

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

FORM 8-K

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

Date of Report (Date of earliest event reported): **August 26, 2022 (August 24, 2022)**

WISA TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of Incorporation) **001-38608**
(Commission
File Number) **30-1135279**
(IRS Employer
Identification Number)

15268 NW Greenbrier Pkwy
Beaverton, OR
(Address of registrant's principal executive office) **97006**
(Zip code)

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

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

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

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

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

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

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

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

Modification of Senior Secured Convertible Notes

As previously disclosed on a Current Report on Form 8-K filed with the U.S. Securities and Exchange Commission by WiSA Technologies, Inc. (the "Company") on August 19, 2022, the Company entered into a Securities Purchase Agreement with an institutional investor (the "Investor") on August 15, 2022, pursuant to which, among other things, the Company agreed to issue to the Investor in a private placement a senior secured convertible note in the principal amount of \$3,600,000 (the "Convertible Note") and a warrant to purchase up to 2,097,022 shares of the Company's common stock, \$0.0001 par value per share, at an exercise price of \$0.997 per share, in consideration for \$3,000,000 in cash before fees and other expenses associated with the transaction, including but not limited to, a \$105,000 commitment fee payable to the Investor.

Effective August 24, 2022, the Company and the Investor agreed to amend Section 3.1(b) of the Convertible Note to provide that the Conversion Price (as defined in the Convertible Note) could not be lower than \$0.50 (the "Floor Price") until stockholder approval has been obtained, after which stockholder approval the Floor Price may be reduced to no lower than \$0.25. The changes were effected by cancellation of the Convertible Note and the issuance of a replacement senior secured convertible note (the "New Convertible Note") to the Investor. The New Convertible Note contains identical terms as the Convertible Note, except for the amendment to the Section 3.1(b).

Entry into Employment Agreements

Effective August 24, 2022, the Company entered into three new employment agreements (the "Employment Agreements") with each of its executive officers, namely Brett Moyer, the Company's Chief Executive Officer and President, George Oliva, the Company's Chief Financial Officer and Secretary, and Gary Williams, the Company's Chief

Accounting Officer and Vice President of Finance. Pursuant to each of their respective Employment Agreements, Mr. Moyer's initial annual base salary will be \$404,250; Mr. Oliva's initial annual base salary will be \$288,750; and Mr. Williams' initial annual base salary will be \$262,495, each of which is subject to adjustment approved by the Company's board of directors. Each of the Employment Agreements has an unspecified term and each such executive officer will serve in his respective position on an at-will basis, subject to the payment of severance in certain circumstances as set forth in the applicable Employment Agreement. Pursuant to each of the Employment Agreements with Messrs. Moyer and Oliva, if such executive officer is terminated without cause or resigns with good reason, he is entitled to receive 12 months of salary, and pursuant to the Employment Agreement with Mr. Williams, in the event of such termination, he is entitled to 6 months salary. Each such executive officer is also entitled to continue to receive the employer subsidy under group health, dental and vision coverage for the period of severance (12 months in the case of Messrs. Moyer and Oliva and 6 months in the case of Mr. Williams), a pro rata bonus for the year of termination and the acceleration of vesting with respect to all unvested equity awards. Additionally, in the event of a Change in Control (as defined in each of the Employment Agreements), all unvested equity awards held by such executive officer shall immediately vest and become exercisable, provided that subject to any exceptions in any award agreement entered into with such executive officer, no exercise may occur more than six months after such termination and in no event after the expiration of such award. In the case of Messrs. Moyer and Oliva, each individual is also entitled to be made whole for income, employment and excise taxes in the event that payments, benefits and distributions, including the effects of accelerated vesting of equity, would result in the application of the "golden parachute" excise tax under Internal Revenue Code Section 4999.

The terms of each Employment Agreement supersedes the terms of each such executive officer's previous employment agreement or letter agreement with the Company, as applicable, in their entirety. Each of the Employment Agreements also provides for bonus eligibility, expense reimbursement, participation in our benefit plans and paid vacation. Under the terms of the Employment Agreements, each such executive officer is bound by confidentiality, non-competition, non-disparagement and non-solicitation provisions.

The foregoing does not purport to be a complete description of the New Convertible Note and each of the Employment Agreements, and each such description is qualified in its entirety by reference to the full text of each such document, with the form of New Convertible Note attached as Exhibit 4.1 to this Current Report on Form 8-K (this "Form 8-K") and with each of the Employment Agreements attached as Exhibits 10.1, 10.2 and 10.3 to this Form 8-K, and the full text of each such document is incorporated by reference herein.

Item 1.02. Termination of a Material Definitive Agreement

The applicable information provided under Item 1.01 in this Form 8-K with respect to the Convertible Note is incorporated by reference into this Item 1.02. As a result of the applicable information provided under Item 1.01 of this Form 8-K with respect to the Employment Agreements, each of (i) the Employment Agreement between FOCUS Enhancements, Inc. and Mr. Moyer, dated August 6, 2002, (ii) the First Amendment to Employment Agreement by and between Summit Semiconductor, LLC and Mr. Moyer, effective May 2, 2011, (iii) the Executive Employment Agreement between FOCUS Enhancements, Inc. and Mr. Williams, dated May 28, 2004, (iv) the First Amendment to Executive Employment Agreement by and between Summit Semiconductor, LLC and Mr. Williams, effective May 2, 2011 and (v) the Amended and Restated Offer Letter from Summit Wireless Technologies, Inc. to Mr. Oliva, dated October 4, 2019 are superseded in their entirety, as applicable.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The applicable information provided under Item 1.01 in this Form 8-K with respect to the New Convertible Note is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities

The applicable information provided under Item 1.01 of this Form 8-K with respect to the issuance of the New Convertible Note is incorporated herein by reference. The New Convertible Note was issued without registration under the Securities Act of 1933, as amended (the "Securities Act"), based on the exemption from registration afforded by Section 4(a)(2) of the Securities Act and/or Rule 506(b) of Regulation D promulgated thereunder. Such offer and sale was made only to an "accredited investor" under Rule 501 of Regulation D promulgated under the Securities Act, and without any form of general solicitation and with full access to any information requested by the Investor regarding the Company or the New Convertible Note.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(e) The applicable information provided under Item 1.01 in this Form 8-K with respect to the Employment Agreements entered into with Messrs. Moyer, Oliva and Williams is incorporated by reference into this Item 3.03.

Cautionary Statement Regarding Forward-Looking Statements

This Form 8-K contains forward-looking statements within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to, statements that express the Company's intentions, beliefs, expectations, strategies, predictions or any other statements related to the Company's future activities, or future events or conditions, which can be identified by terminology such as "may," "will," "expects," "anticipates," "aims," "potential," "future," "intends," "plans," "believes," "estimates," "continue," "likely to" and other similar expressions intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. These statements are not historical facts and are based on current expectations, estimates and projections about the Company's business based, in part, on assumptions made by its management, including, without limitation, the intended use of proceeds upon consummation of the Private Placement. These statements are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict, many of which are beyond the Company's control, including, among other things, the Company's ability to maintain its listing of Common Stock on the Nasdaq Capital Market, which may cause the Company's actual results, performance and achievements to differ materially from those contained in any forward-looking statement. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in the forward-looking statements due to numerous factors, including those risks that may be included in the periodic reports and other filings that the Company files from time to time with the U.S. Securities and Exchange Commission. Any forward-looking statements speak only as of the date on which they are made, and the Company undertakes no obligation to update any forward-looking statement to reflect events or circumstances after the date of this Form 8-K, except as required by applicable law.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
4.1	Form of New Senior Secured Convertible Note.
10.1	Executive Employment Agreement, effective as of August 24, 2022, by and between the Company and Brett Moyer.

[Executive Employment Agreement, effective as of August 24, 2022, by and between the Company and George Oliva.](#)

[Executive Employment Agreement, effective as of August 24, 2022, by and between the Company and Gary Williams.](#)

Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

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

Date: August 26, 2022

WISA TECHNOLOGIES, INC.

By: /s/ Brett Moyer
Name: Brett Moyer
Title: Chief Executive Officer

THIS NOTE HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO 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 AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS NOTE AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS NOTE MAY BE PLEDGED IN CONNECTION WITH A bona fide margin account SECURED BY SUCH SECURITIES.

WISA TECHNOLOGIES, INC.

Form of Senior Secured
Convertible Promissory
Note due August 15, 2024

Note No. 08152022 \$3,600,000
Dated: August 15, 2022 (the "Issuance Date")

For value received, WISA TECHNOLOGIES, INC., a Delaware corporation (the "Maker" or the "Company"), hereby promises to pay to the order of [____], a Delaware limited partnership (together with its successors and representatives, the "Holder"), in accordance with the terms hereinafter provided, the principal amount of THREE MILLION SIX HUNDRED THOUSAND DOLLARS (\$3,600,000.00) (the "Principal Amount").

All payments under or pursuant to this Senior Secured Convertible Promissory Note (this "Note") shall be made in United States Dollars in immediately available funds to the Holder at the address of the Holder set forth in the Purchase Agreement (as hereinafter defined) or at such other place as the Holder may designate from time to time in writing to the Maker or by wire transfer of funds to the Holder's account, instructions for which are attached hereto as Exhibit A. The outstanding principal balance of this Note shall be due and payable on August 15, 2024 (the "Maturity Date") or at such earlier time as provided herein; provided, that the Holder, in its sole discretion, may extend the Maturity Date to any date after the original Maturity Date. In the event that the Maturity Date shall fall on Saturday or Sunday, such Maturity Date shall be the next succeeding Business Day. All calculations made pursuant to this Note shall be rounded down to three decimal places.

ARTICLE 1

1.1 Purchase Agreement. This Note has been executed and delivered pursuant to the Securities Purchase Agreement, dated as of August 15, 2022 (as the same may be amended from time to time, the "Purchase Agreement"), by and between the Maker and the Holder. Capitalized terms used and not otherwise defined herein shall have the meanings set forth for such terms in the Purchase Agreement.

1.2 Interest. Except as set forth in Section 2.2, this Note shall not bear interest.

1.3 Prepayment. At any time after the Issuance Date, the Maker may repay all (but not less than all) of the Outstanding Principal Amount upon at least ten (10) days' written notice of the Holder (the "Prepayment Notice"). If the Maker elects to prepay this Note pursuant to the provisions of this Section 1.3, the Holder shall have the right, upon written notice to the Maker (a "Prepayment Conversion Notice") within five (5) Business Days of the Holder's receipt of a Prepayment Notice, to convert up to thirty-three percent (33%) of the Principal Amount (the "Maximum Amount") at the Conversion Price (as defined below), in accordance with the provisions of Article 3, specifying the Principal Amount (up to the Maximum Amount) that the Holder will convert. Upon delivery of a Prepayment Notice, the Maker irrevocably and unconditionally agrees to, within five (5) Business Days of receiving a Prepayment Conversion Notice, and if no Prepayment Conversion Notice is received, within ten (10) Business Days of delivery of a Prepayment Notice: (i) repay the Outstanding Principal Amount minus the Principal Amount set forth in the Prepayment Conversion Notice and (ii) issue the applicable Conversion Shares to the Holder in accordance with Article 3. The foregoing notwithstanding, the Maker may not deliver a Prepayment Notice with respect to any Outstanding Principal Amount that is subject to a Conversion Notice delivered by the Holder in accordance with Article 3.

1.4 Delisting from a Trading Market. If at any time the Common Stock ceases to be listed on a Trading Market, (i) the Holder may deliver a demand for payment to the Company and, if such a demand is delivered, the Company shall, within ten (10) Business Days following receipt of the demand for payment from the Holder, pay all of the Outstanding Principal Amount or (ii) the Holder may, at its election, after the six-month anniversary of the Issuance Date or earlier if a Registration Statement covering the Conversion Shares has been declared effective, upon notice to the Company in accordance with Section 5.1, convert all or a portion of the Outstanding Principal Amount and the Conversion Price shall be adjusted to the lower of (A) the then-current Conversion Price and (A) eighty percent (80%) of the average of the three (3) lowest daily VWAPs during the twenty (20) Trading Days prior to delivery by the Holder of its notice of conversion pursuant to this Section 1.4.

1.5 Payment on Non-Business Days. Whenever any payment to be made shall be due on a day which is not a Business Day, such payment may be due on the next succeeding Business Day.

1.6 Transfer. This Note may be transferred or sold, subject to the provisions of Section 5.8 of this Note, or pledged, hypothecated or otherwise granted as security by the Holder.

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1.7 Replacement. Upon receipt of a duly executed and notarized written statement from the Holder with respect to the loss, theft or destruction of this Note (or any replacement hereof), or, in the case of a mutilation of this Note, upon surrender and cancellation of such Note, the Maker shall issue a new Note, of like tenor and amount, in lieu of such lost, stolen, destroyed or mutilated Note.

1.8 Use of Proceeds. The Maker shall use the proceeds of this Note as set forth in the Purchase Agreement.

1.9 Status of Note and Security Interest. The obligations of the Maker under this Note shall be senior to all other existing Indebtedness and equity of the Company. Upon any Liquidation Event (as hereinafter defined), the Holder will be entitled to receive, before any distribution or payment is made upon, or set apart with respect to, any Indebtedness of the Maker or any class of capital stock of the Maker, an amount equal to the Outstanding Principal Amount. For purposes of this Note, "Liquidation Event" means a liquidation pursuant to a filing of a petition for bankruptcy under applicable law or any other insolvency or debtor's relief, an assignment for the benefit of creditors, or a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Maker.

1.10 **Secured Note.** The full amount of this Note is secured by the Collateral (as defined in the Security Agreement) identified and described as security therefor in the Security Agreement, the Pledge Agreement, the Company Patent Security Agreement and the Company Trademark Security Agreement. In addition, the obligations are also guaranteed by the Company's wholly-owned subsidiary, WiSA, LLC ("WiSA LLC") pursuant to the WiSA LLC Guaranty, and all of WiSA LLC's obligations under the WiSA LLC Guaranty are secured by the "Collateral" (as defined in the WiSA LLC Security Agreement) identified and described as security therefor in the WiSA LLC Security Agreement and the WiSA LLC Trademark Security Agreement.

1.11 **Tax Treatment.** The Maker and the Holder agree that for U.S. federal income tax purposes, and applicable state, local and non-U.S. income tax purposes, this Note is not intended to be, and shall not be, treated as indebtedness. Neither the Maker nor the Holder shall take any contrary position on any tax return, or in any audit, claim, investigation, inquiry or proceeding in respect of Taxes, unless otherwise required pursuant to a final determination within the meaning of Section 1313 of the Internal Revenue Code of 1986, as amended (the "Code"), or any analogous provision of applicable state, local or non-U.S. law.

ARTICLE 2

2.1 **Events of Default.** An "Event of Default" under this Note shall mean the occurrence of any of the events defined in the Purchase Agreement, and any of the additional events described below:

(a) any default in the payment of (i) the Principal Amount hereunder when due; or (ii) liquidated damages in respect of this Note as and when the same shall become due and payable (whether on the Maturity Date or by acceleration or otherwise);

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(b) the Maker shall fail to observe or perform any other covenant, condition or agreement contained in this Note or any Transaction Document or WiSA LLC shall fail to observe or perform any covenant, condition or agreement contained in any Transaction Document to which it is a party;

(c) the Maker's notice to the Holder, including by way of public announcement, at any time, of its inability to comply (including for any of the reasons described in Section 3.6(a) hereof) or its intention not to comply with proper requests for conversion of this Note into shares of Common Stock;

(d) the Maker shall fail to (i) timely deliver the shares of Common Stock as and when required in Section 3.2; or (ii) make the payment of any fees and/or liquidated damages under this Note, the Purchase Agreement or the other Transaction Documents;

(e) default shall be made in the performance or observance of any material covenant, condition or agreement contained in the Purchase Agreement or any other Transaction Document that is not covered by any other provisions of this Section 2.1;

(f) at any time the Maker shall fail to have a sufficient number of shares of Common Stock authorized, reserved and available for issuance to satisfy the potential conversion in full (disregarding for this purpose any and all limitations of any kind on such conversion) of this Note or upon exercise of the Warrant;

(g) any representation or warranty made by the Maker or any of its Subsidiaries herein or in the Purchase Agreement, this Note, the Warrant or any other Transaction Document shall prove to have been false or incorrect or breached in a material respect on the date as of which made;

(h) unless otherwise approved in writing in advance by the Holder, the Maker shall, or shall announce an intention to pursue or consummate a Change of Control, or a Change of Control shall be consummated, or the Maker shall negotiate, propose or enter into any agreement, understanding or arrangement with respect to any Change of Control;

(i) the Maker or any of its Subsidiaries shall (A) default in any payment of any amount or amounts of principal of or interest (if any) on any Indebtedness (other than the Indebtedness hereunder), the aggregate principal amount of which Indebtedness is in excess of \$250,000 or (B) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders or beneficiary or beneficiaries of such Indebtedness to cause with the giving of notice if required, such Indebtedness to become due prior to its stated maturity;

(j) the Maker or any of its Subsidiaries shall: (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property or assets; (ii) make a general assignment for the benefit of its creditors; (iii) commence a voluntary case under the United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic); (iv) file a petition seeking to take advantage of any bankruptcy, insolvency, moratorium, reorganization or other similar law affecting the enforcement of creditors' rights generally; (v) acquiesce in writing to any petition filed against it in an involuntary case under United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic); (vi) issue a notice of bankruptcy or winding down of its operations or issue a press release regarding same; or (vii) take any action under the laws of any jurisdiction (foreign or domestic) analogous to any of the foregoing;

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(k) a proceeding or case shall be commenced in respect of the Maker or any of its Subsidiaries, without its application or consent, in any court of competent jurisdiction, seeking: (i) the liquidation, reorganization, moratorium, dissolution, winding up, or composition or readjustment of its debts; (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of it or of all or any substantial part of its assets in connection with the liquidation or dissolution of the Maker or any of its Subsidiaries; or (iii) similar relief in respect of it under any law providing for the relief of debtors, and such proceeding or case described in clause (i), (ii) or (iii) shall continue undismissed, or unstayed and in effect, for a period of forty-five (45) days or any order for relief shall be entered in an involuntary case under United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic) against the Maker or any of its Subsidiaries or action under the laws of any jurisdiction (foreign or domestic) analogous to any of the foregoing shall be taken with respect to the Maker or any of its Subsidiaries and shall continue undismissed, or unstayed and in effect for a period of forty-five (45) days;

(l) one or more final judgments or orders for the payment of money aggregating in excess of \$250,000 (or its equivalent in the relevant currency of payment) are rendered against one or more of the Company and its Subsidiaries;

(m) the failure of the Maker to instruct its transfer agent to remove any legends from shares of Common Stock and issue such unlegended certificates to the Holder within three (3) Trading Days of the Holder's request so long as the Holder has provided reasonable assurances to the Maker that such shares of Common Stock can be sold pursuant to Rule 144 or any other applicable exemption;

(n) the Maker's shares of Common Stock are no longer publicly traded or cease to be listed on the Trading Market or, after the six month anniversary of

the Issuance Date, any Investor Shares may not be immediately resold under Rule 144 without restriction on the number of shares to be sold or manner of sale, unless such Investor Shares have been registered for resale under the 1933 Act and may be sold without restriction;

(o) the Maker consummates a “going private” transaction and as a result the Common Stock is no longer registered under Sections 12(b) or 12(g) of the 1934 Act;

(p) there shall be any SEC or judicial stop trade order or trading suspension stop-order or any restriction in place with the transfer agent for the Common Stock restricting the trading of such Common Stock;

(q) the Depository Trust Company places any restrictions on transactions in the Common Stock or the Common Stock is no longer tradeable through the Depository Trust Company Fast Automated Securities Transfer program;

(r) the Company’s Market Capitalization is below \$2,500,000 for ten (10) consecutive days; or

(s) the occurrence of a Material Adverse Effect in respect of the Maker, or the Maker and its Subsidiaries taken as a whole.

For the avoidance of doubt, any default pursuant to clause (i) above shall not be subject to any cure periods pursuant to the instrument governing such Indebtedness or this Note.

2.2 Remedies Upon an Event of Default

(a) Upon the occurrence of any Event of Default that has not been remedied within (i) two (2) Business Days for an Event of Default occurring by the Company’s failure to comply with Section 7.1(c) of the Purchase Agreement or Section 3.2 of this Note, or (ii) ten (10) Business Days for all other Events of Default, *provided, however,* that there shall be no cure period for an Event of Default described inSection 2.1(i), 2.1(j) or 2.1(k), the Maker shall be obligated to pay to the Holder the Mandatory Default Amount, which Mandatory Default Amount shall be earned by the Holder on the date the Event of Default giving rise thereto occurs and shall be due and payable on the earlier to occur of the Maturity Date, upon conversion, redemption or prepayment of this Note or the date on which all amounts owing hereunder have been accelerated in accordance with the terms hereof.

(b) Upon the occurrence of any Event of Default, the Maker shall, as promptly as possible but in any event within one (1) Business Day of the occurrence of such Event of Default, notify the Holder of the occurrence of such Event of Default, describing the event or factual situation giving rise to the Event of Default and specifying the relevant subsection or subsections of Section 2.1 hereof under which such Event of Default has occurred.

(c) If an Event of Default shall have occurred and shall not have been remedied within (i) two (2) Business Days for an Event of Default occurring by the Company’s failure to comply with Section 7.1(c) of the Purchase Agreement or Section 3.2 of this Note, or (ii) ten (10) Business Days for all other Events of Default, *provided, however,* that there shall be no cure period for an Event of Default described inSection 2.1(i), 2.1(j) or 2.1(k), the Holder may at any time at its option declare the Mandatory Default Amount due and payable, and thereupon, the same shall be accelerated and so due and payable, without presentment, demand, protest, or notice, all of which are hereby unconditionally and irrevocably waived by the Maker; *provided, further, however,* that (x) upon the occurrence of an Event of Default described above, the Holder, in its sole and absolute discretion, may: (a) from time-to-time demand that all or a portion of the Outstanding Principal Amount be converted into shares of Common Stock at the lower of (i) the then-current Conversion Price and (ii) eighty-percent (80%) of the average of the three (3) lowest daily VWAPs during the twenty (20) Trading Days prior to the delivery by the Holder of the applicable notice of conversion, which price shall not be lower than the Floor Price (as defined below) in the event Stockholder Approval has not been obtained; or (b) exercise or otherwise enforce any one or more of the Holder’s rights, powers, privileges, remedies and interests under this Note, the Purchase Agreement, the other Transaction Documents or applicable law and (y) upon the occurrence of an Event of Default described in clauses (k) or (l) above, the Mandatory Default Amount shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Maker. No course of delay on the part of the Holder shall operate as a waiver thereof or otherwise prejudice the rights of the Holder. No remedy conferred hereby shall be exclusive of any other remedy referred to herein or now or hereafter available at law, in equity, by statute or otherwise.

ARTICLE 3

3.1 Conversion

(a) Conversion. At any time following the Conversion Trigger Date, subject to Section 3.3, this Note shall be convertible (in whole or in part), at the option of the Holder, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing (x) that portion of the Outstanding Principal Amount that the Holder elects to convert (the “Conversion Amount”) by (y) the Conversion Price then in effect on the date on which the Holder delivers a notice of conversion, in substantially the form attached hereto as Exhibit B (the “Conversion Notice”), in accordance with Section 5.1 to the Maker; provided, that, in the event that the Conversion Price is the Variable Conversion Price, the Maker shall have the right, upon written notice to the Holder (a “Cash Conversion Notice”) within three (3) Business Days of the Maker’s receipt of a Conversion Notice, to, in lieu of delivering Conversion Shares, satisfy the Conversion Notice by paying in cash one hundred and five percent (105%) of the Conversion Amount set forth in the applicable Conversion Notice. The Holder shall deliver this Note to the Maker at the address designated in the Purchase Agreement at such time that this Note is fully converted. With respect to partial conversions of this Note, the Maker shall keep written records of the amount of this Note converted as of the date of such conversion (each, a “Conversion Date”).

(b) Conversion Price. The “Conversion Price” means the lesser of: (i) ninety percent (90%) of the average of the five (5) lowest daily VWAPs during the twenty (20) Trading Days prior to the delivery of the applicable Conversion Notice (the “Variable Conversion Price”); and (ii) \$0.926 (the “Base Conversion Price”), provided, that the Conversion Price shall not be lower than \$0.50 (the “Floor Price”) until Stockholder Approval has been obtained; provided, that if the Conversion Price is deemed to be the Floor Price, then the Maker will also pay to the Holder a cash amount equal to the following formula; and provided further, that the Floor Price shall be reduced to no lower than \$0.25 in the event that Stockholder Approval has been obtained:

Where:

A: Number of shares of Common Stock that would be issued to the Holder on such Conversion Date determined by dividing the Principal Amount being paid in shares of Common Stock by ninety percent (90%) of the average of the five (5) lowest daily VWAPs during the twenty (20) Trading Days prior to such Conversion Date (notwithstanding the Floor Price);

B: Number of Conversion Shares issued to the Holder in connection with such Conversion Date; and

C: the VWAP on the Conversion Date.

provided further, that, following any transaction or event that would, but for the preceding proviso, lower the Conversion Price to below the Floor Price, upon the delivery of a Conversion Notice the Holder may, in its sole discretion, either (i) receive the number of shares of Common Stock equal to the relevant Conversion Amount divided by the Floor Price or (ii) require the Maker to redeem the relevant Conversion Amount at 103% of the applicable Conversion Amount in immediately available funds.

(c) Conversion Limitation. During the Limitation Period, this Note shall only be convertible by the Holder to the extent that the aggregate amount of Outstanding Principal Amount voluntary converted pursuant to Section 3.1(a) does not exceed \$250,000 during any calendar month; provided, (i) during any period where the Maker's Market Capitalization is greater than \$18 million or less than \$5 million, (ii) upon the occurrence of any Event of Default that has not been remedied, or (iii) in the event Stockholder Approval has been obtained, the limitations set forth in this Section 3.1(c) shall not apply and there shall be no limitation on the Holder's ability to convert this Note pursuant to Section 3.1(a).

(d) Stockholder Approval. The Company shall not be required to issue any Conversion Shares if such issuance would cause the Company to be required to obtain the Stockholder Approval either pursuant to the rules and regulations of the Trading Market or otherwise until such Stockholder Approval has been obtained.

3.2 Delivery of Conversion Shares. As soon as practicable after any conversion in accordance with this Note and in any event within three (3) Trading Days thereafter (such date, the "Share Delivery Date"), the Maker shall, at its expense, cause to be issued in the name of and delivered to the Holder, or as the Holder may direct, a certificate or certificates evidencing the number of fully paid and non-assessable shares of Common Stock to which the Holder shall be entitled on such conversion (the "Conversion Shares"), in such denominations as may be requested by the Holder, which certificate or certificates shall be free of restrictive and trading legends (except for any such legends as may be required under the 1933 Act). In lieu of delivering physical certificates for the shares of Common Stock issuable upon any conversion of this Note, provided the Company's transfer agent is participating in the Depository Trust Company ("DTC") Fast Automated Securities Transfer program or a similar program, upon request of the Holder, the Company shall cause its transfer agent to electronically transmit such shares of Common Stock issuable upon conversion of this Note to the Holder (or its designee), by crediting the account of the Holder's (or such designee's) broker with DTC through its Deposit Withdrawal Agent Commission system (provided that the same time periods herein as for stock certificates shall apply) as instructed by the Holder (or its designee).

3.3 Ownership Cap. Notwithstanding anything to the contrary contained herein, the Holder shall not be entitled to receive shares representing Equity Interests upon conversion of this Note to the extent (but only to the extent) that such exercise or receipt would cause the Holder Group (as defined below) to become, directly or indirectly, a "beneficial owner" (within the meaning of Section 13(d) of the 1934 Act and the rules and regulations promulgated thereunder) of a number of Equity Interests of a class that is registered under the 1934 Act which exceeds the Maximum Percentage (as defined below) of the Equity Interests of such class that are outstanding at such time. Any purported delivery of Equity Interests in connection with the conversion of this Note prior to the termination of this restriction in accordance herewith shall be void and have no effect to the extent (but only to the extent) that such delivery would result in the Holder Group becoming the beneficial owner of more than the Maximum Percentage of the Equity Interests of a class that is registered under the 1934 Act that is outstanding at such time. If any delivery of Equity Interests owed to the Holder following conversion of this Note is not made, in whole or in part, as a result of this limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall deliver such Equity Interests as promptly as practicable after the Holder gives notice to the Company that such delivery would not result in such limitation being triggered or upon termination of the restriction in accordance with the terms hereof. To the extent limitations contained in this Section 3.3 apply, the determination of whether this Note is convertible and of which portion of this Note is convertible shall be the sole responsibility and in the sole determination of the Holder, and the submission of a notice of conversion shall be deemed to constitute the Holder's determination that the issuance of the full number of Conversion Shares requested in the notice of conversion is permitted hereunder, and the Company shall not have any obligation to verify or confirm the accuracy of such determination. For purposes of this Section 3.3, (i) the term "Maximum Percentage" shall mean 4.99%; provided, that if at any time after the date hereof the Holder Group beneficially owns in excess of 4.99% of any class of Equity Interests in the Company that is registered under the 1934 Act, then the Maximum Percentage shall automatically increase to 9.99% so long as the Holder Group owns in excess of 4.99% of such class of Equity Interests (and shall, for the avoidance of doubt, automatically decrease to 4.99% upon the Holder Group ceasing to own in excess of 4.99% of such class of Equity Interests); and (ii) the term "Holder Group" shall mean the Holder plus any other Person with which the Holder is considered to be part of a group under Section 13 of the 1934 Act or with which the Holder otherwise files reports under Sections 13 and/or 16 of the 1934 Act. In determining the number of Equity Interests of a particular class outstanding at any point in time, the Holder may rely on the number of outstanding Equity Interests of such class as reflected in (x) the Company's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission, as the case may be, (y) a more recent public announcement by the Company or (z) a more recent notice by the Company or its transfer agent to the Holder setting forth the number of Equity Interests of such class then outstanding. For any reason at any time, upon written or oral request of the Holder, the Company shall, within one (1) Business Day of such request, confirm orally and in writing to the Holder the number of Equity Interests of any class then outstanding. Anything herein to the contrary, any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this Section 3.3 shall be construed, corrected and implemented in a manner so as to effectuate the intended beneficial ownership limitation herein contained.

3.4 Adjustment of Base Conversion Price.

(a) Until the Note has been paid in full or converted in full, the Base Conversion Price shall be subject to adjustment from time to time as follows (but shall not be increased, other than pursuant to Section 3.4(a)(i) hereof):

(i) Adjustments for Stock Splits and Combinations. If the Maker shall at any time or from time to time after the Closing Date (but whether before or after the Issuance Date) effect a split of the outstanding Common Stock, the applicable Base Conversion Price in effect immediately prior to the stock split shall be proportionately decreased. If the Maker shall at any time or from time to time after the Closing Date (but whether before or after the Issuance Date), combine the outstanding shares of Common Stock, the applicable Base Conversion Price in effect immediately prior to the combination shall be proportionately increased. Any adjustments under this Section 3.4(a)(i) shall be effective at the close of business on the date the stock split or combination occurs.

(ii) Adjustments for Certain Dividends and Distributions. If the Maker shall at any time or from time to time after the Closing Date (but whether before or after the Issuance Date) make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in shares of Common Stock, then, and in each event, the applicable Base Conversion Price in effect immediately prior to such event shall be decreased as of

the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Base Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

(iii) Adjustment for Other Dividends and Distributions. If the Maker shall at any time or from time to time after the Closing Date (but whether before or after the Issuance Date) make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in other than shares of Common Stock, then, and in each event, an appropriate revision to the applicable Base Conversion Price shall be made and provision shall be made (by adjustments of the Base Conversion Price or otherwise) so that the Holder of this Note shall receive upon conversions thereof, in addition to the number of shares of Common Stock receivable thereon, the number of securities of the Maker or other issuer (as applicable) or other property that it would have received had this Note been converted into Common Stock in full (without regard to any conversion limitations herein) on the date of such event and had thereafter, during the period from the date of such event to and including the Conversion Date, retained such securities (together with any distributions payable thereon during such period) or assets, giving application to all adjustments called for during such period under this Section 3.4(a)(iii) with respect to the rights of the holders of this Note; *provided, however,* that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Base Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(iv) Adjustments for Reclassification, Exchange or Substitution. If the Common Stock at any time or from time to time after the Closing Date (but whether before or after the Issuance Date) shall be changed to the same or different number of shares or other securities of any class or classes of stock or other property, whether by reclassification, exchange, substitution or otherwise (other than by way of a stock split or combination of shares or stock dividends provided for in Sections 3.4(a)(i), (ii) and (iii) hereof, or a reorganization, merger, consolidation, or sale of assets provided for in Section 3.4(a)(v) hereof), then, and in each event, an appropriate revision to the Base Conversion Price shall be made and provisions shall be made (by adjustments of the Base Conversion Price or otherwise) so that the Holder shall have the right thereafter to convert this Note into the kind and amount of shares of stock or other securities or other property receivable upon reclassification, exchange, substitution or other change, by holders of the number of shares of Common Stock into which such Note might have been converted immediately prior to such reclassification, exchange, substitution or other change, all subject to further adjustment as provided herein.

(v) Adjustments for Issuance of Additional Shares of Common Stock. In the event the Maker shall at any time or from time to time after the Closing Date (but whether before or after the Issuance Date) issue or sell any additional shares of Common Stock (“Additional Shares of Common Stock”), other than (A) as provided in this Note (including the foregoing subsections (i) through (iv) of this Section 3.4(a)), pursuant to any Equity Plan (including pursuant to Common Stock Equivalents granted or issued under any Equity Plan), (B) pursuant to Common Stock Equivalents granted or issued prior to the Closing Date, or (C) Exempted Securities, in any case, at an effective price per share that is *less* than the Base Conversion Price then in effect or without consideration, then the Base Conversion Price upon each such issuance shall be reduced to a price equal to the consideration per share paid for such Additional Shares of Common Stock. For purposes of clarification, the amount of consideration received for such Additional Shares of Common Stock shall not include the value of any additional securities or other rights received in connection with such issuance of Additional Shares of Common Stock (i.e. warrants, rights of first refusal or other similar rights).

(vi) Issuance, Amendment or Adjustment of Common Stock Equivalents. Except for Exempted Securities, if (x) the Maker, at any time after the Closing Date (but whether before or after the Issuance Date), shall issue any securities convertible into or exercisable or exchangeable for, directly or indirectly, Common Stock (“Convertible Securities”), or any rights or warrants or options to purchase any such Common Stock or Convertible Securities, other than Common Stock Equivalents granted or issued under any Equity Plan (collectively with the Convertible Securities, the “Common Stock Equivalents”) and the price per share for which shares of Common Stock may be issuable pursuant to any such Common Stock Equivalent shall be *less* than the applicable Base Conversion Price then in effect, or (y) the price per share for which shares of Common Stock may be issuable under any Common Stock Equivalents is amended or adjusted, pursuant to the terms of such Common Stock Equivalents or otherwise, and such price as so amended or adjusted shall be less than the applicable Base Conversion Price in effect at the time of such amendment or adjustment, then, in each such case (x) or (y), the applicable Base Conversion Price upon each such issuance or amendment or adjustment shall be adjusted as provided in subsection (vi) of this Section 3.4(a) as if the maximum number of shares of Common Stock issuable upon conversion, exercise or exchange of such Common Stock Equivalents had been issued on the date of such issuance or amendment or adjustment.

(vii) Consideration for Stock. In case any shares of Common Stock or any Common Stock Equivalents shall be issued or sold:

(1) in connection with any merger or consolidation in which the Maker is the surviving corporation (other than any consolidation or merger in which the previously outstanding shares of Common Stock of the Maker shall be changed to or exchanged for the stock or other securities of another corporation), the amount of consideration therefor shall be, deemed to be the fair value, as determined reasonably and in good faith by the Board of Directors of the Maker and approved by the Holder, of such portion of the assets and business of the nonsurviving corporation as such Board of Directors may determine to be attributable to such shares of Common Stock, Convertible Securities, rights or warrants or options, as the case may be; or

(2) in the event of any consolidation or merger of the Maker in which the Maker is not the surviving corporation or in which the previously outstanding shares of Common Stock of the Maker shall be changed into or exchanged for the stock or other securities of another corporation or other property, or in the event of any sale of all or substantially all of the assets of the Maker for stock or other securities or other property of any corporation, the Maker shall be deemed to have issued shares of its Common Stock, at a price per share equal to the valuation of the Maker’s Common Stock based on the actual exchange ratio on which the transaction was predicated, as applicable, and the fair market value on the date of such transaction of all such stock or securities or other property of the other corporation. If any such calculation results in adjustment of the applicable Base Conversion Price, or the number of shares of Common Stock issuable upon conversion of the Note, the determination of the applicable Base Conversion Price or the number of shares of Common Stock issuable upon conversion of the Note immediately prior to such merger, consolidation or sale, shall be made after giving effect to such adjustment of the number of shares of Common Stock issuable upon conversion of the Note. In the event Common Stock is issued with other shares or securities or other assets of the Maker for consideration which covers both, the consideration computed as provided in this Section 3.4(a)(vii) shall be allocated among such securities and assets as determined in good faith by the Board of Directors of the Maker, and approved by the Holder.

(viii) Record Date. In case the Maker shall take record of the holders of its Common Stock for the purpose of entitling them to subscribe for or purchase Common Stock or Convertible Securities, then the date of the issue or sale of the shares of Common Stock shall be deemed to be such record date.

(b) No Impairment. The Maker shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Maker, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3.4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holder against impairment. In the event the Holder shall elect to convert this Note as provided herein, the Maker cannot refuse conversion based on any claim that the Holder or anyone associated or affiliated with the Holder has been engaged in any violation of law, violation of an agreement to which the Holder is a party or for any reason whatsoever, unless, an injunction from a court, or notice, restraining and or adjoining conversion of this Note shall have issued and the Maker posts a surety bond for the benefit of the Holder in an amount equal to one hundred fifty percent (150%) of the Principal Amount of the Note the Holder has elected to convert, which bond shall remain in effect until the completion of arbitration/litigation of the dispute and the proceeds of which shall be payable to the Holder (as liquidated damages) in the event it obtains judgment.

(c) Certificates as to Adjustments. Upon occurrence of each adjustment or readjustment of the Base Conversion Price or number of shares of Common Stock issuable upon conversion of this Note pursuant to this Section 3.4, the Maker at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Holder a certificate setting forth such adjustment and readjustment, showing in detail the facts upon which such adjustment or readjustment is based. The Maker shall, upon written request of the Holder, at any time, furnish or cause to be furnished to the Holder a like certificate setting forth such adjustments and readjustments, the applicable Base Conversion Price in effect at the time, and the number of shares of Common Stock and the amount, if any, of other securities or property which at the time would be received upon the conversion of this Note. Notwithstanding the foregoing, the Maker shall not be obligated to deliver a certificate unless such certificate would reflect an increase or decrease of at least one percent (1%) of such adjusted amount.

(d) Issue Taxes. The Maker shall pay any and all issue and other taxes, excluding federal, state or local income taxes, that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of this Note pursuant thereto; *provided, however,* that the Maker shall not be obligated to pay any transfer taxes resulting from any transfer requested by the Holder in connection with any such conversion.

(e) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of this Note. In lieu of any fractional shares to which the Holder would otherwise be entitled, the Maker shall pay cash equal such fractional shares multiplied by the Conversion Price then in effect.

(f) Reservation of Common Stock. The Maker shall at all times while this Note shall be outstanding, reserve and keep available out of its authorized but unissued Common Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of this Note (disregarding for this purpose any and all limitations of any kind on such conversion). The Maker shall, from time to time, increase the authorized number of shares of Common Stock or take other effective action if at any time the unissued number of authorized shares shall not be sufficient to satisfy the Maker's obligations under this Section 3.4(g).

(g) Regulatory Compliance. If any shares of Common Stock to be reserved for the purpose of conversion of this Note require registration or listing with or approval of any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise before such shares may be validly issued or delivered upon conversion, the Maker shall, at its sole cost and expense, in good faith and as expeditiously as possible, secure such registration, listing or approval, as the case may be.

(h) Effect of Events Prior to the Issuance Date. If the Issuance Date of this Note is after the Closing Date, then, if the Base Conversion Price or any other right of the Holder of this Note would have been adjusted or modified by operation of any provision of this Note had this Note been issued on the Closing Date, such adjustment or modification shall be deemed to apply to this Note as of the Issuance Date as if this Note had been issued on the Closing Date.

3.5 Prepayment Following a Change of Control

(a) Mechanics of Prepayment at Option of Holder in Connection with a Change of Control No sooner than fifteen (15) days prior to entry into an agreement for a Change of Control nor later than ten (10) days prior to the consummation of a Change of Control, but not prior to the public announcement of such Change of Control, the Maker shall deliver written notice ("Notice of Change of Control") to the Holder. At any time after receipt of a Notice of Change of Control (or, in the event a Notice of Change of Control is not delivered at least ten (10) days prior to a Change of Control, at any time within ten (10) days prior to a Change of Control), the Holder may require the Maker to prepay, effective immediately prior to the consummation of such Change of Control, an amount equal to 105% of the Outstanding Principal Amount(the "COC Repayment Price"), by delivering written notice thereof ("Notice of Prepayment at Option of Holder Upon Change of Control") to the Maker.

(b) Payment of COC Repayment Price. Upon the Maker's receipt of a Notice(s) of Prepayment at Option of Holder Upon Change of Control from the Holder, the Maker shall deliver the COC Repayment Price to the Holder immediately prior to the consummation of the Change of Control; provided that the Holder's original Note shall have been so delivered to the Maker.

3.6 Inability to Fully Convert

(a) Holder's Option if Maker Cannot Fully Convert. If, upon the Maker's receipt of a Conversion Notice or as otherwise required under this Note, including with respect to repayment of principal in shares of Common Stock as permitted under this Note, the Maker cannot issue shares of Common Stock for any reason, including, without limitation, because the Maker (x) does not have a sufficient number of shares of Common Stock authorized and available, (y) is unable to issue the Holder freely tradable shares of Common Stock or (z) is otherwise prohibited by applicable law or by the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Maker or any of its securities from issuing all of the Common Stock which is to be issued to the Holder pursuant to this Note, then the Maker shall issue as many shares of Common Stock as it is able to issue and, with respect to the unconverted portion of this Note or with respect to any shares of Common Stock not timely issued in accordance with this Note, the Holder, solely at Holder's option, can elect to:

(i) require the Maker to prepay that portion of this Note for which the Maker is unable to issue Common Stock or for which shares of Common Stock were not timely issued (the "Mandatory Prepayment") at a price equal to the number of shares of Common Stock that the Maker is unable to issue multiplied by the VWAP on the date of the Conversion Notice (the "Mandatory Prepayment Price");

(ii) void its Conversion Notice and retain or have returned, as the case may be, this Note that was to be converted pursuant to the Conversion Notice (provided that the Holder's voiding its Conversion Notice shall not affect the Maker's obligations to make any payments which have accrued prior to the date of such notice); or

(iii) defer issuance of the applicable Conversion Shares until such time as the Maker can legally issue such shares; provided, that the Principal Amount underlying such Conversion Shares shall remain outstanding until the delivery of such Conversion Shares; provided, further, that if the Holder elects to defer the issuance of the Conversion Shares, it may exercise its rights under either clause (i) or (ii) above at any time prior to the issuance of the Conversion Shares upon two (2) Business Days' notice to the Maker.

(b) Mechanics of Fulfilling Holder's Election. The Maker shall immediately send to the Holder, upon receipt of a Conversion Notice from the Holder, which cannot be fully satisfied as described in Section 3.6(a) above, a notice of the Maker's inability to fully satisfy the Conversion Notice (the "Inability to Fully Convert Notice"). Such Inability to Fully Convert Notice shall indicate (i) the reason why the Maker is unable to fully satisfy the Holder's Conversion Notice; and (ii) the amount of this Note which cannot be converted. The Holder shall notify the Maker of its election pursuant to Section 3.6(a) above by delivering written notice to the Maker ("Notice in Response to Inability to Convert").

(c) Payment of Mandatory Prepayment Price. If the Holder shall elect to have its Note prepaid pursuant to Section 3.6(a)(i) above, the Maker shall pay the Mandatory Prepayment Price to the Holder within five (5) Business Days of the Maker's receipt of the Holder's Notice in Response to Inability to Convert; provided that prior to the Maker's receipt of the Holder's Notice in Response to Inability to Convert the Maker has not delivered a notice to the Holder stating, to the satisfaction of the Holder, that the event or condition resulting in the Mandatory Prepayment has been cured and all Conversion Shares issuable to the Holder can and will be delivered to the Holder in accordance with the terms of this Note. If the Maker shall fail to pay the applicable Mandatory Prepayment Price to the Holder on the date that is one (1) Business Day following the Maker's receipt of the Holder's Notice in Response to Inability to Convert, in addition to any remedy the Holder may have under this Note and the Purchase Agreement, such unpaid amount shall bear interest at the rate of two percent (2%) per month (prorated for partial months) until paid in full. Until the full Mandatory Prepayment Price is paid in full to the Holder, the Holder may (i) void the Mandatory Prepayment with respect to that portion of the Note for which the full Mandatory Prepayment Price has not been paid and (ii) receive back such Note.

(d) No Rights as Stockholder. Nothing contained in this Note shall be construed as conferring upon the Holder, prior to the conversion of this Note, the right to vote or to receive dividends or to consent or to receive notice as a stockholder in respect of any meeting of stockholders for the election of directors of the Maker or of any other matter, or any other rights as a stockholder of the Maker.

ARTICLE 4

4.1 Covenants. For so long as any Note is outstanding, without the prior written consent of the Holder:

(a) Compliance with Transaction Documents. The Maker shall, and shall cause its Subsidiaries to, comply with its obligations under this Note and the other Transaction Documents.

(b) Payment of Taxes, Etc. The Maker shall, and shall cause each of its Subsidiaries to, promptly pay and discharge, or cause to be paid and discharged, when due and payable, all lawful taxes, assessments and governmental charges or levies imposed upon the income, profits, property or business of the Maker and the Subsidiaries, except for such failures to pay that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect; provided, however, that any such tax, assessment, charge or levy need not be paid if the validity thereof shall currently be contested in good faith by appropriate proceedings and if the Maker or such Subsidiaries shall have set aside on its books adequate reserves with respect thereto, and provided, further, that the Maker and such Subsidiaries will pay all such taxes, assessments, charges or levies forthwith upon the commencement of proceedings to foreclose any lien which may have attached as security therefor.

(c) Corporate Existence. The Maker shall, and shall cause each of its Subsidiaries to, maintain in full force and effect its corporate existence, rights and franchises and all licenses and other rights to use property owned or possessed by it and reasonably deemed to be necessary to the conduct of its business.

(d) Investment Company Act. The Maker shall conduct its businesses in a manner so that it will not become subject to, or required to be registered under, the Investment Company Act of 1940, as amended.

(e) Sale of Collateral; Liens. From the date hereof until the full release of the security interest in the Collateral and the "Collateral" (as such term is defined in the WiSA LLC Security Agreement) (the "WiSA LLC Collateral"), (i) the Maker shall not, and shall not permit WiSA LLC to, sell, lease, transfer or otherwise dispose of any of the Collateral or the WiSA LLC Collateral, or attempt or contract to do so or permit WiSA LLC to attempt or contract to do so, other than sales of inventory in the ordinary course of business consistent with past practices; and (ii) the Maker shall not, and shall not permit WiSA LLC to, directly or indirectly, create, permit or suffer to exist, and shall defend the Collateral and cause WiSA LLC to defend the WiSA LLC Collateral against and take such other action, and cause WiSA LLC to take such other action, as is necessary to remove, any lien, security interest or other encumbrance on the Collateral and the WiSA LLC Collateral (except for the pledge, assignment and security interest created under the Security Agreement, the WiSA LLC Security Agreement, any Permitted Liens (as defined in the Security Agreement) or any "Permitted Lien" (as defined in the WiSA LLC Security Agreement)).

(f) Prohibited Transactions. The Company hereby covenants and agrees not to enter into any Prohibited Transactions until thirty (30) days after such time as this Note has been converted into Conversion Shares or repaid in full.

(g) Repayment of This Note. If the Company or WiSA LLC issue any debt (other than this Note), or issue any preferred stock, other than Exempted Securities, while this Note remains outstanding, then unless otherwise waived in writing by and at the discretion of the Holder, the Company will immediately utilize the proceeds of such issuance to repay the Note. If the Company or WiSA LLC issue any Equity Interests, other than Exempted Securities, while this Note remains outstanding, then unless otherwise waived in writing by and at the discretion of the Holder, the Company will immediately direct twenty percent (20%) of the proceeds from such issuance to repay this Note.

4.2 Set-Off. This Note shall be subject to the set-off provisions set forth in the Purchase Agreement.

ARTICLE 5

5.1 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section prior to 5:00 p.m. (New York time) on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section on a day that is not a Business Day or later than 5:00 p.m. (New York time) on any date and earlier than 11:59 p.m. (New York time) on such date, (c) the Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such

5 . 2 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without reference to principles of conflict of laws or choice of laws. This Note shall not be interpreted or construed with any presumption against the party causing this Note to be drafted.

5.3 Headings. Article and section headings in this Note are included herein for purposes of convenience of reference only and shall not constitute a part of this Note for any other purpose.

5.4 Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, at law or in equity (including, without limitation, a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit the Holder's right to pursue actual damages for any failure by the Maker to comply with the terms of this Note. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Maker (or the performance thereof). The Maker acknowledges that a breach by it of its obligations hereunder will cause irreparable and material harm to the Holder and that the remedy at law for any such breach would be inadequate. Therefore, the Maker agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available rights and remedies, at law or in equity, to equitable relief, including but not limited to an injunction restraining any such breach or threatened breach, without the necessity of showing economic loss and without any bond or other security being required.

5.5 Enforcement Expenses. The Maker agrees to pay all costs and expenses of enforcement of this Note, including, without limitation, reasonable attorneys' fees and expenses.

5.6 Binding Effect. The obligations of the Maker and the Holder set forth herein shall be binding upon the successors and assigns of each such party, whether or not such successors or assigns are permitted by the terms herein.

5.7 Amendments; Waivers. No provision of this Note may be waived or amended except in a written instrument signed by the Company and the Holder. No waiver of any default with respect to any provision, condition or requirement of this Note shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

5.8 Compliance with Securities Laws. The Holder of this Note acknowledges that this Note is being acquired solely for the Holder's own account and not as a nominee for any other party, and for investment, and that the Holder shall not offer, sell or otherwise dispose of this Note in violation of securities laws. This Note and any Note issued in substitution or replacement therefor shall be stamped or imprinted with a legend in substantially the following form:

"THIS NOTE HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO 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 AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY."

5.9 Jurisdiction; Venue. Any action, proceeding or claim arising out of, or relating in any way to this Agreement shall be brought and enforced in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York. The Company and the Holder irrevocably submit to the jurisdiction of such courts, which jurisdiction shall be exclusive, and hereby waive any objection to such exclusive jurisdiction or that such courts represent an inconvenient forum. The prevailing party in any such action shall be entitled to recover its reasonable and documented attorneys' fees and out-of-pocket expenses relating to such action or proceeding.

5.10 Parties in Interest. This Note shall be binding upon, inure to the benefit of and be enforceable by the Maker, the Holder and their respective successors and permitted assigns.

5.11 Failure or Indulgence Not Waiver. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

5.12 Maker Waivers. Except as otherwise specifically provided herein, the Maker and all others that may become liable for all or any part of the obligations evidenced by this Note, hereby waive presentment, demand, notice of nonpayment, protest and all other demands' and notices in connection with the delivery, acceptance, performance and enforcement of this Note, and do hereby consent to any number of renewals of extensions of the time or payment hereof and agree that any such renewals or extensions may be made without notice to any such persons and without affecting their liability herein and do further consent to the release of any person liable hereon, all without affecting the liability of the other persons, firms or Maker liable for the payment of this Note, AND DO HEREBY WAIVE TRIAL BY JURY.

(a) No delay or omission on the part of the Holder in exercising its rights under this Note, or course of conduct relating hereto, shall operate as a waiver of such rights or any other right of the Holder, nor shall any waiver by the Holder of any such right or rights on any one occasion be deemed a waiver of the same right or rights on any future occasion.

(b) THE MAKER ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS NOTE IS A PART IS A COMMERCIAL TRANSACTION, AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, HEREBY WAIVES ITS RIGHT TO NOTICE AND HEARING WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH THE HOLDER OR ITS SUCCESSORS OR ASSIGNS MAY DESIRE TO USE.

5 . 1 3 **Definitions.** Capitalized terms used herein and not defined shall have the meanings set forth in the Purchase Agreement. For the purposes hereof, the following terms shall have the following meanings:

(a) “Conversion Trigger Date” means the day that is the six (6) month anniversary of the Issuance Date.

(b) “Indebtedness” means: (a) all obligations for borrowed money; (b) all obligations evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, current swap agreements, interest rate hedging agreements, interest rate swaps, or other financial products; (c) all capital lease obligations that exceed \$150,000 in the aggregate in any fiscal year; (d) all obligations or liabilities secured by a lien or encumbrance on any asset of the Maker, irrespective of whether such obligation or liability is assumed; (e) all obligations for the deferred purchase price of assets, together with trade debt and other accounts payable that exceed \$150,000 in the aggregate in any fiscal year; (f) all synthetic leases; (g) any obligation guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse) any of the foregoing obligations of any other person; (h) trade debt; and (i) endorsements for collection or deposit.

(c) “Limitation Period” means the period commencing on the Conversion Trigger Date and ending on the nine-month anniversary of the Conversion Trigger Date.

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(d) “Mandatory Default Amount” means an amount equal to one hundred twenty percent (120%) of the Outstanding Principal Amount of this Note on the date on which the first Event of Default has occurred hereunder.

(e) “Market Capitalization” means, as of any date of determination, the product of (a) the number of issued and outstanding shares of Common Stock as of such date (exclusive of any shares of common stock issuable upon the exercise of options or warrants or conversion of any convertible securities), multiplied by (b) the closing price of the Common Stock on the Trading Market on the date of determination.

(f) “Outstanding Principal Amount” means, at the time of determination, the Principal Amount outstanding after giving effect to any conversions or prepayments pursuant to the terms hereof.

(g) “Trading Day” means a day on which the Common Stock is traded on a Trading Market.

(h) “VWAP” means, as of any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of one share of Common Stock on the applicable Trading Price for such date (or the nearest preceding date) on such Trading Market as reported by Bloomberg Financial L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York city time)); (b) if the Common Stock is not then listed on a Trading Market and if the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, the volume weighted average price of one share of Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, as reported by Bloomberg Financial L.P.; (c) if the Common Stock is not then listed or quoted on the OTC Bulletin Board and if prices for the Common Stock is then reported in the “Pink Sheets” published by the Pink OTC Markets Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price of one share of Common Stock so reported, as reported by Bloomberg Financial L.P.; or (d) in all other cases, the fair market value of one share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed by its duly authorized officer as of the date first above indicated.

WISA TECHNOLOGIES, INC.

By: _____
Name: Brett Moyer
Title: Chairman & Chief Executive Officer

EXHIBIT A

WIRE INSTRUCTIONS

Name of Bank:

Routing #:
For credit to:
Account #:
Address:

EXHIBIT B

FORM OF CONVERSION NOTICE

(To be Executed by the Registered Holder in order to Convert the Note)

The undersigned hereby irrevocably elects to convert \$ _____ of the principal amount of the above Note No. ____ into shares of Common Stock of WiSA Technologies, Inc. (the "Maker") according to the conditions hereof, as of the date written below.

Date of Conversion:

Conversion Price:

Number of shares of Common Stock beneficially owned or deemed beneficially owned by the Holder on the Conversion Date:

[HOLDER]

By: _____
Name:
Title:

Address:

EXECUTIVE EMPLOYMENT AGREEMENT

This **EXECUTIVE EMPLOYMENT AGREEMENT** ("Agreement") is made effective as of the 24 day of August 2022 by and between **WiSA Technologies, Inc.**, a Delaware corporation, with its principal offices in Beaverton, Oregon (hereinafter "WiSA" or the "Company"), and Brett Moyer, an individual and a resident of California ("Executive").

RECITALS

A. Executive is currently employed by WiSA, which employment is governed by an Employment Agreement executed August 6, 2002 and a First Amendment to Employment Agreement entered into effective May 2, 2011 (together, the "Existing Agreement").

B. WiSA and Executive desire to enter into this employment agreement, the terms of which shall supersede in their entirety the Existing Agreement, in order to secure the additional covenants of Executive as set forth herein and to provide the additional rights and benefits to Executive in consideration of Executive's obligations hereunder.

AGREEMENT

NOW, THEREFORE, the parties, in consideration of the foregoing Recitals, each of which is incorporated by this reference as an essential term, the covenants, conditions and other terms hereof, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows.

1. **Employment and Term.** WiSA shall employ Executive and Executive accepts full time employment as President and Chief Executive Officer of WiSA on the terms and conditions set forth herein. As of the effective date of this Agreement, Executive also serves as Chairman of WiSA's Board of Directors (the "Board").

Executive's employment under this Agreement shall be for an unspecified term (the "Term") on an "at will" basis. Nothing in Company's policies, actions or this Agreement shall be construed to alter the "at will" nature of Executive's status with Company, and Executive understands that Company may terminate Executive's employment at any time for any reason or for no reason, provided that it is not terminated in violation of state or federal law.

2. **Duties and Responsibilities.** During the Term of this Agreement, Executive shall devote substantially all of his time, energy and skills to the business of the Company. He shall perform his duties as the Board may require from time to time. Executive shall be subject to the duly-issued instructions of the Board regardless of whether he supported each such instruction in his capacity as a Board member. Executive shall work faithfully and to the best of his ability and efforts promoting the business interests of WiSA. Executive will discharge his duties at all times in accordance with any and all policies of WiSA and will report to, and be subject to the direction of, the WiSA Board of Directors. Executive shall be considered a key employee of the Company.

Executive shall not engage in any other business duties or pursuit whatsoever, or directly or indirectly render any services of a business, commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Board except for (a) boards of directors or private companies on which Executive currently serves and (b) other boards of directors to which Executive shall not devote more than sixteen (16) hours of service per month. However, the expenditure of reasonable amounts of time for education, charitable or professional activities shall not be deemed a breach of this Agreement if those activities do not materially interfere with the services required under this Agreement. Furthermore, this Agreement shall not be interpreted to prohibit Executive from making passive personal investments if those activities do not materially interfere with the services required under this Agreement and if those investments do not create any conflict of interest with Executive's duties to the Company; provided, however, that Executive may invest in index funds without regard to conflicts of interest.

3. **Compensation.** Executive's base annual salary upon signing this Agreement shall be \$404,250. Executive's performance shall be reviewed annually thereafter. Adjustments in salary may be made from time to time in the sole discretion of the Board. Salary shall be paid in arrears in accordance with Company's regular payroll practices and subject to applicable income and employment tax withholding and authorized deductions.

4. **Bonus Compensation.** Executive will be eligible to participate in bonus arrangements made available to the Company's senior management from time to time by the Board. Except as otherwise provided in this Agreement, to be eligible for payment, Executive must be employed by the Company on the date any such bonus is paid.

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5. **Executive Benefits.**

(a) **Vacation.** Executive shall receive a minimum of twenty (20) business days of paid vacation and thereafter consistent with the Company's vacation policy, during each year of this Agreement (pro rata). Unused vacation will carry over from one year to the next but the maximum amount of vacation, which can accrue (unused) at any one time, shall not exceed thirty (30) business days. Unused vacation will not be paid in the form of cash, except upon termination of employment.

(b) **Benefits.** Executive shall be eligible to participate in any and all benefit plans maintained by the Company, subject to the eligibility requirements and other terms of such plans and programs. The benefits offered by the Company may be modified or changed at the discretion of the Company.

6. **Expenses.** WiSA shall reimburse Executive for all reasonable business expenses incurred by Executive pursuant to Company policies (as adopted from time to time); provided, however, that Executive complies with any established policy and procedure for the reimbursement of such expenses, including, but not limited to, submitting an appropriate expense report.

7. **Compliance with Laws and Policies.** As a Company employee, Executive agrees that he must act in conformity with the law at all times, without exception. Executive will abide by Company rules, regulations and policies as in effect from time to time, including, but not limited to those uploaded to the "Corporate Governance" section of the Company's website (<https://ir.summitwireless.com/governance-docs>).

8. **Consequences of Termination.**

(a) **Termination for Cause.** If Executive's employment is terminated by WiSA for "Cause" (as defined below), then (i) WiSA shall pay the Executive his base salary, as described in Section 3 above, to the date of termination and (ii) Executive shall not be entitled to any other salary, bonus compensation or benefits after the date of termination, except the right to receive benefits that have become vested under any benefit plan or to which Executive is entitled as a matter of law. For the avoidance of doubt, if Executive's employment is terminated by WiSA for "Cause" then none of the severance related benefits described in Section 8(c) shall be provided.

(b) **Resignation without Good Reason.** Executive may resign without "Good Reason" (as defined below) on thirty (30) days notice, which commences the "Resignation Notice Period"; provided, however, that the Company may thereafter terminate Executive's employment immediately or at any time during the Resignation Notice Period provided that Executive receives all base salary, benefits and options vested through the remaining Resignation Notice Period. Executive shall not otherwise be entitled to any other salary, bonus compensation or benefits after the date of termination, except the right to receive benefits that have become vested

under any benefit plan or to which Executive is entitled as a matter of law. For the avoidance of doubt, if Executive resigns without “Good Reason,” then none of the severance related benefits described in Section 8(c) shall be provided.

(c) Resignation for Good Reason or Termination without Cause. The provisions of this Section 8(c) shall apply in the event Executive is either terminated by Company without Cause or Executive resigns for Good Reason and provided Executive executes, delivers and does not revoke the Company’s standard release of claims agreement within sixty (60) days of such termination of employment. If the sixty (60)-day period referenced in the preceding sentence spans two taxable years, payment shall only commence in the second taxable year.

- (i) The Company may terminate Executive’s employment without Cause upon ten (10) business days’ notice (which commences the “**Termination Notice Period**”) for any reason; provided, however, that the Company may terminate Executive’s employment immediately or at any time during the Notice Period; provided, however, that it pay Executive an amount equal to any base salary otherwise remaining in the Notice Period.
- (ii) The Company will continue payment of Executive’s base salary (at the same rate existing immediately prior to his termination) for a period of twelve (12) months (the “**Severance Period**”) pursuant to the Company’s regular payroll practices and subject to applicable income and employment tax withholding and authorized deductions.
- (iii) Provided Executive is entitled to, elects to and remains eligible to continue group health, dental and vision coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“**COBRA**”), WiSA will continue during the Severance Period to contribute toward the cost of such coverage as if Executive were an active employee unless doing so violates applicable law or is inconsistent with the coverage arrangement.

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- (iv) The Company shall pay Executive any bonus compensation otherwise due for the applicable year of termination prorated on a 365-day basis to the date of termination of employment in the year following the year to which the bonus compensation relates; provided, however, that such bonus shall be paid no earlier than January 1 nor later than March 15 of the year following the year of termination.
- (v) Any and all unvested equity awards in Executive’s name shall immediately become fully vested and exercisableprovided, however, that regardless of the terms of any equity award agreement between the Company and Executive, absent a separate signed written agreement between Company and Executive that specifically references this provision of this Agreement, no exercise of an award that requires exercise by the Executive shall occur more than six (6) months after such termination and in no event after the expiration of such award.
- (vi) In the event of Executive’s subsequent death, Company shall continue to pay and/or make available for the remainder of the Severance Period the payments and benefits not yet paid or provided pursuant to this Section 8(c), with any amounts other than COBRA continuation coverage payable to Executive’s estate.

(d) Termination in the Event of Death or Disability. If Executive’s employment terminates due to Executive’s death or if WiSA terminates Executive’s employment due to Executive’s “Disability” (as defined below), Executive shall be treated as if terminated by the Company without Cause for purposes of this Section 8. Such payments and benefits (other than COBRA continuation coverage) shall be made to Executive’s estate or legal representative.

(e) Suspension of Payment. Notwithstanding anything herein to the contrary, if Executive is in violation of any provision of Sections 10, 11, 12 or 13 below, WiSA shall have no obligation to make payment(s) under Section 8(c) of this Agreement if WiSA has determined in good faith that such a violation(s) has occurred or is occurring. If it is later established through arbitration or other judicial proceeding that no such violation occurred, WiSA shall agree to pay to Executive any such amount withheld from or not paid during such period to the extent consistent with Section 409A (“**Section 409A**”) of the Internal Revenue Code (the ‘**Code**’).

(f) No Mitigation. Executive will be under no obligation to mitigate damages by seeking other employment, and there will be no offset against the amounts due Executive under this Agreement, except as specifically provided in Section 8(d) above or for any other claims that WiSA may have against Executive and to the extent consistent with Section 409A.

(g) Survival of Provisions. The obligations of confidentiality and assignment of inventions under Section 10 and the obligations of Confidential Information and assignment of inventions, non-solicitation and non-disparagement under Sections 10, 11, 12 and 13 hereof shall survive the termination of this Agreement for any reason.

9. Change in Control. If there is a “Change in Control” (as defined below) of WiSA, any and all unvested equity awards in Executive’s name shall immediately become fully vested and exercisable; provided, however, that regardless of the terms of any equity award agreement between the Company and Executive, absent a separate signed written agreement between Company and Executive that specifically references this provision of this Agreement, no exercise of an award that requires exercise by the Executive shall occur more than six (6) months after such termination and in no event after the expiration of such award.

10. Confidential Information and Assignment of Inventions.

(a) Executive will not disclose to a third party or use for his personal benefit confidential information of WiSA. “**Confidential Information**” means any information used or useful in WiSA’s business that is not generally known outside of WiSA and that is proprietary to WiSA relating to any aspect of WiSA’s existing or reasonably foreseeable business that is disclosed to Executive or conceived, discovered or developed by Executive. Confidential Information includes, but is not limited to: product designs including drawings and sketches, manufacturing materials, plant layouts, tooling, sales marketing plans or proposals, customer information, customer lists, raw material sources, manufacturing processes, price, financial, accounting and cost information, clinical data, administrative techniques and documents and information designated by WiSA as “Confidential.” Executive shall also comply with the terms of any Confidentiality Agreement by which WiSA is bound to a third party as well as the Company’s Confidential Information and Invention Assignment Agreement.

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(b) Executive grants to WiSA the exclusive ownership of all reports, drawings, blueprints, data writings and technical information made by Executive alone or with others during the term of his employment, whether or not made or prepared in the course of his employment, that relate to apparatus, compositions of matter or methods pertaining to WiSA business. Executive acknowledges that all such reports, drawings, blueprints, data writings and technical information are the property of WiSA.

(c) Executive will promptly disclose to WiSA in writing all inventions and proprietary information that he alone or with others conceives, generates or

reduces to practice, during or after working hours, while an employee of WiSA and for six (6) months following Executive's termination of employment with respect to work performed by Executive for WiSA. All such inventions and proprietary information shall be the exclusive property of WiSA and are assigned to WiSA. This Agreement shall not apply to any invention for which no equipment, supplies, facility or trade secret information of WiSA was used, and that was developed entirely on Executive's time, and (i) that does not relate (1) directly to the business of WiSA or (2) to WiSA' actual or demonstrably anticipated research or development or (ii) that does not result from any work performed by Executive for WiSA.

(d) At WiSA's expense, Executive shall give WiSA all assistance it reasonably requires to perfect, protect and use its rights to inventions and proprietary information. In particular, but without limitation, Executive will sign all documents, do all things and supply all information that WiSA may deem necessary or desirable to (i) transfer or record the transfer of Executive's entire right, title and interest in inventions and proprietary information and (ii) enable WiSA to obtain patent, copyright or trademark protection for inventions anywhere in the world. Executive understands that the provisions of this Section 10 do not apply to any invention that qualifies fully under the provisions of California Labor Code Section 2870 (attached hereto as **Exhibit A**).

11. **Non-Competition.** During the Term, Executive shall not, directly or indirectly, either as an Executive, consultant, agent, principal, partner, stockholder (except in a publicly held company), corporate officer, director or in any other individual or representative capacity, engage or participate in any business that is in competition in any manner whatsoever with the then current or anticipated business of WiSA.

12. **Non-Solicitation.** During the Term of his employment with WiSA and any Severance Period, and for a period of one (1) year after termination of such employment or end of any Severance Period, whichever is later, Executive will not, directly or indirectly, solicit, hire or otherwise engage, on his own behalf or on behalf of another person or entity, the services of any person who is an employee of WiSA. In no event will this non-solicitation provision expire in less than two (2) years from the date of termination of employment.

13. **Non-Disparagement.** During and after the termination or expiration of this Agreement, Executive shall not make any negative or disparaging remarks or comments (either oral or written) about WiSA, its affiliated or related companies or any of the foregoing entities directors, officers, employees, agents, services or products, and WiSA agrees not to make any negative or disparaging remarks or comments (either oral or written) about Executive. Notwithstanding the foregoing, each of the parties is entitled accurately to describe their past relationship to potential employers, partners or affiliates of Executive or potential partners or affiliates of WiSA.

14. **Protected Disclosures.** Under the Defend Trade Secrets Act of 2016, Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is: (a) made in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement shall prohibit Executive from reporting possible violations of federal or state law or regulation to any governmental agency or entity or making other disclosures that are protected under the whistleblower provisions of federal or state law or regulation. Executive does not need the prior authorization of WiSA to make any such whistleblower reports or disclosures and is not required to notify WiSA that he has made such whistleblower reports or disclosures. Furthermore, nothing in this Agreement prohibits or restricts Executive from making other reports protected by law, including filing a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board or a similar agency enforcing federal, state or local laws, and it does not limit Executive's ability to communicate with any government agency, entity or organization, make disclosures or otherwise participate in any investigation or proceeding that may be conducted by any government agency, entity or organization.

15. **Arbitration.**

(a) To the maximum extent permitted by law, any controversy between WiSA and Executive involving the construction or application of any of the terms, provisions or conditions of this Agreement or the breach thereof shall be settled by final and binding arbitration by a single arbitrator to be held in Santa Clara, California, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA Rules") then in effect. The arbitrator selected shall have the authority to grant Executive or the Company or both all remedies otherwise available by law, including injunctions.

(b) Notwithstanding anything to the contrary in the AAA Rules, the arbitration shall provide (i) for written discovery and depositions adequate to give the Parties access to documents and witnesses that are essential to the dispute and (ii) for a written decision by the arbitrator that includes the essential findings and conclusions upon which the decision is based. Consistent with applicable law, Executive and the Company shall each bear his or its own costs and attorneys' fees incurred in conducting the arbitration and, except in such disputes where Executive asserts a claim otherwise under a state or federal statute prohibiting discrimination in employment (a "Statutory Discrimination Claim"), or where otherwise required by law, shall split equally the fees and administrative costs charged by the arbitrator and AAA. In disputes where Executive asserts a Statutory Discrimination Claim against the Company, or where otherwise required by law, Executive shall be required to pay only the AAA filing fee to the extent such filing fee does not exceed the fee to file a complaint in state or federal court. The Company shall pay the balance of the arbitrator's fees and administrative costs.

(c) The decision of the arbitrators will be final, conclusive and binding on the Parties to the arbitration. The prevailing party in the arbitration, as determined by the arbitrator, shall be entitled to recover his or its reasonable attorneys' fees and costs, including the costs or fees charged by the arbitrator and AAA. In disputes where Executive asserts a Statutory Discrimination Claim, reasonable attorneys' fees shall be awarded by the arbitrator based on the same standard as such fees would be awarded if the Statutory Discrimination Claim had been asserted in state or federal court. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.

16. **Certain Definitions.** For purposes of this Agreement, the following terms will have the meaning set forth below.

(a) **Cause.** "Cause" means that Executive has: (i) committed an act of dishonesty, fraud or breach of trust involving the business of WiSA; (ii) willfully failed to follow any material policy or material instructions of the Board provided such are lawful and not a violation of public policy; (iii) been indicted for or convicted of any felony; (iv) engaged in any gross misconduct, such as sexual harassment, material violations of applicable law or defalcations in the performance of or in connection with the Executive's duties or employment by WiSA (including Executive's role on the Board); or (v) otherwise breached material obligations under this Agreement.

(b) **Change in Control.** "Change in Control" means any of the following events: (i) the acquisition by any individual, entity or group (a "Person") within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934 (the "Exchange Act") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of the then-outstanding shares of Common Stock plus any other outstanding shares of stock of the Company entitled to vote in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that the Company and any employee benefit plan (or related trust) sponsored by it shall not be deemed to be a Person; or (ii) a change in the composition of the Board such that the individuals who constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board within any 365-day period

(and for this purpose, any individual whose election or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds (2/3rds) of the directors then comprising the Incumbent Board shall be considered a member of the Incumbent Board); or (iii) the consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its subsidiaries or a sale or other disposition of substantially all of the assets of the Company or a material acquisition of assets or stock of another entity by the Company or any of its subsidiaries (each, a "Business Combination") if: (1) the individuals and entities that were the beneficial owners of the Outstanding Company Voting Securities immediately prior to such Business Combination do not beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of stock and the combined voting power of the then-outstanding voting securities of the company resulting from such Business Combination; or (2) a Person beneficially owns, directly or indirectly, 50% or more of the then-outstanding shares of stock of the company resulting from such Business Combination; or (3) members of the Incumbent Board do not comprise at least a majority of the members of the board of directors of the company resulting from such Business Combination; or (iv) the approval by the shareholders (or in the case of (iv)(1) the Board) of the Company of: (1) a complete liquidation or dissolution of the Company; (2) any merger/consolidation/recap in which Company not survivor; or (3) upon the Company's insolvency, general assignment for the benefit of creditors or the commencement by or against the Company of any action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Company's debts under any law relating to bankruptcy, insolvency or reorganization, or relief of debtors, or seeking appointment of a receiver other similar official for the Company or for all or any substantial part of the Company's assets.

(c) **Disability.** "**Disability**" means that Executive satisfies the conditions to be eligible for benefits under the disability plan maintained by WiSA, whether or not Executive is then covered by such plan.

(d) **Good Reason.** "**Good Reason**" means WiSA, without Executive's consent: (i) during the Term of his employment at WiSA, requires a material change in the geographic location at which Executive must perform services; or (ii) a substantial change in Executive's duties and responsibilities; or (iii) at any time reduces Executive's base compensation following a Change in Control; or (iv) at any time otherwise materially breaches its obligations under this Agreement; provided, however, that such termination by the Executive shall only be deemed for Good Reason pursuant to the foregoing definition if: (1) the Executive gives WiSA written notice of the intent to terminate for Good Reason within ninety (90) days following the first occurrence of the condition(s) that the Executive believes constitutes Good Reason, which notice shall describe such condition(s); (2) WiSA fails to remedy such condition(s) within thirty (30) days following receipt of the written notice (the "Cure Period"); and (3) the Executive terminates his employment within six (6) months following the end of the Cure Period.

17. Section 280G.

(a) Subject to Section 17(b), in the event it shall be determined that any payment or distribution by WiSA to Executive or for Executive's benefit (whether paid or payable, distributed or distributable, including, without limitation, the acceleration of vesting of any equity or other benefit or award, but determined without regard to any additional payments required under this Section 17 (each, a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code, or any interest or penalties are incurred by Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, the "Excise Tax"), then Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount sufficient to pay the Excise Tax on the Payment(s) plus any federal, state or local income taxes, employment taxes and any Excise Tax imposed upon the Gross-Up Payment.

(b) Subject to the provisions of Section 17(c), all determinations required to be made under this Section 17, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be used in arriving at such determination, shall be made by a certified public accounting firm selected by the Company and reasonably acceptable to Executive (the "Accounting Firm"), which shall be retained to provide detailed supporting calculations both to WiSA and Executive. If the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the change in control, the Company shall have the right to appoint another nationally recognized accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be paid solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 17, shall be paid by the Company to Executive within five (5) days of the receipt of the Accounting Firm's determination. Any determination by the Accounting Firm shall be binding upon the Company and Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which should have been made will not have been made by the Company (an "Underpayment"), consistent with the calculations required to be made hereunder. If the Company exhausts its remedies pursuant to Section 17(c) and Executive thereafter is required to pay an Excise Tax in an amount that exceeds the Gross-Up Payment received by Executive, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for Executive's benefit.

(c) Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would result in an Underpayment. Such notification shall be given as soon as practicable but no later than ten (10) business days after Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid or appealed. Executive shall not pay such claim prior to the expiration of the thirty (30)-day period following the date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies Executive in writing prior to the expiration of such period that it desires to contest such claim, Executive shall:

- (i) give the Company any information reasonably requested by the Company relating to such claim;
- (ii) take such action in connection with contesting such claims as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company;
- (iii) cooperate with the Company in good faith in order to effectively contest such claim, and
- (iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 17(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct Executive to pay the tax claimed and sue for a refund or to contest the claim in any permissible manner, and Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to Executive, and shall indemnify and hold Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for Executive's taxable year with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to the amount of the Gross-Up Payment, and Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by Executive of an amount advanced by the Company pursuant to this Section 17, Executive becomes entitled to receive any refund with respect to such claim, Executive shall promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto).

18. Section 409A. It is the intention of the parties that no payment or entitlement pursuant to this Agreement will give rise to any adverse tax consequences to any person pursuant to Section 409A and this Agreement shall be interpreted, applied and, to the minimum extent necessary, amended to achieve that intention. It is further intended that payments hereunder satisfy, to the greatest extent possible, the exemption from the application of Section 409A provided under Treasury Regulation Section 1.409A-1(b)(4) (as a “short-term deferral”). To the extent (i) any payments or benefits to which Executive becomes entitled under this Agreement, or under any agreement or plan referenced herein, in connection with his termination of employment with WiSA constitute deferred compensation subject to Section 409A and (ii) Executive is deemed at the time of such termination of employment to be a “specified employee” under Section 409A, then such payments shall not be made or commence until the earlier of (1) the date that is immediately following the expiration of the six (6)-month period measured from the date of Executive’s “separation from service” (as such term is at the time defined in Treasury Regulations under Section 409A) from WiSA or (2) the date of Executive’s death following such separation from service. Upon the expiration of the applicable deferral period, any payments that would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this provision shall be paid to Executive or his beneficiary in one lump sum (without interest).

Each installment of any payments provided hereunder shall constitute separate “payments” for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii). Except as otherwise expressly provided herein, to the extent any expense reimbursement or the provision of any in-kind benefit under this Agreement is determined to be subject to Section 409A, the amount of any such reimbursement or benefit in one calendar year shall not affect any reimbursement or benefit in any other taxable year, in no event shall any such reimbursement or benefit be provided after the last day of the calendar year following the calendar year in which Executive incurred such expense and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit.

Anything in this Agreement to the contrary notwithstanding, any tax gross-up payment (within the meaning of Treasury Regulation Section 1.409A-3(i)(1)(v)) provided for in this Agreement shall be made to Executive no later than the end of Executive’s taxable year next following his taxable year in which he remits the related taxes.

19. Miscellaneous.

(a) Entire Agreement. This Agreement, and any other agreement specifically referenced herein, constitutes the entire agreement between the parties with respect to its subject matter, and supersedes, merges and voids all previous agreements, representations and warranties, written or oral, between the parties with respect to such subject matter. All other prior employment-related agreement(s) between Executive and WiSA are hereby terminated and of no further force or effect. Except as otherwise provided herein to Executive’s benefit, this Agreement shall not amend, modify, supersede or otherwise affect the terms of any equity award agreement(s), stock sale or sale restriction agreement(s) and any confidentiality, non-disclosure, non-competition and inventions agreement(s) to which Executive is a party with WiSA.

(b) No Oral Modifications. This Agreement may only be modified in a writing signed by the Executive and an officer of WiSA expressly authorized by WiSA to modify this Agreement.

(c) Personal Agreement. This Agreement shall be binding upon and inure to the benefit of WiSA. This Agreement shall be binding upon Executive, his heirs and personal and legal representative. This Agreement may not be assigned by Executive.

(d) No Waiver. No failure by either party to exercise, and no delay in exercising, any right or remedy under this Agreement will operate as a waiver; nor will any single or partial exercise of any right or remedy preclude any other or further exercise of any right or remedy. The covenants and agreements set forth herein may be waived only by a written instrument executed by the party waiving compliance. Any such waiver shall only be effective in the specific instance and for the specific purpose for which it was given and shall not be deemed a waiver of any other provision hereof or of the same breach or default upon any recurrence thereof.

(e) Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement, other than the payment of money for the Executive’s Term of employment, were not performed in accordance with their specific terms or are otherwise breached or threatened to be breached. In the event of any breach or threatened breach, Executive acknowledges that damages will be insufficient remedy to WiSA in the event of a violation of Section 10, 11, 12 and/or 13 of this Agreement, and in the event of such breach or threatened breach of this Agreement, WiSA shall be entitled to seek injunctive relief, without the necessity of posting bond, through a court of competent jurisdiction to enforce the provisions of such Sections in addition to any other rights or remedies available to WiSA.

(f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company, its successors and assigns and any such successor or assignee shall be deemed substituted for the Company under the terms of this Agreement for all purposes. As used herein, “successor” and “assignee” shall include any person, firm, corporation or other business entity that at any time, whether by purchase, merger or otherwise, directly or indirectly acquires the Company or to which the Company assigns the Agreement by operation of law or otherwise.

(g) Survival. Notwithstanding any contrary provision of this Agreement, upon termination or expiration of this Agreement for any reason, the covenants and obligations set forth in Sections 6, 7, 8 (including the applicability thereto of Sections 3 and 4), 10, 11, 12, 13, 14, 15, 16, 17 and 18 shall survive any termination of this Agreement or Executive’s employment hereunder until such covenants and agreements are fully satisfied and require no further performance or forbearance, or the rights of a party expire on the specific date by the terms hereof.

(h) Adjustment of Restrictions. If any provision of Sections 10, 11, 12 and/or 13 of this Agreement is found by a court or arbitrator to be unenforceable under applicable law because one or more provisions are over broad or otherwise not enforceable in the form as set forth herein, then the court or arbitrator shall have the power to revise the terms of this Agreement to the extent necessary to make the provisions hereof enforceable.

(i) Governing Law. This Agreement shall be governed by the laws of the State of California without giving effect to the conflicts of law provisions of any jurisdiction that would cause this Agreement to be governed by the laws of any jurisdiction other than those of the State of California.

(j) Counterparts and Facsimile Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and any schedules and exhibits hereto, if any, may be executed and delivered by facsimile signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile as if the original had been received.

(k) **Construction.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by both parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS OF THIS AGREEMENT, the parties have signed below.

EXECUTIVE

/s/ Brett Moyer

Dated: August 24, 2022

WiSA TECHNOLOGIES, INC.

/s/ Sriram Peruvemba

By: Sriram Peruvemba

Its: Chair of the Compensation Committee of
the Board of Directors of the Company

Dated: August 24, 2022

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EXHIBIT A

CALIFORNIA LABOR CODE SECTION 2870(a)

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

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EXECUTIVE EMPLOYMENT AGREEMENT

This **EXECUTIVE EMPLOYMENT AGREEMENT** (“**Agreement**”) is made effective as of the 24th day of August 2022 by and between **WiSA Technologies, Inc.**, a Delaware corporation, with its principal offices in Beaverton, Oregon (hereinafter “**WiSA**” or the “**Company**”), and George Oliva, an individual and a resident of California (“**Executive**”).

RECITALS

- A. Executive is currently employed by WiSA, which employment is governed by a letter agreement dated October 4, 2019 (the ‘**Existing Agreement**’).
- B. WiSA and Executive desire to enter into this employment agreement, the terms of which shall supersede in their entirety the Existing Agreement, in order to secure the additional covenants of Executive as set forth herein and to provide the additional rights and benefits to Executive in consideration of Executive’s obligations hereunder.

AGREEMENT

NOW, THEREFORE, the parties, in consideration of the foregoing Recitals, each of which is incorporated by this reference as an essential term, the covenants, conditions and other terms hereof, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows.

1. **Employment and Term.** WiSA shall employ Executive and Executive accepts full time employment as Chief Financial Officer of WiSA and as Secretary of WiSA on the terms and conditions set forth herein.

Executive’s employment under this Agreement shall be for an unspecified term (the “**Term**”) on an “at will” basis. Nothing in Company’s policies, actions or this Agreement shall be construed to alter the “at will” nature of Executive’s status with Company, and Executive understands that Company may terminate Executive’s employment at any time for any reason or for no reason, provided that it is not terminated in violation of state or federal law.

2. **Duties and Responsibilities.** During the Term of this Agreement, Executive shall devote substantially all of his time, energy and skills to overseeing the Company’s accounting, finance, human resources and financial control departments and such other duties as the Chief Executive Officer or Board of Directors of the Company (the “**Board**”) may require from time to time. Executive shall work faithfully and to the best of his ability and efforts promoting the business interests of WiSA. Executive will discharge his duties at all times in accordance with any and all policies of WiSA and will report to, and be subject to the direction of, the Chief Executive Officer of WiSA, except that it is understood Executive shall also work independently with the Board of Directors as required by the Board. Executive shall be considered a key employee of the Company.

3. **Compensation.** Executive’s base annual salary upon signing this Agreement shall be \$288,750. Executive’s performance shall be reviewed annually thereafter. Adjustments in salary may be made from time to time in the sole discretion of the Board. Salary shall be paid in arrears in accordance with Company’s regular payroll practices and subject to applicable income and employment tax withholding and authorized deductions.

4. **Bonus Compensation.** Executive will be eligible to participate in bonus arrangements made available to the Company’s senior management from time to time by the Board. Except as otherwise provided in this Agreement, to be eligible for payment, Executive must be employed by the Company on the date any such bonus is paid.

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5. **Executive Benefits.**

- (a) **Vacation.** Executive shall receive a minimum of fifteen (15) business days of paid vacation and thereafter consistent with the Company’s vacation policy, during each year of this Agreement (pro rata). Unused vacation will carry over from one year to the next but the maximum amount of vacation, which can accrue (unused) at any one time, shall not exceed thirty (30) business days. Unused vacation will not be paid in the form of cash, except upon termination of employment.

- (b) **Benefits.** Executive shall be eligible to participate in any and all benefit plans maintained by the Company, subject to the eligibility requirements and other terms of such plans and programs. The benefits offered by the Company may be modified or changed at the discretion of the Company.

6. **Expenses.** WiSA shall reimburse Executive for all reasonable business expenses incurred by Executive pursuant to Company policies (as adopted from time to time); provided, however, that Executive complies with any established policy and procedure for the reimbursement of such expenses, including, but not limited to, submitting an appropriate expense report.

7. **Compliance with Laws and Policies.** As a Company employee, Executive agrees that he must act in conformity with the law at all times, without exception. Executive will abide by Company rules, regulations and policies as in effect from time to time, including, but not limited to those uploaded to the “Corporate Governance” section of the Company’s website (<https://ir.summitwireless.com/governance-docs>).

8. **Consequences of Termination.**

- (a) **Termination for Cause or Resignation without Good Reason.** If Executive’s employment is terminated by WiSA for “Cause” (as defined below) or Executive resigns without “Good Reason” (as defined below), then (i) WiSA shall pay the Executive his base salary, as described in Section 3 above, to the date of termination and (ii) Executive shall not be entitled to any other salary, bonus compensation or benefits after the date of termination, except the right to receive benefits that have become vested under any benefit plan or to which Executive is entitled as a matter of law. For the avoidance of doubt, if Executive’s employment is terminated by WiSA for “Cause” or Executive resigns without “Good Reason,” then none of the severance related benefits described in Section 8(b) shall be provided.

- (b) **Resignation for Good Reason or Termination without Cause.** The provisions of this Section 8(b) shall apply in the event Executive is either terminated by Company without Cause or Executive resigns for Good Reason and provided Executive executes, delivers and does not revoke the Company’s standard release of claims agreement within sixty (60) days of such termination of employment. If the sixty (60)-day period referenced in the preceding sentence spans two taxable years, payment shall only commence in the second taxable year.

- (i) The Company will continue payment of Executive’s base salary (at the same rate existing immediately prior to his termination) for a period of twelve (12) months (the “**Severance Period**”) pursuant to the Company’s regular payroll practices and subject to applicable income and employment tax withholding and authorized deductions.

- (ii) Provided Executive is entitled to, elects to and remains eligible to continue group health, dental and vision coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), WiSA will continue during the Severance Period to contribute toward the cost of such coverage as if Executive were an active employee unless doing so violates applicable law or is inconsistent with the coverage arrangement.
- (iii) The Company shall pay Executive any bonus compensation otherwise due for the applicable year of termination prorated on a 365-day basis to the date of termination of employment in the year following the year to which the bonus compensation relates; provided, however, that such bonus shall be paid no earlier than January 1 nor later than March 15 of the year following the year of termination.

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- (iv) Any and all unvested equity awards in Executive's name shall immediately become fully vested and exercisable provided, however, that regardless of the terms of any equity award agreement between the Company and Executive, absent a separate signed written agreement between Company and Executive that specifically references this provision of this Agreement, no exercise of an award that requires exercise by the Executive shall occur more than six (6) months after such termination and in no event after the expiration of such award.
- (v) In the event of Executive's subsequent death, Company shall continue to pay and/or make available for the remainder of the Severance Period the payments and benefits not yet paid or provided pursuant to this Section 8(b), with any amounts other than COBRA continuation coverage payable to Executive's estate.

(c) Termination in the Event of Death or Disability. If Executive's employment terminates due to Executive's death or if WiSA terminates Executive's employment due to Executive's "Disability" (as defined below), Executive shall be treated as if terminated by the Company without Cause for purposes of this Section 8. Such payments and benefits (other than COBRA continuation coverage) shall be made to Executive's estate or legal representative.

(d) Suspension of Payment. Notwithstanding anything herein to the contrary, if Executive is in violation of any provision of Sections 10, 11, 12 or 13 below, WiSA shall have no obligation to make payment(s) under Section 8(b) of this Agreement if WiSA has determined in good faith that such a violation(s) has occurred or is occurring. If it is later established through arbitration or other judicial proceeding that no such violation occurred, WiSA shall agree to pay to Executive any such amount withheld from or not paid during such period to the extent consistent with Section 409A ("Section 409A") of the Internal Revenue Code (the "Code").

(e) No Mitigation. Executive will be under no obligation to mitigate damages by seeking other employment, and there will be no offset against the amounts due Executive under this Agreement, except as specifically provided in Section 8(d) above or for any other claims that WiSA may have against Executive and to the extent consistent with Section 409A.

(f) Survival of Provisions. The obligations of confidentiality and assignment of inventions under Section 10 and the obligations of Confidential Information and assignment of inventions, non-solicitation and non-disparagement under Sections 10, 11, 12 and 13 hereof shall survive the termination of this Agreement for any reason.

9. Change in Control. If there is a "Change in Control" (as defined below) of WiSA, any and all unvested equity awards in Executive's name shall immediately become fully vested and exercisable; provided, however, that regardless of the terms of any equity award agreement between the Company and Executive, absent a separate signed written agreement between Company and Executive that specifically references this provision of this Agreement, no exercise of an award that requires exercise by the Executive shall occur more than six (6) months after such termination and in no event after the expiration of such award.

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10. Confidential Information and Assignment of Inventions.

(a) Executive will not disclose to a third party or use for his personal benefit confidential information of WiSA. "Confidential Information" means any information used or useful in WiSA's business that is not generally known outside of WiSA and that is proprietary to WiSA relating to any aspect of WiSA's existing or reasonably foreseeable business that is disclosed to Executive or conceived, discovered or developed by Executive. Confidential Information includes, but is not limited to: product designs including drawings and sketches, manufacturing materials, plant layouts, tooling, sales marketing plans or proposals, customer information, customer lists, raw material sources, manufacturing processes, price, financial, accounting and cost information, clinical data, administrative techniques and documents and information designated by WiSA as "Confidential." Executive shall also comply with the terms of any Confidentiality Agreement by which WiSA is bound to a third party as well as the Company's Confidential Information and Invention Assignment Agreement.

(b) Executive grants to WiSA the exclusive ownership of all reports, drawings, blueprints, data writings and technical information made by Executive alone or with others during the term of his employment, whether or not made or prepared in the course of his employment, that relate to apparatus, compositions of matter or methods pertaining to WiSA business. Executive acknowledges that all such reports, drawings, blueprints, data writings and technical information are the property of WiSA.

(c) Executive will promptly disclose to WiSA in writing all inventions and proprietary information that he alone or with others conceives, generates or reduces to practice, during or after working hours, while an employee of WiSA and for six (6) months following Executive's termination of employment with respect to work performed by Executive for WiSA. All such inventions and proprietary information shall be the exclusive property of WiSA and are assigned to WiSA. This Agreement shall not apply to any invention for which no equipment, supplies, facility or trade secret information of WiSA was used, and that was developed entirely on Executive's time, and (i) that does not relate (1) directly to the business of WiSA or (2) to WiSA' actual or demonstrably anticipated research or development or (ii) that does not result from any work performed by Executive for WiSA.

(d) At WiSA's expense, Executive shall give WiSA all assistance it reasonably requires to perfect, protect and use its rights to inventions and proprietary information. In particular, but without limitation, Executive will sign all documents, do all things and supply all information that WiSA may deem necessary or desirable to (i) transfer or record the transfer of Executive's entire right, title and interest in inventions and proprietary information and (ii) enable WiSA to obtain patent, copyright or trademark protection for inventions anywhere in the world. Executive understands that the provisions of this Section 10 do not apply to any invention that qualifies fully under the provisions of California Labor Code Section 2870 (attached hereto as **Exhibit A**).

11. Non-Competition. During the Term, Executive shall not, directly or indirectly, either as an Executive, consultant, agent, principal, partner, stockholder (except in a publicly held company), corporate officer, director or in any other individual or representative capacity, engage or participate in any business that is in competition in any manner whatsoever with the then current or anticipated business of WiSA.

12. Non-Solicitation. During the Term of his employment with WiSA and any Severance Period, and for a period of one (1) year after termination of such

employment or end of any Severance Period, whichever is later, Executive will not, directly or indirectly, solicit, hire or otherwise engage, on his own behalf or on behalf of another person or entity, the services of any person who is an employee of WiSA.

13. **Non-Disparagement**. During and after the termination or expiration of this Agreement, Executive shall not make any negative or disparaging remarks or comments (either oral or written) about WiSA, its affiliated or related companies or any of the foregoing entities directors, officers, employees, agents, services or products, and WiSA agrees not to make any negative or disparaging remarks or comments (either oral or written) about Executive. Notwithstanding the foregoing, each of the parties is entitled accurately to describe their past relationship to potential employers, partners or affiliates of Executive or potential partners or affiliates of WiSA.

14. **Protected Disclosures**. Under the Defend Trade Secrets Act of 2016, Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is: (a) made in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement shall prohibit Executive from reporting possible violations of federal or state law or regulation to any governmental agency or entity or making other disclosures that are protected under the whistleblower provisions of federal or state law or regulation. Executive does not need the prior authorization of WiSA to make any such whistleblower reports or disclosures and is not required to notify WiSA that he has made such whistleblower reports or disclosures. Furthermore, nothing in this Agreement prohibits or restricts Executive from making other reports protected by law, including filing a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board or a similar agency enforcing federal, state or local laws, and it does not limit Executive's ability to communicate with any government agency, entity or organization, make disclosures or otherwise participate in any investigation or proceeding that may be conducted by any government agency, entity or organization.

15. **Arbitration**.

(a) To the maximum extent permitted by law, any controversy between WiSA and Executive involving the construction or application of any of the terms, provisions or conditions of this Agreement or the breach thereof shall be settled by final and binding arbitration by a single arbitrator to be held in Santa Clara, California, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA Rules") then in effect. The arbitrator selected shall have the authority to grant Executive or the Company or both all remedies otherwise available by law, including injunctions.

(b) Notwithstanding anything to the contrary in the AAA Rules, the arbitration shall provide (i) for written discovery and depositions adequate to give the Parties access to documents and witnesses that are essential to the dispute and (ii) for a written decision by the arbitrator that includes the essential findings and conclusions upon which the decision is based. Consistent with applicable law, Executive and the Company shall each bear his or its own costs and attorneys' fees incurred in conducting the arbitration and, except in such disputes where Executive asserts a claim otherwise under a state or federal statute prohibiting discrimination in employment (a "**Statutory Discrimination Claim**"), or where otherwise required by law, shall split equally the fees and administrative costs charged by the arbitrator and AAA. In disputes where Executive asserts a Statutory Discrimination Claim against the Company, or where otherwise required by law, Executive shall be required to pay only the AAA filing fee to the extent such filing fee does not exceed the fee to file a complaint in state or federal court. The Company shall pay the balance of the arbitrator's fees and administrative costs.

(c) The decision of the arbitrators will be final, conclusive and binding on the Parties to the arbitration. The prevailing party in the arbitration, as determined by the arbitrator, shall be entitled to recover his or its reasonable attorneys' fees and costs, including the costs or fees charged by the arbitrator and AAA. In disputes where Executive asserts a Statutory Discrimination Claim, reasonable attorneys' fees shall be awarded by the arbitrator based on the same standard as such fees would be awarded if the Statutory Discrimination Claim had been asserted in state or federal court. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.

16. **Certain Definitions**. For purposes of this Agreement, the following terms will have the meaning set forth below.

(a) **Cause**. "**Cause**" means that Executive has: (i) committed an act of dishonesty, fraud or breach of trust involving the business of WiSA; (ii) willfully failed to follow any material policy or material instructions of WiSA, his or her supervisor or its Chief Executive Officer provided such are lawful and not a violation of public policy; (iii) been indicted for or convicted of any felony; (iv) engaged in any gross misconduct, such as sexual harassment, material violations of applicable law or defalcations in the performance of or in connection with the Executive's duties or employment by WiSA; or (v) otherwise breached material obligations under this Agreement.

(b) **Change in Control**. "**Change in Control**" means any of the following events: (i) the acquisition by any individual, entity or group (a "**Person**") within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934 (the "**Exchange Act**") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of the then-outstanding shares of Common Stock plus any other outstanding shares of stock of the Company entitled to vote in the election of directors (the "**Outstanding Company Voting Securities**"); provided, however, that the Company and any employee benefit plan (or related trust) sponsored by it shall not be deemed to be a Person; or (ii) a change in the composition of the Board such that the individuals who constitute the Board (the "**Incumbent Board**") cease for any reason to constitute at least a majority of the Board within any 365-day period (and for this purpose, any individual whose election or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds (2/3^{rds}) of the directors then comprising the Incumbent Board shall be considered a member of the Incumbent Board); or (iii) the consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its subsidiaries or a sale or other disposition of substantially all of the assets of the Company or a material acquisition of assets or stock of another entity by the Company or any of its subsidiaries (each, a "**Business Combination**") if: (1) the individuals and entities that were the beneficial owners of the Outstanding Company Voting Securities immediately prior to such Business Combination do not beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of stock and the combined voting power of the then-outstanding voting securities of the company resulting from such Business Combination; or (2) a Person beneficially owns, directly or indirectly, 50% or more of the then-outstanding shares of stock of the company resulting from such Business Combination; or (3) members of the Incumbent Board do not comprise at least a majority of the members of the board of directors of the company resulting from such Business Combination; or (iv) the approval by the shareholders (or in the case of (iv)(1) the Board) of the Company of: (1) a complete liquidation or dissolution of the Company; (2) any merger/consolidation/recap in which Company not survivor; or (3) upon the Company's insolvency, general assignment for the benefit of creditors or the commencement by or against the Company of any action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Company's debts under any law relating to bankruptcy, insolvency or reorganization, or relief of debtors, or seeking appointment of a receiver other similar official for the Company or for all or any substantial part of the Company's assets.

(c) **Disability**. "**Disability**" means that Executive satisfies the conditions to be eligible for benefits under the disability plan maintained by WiSA, whether or not Executive is then covered by such plan.

(d) **Good Reason.** “**Good Reason**” means WiSA, without Executive’s consent: (i) during the Term of his employment at WiSA, requires a material change in the geographic location at which Executive must perform services; or (ii) a substantial change in Executive’s duties and responsibilities; or (iii) at any time reduces Executive’s base compensation following a Change in Control; or (iv) at any time otherwise materially breaches its obligations under this Agreement; provided, however, that such termination by the Executive shall only be deemed for Good Reason pursuant to the foregoing definition if: (1) the Executive gives WiSA written notice of the intent to terminate for Good Reason within ninety (90) days following the first occurrence of the condition(s) that the Executive believes constitutes Good Reason, which notice shall describe such condition(s); (2) WiSA fails to remedy such condition(s) within thirty (30) days following receipt of the written notice (the “**Cure Period**”); and (3) the Executive terminates his employment within six (6) months following the end of the Cure Period.

17. Section 280G.

(a) Subject to Section 17(b), in the event it shall be determined that any payment or distribution by WiSA to Executive or for Executive’s benefit (whether paid or payable, distributed or distributable, including, without limitation, the acceleration of vesting of any equity or other benefit or award, but determined without regard to any additional payments required under this Section 17 (each, a “**Payment**”) would be subject to the excise tax imposed by Section 4999 of the Code, or any interest or penalties are incurred by Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, the “**Excise Tax**”), then Executive shall be entitled to receive an additional payment (a “**Gross-Up Payment**”) in an amount sufficient to pay the Excise Tax on the Payment(s) plus any federal, state or local income taxes, employment taxes and any Excise Tax imposed upon the Gross-Up Payment.

(b) Subject to the provisions of Section 17(c), all determinations required to be made under this Section 17, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be used in arriving at such determination, shall be made by a certified public accounting firm selected by the Company and reasonably acceptable to Executive (the “**Accounting Firm**”), which shall be retained to provide detailed supporting calculations both to WiSA and Executive. If the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the change in control, the Company shall have the right to appoint another nationally recognized accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be paid solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 17, shall be paid by the Company to Executive within five (5) days of the receipt of the Accounting Firm’s determination. Any determination by the Accounting Firm shall be binding upon the Company and Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which should have been made will not have been made by the Company (an “**Underpayment**”), consistent with the calculations required to be made hereunder. If the Company exhausts its remedies pursuant to Section 17(c) and Executive thereafter is required to pay an Excise Tax in an amount that exceeds the Gross-Up Payment received by Executive, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for Executive’s benefit.

(c) Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would result in an Underpayment. Such notification shall be given as soon as practicable but no later than ten (10) business days after Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid or appealed. Executive shall not pay such claim prior to the expiration of the thirty (30)-day period following the date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies Executive in writing prior to the expiration of such period that it desires to contest such claim, Executive shall:

- (i) give the Company any information reasonably requested by the Company relating to such claim;
- (ii) take such action in connection with contesting such claims as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company;
- (iii) cooperate with the Company in good faith in order to effectively contest such claim, and
- (iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 17(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct Executive to pay the tax claimed and sue for a refund or to contest the claim in any permissible manner, and Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to Executive, and shall indemnify and hold Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for Executive’s taxable year with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company’s control of the contest shall be limited to issues with respect to the amount of the Gross-Up Payment, and Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by Executive of an amount advanced by the Company pursuant to this Section 17, Executive becomes entitled to receive any refund with respect to such claim, Executive shall promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto).

18. Section 409A. It is the intention of the parties that no payment or entitlement pursuant to this Agreement will give rise to any adverse tax consequences to any person pursuant to Section 409A and this Agreement shall be interpreted, applied and, to the minimum extent necessary, amended to achieve that intention. It is further intended that payments hereunder satisfy, to the greatest extent possible, the exemption from the application of Section 409A provided under Treasury Regulation Section 1.409A-1(b)(4) (as a “short-term deferral”). To the extent (i) any payments or benefits to which Executive becomes entitled under this Agreement, or under any agreement or plan referenced herein, in connection with his termination of employment with WiSA constitute deferred compensation subject to Section 409A and (ii) Executive is deemed at the time of such termination of employment to be a “specified employee” under Section 409A, then such payments shall not be made or commence until the earlier of (1) the date that is immediately following the expiration of the six (6)-month period measured from the date of Executive’s “separation from service” (as such term is at the time defined in Treasury Regulations under Section 409A) from WiSA or (2) the date of Executive’s death following such separation from service. Upon the expiration of the applicable deferral period, any payments that would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this provision shall be paid to Executive or his beneficiary in one lump sum (without interest).

Each installment of any payments provided hereunder shall constitute separate “payments” for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii). Except as otherwise expressly provided herein, to the extent any expense reimbursement or the provision of any in-kind benefit under this Agreement is determined to be subject to Section 409A, the amount of any such reimbursement or benefit in one calendar year shall not affect any reimbursement or benefit in any other taxable year, in no event shall any such reimbursement or benefit be provided after the last day of the calendar year following the calendar year in which Executive incurred such expense and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit.

Anything in this Agreement to the contrary notwithstanding, any tax gross-up payment (within the meaning of Treasury Regulation Section 1.409A-3(i)(1)(v)) provided for in this Agreement shall be made to Executive no later than the end of Executive’s taxable year next following his taxable year in which he remits the related taxes.

19. Miscellaneous.

(a) Entire Agreement. This Agreement, and any other agreement specifically referenced herein, constitutes the entire agreement between the parties with respect to its subject matter, and supersedes, merges and voids all previous agreements, representations and warranties, written or oral, between the parties with respect to such subject matter. All other prior employment-related agreement(s) between Executive and WiSA are hereby terminated and of no further force or effect. Except as otherwise provided herein to Executive’s benefit, this Agreement shall not amend, modify, supersede or otherwise affect the terms of any equity award agreement(s), stock sale or sale restriction agreement(s) and any confidentiality, non-disclosure, non-competition and inventions agreement(s) to which Executive is a party with WiSA.

(b) No Oral Modifications. This Agreement may only be modified in a writing signed by the Executive and an officer of WiSA expressly authorized by WiSA to modify this Agreement.

(c) Personal Agreement. This Agreement shall be binding upon and inure to the benefit of WiSA. This Agreement shall be binding upon Executive, his heirs and personal and legal representative. This Agreement may not be assigned by Executive.

(d) No Waiver. No failure by either party to exercise, and no delay in exercising, any right or remedy under this Agreement will operate as a waiver; nor will any single or partial exercise of any right or remedy preclude any other or further exercise of any right or remedy. The covenants and agreements set forth herein may be waived only by a written instrument executed by the party waiving compliance. Any such waiver shall only be effective in the specific instance and for the specific purpose for which it was given and shall not be deemed a waiver of any other provision hereof or of the same breach or default upon any recurrence thereof.

(e) Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement, other than the payment of money for the Executive’s Term of employment, were not performed in accordance with their specific terms or are otherwise breached or threatened to be breached. In the event of any breach or threatened breach, Executive acknowledges that damages will be insufficient remedy to WiSA in the event of a violation of Section 10, 11, 12 and/or 13 of this Agreement, and in the event of such breach or threatened breach of this Agreement, WiSA shall be entitled to seek injunctive relief, without the necessity of posting bond, through a court of competent jurisdiction to enforce the provisions of such Sections in addition to any other rights or remedies available to WiSA.

(f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company, its successors and assigns and any such successor or assignee shall be deemed substituted for the Company under the terms of this Agreement for all purposes. As used herein, “successor” and “assignee” shall include any person, firm, corporation or other business entity that at any time, whether by purchase, merger or otherwise, directly or indirectly acquires the Company or to which the Company assigns the Agreement by operation of law or otherwise.

(g) Survival. Notwithstanding any contrary provision of this Agreement, upon termination or expiration of this Agreement for any reason, the covenants and obligations set forth in Sections 6, 7, 8 (including the applicability thereto of Sections 3 and 4), 10, 11, 12, 13, 14, 15, 16, 17 and 18 shall survive any termination of this Agreement or Executive’s employment hereunder until such covenants and agreements are fully satisfied and require no further performance or forbearance, or the rights of a party expire on the specific date by the terms hereof.

(h) Adjustment of Restrictions. If any provision of Sections 10, 11, 12 and/or 13 of this Agreement is found by a court or arbitrator to be unenforceable under applicable law because one or more provisions are over broad or otherwise not enforceable in the form as set forth herein, then the court or arbitrator shall have the power to revise the terms of this Agreement to the extent necessary to make the provisions hereof enforceable.

(i) Governing Law. This Agreement shall be governed by the laws of the State of California without giving effect to the conflicts of law provisions of any jurisdiction that would cause this Agreement to be governed by the laws of any jurisdiction other than those of the State of California.

(j) Counterparts and Facsimile Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and any schedules and exhibits hereto, if any, may be executed and delivered by facsimile signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile as if the original had been received.

(k) Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by both parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS OF THIS AGREEMENT, the parties
have signed below.

EXECUTIVE

/s/ George Oliva

Dated: August 24,, 2022

EXHIBIT A

CALIFORNIA LABOR CODE SECTION 2870(a)

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

- (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or
- (2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

EXECUTIVE EMPLOYMENT AGREEMENT

This **EXECUTIVE EMPLOYMENT AGREEMENT** ("Agreement") is made effective as of the 24th day of August 2022 by and between **WiSA Technologies, Inc.**, a Delaware corporation, with its principal offices in Beaverton, Oregon (hereinafter "WiSA" or the "Company"), and Gary Williams, an individual and a resident of California ("Executive").

RECITALS

A. Executive is currently employed by WiSA, which employment is governed by an Executive Employment Agreement dated effective as of May 28, 2004, the First Amendment to Executive Employment Agreement entered into effective May 2, 2011 and a Letter of Understanding dated August 13, 2019 (the "Existing Agreement").

B. WiSA and Executive desire to enter into this employment agreement, the terms of which shall supersede in their entirety the Existing Agreement, in order to secure the additional covenants of Executive as set forth herein and to provide the additional rights and benefits to Executive in consideration of Executive's obligations hereunder.

AGREEMENT

NOW, THEREFORE, the parties, in consideration of the foregoing Recitals, each of which is incorporated by this reference as an essential term, the covenants, conditions and other terms hereof, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows.

1. **Employment and Term.** WiSA shall employ Executive and Executive accepts full time employment as Chief Accounting Officer and Vice President of Finance of WiSA on the terms and conditions set forth herein.

Executive's employment under this Agreement shall be for an unspecified term (the "Term") on an "at will" basis. Nothing in Company's policies, actions or this Agreement shall be construed to alter the "at will" nature of Executive's status with Company, and Executive understands that Company may terminate Executive's employment at any time for any reason or for no reason, provided that it is not terminated in violation of state or federal law.

2. **Duties and Responsibilities.** During the Term of this Agreement, Executive shall devote substantially all of his time, energy and skills to overseeing the Company's accounting functions (including account receivable, account payable and payroll), SEC reporting, auditor interface for quarterly review and yearly audit, tax return preparation support and such other duties as the Chief Financial Officer or Board of Directors of the Company (the "Board") may require from time to time. Executive shall work faithfully and to the best of his ability and efforts promoting the business interests of WiSA. Executive will discharge his duties at all times in accordance with any and all policies of WiSA and will report to, and be subject to the direction of, the Chief Financial Officer of WiSA. It is understood the Executive shall also work independently with the Board of Directors as required by the Board. The Executive shall be considered a key employee of the Company.

3. **Compensation.** Executive's base annual salary upon signing this Agreement shall be \$262,495. Executive's performance shall be reviewed annually thereafter. Adjustments in salary may be made from time to time in the sole discretion of Board. Salary shall be paid in arrears in accordance with Company's regular payroll practices and subject to applicable income and employment tax withholding and authorized deductions.

4. **Bonus Compensation.** Executive will be eligible to participate in bonus arrangements made available to the Company's senior management from time to time by the Board. Except as otherwise provided in this Agreement, to be eligible for payment, Executive must be employed by the Company on the date any such bonus is paid.

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5. **Executive Benefits.**

(a) **Vacation.** Executive shall receive a minimum of twenty (20) business days of paid vacation and thereafter consistent with the Company's vacation policy, during each year of this Agreement (pro rata). Unused vacation will carry over from one year to the next but the maximum amount of vacation, which can accrue (unused) at any one time, shall not exceed thirty (30) business days. Unused vacation will not be paid in the form of cash, except upon termination of employment.

(b) **Benefits.** Executive shall be eligible to participate in any and all benefit plans maintained by the Company, subject to the eligibility requirements and other terms of such plans and programs. The benefits offered by the Company may be modified or changed at the discretion of the Company.

6. **Expenses.** WiSA shall reimburse Executive for all reasonable business expenses incurred by Executive pursuant to Company policies (as adopted from time to time); **provided, however,** that Executive complies with any established policy and procedure for the reimbursement of such expenses, including, but not limited to, submitting an appropriate expense report.

7. **Compliance with Laws and Policies.** As a Company employee, Executive agrees that he must act in conformity with the law at all times, without exception. Executive will abide by Company rules, regulations and policies as in effect from time to time, including, but not limited to those uploaded to the "Corporate Governance" section of the Company's website (<https://ir.summitwireless.com/governance-docs>).

8. **Consequences of Termination.**

(a) **Termination for Cause or Resignation without Good Reason.** If Executive's employment is terminated by WiSA for "Cause" (as defined below) or Executive resigns without "Good Reason" (as defined below), then (i) WiSA shall pay the Executive his base salary, as described in Section 3 above, to the date of termination and (ii) Executive shall not be entitled to any other salary, bonus compensation or benefits after the date of termination, except the right to receive benefits that have become vested under any benefit plan or to which Executive is entitled as a matter of law. For the avoidance of doubt, if Executive's employment is terminated by WiSA for Cause or Executive resigns without Good Reason, then none of the severance related benefits described in Section 8(b) shall be provided.

(b) **Resignation for Good Reason or Termination without Cause.** The provisions of this Section 8(b) shall apply in the event Executive is either terminated by Company without Cause or Executive resigns for Good Reason and provided Executive executes, delivers and does not revoke the Company's standard release of claims agreement within sixty (60) days of such termination of employment. If the sixty (60)-day period referenced in the preceding sentence spans two taxable years, payment shall only commence in the second taxable year. For the avoidance of doubt, if the Executive ceases to provide services to the Company within twelve (12) months of a "Change in Control" (as defined below), Executive will be treated for purposes of this Section 8(b) as having been terminated by Company without Cause.

(i) The Company will continue payment of Executive's base salary (at the same rate existing immediately prior to his termination) for a period of six (6) months (the "Severance Period") pursuant to the Company's regular payroll practices and subject to applicable income and employment tax withholding and authorized deductions.

- (ii) Provided Executive is entitled to, elects to and remains eligible to continue group health, dental and vision coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), WiSA will continue during the Severance Period to contribute toward the cost of such coverage as if Executive were an active employee unless doing so violates applicable law or is inconsistent with the coverage arrangement.

- (iii) The Company shall pay Executive any bonus compensation otherwise due for the applicable year of termination prorated on a 365-day basis to the date of termination of employment in the year following the year to which the bonus compensation relates; provided, however, that such bonus shall be paid no earlier than January 1 nor later than March 15 of the year following the year of termination.
- (iv) Any and all unvested equity awards in Executive's name shall immediately become fully vested and exercisable provided, however, that regardless of the terms of any equity award agreement between the Company and Executive, absent a separate signed written agreement between Company and Executive that specifically references this provision of this Agreement, no exercise of an award that requires exercise by the Executive shall occur more than six (6) months after such termination and in no event after the expiration of such award.
- (v) In the event of Executive's subsequent death, Company shall continue to pay and/or make available for the remainder of the Severance Period the payments and benefits not yet paid or provided pursuant to this Section 8(b), with any amounts other than COBRA continuation coverage payable to Executive's estate.

(c) **Termination in the Event of Death or Disability.** If Executive's employment terminates due to Executive's death or if WiSA terminates Executive's employment due to Executive's "Disability" (as defined below), Executive shall be treated as if terminated by the Company without Cause for purposes of this Section 8. Such payments and benefits (other than COBRA continuation coverage) shall be made to Executive's estate or legal representative.

(d) **Suspension of Payment.** Notwithstanding anything herein to the contrary, if Executive is in violation of any provision of Sections 10, 11, 12 or 13 below, WiSA shall have no obligation to make payment(s) under Section 8(b) of this Agreement if WiSA has determined in good faith that such a violation(s) has occurred or is occurring. If it is later established through arbitration or other judicial proceeding that no such violation occurred, WiSA shall agree to pay to Executive any such amount withheld from or not paid during such period to the extent consistent with Section 409A ("Section 409A") of the Internal Revenue Code (the "Code").

(e) **No Mitigation.** Executive will be under no obligation to mitigate damages by seeking other employment, and there will be no offset against the amounts due Executive under this Agreement, except as specifically provided in Section 8(d) above or for any other claims that WiSA may have against Executive and to the extent consistent with Section 409A.

(f) **Survival of Provisions.** The obligations of confidentiality and assignment of inventions under Section 10 and the obligations of Confidential Information and assignment of inventions, non-solicitation and non-disparagement under Sections 10, 11, 12 and 13 hereof shall survive the termination of this Agreement for any reason.

9. **Change in Control.** If there is a Change in Control of WiSA, any and all unvested equity awards in Executive's name shall immediately become fully vested and exercisable; provided, however, that regardless of the terms of any equity award agreement between the Company and Executive, absent a separate signed written agreement between Company and Executive that specifically references this provision of this Agreement, no exercise of an award that requires exercise by the Executive shall occur more than six (6) months after such termination and in no event after the expiration of such award.

10. **Confidential Information and Assignment of Inventions.**

(a) Executive will not disclose to a third party or use for his personal benefit confidential information of WiSA. "Confidential Information" means any information used or useful in WiSA's business that is not generally known outside of WiSA and that is proprietary to WiSA relating to any aspect of WiSA's existing or reasonably foreseeable business that is disclosed to Executive or conceived, discovered or developed by Executive. Confidential Information includes, but is not limited to: product designs including drawings and sketches, manufacturing materials, plant layouts, tooling, sales marketing plans or proposals, customer information, customer lists, raw material sources, manufacturing processes, price, financial, accounting and cost information, clinical data, administrative techniques and documents and information designated by WiSA as "Confidential." Executive shall also comply with the terms of any Confidentiality Agreement by which WiSA is bound to a third party as well as the Company's Confidential Information and Invention Assignment Agreement.

(b) Executive grants to WiSA the exclusive ownership of all reports, drawings, blueprints, data writings and technical information made by Executive alone or with others during the term of his employment, whether or not made or prepared in the course of his employment, that relate to apparatus, compositions of matter or methods pertaining to WiSA business. Executive acknowledges that all such reports, drawings, blueprints, data writings and technical information are the property of WiSA.

(c) Executive will promptly disclose to WiSA in writing all inventions and proprietary information that he alone or with others conceives, generates or reduces to practice, during or after working hours, while an employee of WiSA and for six (6) months following Executive's termination of employment with respect to work performed by Executive for WiSA. All such inventions and proprietary information shall be the exclusive property of WiSA and are assigned to WiSA. This Agreement shall not apply to any invention for which no equipment, supplies, facility or trade secret information of WiSA was used, and that was developed entirely on Executive's time, and (i) that does not relate (1) directly to the business of WiSA or (2) to WiSA' actual or demonstrably anticipated research or development or (ii) that does not result from any work performed by Executive for WiSA.

(d) At WiSA's expense, Executive shall give WiSA all assistance it reasonably requires to perfect, protect and use its rights to inventions and proprietary information. In particular, but without limitation, Executive will sign all documents, do all things and supply all information that WiSA may deem necessary or desirable to (i) transfer or record the transfer of Executive's entire right, title and interest in inventions and proprietary information and (ii) enable WiSA to obtain patent, copyright or trademark protection for inventions anywhere in the world. Executive understands that the provisions of this Section 10 do not apply to any invention that qualifies fully under the provisions of California Labor Code Section 2870 (attached hereto as **Exhibit A**).

11. **Non-Competition.** During the Term, Executive shall not, directly or indirectly, either as an Executive, consultant, agent, principal, partner, stockholder (except in a publicly held company), corporate officer, director or in any other individual or representative capacity, engage or participate in any business that is in competition in any manner whatsoever with the then current or anticipated business of WiSA.

12. **Non-Solicitation.** During the Term of his employment with WiSA and any Severance Period, and for a period of one (1) year after termination of such

employment or end of any Severance Period, whichever is later, Executive will not, directly or indirectly, solicit, hire or otherwise engage, on his own behalf or on behalf of another person or entity, the services of any person who is an employee of WiSA.

13. **Non-Disparagement**. During and after the termination or expiration of this Agreement, Executive shall not make any negative or disparaging remarks or comments (either oral or written) about WiSA, its affiliated or related companies or any of the foregoing entities directors, officers, employees, agents, services or products, and WiSA agrees not to make any negative or disparaging remarks or comments (either oral or written) about Executive. Notwithstanding the foregoing, each of the parties is entitled accurately to describe their past relationship to potential employers, partners or affiliates of Executive or potential partners or affiliates of WiSA.

14. **Protected Disclosures**. Under the Defend Trade Secrets Act of 2016, Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is: (a) made in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement shall prohibit Executive from reporting possible violations of federal or state law or regulation to any governmental agency or entity or making other disclosures that are protected under the whistleblower provisions of federal or state law or regulation. Executive does not need the prior authorization of WiSA to make any such whistleblower reports or disclosures and is not required to notify WiSA that he has made such whistleblower reports or disclosures. Furthermore, nothing in this Agreement prohibits or restricts Executive from making other reports protected by law, including filing a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board or a similar agency enforcing federal, state or local laws, and it does not limit Executive's ability to communicate with any government agency, entity or organization, make disclosures or otherwise participate in any investigation or proceeding that may be conducted by any government agency, entity or organization.

15. **Arbitration**.

(a) To the maximum extent permitted by law, any controversy between WiSA and Executive involving the construction or application of any of the terms, provisions or conditions of this Agreement or the breach thereof shall be settled by final and binding arbitration by a single arbitrator to be held in Santa Clara, California, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA Rules") then in effect. The arbitrator selected shall have the authority to grant Executive or the Company or both all remedies otherwise available by law, including injunctions.

(b) Notwithstanding anything to the contrary in the AAA Rules, the arbitration shall provide (i) for written discovery and depositions adequate to give the Parties access to documents and witnesses that are essential to the dispute and (ii) for a written decision by the arbitrator that includes the essential findings and conclusions upon which the decision is based. Consistent with applicable law, Executive and the Company shall each bear his or its own costs and attorneys' fees incurred in conducting the arbitration and, except in such disputes where Executive asserts a claim otherwise under a state or federal statute prohibiting discrimination in employment (a "**Statutory Discrimination Claim**"), or where otherwise required by law, shall split equally the fees and administrative costs charged by the arbitrator and AAA. In disputes where Executive asserts a Statutory Discrimination Claim against the Company, or where otherwise required by law, Executive shall be required to pay only the AAA filing fee to the extent such filing fee does not exceed the fee to file a complaint in state or federal court. The Company shall pay the balance of the arbitrator's fees and administrative costs.

(c) The decision of the arbitrators will be final, conclusive and binding on the Parties to the arbitration. The prevailing party in the arbitration, as determined by the arbitrator, shall be entitled to recover his or its reasonable attorneys' fees and costs, including the costs or fees charged by the arbitrator and AAA. In disputes where Executive asserts a Statutory Discrimination Claim, reasonable attorneys' fees shall be awarded by the arbitrator based on the same standard as such fees would be awarded if the Statutory Discrimination Claim had been asserted in state or federal court. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.

16. **Certain Definitions**. For purposes of this Agreement, the following terms will have the meaning set forth below.

(a) **Cause**. "**Cause**" means that Executive has: (i) committed an act of dishonesty, fraud or breach of trust involving the business of WiSA; (ii) willfully failed to follow any material policy or material instructions of WiSA, his or her supervisor or its Chief Executive Officer provided such are lawful and not a violation of public policy; (iii) been indicted for or convicted of any felony; (iv) engaged in any gross misconduct, such as sexual harassment, material violations of applicable law or defalcations in the performance of or in connection with the Executive's duties or employment by WiSA; or (v) otherwise breached material obligations under this Agreement.

(b) **Change in Control**. "**Change in Control**" means any of the following events: (i) the acquisition by any individual, entity or group (a "**Person**") within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934 (the "**Exchange Act**") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of the then-outstanding shares of Common Stock plus any other outstanding shares of stock of the Company entitled to vote in the election of directors (the "**Outstanding Company Voting Securities**"); provided, however, that the Company and any employee benefit plan (or related trust) sponsored by it shall not be deemed to be a Person; or (ii) a change in the composition of the Board such that the individuals who constitute the Board (the "**Incumbent Board**") cease for any reason to constitute at least a majority of the Board within any 365-day period (and for this purpose, any individual whose election or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds (2/3^{rds}) of the directors then comprising the Incumbent Board shall be considered a member of the Incumbent Board); or (iii) the consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its subsidiaries or a sale or other disposition of substantially all of the assets of the Company or a material acquisition of assets or stock of another entity by the Company or any of its subsidiaries (each, a "**Business Combination**") if: (1) the individuals and entities that were the beneficial owners of the Outstanding Company Voting Securities immediately prior to such Business Combination do not beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of stock and the combined voting power of the then-outstanding voting securities of the company resulting from such Business Combination; or (2) a Person beneficially owns, directly or indirectly, 50% or more of the then-outstanding shares of stock of the company resulting from such Business Combination; or (3) members of the Incumbent Board do not comprise at least a majority of the members of the board of directors of the company resulting from such Business Combination; or (iv) the approval by the shareholders (or in the case of (iv)(1) the Board) of the Company of: (1) a complete liquidation or dissolution of the Company; (2) any merger/consolidation/recap in which Company not survivor; or (3) upon the Company's insolvency, general assignment for the benefit of creditors or the commencement by or against the Company of any action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Company's debts under any law relating to bankruptcy, insolvency or reorganization, or relief of debtors, or seeking appointment of a receiver other similar official for the Company or for all or any substantial part of the Company's assets.

(c) **Disability**. "**Disability**" means that Executive satisfies the conditions to be eligible for benefits under the disability plan maintained by WiSA, whether or not Executive is then covered by such plan.

(d) **Good Reason.** “**Good Reason**” means WiSA, without Executive’s consent: (i) during the Term of his employment at WiSA, requires a material change in the geographic location at which Executive must perform services; or (ii) a substantial change in Executive’s duties and responsibilities; or (iii) at any time reduces Executive’s base compensation following a Change in Control; or (iv) at any time otherwise materially breaches its obligations under this Agreement; provided, however, that such termination by the Executive shall only be deemed for Good Reason pursuant to the foregoing definition if: (1) the Executive gives WiSA written notice of the intent to terminate for Good Reason within ninety (90) days following the first occurrence of the condition(s) that the Executive believes constitutes Good Reason, which notice shall describe such condition(s); (2) WiSA fails to remedy such condition(s) within thirty (30) days following receipt of the written notice (the “**Cure Period**”); and (3) the Executive terminates his employment within six (6) months following the end of the Cure Period.

17. **Section 409A.** It is the intention of the parties that no payment or entitlement pursuant to this Agreement will give rise to any adverse tax consequences to any person pursuant to Section 409A and this Agreement shall be interpreted, applied and, to the minimum extent necessary, amended to achieve that intention. It is further intended that payments hereunder satisfy, to the greatest extent possible, the exemption from the application of Section 409A provided under Treasury Regulation Section 1.409A-1(b)(4) (as a “short-term deferral”). To the extent (i) any payments or benefits to which Executive becomes entitled under this Agreement, or under any agreement or plan referenced herein, in connection with his termination of employment with WiSA constitute deferred compensation subject to Section 409A and (ii) Executive is deemed at the time of such termination of employment to be a “specified employee” under Section 409A, then such payments shall not be made or commence until the earlier of (1) the date that is immediately following the expiration of the six (6)-month period measured from the date of Executive’s “separation from service” (as such term is at the time defined in Treasury Regulations under Section 409A) from WiSA or (2) the date of Executive’s death following such separation from service. Upon the expiration of the applicable deferral period, any payments that would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this provision shall be paid to Executive or his beneficiary in one lump sum (without interest).

Each installment of any payments provided hereunder shall constitute separate “payments” for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii). Except as otherwise expressly provided herein, to the extent any expense reimbursement or the provision of any in-kind benefit under this Agreement is determined to be subject to Section 409A, the amount of any such reimbursement or benefit in one calendar year shall not affect any reimbursement or benefit in any other taxable year, in no event shall any such reimbursement or benefit be provided after the last day of the calendar year following the calendar year in which Executive incurred such expense and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit.

18. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement, and any other agreement specifically referenced herein, constitutes the entire agreement between the parties with respect to its subject matter, and supersedes, merges and voids all previous agreements, representations and warranties, written or oral, between the parties with respect to such subject matter. All other prior employment-related agreement(s) between Executive and WiSA are hereby terminated and of no further force or effect. Except as otherwise provided herein to Executive’s benefit, this Agreement shall not amend, modify, supersede or otherwise affect the terms of any equity award agreement(s), stock sale or sale restriction agreement(s) and any confidentiality, non-disclosure, non-competition and inventions agreement(s) to which Executive is a party with WiSA.

(b) **No Oral Modifications.** This Agreement may only be modified in a writing signed by the Executive and an officer of WiSA expressly authorized by WiSA to modify this Agreement.

(c) **Personal Agreement.** This Agreement shall be binding upon and inure to the benefit of WiSA. This Agreement shall be binding upon Executive, his heirs and personal and legal representative. This Agreement may not be assigned by Executive.

(d) **No Waiver.** No failure by either party to exercise, and no delay in exercising, any right or remedy under this Agreement will operate as a waiver; nor will any single or partial exercise of any right or remedy preclude any other or further exercise of any right or remedy. The covenants and agreements set forth herein may be waived only by a written instrument executed by the party waiving compliance. Any such waiver shall only be effective in the specific instance and for the specific purpose for which it was given and shall not be deemed a waiver of any other provision hereof or of the same breach or default upon any recurrence thereof.

(e) **Specific Performance.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement, other than the payment of money for the Executive’s Term of employment, were not performed in accordance with their specific terms or are otherwise breached or threatened to be breached. In the event of any breach or threatened breach, Executive acknowledges that damages will be insufficient remedy to WiSA in the event of a violation of Section 10, 11, 12 and/or 13 of this Agreement, and in the event of such breach or threatened breach of this Agreement, WiSA shall be entitled to seek injunctive relief, without the necessity of posting bond, through a court of competent jurisdiction to enforce the provisions of such Sections in addition to any other rights or remedies available to WiSA.

(f) **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Company, its successors and assigns and any such successor or assignee shall be deemed substituted for the Company under the terms of this Agreement for all purposes. As used herein, “successor” and “assignee” shall include any person, firm, corporation or other business entity that at any time, whether by purchase, merger or otherwise, directly or indirectly acquires the Company or to which the Company assigns the Agreement by operation of law or otherwise.

(g) **Survival.** Notwithstanding any contrary provision of this Agreement, upon termination or expiration of this Agreement for any reason, the covenants and obligations set forth in Sections 6, 7, 8 (including the applicability thereto of Sections 3 and 4), 10, 11, 12, 13, 14, 15, 16 and 17 shall survive any termination of this Agreement or Executive’s employment hereunder until such covenants and agreements are fully satisfied and require no further performance or forbearance, or the rights of a party expire on the specific date by the terms hereof.

(h) **Adjustment of Restrictions.** If any provision of Sections 10, 11, 12 and/or 13 of this Agreement is found by a court or arbitrator to be unenforceable under applicable law because one or more provisions are over broad or otherwise not enforceable in the form as set forth herein, then the court or arbitrator shall have the power to revise the terms of this Agreement to the extent necessary to make the provisions hereof enforceable.

(i) **Governing Law.** This Agreement shall be governed by the laws of the State of California without giving effect to the conflicts of law provisions of any jurisdiction that would cause this Agreement to be governed by the laws of any jurisdiction other than those of the State of California.

(j) **Counterparts and Facsimile Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and any schedules and exhibits hereto, if any, may be executed and delivered by facsimile signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile as if the original had been received.

(k) **Construction.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by both parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS OF THIS AGREEMENT, the parties
have signed below.

EXECUTIVE

/s/ Gary Williams

8/24/2022

Dated: _____, 2022

WiSA TECHNOLOGIES, INC.

/s/ Brett Moyer

By: Brett Moyers

Its: Chief Executive Officer

8/25/2022

Dated: _____, 2022

EXHIBIT A

CALIFORNIA LABOR CODE SECTION 2870(a)

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.