1) Each Conversion Share shall bear a legend substantially to the same effect as the Restricted Stock Legend if the Convertible Preferred Stock upon the conversion of which such Conversion Share was issued was (or would have been had it not been converted) a Transfer Restricted Security at the time such Conversion Share was issued.

(2) In connection with any sale, assignment, transfer or other disposition of the Conversion Shares by a Holder pursuant to an effective registration statement, Rule 144 or pursuant to any other exemption under the Securities Act such that the purchaser acquires freely tradable shares, if requested by such Holder by notice to the Company, the Company shall request the Transfer Agent to remove any restrictive legends related to the book entry account holding such Conversion Shares and make a new, unlegended entry for such book entry shares sold or disposed of without restrictive legends as soon as reasonably practicable following any such request therefor from such Holder and shall issue to the Transfer Agent the legal opinion referred to in the Irrevocable Transfer Agent Instructions attached as Exhibit C to the Subscription Agreement, provided that, in connection therewith, that the Company has timely received from such Holder and, if applicable, its broker, customary representations and other documentation reasonably acceptable to the Company.

(3) In addition to **Section 3(f)(iii)(2)**, at any time when Conversion Shares have been registered for resale pursuant to a Resale Registration Statement, if requested by a Holder by notice to the Company, the Company shall request the Transfer Agent to remove any restrictive legends related to the book entry account holding such shares and make a new, unlegended entry for such book entry shares sold or disposed of without restrictive legends as soon as reasonably practicable following any such request therefor from such Holder and shall issue to the Transfer Agent the legal opinion referred to in the Irrevocable Transfer Agent Instructions attached as Exhibit C to the Subscription Agreement, provided that, in connection therewith, the Company has timely received customary representations and other documentation reasonably acceptable to the Company from such Holder and its broker that will hold the Conversion Shares on behalf of such Holder.

*(g) Transfers and Exchanges; Transfer Taxes; Certain Transfer Restrictions.*

*(i) Provisions Applicable to All Transfers and Exchanges.*

(1) *Generally.* Subject to this **Section 3(g)** and compliance with applicable federal and state securities laws, Convertible Preferred Stock represented by any Certificate may not be transferred, except for transfers (i) to a Holder's Affiliates, (ii) consisting of pro rata distributions to a Holder's limited partners or other holders of equity securities of a Holder, (iii) to or with the consent of the Company, (iv) in connection with any pledge, encumbrance or hypothecation in connection with any financing arrangements by the Holder, (v) pursuant to a tender or exchange offer, merger, consolidation or recapitalization of or involving

the Company, or (vi) after commencement of bankruptcy or other voluntary or involuntary insolvency proceeding or restructuring involving the Company. The Company will cause each such transfer or exchange to be recorded in the Register.

(2) *No Services Charge; Transfer Taxes.* The Company will not impose any service charge on any Holder for any transfer, exchange or conversion of any Convertible Preferred Stock, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or conversion, pursuant to **Section 3(h)**, of Convertible Preferred Stock, other than exchanges pursuant to **Section 3(h)** or **Section 3(o)** not involving any transfer.

(3) *No Transfers or Exchanges of Fractional Shares.* Notwithstanding anything to the contrary in this Certificate of Designations, all transfers or exchanges of Convertible Preferred Stock must be in an amount representing a whole number of shares of Convertible Preferred Stock, and no fractional share of Convertible Preferred Stock may be transferred or exchanged.

(4) *Legends.* Each Certificate representing any share of Convertible Preferred Stock that is issued upon transfer of, or in exchange for, another share of Convertible Preferred Stock will bear each legend, if any, required by **Section 3(f)**.

(5) *Settlement of Transfers and Exchanges.* Upon satisfaction of the requirements of this Certificate of Designations to effect a transfer or exchange of any Convertible Preferred Stock as well as the delivery of all documentation reasonably required by the Transfer Agent or the Company in order to effect any transfer or exchange, the Company will cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the number of Trading Days comprising the Standard Settlement Period after the date of such satisfaction.

(ii) *Transfers of Shares Subject to Redemption, Repurchase or Conversion.* Notwithstanding anything to the contrary in this Certificate of Designations, the Company will not be required to register the transfer of or exchange any share of Convertible Preferred Stock:

(1) that has been surrendered for conversion; or

(2) that has been called for Redemption pursuant to a Redemption Notice, except to the extent that the Company fails to pay the related Redemption Price when due.

(h) *Exchange and Cancellation of Convertible Preferred Stock to Be Converted or to Be Repurchased Pursuant to a Redemption.*

(i) *Partial Conversions of Certificate.* If only a portion of a Holder's Convertible Preferred Stock represented by a Certificate (such Certificate being referred to

as the “old Certificate” for purposes of this **Section 3(h)(ii)** is to be converted pursuant to **Section 9**, then, as soon as reasonably practicable after such Certificate is surrendered for such conversion, the Company will cause such Certificate to be exchanged for (1) one or more Certificates that each represent a whole number of shares of Convertible Preferred Stock and, in the aggregate, represent a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock represented by such old Certificate that are not to be so converted and deliver such Certificate(s) to such Holder; and (2) a Certificate representing a whole number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock represented by such old Certificate that are to be so converted, which Certificate will be converted pursuant to the terms of this Certificate of Designations; *provided, however*, that the Certificate referred to in this **clause (2)** need not be issued at any time after which such shares subject to such conversion are deemed to cease to be outstanding pursuant to **Section 3(n)**.

(ii) *Cancellation of Convertible Preferred Stock that Is Converted and Convertible Preferred Stock that Is Repurchased Pursuant to a Redemption.* If a Holder’s Convertible Preferred Stock represented by a Certificate (or any portion thereof that has not theretofore been exchanged pursuant to **Section 3(h)(i)**) (such Certificate being referred to as the “old Certificate” for purposes of this **Section 3(h)(ii)**) is to be converted pursuant to **Section 9** or repurchased pursuant to a Redemption, then, promptly after the later of the time such Convertible Preferred Stock is deemed to cease to be outstanding pursuant to **Section 3(n)** and the time such Certificate is surrendered for such conversion or repurchase, as applicable, (A) such Certificate will be cancelled pursuant to **Section 3(l)**; and (B) in the case of a partial conversion or repurchase, the Company will issue, execute and deliver to such Holder, and cause the Transfer Agent to countersign, one or more Certificates that (x) each represent a whole number of shares of Convertible Preferred Stock and, in the aggregate, represent a total number of shares of Convertible Preferred Stock equal to the number of shares of Convertible Preferred Stock represented by such old Certificate that are not to be so converted or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 3(f)**.

(i) *Status of Retired Shares.* Upon any share of Convertible Preferred Stock ceasing to be outstanding, such share will be deemed to be retired and to resume the status of an authorized and unissued share of preferred stock of the Company, and such share cannot thereafter be reissued as Convertible Preferred Stock.

(j) *Replacement Certificates.* If a Holder of any Convertible Preferred Stock claims that the Certificate(s) representing such Convertible Preferred Stock have been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(c)**, a replacement Certificate representing such Convertible Preferred Stock upon surrender to the Company or the Transfer Agent of such mutilated Certificate, or upon delivery to the Company or the Transfer Agent of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Transfer Agent and the Company. In the case of a lost, destroyed or wrongfully taken Certificate representing any Convertible Preferred Stock, the Company and the Transfer Agent may require the Holder thereof to provide such security or indemnity that is reasonably satisfactory to the



Company and the Transfer Agent to protect the Company and the Transfer Agent from any loss that any of them may suffer if such Certificate is replaced.

Every replacement Convertible Preferred Stock issued pursuant to this **Section 3(j)** will, upon such replacement, be deemed to be outstanding Convertible Preferred Stock, entitled to all of the benefits of this Certificate of Designations equally and ratably with all other Convertible Preferred Stock then outstanding.

(k) *Registered Holders*. Only the Holder of any Convertible Preferred Stock will have rights under this Certificate of Designations as the owner of such Convertible Preferred Stock.

(l) *Cancellation*. The Company may at any time deliver Convertible Preferred Stock to the Transfer Agent for cancellation. The Company will cause the Transfer Agent to promptly cancel all shares of Convertible Preferred Stock so surrendered to it in accordance with its customary procedures.

(m) *Shares Held by the Company or its Subsidiaries*. Without limiting the generality of **Section 3(n)**, in determining whether the Holders of the required number of outstanding shares of Convertible Preferred Stock have concurred in any direction, waiver or consent, shares of Convertible Preferred Stock held by the Company or any of its Subsidiaries will be deemed not to be outstanding.

(n) *Outstanding Shares*.

(i) *Generally*. The shares of Convertible Preferred Stock that are outstanding at any time will be deemed to be those shares of Convertible Preferred Stock that, at such time, have been duly executed by the Company and countersigned by the Transfer Agent, excluding those shares of Convertible Preferred Stock that have theretofore been (1) cancelled by the Transfer Agent or delivered to the Transfer Agent for cancellation in accordance with **Section 3(l)**; (2) paid in full upon their conversion or upon their repurchase pursuant to a Redemption in accordance with this Certificate of Designations; or (3) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (ii), (iii), or (iv) of this Section 3(n)**.

(ii) *Replaced Shares*. If any Certificate representing any share of Convertible Preferred Stock is replaced pursuant to **Section 3(j)**, then such share will cease to be outstanding at the time of such replacement, unless the Transfer Agent and the Company receive proof reasonably satisfactory to them that such share is held by a “*bona fide* purchaser” under applicable law.

(iii) *Shares to Be Repurchased Pursuant to a Redemption*. If, on a Redemption Date, the Company has segregated, solely for the benefit of the applicable Holders,

consideration in kind and amount that is sufficient to pay the aggregate Redemption Price due on such date, then (unless there occurs a default in the payment of the Redemption Price) (1) the Convertible Preferred Stock to be redeemed on such date will be deemed, as of such date, to cease to be outstanding; (2) Regular Dividends will cease to accumulate on such Convertible Preferred Stock from and after such Redemption Date; and (3) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive the Redemption Price as provided in **Section 7**.

(iv) *Shares to Be Converted*. If any Convertible Preferred Stock is to be converted, then, at the Close of Business on the Conversion Date for such conversion (unless there occurs a default in the delivery of the Conversion Consideration due pursuant to **Section 9** upon such conversion): (1) such Convertible Preferred Stock will be deemed to cease to be outstanding; (2) Regular Dividends will cease to accumulate on such Convertible Preferred Stock from and after such Conversion Date; and (3) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive such Conversion Consideration as provided in **Section 9** and, if applicable, **Section 15**.

(o) *Notations and Exchanges*. Without limiting any rights of Holders pursuant to **Section 8**, if any amendment, supplement or waiver to the Certificate of Incorporation or this Certificate of Designations changes the terms of any Convertible Preferred Stock, then the Company may, in its discretion, require the Holder of the Certificate representing such Convertible Preferred Stock to deliver such Certificate to the Transfer Agent so that the Transfer Agent may place an appropriate notation prepared by the Company on such Certificate and return such Certificate to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Convertible Preferred Stock, issue, execute and deliver, and cause the Transfer Agent to countersign, in each case in accordance with **Section 3(c)**, a new Certificate representing such Convertible Preferred Stock that reflects the changed terms. The failure to make any appropriate notation or issue a new Certificate representing any Convertible Preferred Stock pursuant to this **Section 3(o)** will not impair or affect the validity of such amendment, supplement or waiver.

**SECTION 4. RANKING**. The Convertible Preferred Stock will rank (a) senior to (i) Dividend Junior Stock with respect to the payment of dividends; and (ii) Liquidation Junior Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up; (b) equally with (i) Dividend Parity Stock with respect to the payment of dividends; and (ii) Liquidation Parity Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up; and (c) junior to (i) Dividend Senior Stock with respect to the payment of dividends; and (ii) Liquidation Senior Stock with respect to the distribution of assets upon the Company's liquidation, dissolution or winding up.

#### **SECTION 5. DIVIDENDS**

(a) *Generally*.

(i) *Regular Dividends.*

(1) *Accumulation and Payment of Regular Dividends.* Each share of Convertible Preferred Stock will accumulate cumulative dividends at a rate per annum equal to the Regular Dividend Rate on the Liquidation Preference thereof (calculated in accordance with **Section 5(a)(i)(2)**), regardless of whether or not declared or funds are legally available for their payment (such dividends that accumulate on each share of Convertible Preferred Stock pursuant to this sentence, “**Regular Dividends**”). Subject to the other provisions of this **Section 5** (including, for the avoidance of doubt, **Section 5(a)(ii)(1)**), such Regular Dividends will be payable quarterly in arrears on each Regular Dividend Payment Date. Regular Dividends on the Convertible Preferred Stock will accumulate on a daily basis from, and including, the last date on which Regular Dividends have been paid (or, if no Regular Dividends have been paid, from, and including, the Initial Issue Date) to, but excluding, the next Regular Dividend Payment Date.

(2) *Computation of Accumulated Regular Dividends.* Accumulated Regular Dividends will be computed on the basis of a 360-calendar day year comprised of twelve 30-calendar day months. Regular Dividends on each share of Convertible Preferred Stock will accrue on the Liquidation Preference of such share as of immediately before the Close of Business on the preceding Regular Dividend Payment Date (or, if there is no preceding Regular Dividend Payment Date, on the Initial Liquidation Preference of such share).

(ii) *Methods of Payment of Regular Dividends.*

(1) *Generally.* Each Regular Dividend on the Convertible Preferred Stock will be paid (i) in cash or (ii) if, as of the Close of Business on any Regular Dividend Payment Date (or, if such Regular Dividend Payment Date is not a Business Day, the next Business Day), the Company has not paid all or any portion of the full amount of the Regular Dividends (regardless of whether or not declared) that have accumulated on the Convertible Preferred Stock in respect of the Regular Dividend Period ending on, but excluding, such Regular Dividend Payment Date in cash, then the dollar amount (expressed as an amount per share of Convertible Preferred Stock) of such Regular Dividend (or, if applicable, portion thereof) not paid in cash will (without duplication) increase, effective immediately before the Close of Business on the related Regular Dividend Payment Date, the Liquidation Preference of each share of Convertible Preferred Stock outstanding as of such time. Such payment and addition will occur automatically, without the need of any action on the part of the Company or any other Person.

(2) *Construction; Limitation on Late Payment.* Any Regular Dividends the amount of which is added to the Liquidation Preference thereof pursuant to **Section 5(a)(ii)(1)** (the “**Liquidated Regular Dividends**”) (1) will be deemed to be “declared” and “paid” on the Convertible Preferred Stock for all purposes of this

Certificate of Designations, and (2) shall be treated for all purposes as part of the Convertible Preferred Stock and associated Liquidation Preference held by such Holder and shall not be separately “paid off” or “redeemed” by the Company except as contemplated pursuant to **Section 6** or **Section 7**.

*(b) Participating Dividends.*

(i) *Generally.* Subject to **Section 5(b)(ii)** and **Section 8(a)(i)**, no dividend or other distribution on the Common Stock (whether in cash, securities or other property, or any combination of the foregoing) will be declared or paid on the Common Stock unless, at the time of such declaration and payment, an equivalent dividend or distribution is declared and paid, respectively, on the Convertible Preferred Stock (such a dividend or distribution on the Convertible Preferred Stock, a “**Participating Dividend**,” and such corresponding dividend or distribution on the Common Stock, the “**Common Stock Participating Dividend**”), such that (1) the Record Date and the payment date for such Participating Dividend occur on the same dates as the Record Date and payment date, respectively, for such Common Stock Participating Dividend and (2) the kind and amount of consideration payable per share of Convertible Preferred Stock in such Participating Dividend is the same kind and amount of consideration that would be payable in the Common Stock Participating Dividend in respect of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with **Section 9** but without regard to **Section 9(e)(ii)** and **Section 9(h)**) in respect of one (1) share of Convertible Preferred Stock that is converted pursuant to an Optional Conversion with a Conversion Date occurring on such Record Date (subject to the same arrangements, if any, in such Common Stock Participating Dividend not to issue or deliver a fractional portion of any security or other property, but with such arrangement applying separately to each Holder and computed based on the total number of shares of Convertible Preferred Stock held by such Holder on such Record Date).

(ii) *Common Stock Change Events and Stock Splits, Dividends and Combinations.* **Section 5(b)(i)** will not apply to, and no Participating Dividend will be required to be declared or paid in respect of, a Common Stock Change Event, or an event for which an adjustment to the Conversion Rate is required pursuant to **Section 9(f)(i)(1)**, as to which **Section 9(j)** or **Section 9(f)(i)(1)**, respectively, will apply.

(iii) *Treatment of Participating Dividends Upon Redemption or Conversion.* If the Redemption Date or Conversion Date of any share of Convertible Preferred Stock is after a Record Date for a declared Participating Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, then the Holder of such share at the Close of Business on such Record Date will be entitled, notwithstanding the related Redemption or conversion, as applicable, to receive, on or, at the Company’s election, before such Dividend Payment Date, such declared Participating Dividend on such share.

SECTION 6. RIGHTS UPON LIQUIDATION, DISSOLUTION, WINDING UP OR CHANGE OF CONTROL.

(a) *Generally*. If the Company liquidates, dissolves or winds up, whether voluntarily or involuntarily, or undergoes a Change of Control, then, subject to the rights of any of the Company's creditors or holders of any outstanding Liquidation Senior Stock, each share of Convertible Preferred Stock will entitle the Holder thereof to receive payment for the greater of the amounts set forth in **clause (i), (ii) and (iii)** below out of the Company's assets or funds legally available for distribution to the Company's stockholders, before any such assets or funds are distributed to, or set aside for the benefit of, any Liquidation Junior Stock:

(i) the sum of:

(1) the Liquidation Preference per share of Convertible Preferred Stock; and

(2) all unpaid Regular Dividends that will have accumulated on such share to, but excluding, the date of such payment;

(ii) the amount such Holder would have received in respect of the number of shares of Common Stock that would be issuable upon conversion of such shares of Convertible Preferred Stock assuming such conversion occurs immediately prior to such liquidation, dissolution, winding up or Change of Control and assuming all outstanding shares of Convertible Preferred Stock were converted into Common Stock (without regard as to whether sufficient shares of Common Stock are available out of the Company's authorized but unissued stock for the purpose of effecting the conversion of the Convertible Preferred Stock and without regard to any limitation on conversion in accordance with **Section 10(h)** or **Section 9(k)**); and

(iii) in connection with a Change of Control that is consummated within twenty-four (24) months of the Initial Issue Date, \$1,500 per share of Convertible Preferred Stock outstanding:

Upon payment of such amount in full on the outstanding Convertible Preferred Stock, Holders of the Convertible Preferred Stock will have no rights to the Company's remaining assets or funds, if any. If such assets or funds are insufficient to fully pay such amount on all outstanding shares of Convertible Preferred Stock and the corresponding amounts payable in respect of all outstanding shares of Liquidation Parity Stock, if any, then, subject to the rights of any of the Company's creditors or holders of any outstanding Liquidation Senior Stock, such assets or funds will be distributed ratably on the outstanding shares of Convertible Preferred Stock and Liquidation Parity Stock in proportion to the full respective distributions to which such shares would otherwise be entitled.

SECTION 7. REDEMPTION AT THE OPTION OF THE HOLDER.

(a) *Holder's Right to Require the Redemption of Convertible Preferred Stock*. At any time after the seventh (7<sup>th</sup>) anniversary of the Initial Issue Date, each Holder shall have the right,

but not the obligation, to require the Company to redeem all or any portion of the outstanding shares of Convertible Preferred Stock held by such Holder (a **"Holder Optional Redemption"**) for cash.

(b) *Redemption Price*. The Company shall settle any Holder Optional Redemption by paying the Holder the **"Settlement Amount"**, which means (I) the Liquidation Preference, plus (II) unpaid Dividends accrued up to and including the Holder Redemption Exercise Date (as defined below).

(c) *Redemption Notice*. Subject to the provisions of **Section 7(a)**, a Holder may elect to require the Company to redeem the Holder's shares of Convertible Preferred Stock at any time by delivering to the Company a notice of redemption (the **"Holder Redemption Notice"**). Such Holder Redemption Notice shall state the date the Company is required to effect the Holder Optional Redemption (such date, the **"Holder Redemption Exercise Date"**), which date shall be no earlier than ten (10) calendar days following the date of delivery of such Holder Redemption Notice, and shall state the number of shares of Convertible Preferred Stock being redeemed. The Company shall cause the Settlement Amount for each share of Convertible Preferred Stock subject to the Holder Optional Redemption to be paid to the Holder thereof on or before the Holder Redemption Exercise Date.

(d) *Retirement of Convertible Preferred Stock*. Any Convertible Preferred Stock redeemed in accordance with this **Section 7** shall be retired and cancelled and shall not be reissued as shares of such series, and the Company may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of its preferred stock accordingly.

**SECTION 8. HOLDER RIGHTS.** The Convertible Preferred Stock will have no voting rights except as set forth in this **Section 8** or as provided in the Certificate of Incorporation or required by the Delaware General Corporation Law.

(a) *Voting and Consent Rights with Respect to Specified Matters*.

(i) *Generally*. Subject to the other provisions of this **Section 8(a)**, while any Convertible Preferred Stock is outstanding, each of the following will require, and cannot be effected (either directly or indirectly, including as a result of a merger, consolidation or other similar or extraordinary transaction) without, the affirmative vote or consent of Holders representing a majority of the then-outstanding shares of Convertible Preferred Stock:

(1) any amendment, modification, repeal or waiver of any provision of the Certificate of Incorporation, the Company's bylaws or this Certificate of Designations that amends, modifies or otherwise fails to give effect to the rights of

Holders pursuant to this Certificate of Designations;

(2) any increase or decrease in the number of authorized shares of Convertible Preferred Stock, except as permitted herein;

(3) any creation of any new class or series of equity securities of the Company (including any additional class or series of preferred stock or any debt that is convertible into equity securities of the Company or Equity-Linked Securities) that would be senior or pari passu to the Convertible Preferred Stock in respect of liquidation preference or dividend rights or that provide any unique governance rights to holders of such securities that are not existing rights of holders of Common Stock as of the date hereof;

(4) the declaration or payment of any dividend to holders of Common Stock;

(5) any increase to the size of the Board of Directors above twelve (12) directors prior to the next annual meeting of the Company's stockholders after the date hereof and any increase to the size of the Board of Directors above eleven (11) directors after such meeting;

(6) incurrence by the Company and its Subsidiaries of aggregate indebtedness in one or a series of transactions that would result in a Consolidated Total Net Leverage Ratio in excess of 3.5 to 1; or

(7) the entry into, or amendment or waiver of, any agreement by the Company or its Subsidiaries that would prevent or delay the Company from complying, or impair the ability of the Company to comply, with its obligations in accordance with **Section 9(i)**.

(b) *Right to Vote with Holders of Common Stock on an As-Converted Basis.* Subject to the other provisions of, and without limiting the other voting rights provided in, this **Section 8**, and except as provided in the Certificate of Incorporation or required by the DGCL, the Holders will have the right to vote together as a single class with the holders of the Common Stock on each matter submitted for a vote or consent by the holders of the Common Stock, and, solely for these purposes, (i) the Convertible Preferred Stock of each Holder will entitle such Holder to cast a number of votes on such matter equal to the number of votes such Holder would have been entitled to cast if such Holder were the holder of record, as of the record or other relevant date for such matter, of a number of shares of Common Stock equal to the number of shares of Common Stock that would be issuable (determined in accordance with **Section 9(e)**) upon conversion of such Convertible Preferred Stock assuming such Convertible Preferred Stock were converted pursuant to an Optional Conversion with a Conversion Date occurring on such record or other relevant date (without regard as to whether sufficient shares of Common Stock are available out of the Company's authorized but unissued stock); and (ii) the Holders will be entitled to notice of all stockholder meetings or proposed actions by written consent in accordance with the Certificate of Incorporation, the Bylaws of the Company, and the DGCL as if the Holders were holders of Common Stock. For the avoidance of doubt, and without limiting the voting rights set forth in this

**Section 8(b)**, no Holder of Convertible Preferred Stock will be treated as the holder of the shares of Common Stock issuable upon conversion of such Convertible Preferred Stock before the time set forth in **Section 9(d)(iv)** in connection with the conversion of such Convertible Preferred Stock.

*(c) Procedures for Voting and Consents.*

(i) *Voting Power of the Convertible Preferred Stock.* Each share of Convertible Preferred Stock will be entitled to one vote on each matter on which the Holders of the Convertible Preferred Stock are entitled to vote separately as a class and not together with the holders of any other class or series of stock.

(ii) *Written Consent in Lieu of Stockholder Meeting.* A consent or affirmative vote of the Holders pursuant to **Section 8(a)** may be given or obtained either in writing without a meeting or in person or by proxy at a regular annual meeting or a special meeting of stockholders.

(d) *Information Rights.* At the request of a Holder, the Company shall provide such Holder with copies of all notices, minutes, consents and other materials provided to the Board of Directors or any committee thereof, in each case prior to or concurrently with providing to the Board of Directors or committee thereof or promptly after such request by the Holder if the materials had previously been provided to the Board of Directors or the applicable committee thereof.

*(e) Election of Directors; Board Observer Rights.*

(i) At all times when the Holders hold outstanding shares of the Convertible Preferred Stock that are convertible into Conversion Shares representing at least five percent (5%) of the then-outstanding shares of Common Stock (the "**Preferred Designation Right Condition**"), the Holders shall have the exclusive right, voting together as a separate class, to appoint and elect one (1) director of the Company (the "**Investor Director**"). The Board of Directors shall appoint the Investor Director to serve on each committee of the Board of Directors for which the Investor Director is qualified under applicable law and the rules and regulations of any National Securities Exchange on which the Company's securities are then listed. The appointment and election of any director pursuant to this **Section 8(e)(i)** may be made by, and only by, the affirmative vote of a majority of the Holders, given either at a special meeting of such stockholders duly called by such stockholders for that purpose or pursuant to a written consent of such stockholders. Any director appointed and elected as provided in this **Section 8(e)(i)** may be removed without cause by, and only by, the affirmative vote of a majority of the Holders, given either at a special meeting of such stockholders duly called by such stockholders for that purpose or pursuant to a written consent of such stockholders, and any such notification may be made by electronic mail directed to the Secretary of the Company. In the event that a director appointed and elected by the Holders resigns or is unable to serve as a member of the Board, the Holders shall have the exclusive right, voting together as a separate class,



to appoint and elect a director to fill such vacancy. Any appointment or removal of any director pursuant to this **Section 8(e)(i)** shall be effective immediately upon delivery to the Company of a notification of the results of the applicable special meeting or upon delivery of the applicable written consent, as the case may be. If the Holders fail to appoint a director to fill the directorship for which they are entitled to appoint a director pursuant to this **Section 8(e)(i)** (including following the removal or resignation of any such director or the inability of any such director to serve on the Board), then any directorship not so filled shall remain vacant until such time as the Holders appoint and elect an individual to fill such directorship voting exclusively and together as a separate class, pursuant to the terms of this **Section 8(e)(i)**; and no such directorship may be filled other than by the Holders, voting exclusively and together as a separate class, pursuant to the terms of this **Section 8(e)(i)**.

(ii) At all times when the Holders hold any outstanding shares of Convertible Preferred Stock, the Holders shall have the exclusive right, voting together as a separate class, to appoint one (1) non-voting observer to the Board of Directors (the "**Board Observer**"). The appointment of a Board Observer pursuant to this **Section 8(e)(ii)** may be made by, and only by, the affirmative vote of a majority of the Holders, given either at a special meeting of such stockholders for that purpose or pursuant to a written consent of such stockholders. The Board of Directors shall permit the Board Observer to attend all meetings of the Board of Directors and of any committee thereof as a non-voting observer, in each case to the extent permissible under applicable law and the rules and regulations of any National Securities Exchange on which the Company's securities are then listed, and will give the Board Observer notice of such meetings at the same time and in the same manner as notice is provided to the members of the Board of Directors. The Board Observer shall be entitled to concurrent receipt of any materials provided to the Board of Directors or any committee thereof; *provided, however*, that the Board Observer shall agree to hold in confidence and trust all information so provided pursuant to an executed confidentiality agreement between such Board Observer and the Company in a form acceptable to the Company; and (b) the Company reserves the right to withhold any information and to exclude such Board Observer from any meeting or portion thereof if access to such information or attendance at such meeting would be reasonably likely to materially adversely affect the attorney-client privilege between the Company and its counsel. The Board of Directors will provide expense reimbursement to any Board Observer on the same basis as if such Board Observer were a director of the Company.

(iii) The Company shall indemnify the Investor Director and provide the Investor Director with director and officer insurance to the same extent as it indemnifies and provides such insurance to other members of the Board of Directors, pursuant to the Certificate of Incorporation, the DGCL or otherwise. The Company acknowledges and agrees that it (1) is the indemnitor of first resort (i.e., its obligations to the Investor Director are primary and any obligation of the holders of Convertible Preferred Stock or their Affiliates to advance expenses or to provide indemnification for the same expenses or liabilities incurred by any Investor Director are secondary) and (2) shall be required to advance the amount of expenses incurred by the Investor Director and shall be liable for the amount of all expenses and liabilities incurred by the Investor Director, in each case to the same extent as it indemnifies and provides such insurance to other members of the

Board of Directors, pursuant to the Certificate of Incorporation, the DGCL or otherwise, without regard to any rights the Investor Director may have against the holders of Convertible Preferred Stock or their Affiliates.

(iv) Except as set forth below, the Company agrees that in the event that the Investor Director acquires knowledge of a potential transaction or matter which may constitute a corporate opportunity for both (x) the Investor Director and (y) the Company, the Investor Director shall not have any duty to offer or communicate information regarding such corporate opportunity to the Company. To the fullest extent permitted by the DGCL, the Company hereby renounces any interest or expectancy in any potential transaction or matter of which the Investor Director acquires knowledge and waives any claim against the Investor Director that the Investor Director is liable to the Company or its stockholders for breach of any fiduciary duty solely by reason of the fact that the Investor Director (A) pursues or acquires any corporate opportunity for its own account or the account of any Affiliate or other person, (B) directs, recommends, sells, assigns or otherwise transfers such corporate opportunity to another person or (C) does not communicate information regarding such corporate opportunity to the Company, in each case, except for any corporate opportunity which is expressly offered to the Investor Director in his or her capacity as a member of the Board of Directors, it being understood that any such corporate opportunity shall belong to the Company.

(v) If the Preferred Designation Right Condition is no longer satisfied and the Subscribers hold Conversion Shares representing at least five percent (5%) of the then-outstanding shares of Common Stock (the “**Subscriber Designation Right Condition**” and together with the Preferred Designation Right Condition, the “**Designation Right Conditions**”), if requested by the Subscribers, the Company shall grant substantially similar rights provided by this **Section 8** to the Subscribers (the “**Subscriber Designation Right**”). For the avoidance of doubt, any director of the Company nominated and elected to the Board of Directors pursuant to the Subscriber Designation Right will be considered an Investor Director.

(vi) The Company shall take commercially reasonable actions necessary to cause a director selected for appointment pursuant to this **Section 8(e)(v)** to be nominated for election as a member of the Board of Directors and shall, subject to applicable law and the exercise of the fiduciary duties of the Board of Directors, include in any proxy statement prepared, used, delivered or publicly filed by the Company to solicit the vote of its stockholders in connection with any meeting of stockholders of the Company the recommendation of the Board of Directors that stockholders of the Company vote in favor of such director and solicit votes in favor of the election of such director to the Board of Directors consistent with the Company's efforts to solicit votes in favor of the election of the Company's other nominees to the Board of Directors.

(vii) *Investor Director Qualifications.* Each Investor Director, including any Investor Director filling a vacancy created by the death, resignation or removal of a prior Investor Director, shall (1) meet all requirements regarding service as a director of the Company under applicable law and stock exchange rules regarding service as a director of the Company (including satisfying applicable independence requirements for service as a

member of the Board of Directors and its committees (other than the audit committee)), and (2) make himself or herself reasonably available for interviews and consent to such reference and background checks or other investigations as the Board of Directors may reasonably request (and solely to the extent consistent with those performed regarding all other directors of the Company) to determine the Investor Director's eligibility and qualification to serve as a director of the Company. No Investor Director shall be eligible to serve on the Board of Directors if he or she has been involved in any of the events enumerated under Item 2(d) of Schedule 13D under the Exchange Act or Item 401(f) of Regulation S-K under the Securities Act, is a "Bad Actor" as defined in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act or is subject to any judgment prohibiting service as a director of any public company. As a condition to any Investor Director's election to the Board of Directors or nomination for election as a director of the Company at any meeting of the Company's stockholders, the Investor Director must provide to the Company: (A) all information reasonably requested by the Company that is required to be or is customarily disclosed for directors and candidates for directors in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in accordance with applicable law, any stock exchange rules or listing standards, in each case, relating to the Investor Director's election as a director of the Company; (B) all information reasonably requested by the Company in connection with assessing eligibility and other criteria applicable to directors or satisfying compliance and legal or regulatory obligations, in each case, relating to the Investor Director's nomination or election, as applicable, as a director of the Company; and (C) an undertaking to offer to immediately resign, at the request of the Board of Directors made at such time as the Designation Right Condition is no longer satisfied, from the Board of Directors and any committees thereof effective as of the date requested by the Board of Directors.

#### SECTION 9. CONVERSION.

(a) *Generally.* Subject to the provisions of this **Section 9**, the Convertible Preferred Stock may be converted only pursuant to a Forced Conversion or an Optional Conversion.

(b) *Conversion at the Option of the Holders.*

(i) *Conversion Right; When Shares May Be Submitted for Optional Conversion.* Subject to the provisions of this **Section 9**, Holders will have the right to submit all, or any whole number of shares that is less than all, of their shares of Convertible Preferred Stock pursuant to an Optional Conversion at any time after the Initial Issue Date; *provided, however*, that, notwithstanding anything to the contrary in this Certificate of Designations and in addition to any other requirements for Optional Conversion of such shares of Convertible Preferred Stock,

(1) shares of Convertible Preferred Stock that are called for Redemption may not be submitted for Optional Conversion after the Close of Business on the Business Day immediately before the related Redemption Date (or, if the Company

fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full); and

(2) shares of Convertible Preferred Stock that are subject to Forced Conversion may not be submitted for Optional Conversion after the Close of Business on the Business Day immediately before the related Forced Conversion Date.

*(c) Forced Conversion at the Company's Election.*

(i) *Forced Conversion Right.* Subject to the provisions of this **Section 9**, the Company has the right (the "**Forced Conversion Right**"), exercisable at its election, from and after the second anniversary of the Initial Issue Date, to designate any Business Day after the second anniversary of the Initial Issue Date as a Conversion Date for the conversion (such a conversion, a "**Forced Conversion**") of all, but not less than all, of the outstanding shares of Convertible Preferred Stock, but only if the Last Reported Sale Price per share of Common Stock exceeds the product of the Forced Conversion Threshold Price Percentage and the Conversion Price on each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the Trading Day immediately before the Forced Conversion Notice Date for such Forced Conversion.

(ii) *Forced Conversion Prohibited in Certain Circumstances.* The Company will not exercise its Forced Conversion Right, or otherwise send a Forced Conversion Notice, with respect to any Convertible Preferred Stock pursuant to this **Section 9(c)** unless the Common Stock Liquidity Conditions are satisfied with respect to the Forced Conversion.

(iii) *Forced Conversion Date.* The Forced Conversion Date for any Forced Conversion will be a Business Day of the Company's choosing that is no more than fifteen (15), nor less than ten (10), Business Days after the Forced Conversion Notice Date for such Forced Conversion.

(iv) *Forced Conversion Notice.* To exercise its Forced Conversion Right with respect to any shares of Convertible Preferred Stock, the Company must send to each Holder of such shares a written notice of such exercise (a "**Forced Conversion Notice**").

Such Forced Conversion Notice must state:

(1) that the Company has exercised its Forced Conversion Right to cause the Forced Conversion of the shares;

(2) the Forced Conversion Date for such Forced Conversion and the date scheduled for the settlement of such Forced Conversion;

(3) that shares of Convertible Preferred Stock subject to Forced Conversion may be converted earlier at the option of the Holders thereof pursuant to an Optional Conversion at any time before the Close of Business on the Business

Day immediately before the Forced Conversion Date; and

(4) the Conversion Price and the Conversion Rate in effect on the Forced Conversion Notice Date for such Forced Conversion.

*(d) Conversion Procedures.*

(i) *Forced Conversion.* If the Company duly exercises, in accordance with this **Section 9(c)**, its Forced Conversion Right with respect to any share of Convertible Preferred Stock, then (1) the Forced Conversion of such share will occur automatically and without the need for any action on the part of the Holder(s) thereof; and (2) the shares of Common Stock due upon such Forced Conversion will be registered in the name of, and, if applicable, the cash due upon such Forced Conversion will be delivered to, the Holder(s) of such share of Convertible Preferred Stock as of the Close of Business on the related Forced Conversion Date.

*(ii) Requirements for Holders to Exercise Optional Conversion Right.*

(1) *Generally.* To convert any share of Convertible Preferred Stock pursuant to an Optional Conversion, the Holder of such share must (w) complete, manually sign and deliver to the Company a Conversion Notice; (x) deliver any Physical Certificate representing such Convertible Preferred Stock to the Company (at which time such Optional Conversion will become irrevocable); (y) furnish any endorsements and transfer documents that the Company may reasonably require; and (z) if applicable, pay any documentary or other taxes as pursuant to **Section 10(d)**.

(2) *Optional Conversion Permitted only During Business Hours.* Convertible Preferred Stock may be surrendered for Optional Conversion only after the Open of Business and before the Close of Business on a day that is a Business Day.

(iii) *No Adjustments for Accumulated Regular Dividends.* Without limiting any adjustments to the Liquidation Preference required by this Certificate of Designations, the Conversion Rate will not be adjusted to account for any accumulated and unpaid Regular Dividends on any Convertible Preferred Stock being converted.

(iv) *When Holders Become Stockholders of Record of the Shares of Common Stock Issuable Upon Conversion.* The Person in whose name any share of Common Stock is issuable upon conversion of any Convertible Preferred Stock will be deemed to become the holder of record of such share as of the Close of Business on the Conversion Date for such conversion.

*(e) Settlement upon Conversion.*

(i) *Generally.* Subject to **Section 9(e)(ii)**, **Section 9(h)**, **Section 9(i)** and

**Section 13(b)**, the consideration due upon settlement of the conversion of each share of Convertible Preferred Stock will consist of a number of shares of Common Stock equal to the product of (A) the Conversion Rate in effect immediately before the Close of Business on the Conversion Date for such conversion; and (B) the quotient obtained by dividing (I) the sum of (x) the Liquidation Preference of such share of Convertible Preferred Stock immediately before the Close of Business on such Conversion Date and (y) an amount equal to accumulated and unpaid Regular Dividends on such share of Convertible Preferred Stock to, but excluding, such Conversion Date (but only to the extent such accumulated and unpaid Regular Dividends are not included in the Liquidation Preference referred to in the preceding **clause (x)**), by (II) the Initial Liquidation Preference per share of Convertible Preferred Stock.

(ii) *Payment of Cash in Lieu of any Fractional Share of Common Stock.* Subject to **Section 13(b)**, in lieu of delivering any fractional share of Common Stock otherwise due upon conversion of any Convertible Preferred Stock, the Company will, to the extent it is legally able to do so, pay cash based on the Last Reported Sale Price per share of Common Stock on the Conversion Date for such conversion (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(iii) *Delivery of Conversion Consideration.* The Company will pay or deliver, as applicable, the Conversion Consideration due upon conversion of any Convertible Preferred Stock on or before the number of Trading Days comprising the Standard Settlement Period after the Conversion Date for such conversion (the “**Share Delivery Date**”). The Company understands that a delay in the delivery of the shares of Common Stock after the Share Delivery Date could result in economic loss to the Holder. As compensation to the Holder for such loss, if (i) the Company fails to deliver the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion of the Convertible Preferred Stock within the time period specified above and (ii) the Holder has not exercised its Buy-In rights as provided below with respect to such shares, the Company agrees to pay (as liquidated damages and not as a penalty) to the Holder for late issuance of the shares of Common Stock upon exercise of the Convertible Preferred Stock the proportionate amount of \$100 per Trading Day (increasing to \$200 per Trading Day after the third (3rd) Trading Day and increasing to \$300 per Trading Day after the sixth (6th) Trading Day) after the Share Delivery Date for each \$10,000 of shares of Common Stock for which the Convertible Preferred Stock is converted which are not timely delivered. For purposes of clarification, if the Company is obligated to make payments of liquidated damages pursuant to this **Section 9(e)(iii)** for late issuance of shares of Common Stock, then it shall not also be obligated to make Buy-In payments as described below with respect to those same shares of Common Stock. The Company shall pay any payments incurred under this **Section 9(e)(iii)** in immediately available funds upon demand.

(iv) *Buy-In.* In addition to any other rights available to the Holder, if the Company fails for any reason to effect delivery of the shares of Common Stock to the holder by the Share Delivery Date and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder or its brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Common Stock which the holder anticipated receiving upon such exercise (a

“**Buy-In**”), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased, minus any amounts paid to the Holder by the Company as liquidated damages as described in **Section 9(e)(iii)** above, exceeds (y) the amount obtained by multiplying (1) the number of shares of Common Stock that the Company was required to deliver to the Holder in connection with the conversion at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Convertible Preferred Stock and equivalent number of shares of Common Stock for which such conversion was not honored (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000, assuming no liquidated damages. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder’s right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company’s failure to timely deliver certificates representing shares of Common Stock upon exercise of Convertible Preferred Stock as required pursuant to the terms hereof.

(f) *Conversion Rate Adjustments.*

(i) *Events Requiring an Adjustment to the Conversion Rate.* The Conversion Rate will be adjusted from time to time as follows, in each case subject to **Section 8** hereof:

(1) *Stock Dividends, Splits and Combinations.* If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 9(j)** will apply), then the Conversion Rate will be adjusted based on the following formula:

$$CR_j = CR_0 \cdot \frac{OS_j}{OS_0}$$

where:

$CR_0$  = the Conversion Rate in effect immediately before the Close of Business on the Record Date for such dividend or distribution, or immediately before the Close of Business on the effective date of such stock split or stock combination, as applicable;

$CR_1$  = the Conversion Rate in effect immediately after the Close of Business on such Record Date or effective date, as applicable;

$OS_0$  = the number of shares of Common Stock outstanding immediately before the Close of Business on such Record Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

$OS_1$  = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

If any dividend, distribution, stock split or stock combination of the type described in this **Section 9(f)(i)(1)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors, or any Officer acting pursuant to authority conferred by the Board of Directors, determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(2) *Degressive Issuances*. If, at any time after the Initial Issue Date, the Company or any of its Subsidiaries issues or otherwise sells any shares of Common Stock, or any Equity-Linked Securities, in each case at an Effective Price per share of Common Stock that is less than the Conversion Price in effect (before giving effect to the adjustment required by this **Section 9(f)(i)(2)**) as of the date of the issuance or sale of such shares or Equity-Linked Securities (such an issuance or sale, a “**Degressive Issuance**”), then, effective as of the Close of Business on such date, the Conversion Rate will be increased to an amount equal to (x) the Initial Liquidation Preference per share of Convertible Preferred Stock, *divided by* (y) the Weighted Average Issuance Price; *provided, however*, that (A) the Conversion Rate will not be adjusted pursuant to this **Section 9(f)(i)(2)** as a result of an Exempt Issuance; (B) the issuance of shares of Common Stock pursuant to any such Equity-Linked Securities will not constitute an additional issuance or sale of shares of Common Stock for purposes of this **Section 9(f)(i)(2)** (it being understood, for the avoidance of doubt, that the issuance or sale of such Equity-Linked Securities, or any re-pricing or amendment thereof, will be subject to this **Section 9(f)(i)(2)**); and (C) in no event will the Conversion Rate be decreased pursuant to this **Section 9(f)(i)(2)**.

For purposes of this **Section 9(f)(i)(2)**, any re-pricing or amendment of any Equity-Linked Securities (including, for the avoidance of doubt, any Equity-Linked Securities existing as of the Initial Issue Date) will be deemed to be the issuance of additional Equity-Linked Securities, without affecting any prior adjustments theretofore made to the Conversion Rate.



(ii) *No Other Required Adjustments.* Without limiting the operation of **Sections 5(a)(ii)(1)** and **9(e)(i)**, the Company will not be required to adjust the Conversion Rate except pursuant to **Section 9(f)(i)**.

(iii) *Determination of the Number of Outstanding Shares of Common Stock.* For purposes of **Section 9(f)(i)**, the number of shares of Common Stock outstanding at any time will (1) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (2) exclude shares of Common Stock held in the Company's treasury (unless the Company pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(iv) *Calculations.* All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward).

(v) *Notice of Conversion Rate Adjustments.* Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 9(f)(i)**, the Company will promptly send notice to the Holders containing (1) a brief description of the transaction or other event on account of which such adjustment was made; (2) the Conversion Rate in effect immediately after such adjustment; and (3) the effective time of such adjustment.

(g) *Voluntary Conversion Rate Increases.*

(i) *Generally.* To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (1) the Board of Directors determines that such increase is in the Company's best interest or that such increase is advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (2) such increase is in effect for a period of at least twenty (20) Business Days; and (3) such increase is irrevocable during such period; *provided, however*, that any such increase that would be reasonably expected to result in any income tax imposed on holders of the Convertible Preferred Stock shall require the affirmative vote or consent of Holders representing a majority of the then-outstanding shares of Convertible Preferred Stock.

(ii) *Notice of Voluntary Increase.* If the Board of Directors determines to increase the Conversion Rate pursuant to **Section 9(g)(i)**, then, no later than the first Business Day of the related twenty (20) Business Day period referred to in **Section 9(g)(i)**, the Company will send notice to each Holder of such increase to the Conversion Rate, the amount thereof and the period during which such increase will be in effect.

(h) *Restriction on Conversions.*

(i) *Limitation on Conversion Right.* Subject to **Section 9(i)**, notwithstanding anything to the contrary in this Certificate of Designations, unless and until the Requisite

Stockholder Approval is obtained, no shares of Common Stock will be issued or delivered upon conversion of any Convertible Preferred Stock of any Holder, and no Convertible Preferred Stock of any Holder will be convertible, in each case to the extent, and only to the extent, that such issuance, delivery, conversion or convertibility would result in such Holder or a "person" or "group" (within the meaning of Section 13(d)(3) of the Exchange Act) beneficially owning in excess of nineteen and ninety-nine one hundredths percent (19.99%) of the then-outstanding Stockholder Voting Power (the restrictions set forth in this sentence, the "**Ownership Limitation**"). For these purposes, beneficial ownership and calculations of percentage ownership will be determined in accordance with Rule 13d-3 under the Exchange Act.

Any purported delivery of shares of Common Stock upon conversion of the Convertible Preferred Stock will be void and have no effect to the extent, but only to the extent, that such delivery would result in any Holder becoming the beneficial owner of shares of Common Stock outstanding at such time in excess of the Ownership Limitation. For the avoidance of doubt, a Holder may effect an Optional Conversion, and the Company may, upon exercise of its Forced Conversion Right, force conversion of, such Holder's Convertible Preferred Stock, up to the Ownership Limitation, subject to **Section 9(i)**.

(i) *Cash In Lieu of Shares Upon Optional Conversion.* If, at any time after the Initial Issue Date but prior to the receipt of Requisite Stockholder Approval, a Holder elects to convert shares of Convertible Preferred Stock pursuant to an Optional Conversion, as a result of which the number of shares of Common Stock that would be issued would, when aggregated with the number of shares of Common Stock previously issued upon conversion of the Convertible Preferred Stock, exceed the Share Cap, then the Company shall, in lieu of issuing shares of Common Stock in excess of the Share Cap, pay to the Holder upon conversion an amount in cash equal to the product of (i) the number of shares of Common Stock that could not be issued due to such limitation, multiplied by (ii) the 10-Day VWAP as of the Trading Day immediately prior to the conversion date (such amount, the "**Cash In Lieu Amount**"); provided, however, that solely to the extent the Company is prohibited from paying the Cash In Lieu Amount to the Holder on the Share Delivery Date pursuant to the terms of the Credit Agreement in effect as of the date hereof, the Company shall pay the Cash In Lieu Amount to the Holder as soon as possible thereafter without violation of the terms of the Credit Agreement in effect as of the date hereof, but no later than November 5, 2026, together with interest on the Cash In Lieu Amount accrued at a rate of ten percent (10%) per annum from the conversion date through the date the Cash In Lieu Amount is actually received by the Holder.

(j) *Effect of Common Stock Change Event.*

(i) *Generally.* If there occurs any:

(1) recapitalization, reclassification or change of the Common Stock, other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value or (z) stock splits and stock combinations that do not

involve the issuance of any other series or class of securities;

(2) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(3) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(4) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a **"Common Stock Change Event,"** and such other securities, cash or property, the **"Reference Property,"** and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a **"Reference Property Unit"**), then, notwithstanding anything to the contrary in this Certificate of Designations,

(A) from and after the effective time of such Common Stock Change Event, (I) the consideration due upon conversion of any Convertible Preferred Stock will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Section 9** or in **Section 10**, or in any related definitions, were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section 9(c)**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (III) for purposes of the definition of "Change of Control," the terms "Common Stock" and "common equity" will be deemed to mean the common equity (including depositary receipts representing common equity), if any, forming part of such Reference Property; and

(B) for these purposes, the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify the Holders of such weighted average as soon as practicable after such determination is made.

(ii) *Compliance Covenant.* The Company will not become a party to any

Common Stock Change Event unless its terms are consistent with this **Section 9(j)**.

(iii) *Execution of Supplemental Instruments.* On or before the date the Common Stock Change Event becomes effective, the Company and, if applicable, the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the “**Successor Person**”) will execute and deliver such supplemental instruments, if any, as the Company reasonably determines are necessary or desirable to (1) provide for subsequent adjustments to the Conversion Rate pursuant to **Section 9(f)(i)** in a manner consistent with this **Section 9(j)**; and (2) give effect to such other provisions, if any, as the Company reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to **Section 9(j)(i)**. If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such supplemental instrument(s) and such supplemental instrument(s) will contain such additional provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of Holders.

(iv) *Notice of Common Stock Change Event.* The Company will provide notice of each Common Stock Change Event to Holders no later than the effective date of the Common Stock Change Event.

(k) *Limitation on Share Issuances.* In no event shall the number of shares of Common Stock issuable upon conversion of the Convertible Preferred Stock exceed the Share Cap unless the Requisite Stockholder Approval has been obtained. If at any time the number of shares of Common Stock issuable upon conversion of the Convertible Preferred Stock, together with the shares of Common Stock previously issued upon conversion of the Convertible Preferred Stock, exceeds the Share Cap, the Company will use its reasonable best efforts to obtain the Requisite Stockholder Approval, including by seeking such approval, if not previously obtained, at each future regular annual meeting of its stockholders and endorsing its approval in the related proxy materials. The Company will promptly notify the Holders if the Requisite Stockholder Approval is obtained. If, prior to the receipt of the Requisite Stockholder Approval, the number of shares of Common Stock issuable upon conversion of the Convertible Preferred Stock, together with the shares of Common Stock previously issued upon conversion of the Convertible Preferred Stock, would exceed the Share Cap, each Holder shall be entitled to convert up to a number of shares of Convertible Preferred Stock that are convertible into its pro rata amount of such Share Cap, calculated based on the number of shares of Convertible Preferred Stock held by each such Holder.

#### SECTION 10. CERTAIN PROVISIONS RELATING TO THE ISSUANCE OF COMMON STOCK.

(a) *Equitable Adjustments to Prices.* Whenever this Certificate of Designations requires the Company to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate an adjustment to the Conversion Rate), the Company will make appropriate adjustments, if any, to those calculations to account for any adjustment to the Conversion Rate pursuant to **Section 9(f)(i)** that becomes effective, or any event requiring such an adjustment to the Conversion Rate where the Ex-Dividend Date, effective date or Expiration Date, as applicable, of such event occurs, at any time during such period.

(b) *Reservation of Shares of Common Stock.* The Company will reserve, out of its authorized, unreserved and not outstanding shares of Common Stock, for delivery upon conversion of the Convertible Preferred Stock, a number of shares of Common Stock that would be sufficient to settle the conversion of all shares of Convertible Preferred Stock then outstanding, if any. To the extent the Company delivers shares of Common Stock held in the Company's treasury in settlement of any obligation under this Certificate of Designations to deliver shares of Common Stock, each reference in this Certificate of Designations to the issuance of shares of Common Stock in connection therewith will be deemed to include such delivery.

(c) *Status of Shares of Common Stock.* Each share of Common Stock delivered upon conversion of on the Convertible Preferred Stock of any Holder will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of such Holder or the Person to whom such share of Common Stock will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each such share of Common Stock, when so delivered, to be admitted for listing on such exchange or quotation on such system.

(d) *Taxes Upon Issuance of Common Stock.* The Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon conversion of the Convertible Preferred Stock of any Holder, except any tax or duty that is due because such Holder requests those shares to be registered in a name other than such Holder's name.

#### SECTION 11. PREEMPTIVE RIGHTS.

(a) *Generally.* If the Company or any of its Subsidiaries offers to issue or sell, or to enter into any agreement providing for the issuance or sale (contingent or otherwise) of, any capital stock or securities convertible into capital stock of the Company ("**New Securities**") to any Person ("**Offeree**"), other than pursuant to an Exempt Issuance, the Company shall, or shall cause its Subsidiaries to, offer to sell to each Holder that is an "accredited investor," as defined in Rule 501(a) of Regulation D of the Securities Act (each, an "**Entitled Stockholder**"), on the terms set forth in this **Section 11** a pro rata portion of such New Securities equal to (i) the number of such New Securities being offered to such Offeree multiplied by (ii) a fraction (A) the numerator of which is the aggregate number of outstanding shares of Convertible Preferred Stock held by such Entitled Stockholder on an as converted to Common Stock basis (without regard to the Share Cap) and (B) the denominator of which is the aggregate number of outstanding shares of Common Stock issued and outstanding at the time of such offering and including all shares of Common Stock issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the outstanding Convertible Preferred Stock (without regard to the Share Cap) and any other outstanding securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly), Common Stock, including awards under the Company's equity plans and warrants; *provided*,

however, that if the Company requires an Offeree to also purchase other equity securities or debt securities of the Company or any of its subsidiaries, any Entitled Stockholder shall also, as a condition to the exercise of such stockholder's preemptive rights pursuant to this **Section 11**, be required to purchase the same class and type of securities of the Company or its subsidiaries on the same terms and conditions.

(b) *Notice and Procedures.* If the Company proposes to offer New Securities for cash, it shall deliver to each Entitled Stockholder a written notice (the "**Offer Notice**") of its intention, describing the anticipated price (or range of anticipated prices), anticipated amount of New Securities and other material terms and timing upon which the Company proposes to offer the same (including, in the case of a registered public offering and to the extent possible, a copy of the prospectus included in the registration statement filed with respect to such offering) as promptly as reasonably practicable but in any event, with respect to any offering other than a registered public offering, no later than ten (10) Business Days prior to such issuance. The Company may provide such notice to each Entitled Stockholder on a confidential basis prior to public disclosure of such offering. Other than in the case of a registered public offering, the Entitled Stockholder may notify the Company in writing at any time on or prior to the eighth (8th) Business Day following receipt of the Offer Notice whether the Entitled Stockholder will exercise such preemptive rights and as to the amount of New Securities the Entitled Stockholder desires to purchase, up to the maximum amount calculated pursuant to **Section 11(a)**. In the case of a registered public offering, the Entitled Stockholder shall notify the Company in writing at any time prior to the second (2nd) Business Day immediately preceding the date of commencement of such registered public offering (or, if notice of all such terms has not been given prior to the second (2nd) Business Day immediately preceding the date of commencement of such registered public offering, at any time prior to the date of commencement of such registered public offering) whether the Entitled Stockholder will exercise such preemptive rights and as to the amount of New Securities the Entitled Stockholder desires to purchase, up to the maximum amount calculated pursuant to **Section 11(a)**. Such notice to the Company shall constitute a binding commitment by the Entitled Stockholder to purchase the amount of New Securities so specified at the price and other terms set forth in the Company's notice to it; provided, however, if the proposed issuance by the Company of New Securities which gave rise to the exercise by the Entitled Stockholder of its preemptive rights pursuant to this **Section 11** has not been consummated by the date that is sixty (60) calendar days following such Entitled Stockholder's receipt of applicable Offer Notice (the "**New Securities Offering Deadline**"), then the Entitled Stockholder's commitment to purchase New Securities shall automatically terminate as of the New Securities Offering Deadline and the Company may not consummate the issuance of New Securities specified in the Offer Notice without again complying the provisions of this **Section 11**, including providing a new Offer Notice. Subject to receipt of the requisite notice of such issuance by the Company, the failure of an Entitled Stockholder to respond prior to the time a response is required pursuant to this **Section 11(b)** shall be deemed to be a waiver of the Entitled Stockholder's purchase rights under this **Section 11** only with respect to the offering described in the applicable notice. *Purchase of New Securities.* The Entitled Stockholder shall purchase the New Securities that it has elected to purchase under this **Section 11** concurrently with the related issuance of such New Securities by the Company (subject to the receipt of any required approvals). If the proposed issuance by the Company of securities which gave rise to the exercise by the Entitled Stockholder of its preemptive rights pursuant to this **Section 11** shall not have been consummated by the New Securities Offering

Deadline or shall have otherwise been terminated or abandoned by the Company without the issuance of any New Securities, then the purchase rights of the Entitled Stockholder pursuant to this **Section 11** shall also terminate as of such applicable date as to such proposed issuance by the Company (but not any subsequent or future issuance), and any funds in respect thereof paid to the Company by the Entitled Stockholder in respect thereof shall be promptly refunded in full.

(d) *Waiver.* For the avoidance of doubt, the preemptive rights of all Entitled Stockholders pursuant to this **Section 11** may be waived on behalf of all Entitled Stockholders pursuant to a written instrument signed by the holders of a majority of the then-outstanding shares of Convertible Preferred Stock.

**SECTION 12. TAX TREATMENT.** Notwithstanding anything to the contrary in this Certificate of Designations, for U.S. federal and other applicable state and local income tax purposes, it is intended that (a) the Convertible Preferred Stock will not be treated as “preferred stock” within the meaning of Section 305(b)(4) of Code and Treasury Regulations Section 1.305-5(a), (b) if a conversion of the Convertible Preferred Stock into Common Stock is effected, such transaction will be treated as a “reorganization” within the meaning of Section 368(a)(1)(E) of the Code (or similar or analogous state or local income tax law) whereby the Holder of each exchanged share of Convertible Preferred Stock is treated as transferring such share to the Company in exchange for Common Stock, and (c) the Holders of Convertible Preferred Stock will not be required to include as dividend income any amounts in respect of the Convertible Preferred Stock unless and until, and only to the extent that, dividends on the Convertible Preferred Stock are paid in cash (together, the “**Tax Treatment**”). The Company will not, and will not cause or permit any of its Subsidiaries to, issue any securities, pay any dividend or make any other distribution (within the meaning of Code Section 305 and the Treasury Regulations thereunder) on any share of capital stock or other security convertible into, or exercisable or exchangeable for, any capital stock of the Company, or otherwise take any action that could, in each case, reasonably be expected to affect the Tax Treatment of the Convertible Preferred Stock. The Company will, and will cause its Subsidiaries and agents to, report consistently with, and take no positions inconsistent with, the Tax Treatment, including on any IRS Form 1099 or IRS Form 1042-S, unless otherwise required by a change in law following the date hereof or a determination within the meaning of Section 1313(a) of the Code. Each Holder agrees to provide, at the time it becomes a party hereto and thereafter upon reasonable request or as required under applicable law (including if such form becomes inaccurate, expired, or obsolete), a valid and duly completed Internal Revenue Service Form W-9 certifying that such Person is a U.S. Person, or the applicable version of IRS Form W-8 (or successor form), evidencing that such Person is either (x) a “withholding foreign partnership” for U.S. federal income tax purposes or (y) eligible for a 0% rate of withholding with respect to U.S.-source dividends under Section 892 of the Code or applicable treaty.

#### **SECTION 13. CALCULATIONS.**

(a) *Responsibility; Schedule of Calculations.* Except as otherwise provided in this Certificate of Designations, the Company will be responsible for making all calculations called for under this Certificate of Designations or the Convertible Preferred Stock, including determinations

of the Conversion Rate, the Last Reported Sale Prices and accumulated Regular Dividends on the Convertible Preferred Stock. The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of such calculations to any Holder upon written request.

(b) *Calculations Aggregated for Each Holder.* The composition of the Conversion Consideration due upon conversion of the Convertible Preferred Stock of any Holder will be computed based on the total number of shares of Convertible Preferred Stock of such Holder being converted with the same Conversion Date. For these purposes, any cash amounts due to such Holder in respect thereof will be rounded to the nearest cent.

SECTION 14. NOTICES. The Company will send all notices or communications to Holders pursuant to this Certificate of Designations in writing and delivered personally, by facsimile or e-mail (with confirmation of receipt from the recipient, in the case of e-mail), or sent by a nationally recognized overnight courier service to the Holders' respective addresses shown on the Register. Notwithstanding anything in the Certificate of Designations to the contrary, any defect in the delivery of any such notice or communication will not impair or affect the validity of such notice or communication and the failure to give any such notice or communication to all the Holders will not impair or affect the validity of such notice or communication to whom such notice is sent.

SECTION 15. LEGALLY AVAILABLE FUNDS. Without limiting the rights of any Holder (including pursuant to **Section 6**), if the Company does not have sufficient funds legally available to fully pay any cash amount otherwise due on the Convertible Preferred Stock, then the Company will pay the deficiency promptly after funds thereafter become legally available therefor.

SECTION 16. NO OTHER RIGHTS. The Convertible Preferred Stock will have no rights, preferences or voting powers except as provided in this Certificate of Designations, the Certificate of Incorporation, the Bylaws of the Company, the Subscription Agreement or as required by applicable law.

**[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]**



**IN WITNESS WHEREOF**, the Company has caused this Certificate of Designations to be duly executed as of the date first written above.

ORGANOGENESIS HOLDINGS INC.

By: /s/ David C. Francisco  
Name: David C. Francisco  
Title: Chief Financial Officer

[Signature Page to Certificate of Designations]

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FORM OF CONVERTIBLE PREFERRED STOCK

*[Insert Restricted Stock Legend, if applicable]*

**Organogenesis Holdings Inc.**

**Series A Convertible Preferred Stock**

Certificate No. [ ]

Organogenesis Holdings Inc., a Delaware corporation (the “**Company**”), certifies that [ ] is the registered owner of [ ] shares of the Company's Series A Convertible Preferred Stock (the “**Convertible Preferred Stock**”) represented by this certificate (this “**Certificate**”). The special rights, preferences and voting powers of the Convertible Preferred Stock are set forth in the Certificate of Designations of the Company establishing the Convertible Preferred Stock (the “**Certificate of Designations**”). Capitalized terms used in this Certificate without definition have the respective meanings ascribed to them in the Certificate of Designations.

Additional terms of this Certificate are set forth on the other side of this Certificate.

***[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]***

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**IN WITNESS WHEREOF**, Organogenesis Holdings Inc. has caused this instrument to be duly executed as of the date set forth below.

ORGANOGENESIS HOLDINGS INC.

Date: \_ By:\_

Name:  
Title:

Date: \_ By:\_

Name:  
Title:

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TRANSFER AGENT'S COUNTERSIGNATURE

Continental Stock Transfer & Trust Company, as Transfer Agent, certifies that this Certificate represents shares of Convertible Preferred Stock referred to in the within-mentioned Certificate of Designations.

Date: \_ By: \_

Authorized Signatory

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## ORGANOGENESIS HOLDINGS INC.

### Series A Convertible Preferred Stock

This Certificate represents duly authorized, issued and outstanding shares of Convertible Preferred Stock. Certain terms of the Convertible Preferred Stock are summarized below. Notwithstanding anything to the contrary in this Certificate, to the extent that any provision of this Certificate conflicts with the provisions of the Certificate of Designations or the Certificate of Incorporation, the provisions of the of the Certificate of Designations or the Certificate of Incorporation, as applicable, will control.

1. **Method of Payment.** Cash amounts due on the Convertible Preferred Stock represented by this Certificate will be paid in the manner set forth in Section 3(d) of the Certificate of Designations.

2. **Persons Deemed Owners.** The Person in whose name this Certificate is registered will be treated as the owner of the Convertible Preferred Stock represented by this Certificate for all purposes, subject to Section 3(k) of the Certificate of Designations.

3. **Denominations; Transfers and Exchanges.** All shares of Convertible Preferred Stock will be in registered form. Subject to the terms of the Certificate of Designations, the Holder of the Convertible Preferred Stock represented by this Certificate may transfer or exchange this Convertible Preferred Stock by presenting this Certificate to the Company and delivering any required documentation or other materials.

4. **Dividends.** Dividends on the Convertible Preferred Stock will accumulate and will be paid in the manner, and subject to the terms, set forth in Section 5 of the Certificate of Designations.

5. **Liquidation Preference.** The Liquidation Preference per share of Convertible Preferred Stock is initially equal to the Initial Liquidation Preference per share of Convertible Preferred Stock; *provided, however*, that the Liquidation Preference is subject to adjustment pursuant to Section 5(a)(ii)(1) of the Certificate of Designations. The rights of Holders upon the Company's liquidation, dissolution, winding up or Change of Control are set forth in Section 6 of the Certificate of Designations.

6. **Right of the Holder to Require the Company to Redeem the Convertible Preferred Stock.** The Holder of the Convertible Preferred Stock represented by this Certificate will have the right to require the Company to redeem this Convertible Preferred Stock in the manner, and subject to the terms, set forth in Section 7 of the Certificate of Designations.

7. **Voting Rights.** Holders of the Convertible Preferred Stock have the voting rights set forth in Section 8 of the Certificate of Designations.

8. **Conversion.** The Convertible Preferred Stock will be convertible into Conversion Consideration in the manner, and subject to the terms, set forth in Section 9 of the Certificate of Designations.

9. **Countersignature.** The Convertible Preferred Stock represented by this Certificate will not be valid until this Certificate is countersigned by the Transfer Agent.

10. **Abbreviations.** Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

\* \* \*

To request a copy of the Certificate of Designations, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Organogenesis Holdings Inc.  
85 Dan Road  
Canton, MA 02021  
Attention: Chief Administrative and Legal Officer

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## CONVERSION NOTICE

ORGANOGENESIS HOLDINGS INC.

Series A Convertible Preferred Stock

Subject to the terms of the Certificate of Designations, by executing and delivering this Conversion Notice, the undersigned Holder of the Convertible Preferred Stock identified below directs the Company to convert (check one):

☐ all of the shares of Convertible Preferred Stock

☐ shares of Convertible Preferred Stock

identified by Certificate No. \_.

Date: \_

(Legal Name of Holder)

By: \_

Name:

Title:

Signature Guaranteed:

-

Participant in a Recognized Signature  
Guarantee Medallion Program

By: \_

Authorized Signatory

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Must be a whole number.

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**FORM OF RESTRICTED STOCK LEGEND**

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON CONVERSION OF THESE SECURITIES HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES AND THE SECURITIES ISSUABLE UPON CONVERSION OF THESE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER THE SECURITIES ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

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**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO EXCHANGE ACT RULE 13a-14(a) AS  
ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Gary S. Gillheeney, Sr., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Organogenesis Holdings Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2024

By: /s/ Gary S. Gillheeney, Sr.

Gary S. Gillheeney, Sr.  
Chief Executive Officer  
(Principal Executive Officer)

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**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO EXCHANGE ACT RULE 13a-14(a) AS  
ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, David Francisco, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Organogenesis Holdings Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2024

By: /s/ David Francisco

David Francisco  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Each of the undersigned officers of Organogenesis Holdings Inc. (the "Company") certifies, to his knowledge and solely for the purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2024, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 12, 2024

By: /s/ Gary S. Gillheeney, Sr.  
Gary S. Gillheeney, Sr.  
Chief Executive Officer  
(Principal Executive Officer)

Date: November 12, 2024

By: /s/ David Francisco  
David Francisco  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

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