

**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): May 7, 2020**

**Verint Systems Inc.**

(Exact name of registrant as specified in its charter)

**001-34807**

(Commission File Number)

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

**11-3200514**  
(I.R.S. Employer  
Identification No.)

**175 Broadhollow Road  
Melville, New York 11747**  
(Address of principal executive offices, with zip code)

**(631) 962-9600**  
(Registrant's telephone number, including area code)

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

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

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

<u>Title of each class</u>	<u>Trading symbol</u>	<u>Name of exchange on which registered</u>
<b>Common Stock, \$0.001 par value per share</b>	<b>VRNT</b>	<b>The NASDAQ Stock Market, LLC (NASDAQ Global Select Market)</b>

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.**

### *Background*

On May 7, 2020 (the “Closing Date”), Verint Systems Inc. (the “Company”) closed the initial tranche of the previously announced strategic partnership (the “Closing”) with Valor Parent LP (the “Apax Investor”), an affiliate of Apax Partners L.P. (“Apax Partners”). Pursuant to the Investment Agreement (the “Investment Agreement”), dated as of December 4, 2019, by and between the Company and the Apax Investor, at the Closing, the Company sold to the Apax Investor, in a private placement under the Securities Act of 1933 (the “Securities Act”), 200,000 shares of the Company’s Series A Convertible Perpetual Preferred Stock, par value \$0.001 per share (the “Series A Preferred Stock”), for an aggregate purchase price of \$200.0 million (the “Private Placement”). Pursuant to the Investment Agreement, the Company has agreed to issue to the Apax Investor up to 200,000 shares of the Company’s Series B Convertible Perpetual Preferred Stock, par value \$0.001 per share (the “Series B Preferred Stock” and, together with the Series A Preferred Stock, the “Preferred Stock”) following consummation of the previously announced spin-off of its Cyber Intelligence Solutions business (the “Spin-Off”). The Company previously filed the Investment Agreement as Exhibit 10.1 to the Form 8-K/A filed with the Securities and Exchange Commission (the “SEC”) on December 5, 2019.

In connection with the Closing, the Company entered into a Registration Rights Agreement (the “Registration Rights Agreement”), by and between the Company and the Apax Investor on May 7, 2020, as described in further detail below. The Company also filed the First Amended and Restated Certificate of Designation, Preferences and Rights of Series A Convertible Perpetual Preferred Stock (the “Certificate of Designation”) with the Secretary of State of the State of Delaware on May 7, 2020 setting forth the terms, rights, obligations and preferences of the Series A Preferred Stock.

### *Registration Rights Agreement*

The securities that were offered and sold in the Private Placement were not registered under the Securities Act, and may not be offered or sold in the United States absent such registration or the availability of an applicable exemption from registration.

The Registration Rights Agreement provides that the Company will use its commercially reasonable efforts to prepare and file a shelf registration statement with the SEC no later than the first business day after the Common Stock Restricted Period (as defined in the Investment Agreement) and to use its commercially reasonable efforts to cause such shelf registration statement to be declared effective as promptly as is reasonably practicable after its filing to permit the public resale of registrable securities covered by the Registration Rights Agreement. The registrable securities generally include any shares of the Company’s common stock, par value \$0.001 per share (“Common Stock”), into which the Preferred Stock is convertible, and any other securities issued or issuable with respect to any such shares of Common Stock by way of share split, share dividend, distribution, recapitalization, merger, exchange, replacement or similar event or otherwise.

The Company generally will be required to effect registrations for up to three underwritten offerings of the registrable securities within any twelve-month period during the term of the Registration Rights Agreement, subject to certain limitations, including that the anticipated gross proceeds of any offering be at least \$50 million. The Apax Investor is also entitled to customary “piggy-back” registration and shelf take-down rights. The rights of any particular holder to cause the Company to register securities under the Registration Rights Agreement will terminate with respect to that holder upon the date on which the holder no longer holds any Preferred Stock or any registrable securities covered thereby. The registration rights set forth in the Registration Rights Agreement will terminate on the date on which all shares of Common Stock issuable (or actually issued) upon conversion of the Preferred Stock cease to be registrable securities covered thereby.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Registration Rights Agreement, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

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

The information contained in Item 1.01 is incorporated herein by reference.

As described in Item 1.01, under the terms of the Investment Agreement, the Company issued shares of Series A Preferred Stock to the Apax Investor at the Closing. This issuance and sale was exempt from registration under the Securities Act, pursuant to Section 4(a)(2) of the Securities Act. The Apax Investor represented to the Company that it is an “accredited investor” as defined in Rule 501 of the Securities Act and that the Series A Preferred Stock was being acquired for investment purposes and not with a view to, or for sale in connection with, any distribution thereof. Appropriate legend notations were applied to the shares of Series A Preferred Stock or any Common Stock issued upon conversion thereof.

**Item 3.03 Material Modification to Rights of Security Holders.**

The information contained in Item 1.01 and Item 5.03 is incorporated herein by reference.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.***Increase in Size of the Board*

The Investment Agreement requires the Company’s Board of Directors (the “Board”) to, contingent upon and effective as of the Closing, approve an increase in the size of the Board to ten members. On May 7, 2020, the Board increased in size to ten members.

*Appointment of New Director*

Pursuant to the Investment Agreement, the Board appointed Jason A. Wright as a director on May 7, 2020 in connection with the Closing. Mr. Wright joined the Board to serve a term expiring at the Company’s 2020 annual meeting of stockholders. Mr. Wright was designated by the Apax Investor to be appointed to the Board in accordance with the terms and conditions of the Investment Agreement.

Mr. Wright is a Partner in the Tech & Telco team at Apax Partners, where he focuses primarily on investments in enterprise software and technology-enabled services, having joined the firm in 2000. He is currently a director on the boards of Realpage, Paycor, Duck Creek, ECi Software Solutions and TIVIT, and was previously on the boards of Aptos, Exact Software, Trizetto and Epicor Software. Prior to joining Apax Partners in 2000, Mr. Wright served in a variety of roles at GE Capital, a subsidiary of General Electric Corporation, including the evaluation and execution of investment opportunities for the Technology Ventures Group. Previously, Mr. Wright was a consultant at Andersen Consulting, now Accenture plc.

The Board has affirmatively determined that Mr. Wright meets the qualifications of an independent director under NASDAQ Rule 5605(a)(2) and the Company’s Corporate Governance Guidelines.

The Company is not aware of any transactions with Mr. Wright that would require disclosure under Item 404(a) of Regulation S-K, other than the transactions consummated pursuant to the terms and conditions of the Investment Agreement. Mr. Wright will not receive compensation for his service on the Board, other than reimbursement of certain expenses incurred in such service, and will not participate in the Company’s compensation program for non-employee directors.

Mr. Wright is expected to become a party to an Indemnification Agreement with the Company on the same basis as the Company’s other directors, the terms of which are described in the Company’s Annual Report on Form 10-K for the year ended January 31, 2020.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On May 7, 2020, the Company filed the Certificate of Designation to amend and restate the Amended and Restated Certificate of Designation, Preferences and Rights of Series A Convertible Perpetual Preferred Stock and to reestablish and refix the terms of the Series A Preferred Stock. The Certificate of Designation became effective with the Secretary of State of the State of Delaware upon filing.

The Series A Preferred Stock ranks senior to the shares of the Company's Common Stock with respect to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company. The Series A Preferred Stock has a liquidation preference of \$1,000 per share. Holders of Series A Preferred Stock will be entitled to a cumulative dividend at a rate of 5.20% per annum until the 48-month anniversary of the Closing Date and thereafter at a rate of 4.00% per annum, subject in each case to adjustment under certain circumstances. Dividends on the Series A Preferred Stock will be cumulative and payable semi-annually in arrears in cash, as set forth in the Certificate of Designation. All dividends that are not paid in cash will remain accumulated dividends with respect to each share of Series A Preferred Stock. The dividend rate is subject to increase (i) to 6.00% per annum if the Company fails to pay cash dividends in specified circumstances and (ii) by 1.00% each year, up to a maximum dividend rate of 10.00% per annum, in the event the Company fails to satisfy its obligations to redeem the Series A Preferred Stock in specified circumstances.

The Series A Preferred Stock is convertible into Common Stock at the election of the holder at any time at an initial conversion price of \$53.50. Assuming completion of the Spin-Off, the Series A Preferred Stock will not participate in the Spin-Off distribution of the shares of the company holding the Company's Cyber Intelligence Solutions business, and instead, the conversion price will be adjusted based on the ratio of the trading prices of the two companies over a short period following the Spin-Off, subject to a collar. At any time after 36 months following the Closing Date, the Company will have the option to require that all (but not less than all) of the then-outstanding shares of Series A Preferred Stock convert into Common Stock if the VWAP of the Common Stock for at least 30 trading days in any 45 consecutive trading day period (including the last five consecutive trading days in such period) exceeds 175% of the then-applicable conversion price.

The Company may redeem any or all of the Series A Preferred Stock for cash at any time after the 72-month anniversary of the Closing Date at a redemption price equal to 100% of the liquidation preference of the Series A Preferred Stock, plus any accrued and unpaid dividends to, but excluding, the redemption date, plus the make-whole amount designed to allow the Apax Investor to earn a total 8.00% internal rate of return on such shares. At any time after the 102-month anniversary of the Closing Date, the holders will have the right to cause the Company to redeem all of the outstanding shares of Series A Preferred Stock for cash at a redemption price equal to 100% of the liquidation preference of the Series A Preferred Stock, plus any accrued and unpaid dividends to, but excluding, the redemption date. Upon the occurrence of a Change of Control Triggering Event (as defined in the Certificate of Designation), the Company is also required to redeem all of the outstanding shares of Series A Preferred Stock for cash at a redemption price equal to 100% of the liquidation preference of the shares, plus any accrued and unpaid dividends to, but excluding, the redemption date.

The Certificate of Designation provides that holders will have the right to vote on matters submitted to a vote of the holders of Common Stock on an as-converted basis unless required by applicable law, but in no event will the holders have the right to vote shares of Series A Preferred Stock on an as-converted basis in excess of 19.9% of the voting power of the Common Stock outstanding immediately prior to the date of the Investment Agreement.

The foregoing description of the Certificate of Designation does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Certificate of Designation, which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

**Item 7.01 Regulation FD Disclosure.**

On May 7, 2020, the Company issued a press release relating to the Private Placement which is attached hereto as Exhibit 99.1 and incorporated herein by reference.

The information included in Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1, is being furnished pursuant to Item 7.01 of Form 8-K and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to liabilities of that section.

## Item 9.01 Financial Statements and Exhibits.

### (d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
3.1	<a href="#">First Amended and Restated Certificate of Designation, Preferences and Rights of Series A Convertible Perpetual Preferred Stock</a>
10.1	<a href="#">Registration Rights Agreement, dated May 7, 2020, by and between Verint Systems Inc. and Valor Parent LP</a>
99.1	<a href="#">Press Release dated May 7, 2020</a>
104	Cover Page Interactive Data File (embedded within XBRL document)

## Forward-Looking Statements

This Current Report on Form 8-K contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, the provisions of Section 27A of the Securities Act of 1933, and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements include financial projections, statements of plans and objectives for future operations, statements of future economic performance, and statements of assumptions relating thereto. Forward-looking statements may appear throughout this Current Report on Form 8-K and are often identified by future or conditional words such as “will”, “plans”, “expects”, “intends”, “believes”, “seeks”, “estimates”, or “anticipates”, or by variations of such words or by similar expressions. There can be no assurance that forward-looking statements will be achieved. By their very nature, forward-looking statements involve known and unknown risks, uncertainties, assumptions, and other important factors that could cause our actual results or conditions to differ materially from those expressed or implied by such forward-looking statements.

Important risks, uncertainties, assumptions, and other factors that could cause our actual results or conditions to differ materially from our forward-looking statements include, among others: uncertainties regarding the impact of changes in macroeconomic and/or global conditions, including as a result of slowdowns, recessions, economic instability, political unrest, armed conflicts, natural disasters, or outbreaks of disease, such as the novel coronavirus COVID-19 pandemic, as well as the resulting impact on information technology spending and government budgets, on our business; risks associated with our ability to keep pace with technological advances and challenges and evolving industry standards; to adapt to changing market potential from area to area within our markets; and to successfully develop, launch, and drive demand for new, innovative, high-quality products that meet or exceed customer needs, while simultaneously preserving our legacy businesses and migrating away from areas of commoditization; risks due to aggressive competition in all of our markets, including with respect to maintaining revenues, margins, and sufficient levels of investment in our business and operations; risks created by the continued consolidation of our competitors or the introduction of large competitors in our markets with greater resources than we have; risks associated with our ability to successfully compete for, consummate, and implement mergers and acquisitions, including risks associated with valuations, reputational considerations, capital constraints, costs and expenses, maintaining profitability levels, expansion into new areas, management distraction, post-acquisition integration activities, and potential asset impairments; risks relating to our ability to properly manage investments in our business and operations, execute on growth initiatives, and enhance our existing operations and infrastructure, including the proper prioritization and allocation of limited financial and other resources; risks associated with our ability to retain, recruit, and train qualified personnel in regions in which we operate, including in new markets and growth areas we may enter; risks that we may be unable to establish and maintain relationships with key resellers,

partners, and systems integrators and risks associated with our reliance on third-party suppliers, partners, or original equipment manufacturers (“OEMs”) for certain components, products, or services, including companies that may compete with us or work with our competitors; risks associated with the mishandling or perceived mishandling of sensitive or confidential information, including information that may belong to our customers or other third parties, and with security vulnerabilities or lapses, including cyber-attacks, information technology system breaches, failures, or disruptions; risks that our products or services, or those of third-party suppliers, partners, or OEMs which we use in or with our offerings or otherwise rely on, including third-party hosting platforms, may contain defects, develop operational problems, or be vulnerable to cyber-attacks; risks associated with our significant international operations, including, among others, in Israel, Europe, and Asia, exposure to regions subject to political or economic instability, fluctuations in foreign exchange rates, and challenges associated with a significant portion of our cash being held overseas; risks associated with political factors related to our business or operations, including reputational risks associated with our security solutions and our ability to maintain security clearances where required, as well as risks associated with a significant amount of our business coming from domestic and foreign government customers; risks associated with complex and changing local and foreign regulatory environments in the jurisdictions in which we operate, including, among others, with respect to trade compliance, anti-corruption, information security, data privacy and protection, tax, labor, government contracts, relating to our own operations as well as to the use of our solutions by our customers; challenges associated with selling sophisticated solutions, including with respect to assisting customers in understanding and realizing the benefits of our solutions, and developing, offering, implementing, and maintaining a broad and sophisticated solution portfolio; challenges associated with pursuing larger sales opportunities, including with respect to longer sales cycles, transaction reductions, deferrals, or cancellations during the sales cycle; risk of customer concentration; challenges associated with our ability to accurately forecast when a sales opportunity will convert to an order, or to accurately forecast revenue and expenses; challenges associated with our Customer Engagement segment cloud transition and our Cyber Intelligence segment software model transition, and risk of increased volatility of our operating results from period to period; risks that our intellectual property rights may not be adequate to protect our business or assets or that others may make claims on our intellectual property, claim infringement on their intellectual property rights, or claim a violation of their license rights, including relative to free or open source components we may use; risks that our customers delay or cancel orders or are unable to honor contractual commitments due to liquidity issues, challenges in their business, or otherwise; risks that we may experience liquidity or working capital issues and related risks that financing sources may be unavailable to us on reasonable terms or at all; risks associated with significant leverage resulting from our current debt position or our ability to incur additional debt, including with respect to liquidity considerations, covenant limitations and compliance, fluctuations in interest rates, dilution considerations (with respect to our convertible notes), and our ability to maintain our credit ratings; risks arising as a result of contingent or other obligations or liabilities assumed in our acquisition of our former parent company, Comverse Technology, Inc. (“CTI”), or associated with formerly being consolidated with, and part of a consolidated tax group with, CTI, or as a result of the successor to CTI’s business operations, Mavenir Inc., being unwilling or unable to provide us with certain indemnities to which we are entitled; risks relating to the adequacy of our existing infrastructure, systems, processes, policies, procedures, internal controls, and personnel, and our ability to successfully implement and maintain enhancements to the foregoing, for our current and future operations and reporting needs, including related risks of financial statement omissions, misstatements, restatements, or filing delays; risks associated with changing accounting principles or standards, tax laws and regulations, tax rates, and the continuing availability of expected tax benefits; risks associated with market volatility in the prices of our common stock and convertible notes based on our performance, third-party publications or speculation, or other factors and risks associated with actions of activist stockholders; risks associated with the planned issuance of preferred stock to the Apax Investor, including with respect to completion of the second closing and Apax Partner’s resulting significant ownership position and potential that its interests will not be aligned with those of our common stockholders; and risks associated with the planned spin-off of our Cyber Intelligence Solutions business, including the possibility that the spin-off transaction may not be completed in the expected timeframe or at all, that it does not achieve the benefits anticipated, or that it negatively impacts our operations or stock price, including as a result of management distraction from our business.

These risks, uncertainties, assumptions, and challenges, as well as other factors, are discussed in greater detail in the reports filed by us with the U.S. Securities and Exchange Commission, including our Annual Report on Form 10-K for the year ended January 31, 2020. You are cautioned not to place undue reliance on forward-looking statements, which reflect our management’s view only as of the date of this report. We make no commitment to revise or update any forward-looking statements in order to reflect events or circumstances after the date any such statement is made, except as otherwise required under the federal securities laws. If we were in any particular instance to update or correct a forward-looking statement, investors and others should not conclude that we would make additional updates or corrections thereafter except as otherwise required under the federal securities laws.

**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.

**VERINT SYSTEMS INC.**

By: /s/ Peter Fante

Name: Peter Fante

Title: Chief Administrative Officer

Date: May 7, 2020

**FIRST AMENDED AND RESTATED CERTIFICATE OF DESIGNATION, PREFERENCES AND  
RIGHTS  
OF  
SERIES A CONVERTIBLE PERPETUAL PREFERRED STOCK  
OF  
VERINT SYSTEMS INC.**

The undersigned, being the Chief Administrative Officer of Verint Systems Inc., a Delaware corporation (hereinafter called the “**Company**”), in accordance with Section 151 of the General Corporation Law of the State of Delaware (the “**DGCL**”), does hereby certify as follows:

FIRST: The Amended and Restated Certificate of Incorporation of the Company (the “**Certificate of Incorporation**”) initially authorized the issuance of up to 2,500,000 shares and currently authorizes the issuance of up to 2,207,000 shares of preferred stock, par value \$0.001 per share, of the Company (“**Preferred Stock**”) in one or more series, of which 293,000 shares have been previously issued and subsequently cancelled and are no longer outstanding or available for issuance, and expressly authorizes the Board of Directors of the Company (the “**Board**”), subject to limitations prescribed by law, to provide, out of the unissued shares of Preferred Stock, for multiple series of Preferred Stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designation, rights, preferences, powers, restrictions and limitations of the shares of such series;

SECOND: That a Certificate of Designation, Preferences and Rights of the Series A Convertible Perpetual Preferred Stock was originally filed by the Company with the Secretary of State of the State of Delaware on May 25, 2007 (the “**Original Certificate of Designation**”), which Original Certificate of Designation was amended pursuant to the Certificate of Amendment to the Certificate of Designation, Preferences and Rights of the Series A Convertible Perpetual Preferred Stock filed by the Company with the Secretary of State of the State of Delaware on August 30, 2012 (as amended, the “**Existing Certificate of Designation**”);

THIRD: That no shares of Series A Convertible Perpetual Preferred Stock are currently issued or outstanding; and

FOURTH: That it is the desire of the Board to amend and restate the Existing Certificate of Designation to reestablish and refix the number of shares to be included in the Series A Convertible Perpetual Preferred Stock and the designation, rights, preferences and limitations of the shares of such series.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby in this First Amended and Restated Certificate of Designation, Preferences and Rights of the Series A Convertible Perpetual Preferred Stock (this “**Certificate of Designation**”) reestablish and refix and herein restate and reexpress the designation, rights, preferences, powers, restrictions and limitations of the Series A Convertible Perpetual Preferred Stock as follows:

1. Designation. There shall be a series of Preferred Stock that shall be designated as “Series A Convertible Perpetual Preferred Stock” (the “**Series A Preferred Stock**”) and the number of shares constituting such series (“**Shares**”) shall be 200,000. The rights, preferences, powers, restrictions and limitations of the Series A Preferred Stock shall be as set forth herein.

2. Defined Terms. For purposes hereof, the following terms shall have the following meanings:

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is controlled by or is under common Control with the Person specified. “**Affiliated**” has a meaning correlative thereto.

“**Agent Members**” has the meaning set forth in **Section 14.1(d)**.



“**Beneficially Own**” means to possess beneficial ownership as determined pursuant to Rule 13d-3 and Rule 13d-5 of the Exchange Act as in effect on the Original Issuance Date.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

“**Board**” has the meaning set forth in the Recitals.

“**Certificate of Designation**” has the meaning set forth in the Recitals.

“**Certificate of Incorporation**” has the meaning set forth in the Recitals.

“**Change in Tax Law**” has the meaning set forth in **Section 8.7(a)**.

“**Change of Control**” means (a) any sale, transfer, conveyance or disposition (including through an exclusive license of intellectual property) in one or a series of transactions of all or substantially all of the consolidated assets of the Company to a Person or “group” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than to a subsidiary of the Company or a Person that becomes a subsidiary of the Company; or (b) any sale, consolidation, merger, recapitalization or other transaction of the Company with or into another Person or “group” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) (whether or not the Company is the surviving Company) that results in the holders of Common Stock (or other voting stock of the Company, including shares of Common Stock determined on an as-converted basis assuming all Preferred Stock then outstanding had been converted pursuant to **Section 8** as of immediately prior to such sale, consolidation or merger) immediately prior to such sale, consolidation, merger, recapitalization or other transaction failing to hold at least a majority of the Common Stock (or other voting stock of the Company of the resulting entity or its parent company, as determined on an as-converted basis); *provided, however*, that the CIS Spin-Off Transaction shall not constitute a Change of Control.

“**Change of Control Redemption**” has the meaning set forth in **Section 7.1**.

“**Change of Control Redemption Price**” has the meaning set forth in **Section 7.1**.

“**CIS Spin-Off Transaction**” means the contemplated separation of the Company’s cyber intelligence solutions business through a distribution of all of the outstanding equity securities of a wholly owned subsidiary of the Company to the holders of Common Stock and a contribution of the assets and liabilities of such business and/or a contribution of the legal entities comprising such business to such subsidiary.

“**CIS Spin-Off Transaction Adjustment Date**” means the later to occur of (i) the tenth (10<sup>th</sup>) Trading Day following, and including, the Ex-Dividend Date; and (ii) the Trading Day immediately following the Business Day on which the CIS Spin-Off Transaction is consummated.

“**CIS Spin-Off Transaction Adjustment Ratio**” means the quotient of (i) the MPo *divided by* (ii) the sum of FMV and MPo.

“**CIS Spin-Off Transaction Share**” means a share of the common stock of the successor entity to which the Company’s cyber intelligence solutions business is anticipated to be contributed or transferred following the date hereof.

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

“**Common Stock**” means the common stock, par value \$0.001 per share, of the Company.

“**Company**” has the meaning set forth in the Preamble.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power,

by contract or otherwise. “controlling” and “controlled” have meanings correlative thereto; *provided, however* that notwithstanding the foregoing, with respect to any Person that is an investment fund, an Affiliate shall also include any investment fund, vehicle or holding company of which such Person or an Affiliate of such Person serves as the general partner, managing member or discretionary manager or advisor or sub-advisor, but not any portfolio company thereof.

“**Conversion Date**” has the meaning set forth in **Section 8.3(d)**.

“**Conversion Price**” means, initially, \$53.50, as adjusted from time to time in accordance with **Section 8.7**.

“**Conversion Shares**” means the shares of Common Stock or other capital stock of the Company then issuable upon conversion of the Series A Preferred Stock in accordance with the terms of **Section 8**.

“**Conversion Threshold**” means a price per share of Common Stock equal to \$93.625; *provided* that if the Conversion Price is adjusted as provided in **Section 8.7**, the Conversion Threshold on any day shall be the Conversion Threshold determined in accordance with the preceding clause *multiplied* by a fraction the numerator of which is the Conversion Price immediately following such adjustment and the denominator of which shall be the Conversion Price immediately prior to such adjustment.

“**Current Market Price**” means, on any day, the average of the Daily VWAP for the five (5) consecutive Trading Days ending the Trading Day immediately prior to the day in question.

“**Daily VWAP**” means the consolidated volume-weighted average price per share of Common Stock as displayed under the heading “Bloomberg VWAP” on the Bloomberg page for the “<equity> AQR” page corresponding to the “ticker” for such Common Stock (or its equivalent successor if Bloomberg ceases to publish such price, or such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the closing price of one share of such Common Stock on such Trading Day). The “volume weighted average price” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

“**Definitive Series A Preferred Stock Certificate**” means one or more certificates representing Series A Preferred Stock registered in the name of the holder thereof and issued in accordance with **Section 14.2(i)**, except that any such Definitive Series A Preferred Stock Certificate shall not bear a Global Certificate Legend and shall not have a schedule of increases or decreases.

“**DGCL**” has the meaning set forth in the Preamble.

“**Dividend Rate**” means (i) on or prior to the Step-Down Date, 5.20% *per annum* and (ii) at all other times, 4.00% *per annum* (in each case, as adjusted pursuant to **Section 4.2** or **Section 7.7(b)**).

“**Dividend Payment Date**” has the meaning set forth in **Section 4.2**.

“**DTC**” means The Depository Trust Company or any successor depository.

“**ERISA**” has the meaning set forth in **Section 14.2(c)**.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

“**Ex-Dividend Date**” means, the date on which the right to receive the distributions of the CIS Spin-Off Transaction Shares in the CIS Spin-Off Transaction no longer attaches to the Common Stock.

“**Existing Certificate of Designation**” has the meaning set forth in the Recitals.

“**FMV**” means the average of the Daily VWAP of a CIS Spin-Off Transaction Share over the 10 Trading Days immediately following, and including, the Ex-Dividend Date.

“**Global Certificate**” means one or more global certificates representing Shares of Series A Preferred Stock registered in the name of the holder thereof that bears the Global Certificate Legend.

“**Global Certificate Legend**” means the global certificate legends set forth in Exhibit B hereto, which legends are required to be placed on all Global Certificates issued under this Certificate of Designation.

“**holder**” means the person in whose name a Series A Preferred Stock Certificate is registered on the Transfer Agent’s books and records.

“**Investment Agreement**” means the Investment Agreement dated December 4, 2019 between the Company and Valor Parent LP.

“**IRS**” means the United States Internal Revenue Service.

“**Issuer Agreement**” means the Issuer Agreement between Valor Parent LP and lenders from time to time party thereto.

“**Junior Securities**” means, collectively, the Common Stock and each other class or series of capital stock now existing or hereafter authorized, classified or reclassified, the terms of which do not expressly provide that such class or series ranks on a parity basis with or senior to the Series A Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company.

“**Liquidation**” has the meaning set forth in **Section 5.1**.

“**Liquidation Value**” means, with respect to any Share on any given date, \$1,000.00 (as adjusted for any stock splits, stock dividends, recapitalizations or similar transaction with respect to the Series A Preferred Stock).

“**Mandatory Conversion Date**” has the meaning set forth in **Section 8.3(b)**.

“**Make-Whole Amount**” means, in aggregate, with respect to each Share being redeemed by the Company pursuant to a Series A Company Redemption Notice on the date immediately prior to the applicable Series A Company Redemption Date, the difference between: (x) the value representing an amount necessary to make the aggregate of all cash amounts paid with respect to such Share equal to an internal rate of return (calculated using the XIRR function of Microsoft Excel or any successor function) of 8% per annum from the Original Issuance Date of such Share to the date immediately prior to the applicable Series A Company Redemption Date and (y) (i) the Liquidation Value of such Share *plus* (ii) any unpaid accrued and accumulated dividends on such Share (whether or not declared) to, but excluding, the Series A Company Redemption Date. In the event the Make-Whole Amount is less than zero, it shall be deemed to be zero.

“**MPo**” means the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Days immediately following, but including, the Ex-Dividend Date in respect of the CIS Spin-Off Transaction.

“**Original Certificate of Designation**” has the meaning set forth in the Recitals.

“**Original Issuance Date**” means May 7, 2020.

“**Parity Securities**” means any class or series of capital stock, the terms of which expressly provide that such class ranks *pari passu* with the Series A Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, and includes the Series B Preferred Stock.

“**Permitted Common Stock Repurchases**” means redemptions or repurchases of Junior Securities after the Original Issuance Date resulting in payments by the Company in an aggregate amount not to exceed \$400,000,000.

“**Person**” means an individual, Company, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Preferred Stock**” has the meaning set forth in the Recitals.

“**Qualified Institutional Buyer**” has the meaning set forth in **Section 14.2(a)**.

“**Resale Restriction Termination Date**” has the meaning set forth in **Section 14.2(h)**.

“**Reorganization Event**” has the meaning set forth in **Section 8.7(c)**.

“**Restrictive Definitive Series A Preferred Stock Certificate**” means a Definitive Series A Preferred Stock Certificate bearing the applicable legend set forth in Exhibit A.

“**Restricted Global Certificate**” means a Global Certificate bearing the applicable legend set forth in Exhibit A.

“**Rule 144A**” has the meaning set forth in **Section 14.2(a)**.

“**Rule 144A Global Certificate**” has the meaning set forth in **Section 14.2(e)**.

“**Rule 144A Shares**” has the meaning set forth in **Section 14.2(e)**.

“**Securities Act**” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

“**Senior Securities**” means any class or series of capital stock, the terms of which expressly provide that such class ranks senior to any series of the Series A Preferred Stock, has preference or priority over the Series A Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, including for avoidance of doubt, the Convertible Notes (as defined under the Investment Agreement).

“**Series A Company Redemption**” has the meaning set forth in **Section 7.2**.

“**Series A Company Redemption Date**” has the meaning set forth in **Section 7.6(b)**.

“**Series A Company Redemption Notice**” has the meaning set forth in **Section 7.2**.

“**Series A Company Redemption Price**” has the meaning set forth in **Section 7.2**.

“**Series A Conversion Election Date**” means the date upon which the holder’s right to convert its Shares pursuant to **Section 8** terminates in connection with a Series A Company Redemption or Series A Shareholder Redemption, which date shall be no earlier than two Business Days prior to the Series A Company Redemption Date or Series A Shareholder Redemption Date, as applicable.

“**Series A Preferred Stock**” has the meaning set forth in **Section 1**.

“**Series A Preferred Stock Certificate**” means one or more certificates evidencing ownership of a Share or Shares of Series A Preferred Stock, which shall exclusively be in the form of one or more Global Certificates and, following the Original Issuance Date, may be represented by a Definitive Series A Preferred Stock Certificate as provided in **Section 14.2(i)**.

“**Series A Shareholder Election Notice**” has the meaning set forth in **Section 7.3**.

“**Series A Shareholder Redemption Date**” has the meaning set forth in **Section 7.5(a)(iii)**.

“**Series A Shareholder Redemption Notice**” has the meaning set forth in **Section 7.3**.

“**Series A Shareholder Redemption**” has the meaning set forth in **Section 7.3**.

“**Series A Shareholder Redemption Price**” has the meaning set forth in **Section 7.3**.

“**Series B Preferred Stock**” means the Series B Preferred Stock that may be issued as contemplated in the Investment Agreement.

“**Similar Laws**” has the meaning set forth in **Section 14.2(c)**.

“**Spin Cut-Off Date**” means the early to occur of (i) June 4, 2021 and (ii) the date on which the Company publicly announces that it is no longer pursuing the CIS Spin-Off Transaction.

“**Step-Down Date**” means the forty-eight (48) month anniversary of the Original Issuance Date.

“**Subsidiary**” means, with respect to any Person, any other Person of which a majority of the outstanding shares or other equity interests having the power to vote for directors or comparable managers are owned, directly or indirectly, by the first Person.

“**Taxes**” means any federal, state, local or non-U.S. taxes, including sales and use taxes, transaction privilege taxes, gross receipts taxes, income taxes, business and occupation taxes, social security taxes, payroll taxes, employment taxes, estimated taxes, real property taxes, stamp taxes, franchise taxes, transfer taxes, value added taxes, withholding taxes, unemployment taxes, and other similar charges in the nature of tax such as duties, customs, tariffs, imposts, and government-imposed surcharges imposed by any governmental entity (or any department, agency, or political subdivision thereof), together with any interest, penalties and additions to tax imposed thereon.

“**Trading Day**” means a day on which the principal Trading Market is open for business.

“**Trading Market**” means NASDAQ, or any other national securities exchange on which the Common Stock is primarily listed or quoted for trading on the date in question.

“**Transfer Agent**” means the transfer agent with respect to the Series A Preferred Stock, which, on and as of Original Issuance Date, shall be Broadridge Corporate Issuer Solutions, Inc., and any successor transfer agent of national reputation appointed by the Company and notified to the holders.

“**Unrestricted Global Certificate**” means a Global Certificate that is not a Restricted Global Certificate.

3. **Rank.** With respect to payment of dividends and distribution of assets upon liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, all Shares of the Series A Preferred Stock shall rank (a) senior to all Junior Securities, (b) pari passu with any Series B Preferred Stock or Parity Securities in issue from time to time, and (c) junior to all Senior Securities.

4. **Dividends.**

4.1 **Accrual of Dividends.** From and after the Original Issuance Date of the Shares, cumulative dividends on each such Share shall accrue whether or not there are funds legally available for the payment of dividends, on a daily basis in arrears at the applicable Dividend Rate on the sum of the Liquidation Value thereof *plus*, once compounded, any accumulated dividends thereon. All accrued dividends on any Share shall compound twice annually on the last day of June and December of each calendar year, and be paid in accordance with this **Section 4**, when, as and if declared by the Board out of funds legally available therefor or upon a liquidation or redemption of the Series A Preferred Stock in accordance with the provisions of **Section 5** or **Section 7** until paid pursuant hereto or converted pursuant to **Section 8**. All accrued dividends on the Shares (whether accumulated or not) shall be prior and in preference to any dividend on any Junior Securities and shall be fully declared and paid before any dividends are declared and paid, or any other distributions or redemptions are made (whether directly or

through any Subsidiary), on any Junior Securities, other than to (i) declare or pay any dividend or distribution in the CIS Spin-Off Transaction or payable on the Common Stock in shares of Common Stock, (ii) repurchase Common Stock held by employees or consultants of the Company upon termination of their employment or services pursuant to agreements providing for such repurchase or (iii) Permitted Common Stock Repurchases. Notwithstanding the foregoing, in no event will the Company declare or pay a dividend or distribution of cash on any Junior Securities unless such payment is consented to in writing executed by holders of Series A Preferred Stock holding a majority of the Shares outstanding.

4.2 **Payment of Dividends.** If, as and when declared by the Board, in its sole discretion, out of funds legally available therefor, the Company shall make each dividend payment on the Series A Preferred Stock in cash on the last day of June and December of each calendar year (each such date, a “**Dividend Payment Date**”) at the applicable Dividend Rate. The record date for payment of dividends on the Series A Preferred Stock will be the fifteenth (15<sup>th</sup>) day of the calendar month of the applicable Dividend Payment Date, whether or not such date is a Business Day, and dividends shall only be payable to registered holders of record of the Series A Preferred Stock as such holders appear on the stock register of the Company at the close of business on the related record date. If any Dividend Payment Date is not a Business Day, the applicable payment shall be due on the next succeeding Business Day. All dividends that are not paid in cash shall remain accumulated dividends with respect to each such share of Series A Preferred Stock until paid to the holder thereof. Notwithstanding anything to the contrary in the foregoing, unless the issuance of shares upon conversion of the Series A Preferred Stock and Series B Preferred Stock has been approved by holders of the Common Stock in accordance with applicable NASDAQ shareholder approval requirements, if upon any Dividend Payment Date all accrued and unpaid dividends payable on such Dividend Payment Date would result in the number of shares of Common Stock into which the outstanding Series A Preferred Stock and Series B Preferred Stock, considered collectively, could be converted to be in excess of 13,297,975 shares of Common Stock (as adjusted for any event set forth in **Section 8.7**), then the Company must make each dividend payment on the Series A Preferred Stock on each such Dividend Payment Date in cash except to the extent prohibited by applicable Delaware law (and any such accrued and unpaid dividends resulting in conversion in excess of such threshold prior to any such Dividend Payment Date must be paid in cash upon any conversion of the Series A Preferred Stock in accordance with **Section 8** rather than converting into shares of Common Stock). If the Company fails to pay in cash in the circumstances contemplated by the preceding sentence, then any dividends otherwise payable on such Dividend Payment Date (or upon conversion of the Series A Preferred Stock for any accrued and unpaid dividends prior to any such Dividend Payment Date in the circumstances contemplated in the preceding sentence) shall continue to accrue and accumulate at a Dividend Rate of 6.00% *per annum*, for the period from and including the first Dividend Payment Date (or upon conversion for any accrued and unpaid dividends prior to any such Dividend Payment Date in the circumstances contemplated in the preceding sentence) upon which the Company fails to pay in cash through but not including the last day upon which the Company pays in cash all such accrued and accumulated dividends that are payable only in cash pursuant to the preceding sentence.

4.3 **Dividend Calculations.** Dividends on the Series A Preferred Stock shall accrue on the basis of a 360-day year, consisting of twelve (12), thirty (30) calendar day periods, and shall accrue daily commencing on the Original Issuance Date, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends.

4.4 **Conversion Prior to or Following a Record Date.** If the Conversion Date for any Shares is prior to the close of business on the record date for a dividend as provided in **Section 4.2**, the holder of such Shares shall not be entitled to any dividend in respect of such record date. If the Conversion Date for any Shares is after the close of business on the record date for a dividend as provided in **Section 4.2** but prior to the corresponding Dividend Payment Date, the holder of such Shares as of the applicable record date shall be entitled to receive such dividend, notwithstanding the conversion of such Shares prior to the applicable Dividend Payment Date.

## 5. Liquidation.

5.1 Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company (a “**Liquidation**”), the holders of Shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, *pari passu* with any payment to the holders of Series B Preferred Stock, to the holders of any other Parity Securities, but before any distribution or payment out of the assets of the Company shall be made to the holders of Junior Securities by reason of their ownership thereof, an amount in cash equal to the greater of the (i) aggregate Liquidation Value of all Shares held by such holder, *plus* any unpaid accrued and accumulated dividends on all such Shares (whether or not declared) and (ii) payment that such holders would have received had such holders, immediately prior to such Liquidation, converted such Shares then held by such holder into shares of Common Stock at the applicable Conversion Price then in effect in accordance with Section 8.1.

5.2 Insufficient Assets. If upon any Liquidation the remaining assets of the Company available for distribution to its stockholders shall be insufficient to pay the holders of the Shares of Series A Preferred Stock the full preferential amount to which they are entitled under **Section 5.1**, (a) the holders of the Shares shall share ratably in any distribution of the remaining assets and funds of the Company in proportion to the respective full preferential amounts which would otherwise be payable in respect of the Series A Preferred Stock and Series B Preferred Stock and any other Parity Securities in the aggregate upon such Liquidation if all amounts payable on or with respect to such Shares were paid in full, and (b) the Company shall not make or agree to make, or set aside for the benefit of the holders of Junior Securities, any payments to the holders of Junior Securities.

5.3 Notice Requirement. In the event of any Liquidation, the Company shall, within ten (10) days of the date the Board approves such action, or no later than twenty (20) days of any stockholders’ meeting called to approve such action, or within twenty (20) days of the commencement of any involuntary proceeding, whichever is earlier, give each holder of Shares of Series A Preferred Stock written notice of the proposed action. Such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of Shares upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Company shall promptly give written notice to each holder of Shares of such material change. If any Shares of Series A Preferred Stock are held in book-entry form through DTC, any such notice pursuant to this **Section 5.3** may be given to the holders at such time in any manner required or permitted by the procedures of DTC.

6. Voting. Each holder of outstanding Shares of Series A Preferred Stock shall be entitled to vote with holders of outstanding shares of Common Stock, voting together as a single class, with respect to any and all matters presented to the stockholders of the Company for their action or consideration (whether at a meeting of stockholders of the Company, by written action of stockholders in lieu of a meeting or otherwise), except as provided by law. In any such vote, each holder of Shares of Series A Preferred Stock shall be entitled to a number of votes equal to the largest number of whole shares of Common Stock into which all Shares of Series A Preferred Stock (including any unpaid accrued and accumulated dividends) held of record by such holder is convertible pursuant to **Section 8** herein as of the record date for such vote or written consent or, if there is no specified record date, as of the date of such vote or written consent. Each holder of outstanding Shares of Series A Preferred Stock shall be entitled to notice of all stockholder meetings (or requests for written consent) in accordance with the Company’s bylaws. As long as any Share of Series A Preferred Stock is outstanding, the Company shall not amend, modify or supplement any provision of (a) this Certificate of Designation in a manner that alters or changes the rights, powers, preferences or privileges of the holders of the Series A Preferred Stock or (b) the Certificate of Incorporation in a manner that alters or changes the rights, powers, preferences or privileges of the holders of the Series A Preferred Stock that is disproportionate to any other Parity Securities, unless in each case, the prior written approval of the holders of a majority of the Series A Preferred Stock issued and outstanding has been obtained. Notwithstanding anything to the contrary in the foregoing, unless the issuance of shares upon conversion of the Series A Preferred Stock and Series B Preferred Stock has been approved by holders of the Common Stock in accordance with applicable NASDAQ shareholder approval requirements, in no event shall the holders of Series A Preferred Stock have the right to vote Shares of Series A Preferred Stock to the extent the number of shares of Common Stock into which the outstanding

Series A Preferred Stock and Series B Preferred Stock, considered collectively, could be converted would exceed 13,297,975 shares of Common Stock (as adjusted for any event set forth in **Section 8.7**).

## 7. Redemption.

7.1 Change of Control Redemption. Subject to the provisions of this **Section 7**, upon the occurrence of a Change of Control, the Company shall redeem, out of funds legally available therefor, all of the then-outstanding Shares of Series A Preferred Stock (a “**Change of Control Redemption**”) for a price per Share equal to the greater of: (i) the Liquidation Value for such Share, *plus* any unpaid accrued and accumulated dividends on such Share (whether or not declared) to, but excluding, the Change of Control Redemption Date, and (ii) the payment that such holders would have received had such holders, immediately prior to such Change of Control, converted such Shares then held by such holder into shares of Common Stock at the applicable Conversion Price then in effect in accordance with **Section 8.1** (the “**Change of Control Redemption Price**”). In connection with a Change of Control, the Company shall provide written notice of the proposed Change of Control at least prior to the twentieth (20th) Business Day prior to the date on which the Company anticipates consummating a Change of Control (or if later and subject to this **Section 7.1**, promptly after the Company discovers that a Change of Control may occur). Any such Change of Control Redemption shall occur on the date of consummation of the Change of Control and in accordance with a written notice from the Company (the “**Change of Control Redemption Notice**”), which must be delivered by the Company at least five (5) Business Days prior to the consummation of such Change of Control; *provided, however*, that if Shares of Series A Preferred Stock are held in book-entry form through DTC, any Change of Control Redemption Notice may be given to holders at such time in any manner required or permitted by the procedures of DTC. In exchange for the surrender to the Company by the respective holders of Shares of Series A Preferred Stock of their certificate or certificates, if any, or an affidavit of loss, representing such Shares on or after the applicable Change of Control Redemption Date in accordance with **Section 7.8** below (or, if Shares of Series A Preferred Stock are held in book-entry form through DTC, the book-entry transfer in accordance with the applicable procedures of DTC to the Transfer Agent’s account at DTC), the Change of Control Redemption Price for the Shares being redeemed shall be payable in cash by the Company in immediately available funds to the respective holders of the Series A Preferred Stock, except to the extent prohibited by applicable Delaware law, and *provided* that the Company shall only be required to pay the Change of Control Redemption Price simultaneously with, or immediately after, satisfaction of all of the Company’s obligations under the Credit Facility (as defined in the Investment Agreement) or that would otherwise have been required to be repaid in accordance with the Credit Facility without giving effect to any waivers, amendments or modifications thereof.

7.2 Company Redemption. Subject to the provisions of this **Section 7**, at any time following the seventy-two (72) month anniversary of the Original Issuance Date, the Company shall have the right, but not the obligation, to redeem, from time to time, out of funds legally available therefor, all or any portion of the then-outstanding Shares of Series A Preferred Stock (a “**Series A Company Redemption**”) for a price per Share equal to: (i) the Liquidation Value for such Share, *plus* (ii) any unpaid accrued and accumulated dividends on such Share (whether or not declared) to, but excluding, the Series A Company Redemption Date, *plus* (iii) the Make Whole Amount (such sum, in aggregate the “**Series A Company Redemption Price**”). Any such Series A Company Redemption shall occur not less than thirty (30) days and not more than sixty (60) days following receipt by the applicable holder(s) of Series A Preferred Stock of a written election notice (the “**Series A Company Redemption Notice**”) from the Company; *provided, however*, that if Shares of Series A Preferred Stock are held in book-entry form through DTC, any Series A Company Redemption Notice may be given to holders at such time in any manner required or permitted by the procedures of DTC. Following the notice period required by the Series A Company Redemption Notice, the Company shall redeem all, or in the case of an election to redeem less than all of the Shares of Series A Preferred Stock, the same *pro rata* portion of each such holder’s Shares redeemed pursuant to this **Section 7**; *provided, however*, that if any Shares of Series A Preferred Stock are held in book-entry form through DTC, the Shares of Series A Preferred Stock to be redeemed shall be selected in accordance with the applicable procedures of DTC and any notice of redemption may be given to the holders at such time in any manner permitted by the procedures of DTC. In exchange for the surrender to the Company by the respective holders of Shares of Series A Preferred Stock of their certificate or certificates, if any, or an



affidavit of loss, representing such Shares on or after the applicable Series A Company Redemption Date in accordance with **Section 7.8** below (or, if Shares of Series A Preferred Stock are held in book-entry form through DTC, the book-entry transfer in accordance with the applicable procedures of DTC to the Transfer Agent's account at DTC), the Series A Company Redemption Price for the Shares being redeemed shall be payable in cash by the Company in immediately available funds to the respective holders of the Series A Preferred Stock, except to the extent prohibited by applicable Delaware law. Notwithstanding anything to the contrary contained herein, each holder of Shares of Series A Preferred Stock shall have the right to elect, prior to the Series A Company Redemption Date, to exercise the conversion rights, if any, in accordance with **Section 8**.

7.3 **Shareholder Redemption.** Subject to the provisions of this **Section 7**, at any time following the one hundred second (102) month anniversary of the Original Issuance Date, any holder of Series A Preferred Stock shall have the right to elect to have, out of funds legally available therefor, all, but not less than all, of the then-outstanding Shares of Series A Preferred Stock held by such holder redeemed by the Company (a "**Series A Shareholder Redemption**") for a price per Share equal to the Liquidation Value for such Share, *plus* any unpaid accrued and accumulated dividends on such Share (whether or not declared) to, but excluding, the Series A Shareholder Redemption Date (the "**Series A Shareholder Redemption Price**" and, together with the Change of Control Redemption Price and Series A Company Redemption Price, the "**Redemption Prices**"). Any such Series A Redemption shall occur not more than sixty (60) days following receipt by the Company of a written notice (a "**Series A Shareholder Election Notice**") from any holder of Series A Preferred Stock. Within ten (10) Business Days following receipt of the Series A Shareholder Election Notice from a holder, the Company shall deliver to such holder a written notice describing the mechanics of such redemption (the "**Series A Shareholder Redemption Notice**" and, together with the Change of Control Redemption Notice and Series A Company Redemption Notice, the "**Redemption Notices**"); *provided, however,* that if Shares of Series A Preferred Stock are held in book-entry form through DTC, any Series A Shareholder Redemption Notice may be given to holders at such time in any manner required or permitted by the procedures of DTC. In exchange for the surrender to the Company by the respective holders of Shares of Series A Preferred Stock of their certificate or certificates, if any, or an affidavit of loss, representing such Shares on or after the applicable Series A Shareholder Redemption Date in accordance with **Section 7.8** below (or, if Shares of Series A Preferred Stock are held in book-entry form through DTC, the book-entry transfer in accordance with the applicable procedures of DTC to the Transfer Agent's account at DTC), the Series A Shareholder Redemption Price for the Shares being redeemed shall be payable in cash by the Company in immediately available funds to the respective holders of the Series A Preferred Stock, except to the extent prohibited by applicable Delaware law.

7.4 **Change of Control Redemption Notice.** Each Change of Control Redemption Notice shall state:

- (a) the Change of Control Redemption Price;
- (b) the CUSIP number of the Series A Preferred Stock to be redeemed;
- (c) the date of the closing of the redemption, which pursuant to **Section 7.1** shall be the date of consummation of the Change of Control (the applicable date, the "**Change of Control Redemption Date**");
- (d) a description of the payments and other actions required to be made or taken in order to satisfy all of the Company's obligations under the Credit Facility; and
- (e) the manner and place designated for surrender by the holder to the Company of his, her or its certificate or certificates, if any, representing the Shares of Series A Preferred Stock to be redeemed or, if applicable, that the Shares of Series A Preferred Stock to be redeemed must be surrendered by book-entry transfer in accordance with the applicable procedures of DTC.

7.5 **Shareholder Election Notice; Shareholder Redemption Notice.**

- (a) Each Series A Shareholder Election Notice shall state:

- (i) the CUSIP number of the Series A Preferred Stock to be redeemed;
  - (ii) the number of Shares of Series A Preferred Stock held by the holder that the Company shall redeem on the Series A Shareholder Redemption Date specified in the Series A Shareholder Election Notice; and
  - (iii) the date of the closing of the redemption, which pursuant to **Section 7.1** shall be no earlier than thirty (30) days and shall be no later than sixty (60) days following receipt by the Company of the Series A Shareholder Election Notice (the applicable date, the “**Series A Shareholder Redemption Date**”).
- (b) Each Series A Shareholder Redemption Notice shall state:
- (i) the CUSIP number of the Series A Preferred Stock to be redeemed;
  - (ii) the Series A Shareholder Redemption Price;
  - (iii) the Series A Conversion Election Date; and
  - (iv) the manner and place designated for surrender by the holder to the Company of his, her or its certificate or certificates, if any, representing the Shares of Series A Preferred Stock to be redeemed or, if applicable, that the Shares of Series A Preferred Stock to be redeemed must be surrendered by book-entry transfer in accordance with the applicable procedures of DTC.

7.6 Company Redemption Notice. Each Series A Company Redemption Notice shall state:

- (a) the number of Shares of Series A Preferred Stock held by the holder that the Company proposes to redeem on the Series A Company Redemption Date specified in the Series A Company Redemption Notice;
- (b) the date of the closing of the redemption, which pursuant to **Section 7.1** shall be no earlier than thirty (30) days and shall be no later than sixty (60) days following circulation by the Company of the Series A Company Redemption Notice (the applicable date, the “**Series A Company Redemption Date**” and, together with the Change of Control Redemption Date and Series A Shareholder Redemption Date, the “**Redemption Dates**”) and the Series A Company Redemption Price;
- (c) the Series A Conversion Election Date; and
- (d) the manner and place designated for surrender by the holder to the Company of his, her or its certificate or certificates, if any, representing the Shares of Series A Preferred Stock to be redeemed, or if applicable, that the Shares of Series A Preferred Stock to be redeemed must be surrendered by book-entry transfer in accordance with the applicable procedures of DTC.

7.7 Insufficient Funds; Remedies For Nonpayment.

(a) Insufficient Funds. If on any Change of Control Redemption Date or Series A Shareholder Redemption Date the assets of the Company legally available are insufficient to pay the full Change of Control Redemption Price or Series A Shareholder Redemption Price, as applicable, for the total number of Shares to be redeemed, the Company shall (i) take all commercially reasonable actions required and permitted under applicable law to maximize the assets legally available for paying the Change of Control Redemption Price or Series A Shareholder Redemption Price, as applicable, (ii) redeem out of all such assets legally available therefor on the applicable Change of Control Redemption Date or Series A Shareholder Redemption Date the maximum possible number of Shares that it can redeem on such date, *pro rata* among the holders of such Shares to be redeemed in proportion to the aggregate number of Shares to be redeemed by each such holder on the applicable Change of Control Redemption Date

or Series A Shareholder Redemption Date; *provided, however*, that if any Shares of Series A Preferred Stock are held in book-entry form through DTC, the Shares of Series A Preferred Stock to be redeemed shall be selected in accordance with the procedures of DTC, and (iii) following the applicable Change of Control Redemption Date or Series A Shareholder Redemption Date, at any time and from time to time when additional assets of the Company become legally available to redeem the remaining Shares, the Company shall use such assets to pay the remaining balance of the aggregate applicable Change of Control Redemption Price or Series A Shareholder Redemption Price.

(b) Remedies For Nonpayment. If on any Change of Control Redemption Date or Series A Shareholder Redemption Date all of the Shares elected to be redeemed pursuant to a Change of Control Redemption Notice or Series A Shareholder Election Notice are not redeemed in full by the Company by paying the entire Change of Control Redemption Price or Series A Shareholder Redemption Price, as applicable, until such Shares are fully redeemed and the aggregate Change of Control Redemption Price or Series A Shareholder Redemption Price is paid in full, all of the unredeemed Shares shall remain outstanding and continue to have the rights, preferences and privileges expressed herein, including the accrual and accumulation of dividends thereon as provided in **Section 4**; *provided* that the applicable Dividend Rate on all of the unredeemed Shares shall increase by 1.00% *per annum* on the applicable Change of Control Redemption Date or Series A Shareholder Redemption Date and shall subsequently increase by an additional 1.00% *per annum* on each anniversary thereafter of the Change of Control Redemption Date or Series A Shareholder Redemption Date up to a maximum Dividend Rate of 10.00% *per annum*, until such time as the full Change of Control Redemption Price or Series A Shareholder Redemption Price (including all unpaid accrued and accumulated dividends on such Shares at the adjusted Dividend Rate) has been paid in full in respect of all Shares to be redeemed.

7.8 Surrender of Certificates. On or before the applicable Redemption Date, each holder of Shares of Series A Preferred Stock being redeemed shall surrender the Definitive Series A Preferred Stock Certificate or Certificates, if any, representing such Shares to the Transfer Agent in the manner and place designated in the applicable Redemption Notice, or to the Company's corporate secretary at the Company's headquarters, duly assigned or endorsed for transfer to the Company (or accompanied by duly executed stock powers relating thereto), or, in the event such Definitive Series A Preferred Stock Certificate or Certificates are lost, stolen or missing, shall deliver an affidavit of loss, in the manner and place designated in the applicable Redemption Notice. Each surrendered Definitive Series A Preferred Stock Certificate shall be canceled and retired and the Company shall thereafter make payment of the applicable Redemption Price by certified check or wire transfer to the holder of record of such Definitive Series A Preferred Stock Certificate; *provided*, that if less than all the Shares represented by a surrendered Definitive Series A Preferred Stock Certificate are redeemed, then a new stock certificate representing the unredeemed Shares shall be issued in the name of the applicable holder of record of the canceled stock certificate.

7.9 Rights Subsequent to Redemption. If on the applicable Redemption Date the applicable Redemption Price is paid (or tendered for payment, including if the Shares of Series A Preferred Stock are held in book-entry form through DTC by tender for payment to DTC with irrevocable instructions and authority provided to DTC to pay the Redemption Price to holders of such Shares of Series A Preferred Stock) for any of the Shares to be redeemed on such Redemption Date, then on such date all rights of the holder in the Shares so redeemed and paid or tendered, including any rights to dividends on such Shares, shall cease, and such Shares shall no longer be deemed issued and outstanding.

## 8. Conversion.

8.1 Optional Right to Convert. Subject to the provisions of this **Section 8**, at any time and from time to time on or after the Original Issuance Date, any holder of Series A Preferred Stock shall have the right by written election to the Company to convert all or any portion of the outstanding Shares of Series A Preferred Stock (including any fraction of a Share) held by such holder along with the aggregate accrued or accumulated and unpaid dividends thereon into an aggregate number of shares of Common Stock as is determined by (a) *multiplying* the number of Shares (including any fraction of a Share) to be converted by the sum of (i) the Liquidation Value *plus* (ii) all accrued and accumulated and unpaid

dividends to, but excluding, the Conversion Date on such Shares to be converted and then (b) *dividing* the result by the Conversion Price in effect immediately prior to such conversion, and in addition thereto the holder shall receive cash in lieu of any fractional shares as set out in **Section 8.3(c)**.

8.2 Mandatory Conversion. Subject to the provisions of this **Section 8**, if at any time and from time to time on or after the thirty-six (36) month anniversary of the Original Issuance Date the Daily VWAP exceeds the Conversion Threshold for at least thirty (30) Trading Days in any forty-five (45) Trading Day period, including each of the last five (5) Trading Days in such forty-five (45) Trading Day period, the Company shall have the right by written election to the holders of Series A Preferred Stock to convert all but not less than all, of the outstanding Shares of Series A Preferred Stock (including any fraction of a Share) held by such holder along with the aggregate accrued or accumulated and unpaid dividends thereon into an aggregate number of shares of Common Stock as is determined by (a) *multiplying* the number of Shares (including any fraction of a Share) to be converted by the sum of (i) the Liquidation Value *plus* (ii) all accrued and accumulated and unpaid dividends to, but excluding, the Conversion Date on such Shares to be converted and then (b) *dividing* the result by the Conversion Price in effect immediately prior to such conversion, and in addition thereto the holder shall receive cash in lieu of any fractional shares as set out in **Section 8.3(c)**.

### 8.3 Procedures for Conversion; Effect of Conversion

(a) Procedures for Holder Conversion. In order to effectuate a conversion of Shares of Series A Preferred Stock pursuant to **Section 8.1**, a holder shall (i) submit a written election to the Company that such holder elects to convert Shares specifying the number of Shares elected to be converted and (ii) surrender, along with such written election, to the Company the certificate or certificates, if any, representing the Shares being converted, duly assigned or endorsed for transfer to the Company (or accompanied by duly executed stock powers relating thereto) or, in the event such certificate or certificates are lost, stolen or missing, accompanied by an affidavit of loss executed by the holder. The conversion of such Shares hereunder shall be deemed effective as of the date of submission of such written election and surrender of such Series A Preferred Stock certificate or certificates, if any, or delivery of such affidavit of loss, if applicable. Upon the receipt by the Company of a written election and the surrender of such certificate(s) and accompanying materials (if any), the Company shall as promptly as practicable (but in any event within ten (10) days thereafter) deliver to the relevant holder (A) the number of shares of Common Stock (including, subject to **Section 8.3(c)**, any fractional share) to which such holder shall be entitled upon conversion of the applicable Shares as calculated pursuant to **Section 8.1** and, if applicable (B) the number of Shares of Series A Preferred Stock delivered to the Company for conversion but otherwise not elected to be converted pursuant to the written election, in each case in book-entry form on the Company's share ledger. All shares of capital stock issued hereunder by the Company shall be duly and validly issued, fully paid and non-assessable, free and clear of all Taxes, liens, charges and encumbrances with respect to the issuance thereof. Notwithstanding anything to the contrary in this **Section 8.3(a)**, if any Shares of Series A Preferred Stock are held in book-entry form through DTC, holders must convert their Shares in accordance with the applicable procedures of DTC.

(b) Procedures for Mandatory Conversion. In order to effectuate a conversion of Shares of Series A Preferred Stock pursuant to **Section 8.2**, the Company shall submit a written election to each holder, promptly (but no later than two (2) Business Days) following the completion of the applicable forty-five (45) day Trading Period, that the Company intends to convert all outstanding Shares specifying that each holder shall surrender, in accordance with such written election, to the Company the certificate or certificates, if any, representing the Shares being converted, duly assigned or endorsed for transfer to the Company (or accompanied by duly executed stock powers relating thereto) or, in the event such certificate or certificates are lost, stolen or missing, accompanied by an affidavit of loss executed by the holder. The conversion of such Shares hereunder shall be deemed effective on (i) the date of surrender of such Series A Preferred Stock certificate or certificates or delivery of such affidavit of loss or, (ii) if the Shares are not certificated, the Business Day immediately following the date of the Company's written

election pursuant to **Section 8.2**; *provided*, if any Shares of Series A Preferred Stock are held in book-entry form through DTC, holders must convert their Shares in accordance with the applicable procedures of DTC (such date, the “**Mandatory Conversion Date**”). Upon effectiveness of such conversion, the Company shall deliver to the relevant holder the number of shares of Common Stock (including cash in lieu of any fractional share in accordance with **Section 8.3(c)**) to which such holder shall be entitled upon conversion of the applicable Shares as calculated pursuant to **Section 8.2** in book-entry form on the Company’s share ledger. All shares of Common Stock issued hereunder by the Company shall be duly and validly issued, fully paid and non-assessable, free and clear of all Taxes, liens, charges and encumbrances with respect to the issuance thereof.

(c) Fractional Shares. The Company shall not issue any fractional shares of Common Stock upon conversion of Series A Preferred Stock. Instead the Company shall pay a cash adjustment to the holder of Series A Preferred Stock being converted based upon the Current Market Price on the Trading Day prior to the Conversion Date.

(d) Effect of Conversion. All Shares of Series A Preferred Stock converted as provided in **Section 8.1** or **Section 8.2** shall no longer be deemed outstanding as of the applicable Conversion Date and all rights with respect to such Shares shall immediately cease and terminate as of such time (including, without limitation, any right of redemption pursuant to **Section 7**), other than the right of the holder to receive shares of Common Stock and payment in lieu of any fraction of a Share in exchange therefor. The “**Conversion Date**” means (i) with respect to conversion of any Shares of Series A Preferred Stock at the option of any holder pursuant to **Section 8.1**, the date on which such holder complies with the procedures in **Section 8.3(a)** (including the submission of the written election to the Company of its election to convert), and (ii) with respect to a mandatory conversion pursuant to **Section 8.2**, the Mandatory Conversion Date.

(e) Conversion prior to Spin-Off. Notwithstanding the foregoing, in no event may a holder of Series A Preferred Stock convert any portion of the outstanding Shares of Series A Preferred Stock prior to earlier to occur of (A) the consummation of the CIS Spin-Off Transaction and (B) the Spin Cut-Off Date, *provided* that this restriction shall not apply with respect to any holder of Series A Preferred Stock that is a lender or other counterparty providing any Back Leverage (as defined under the Investment Agreement).

8.4 Reservation of Stock. The Company shall at all times when any Shares of Series A Preferred Stock is outstanding reserve and keep available out of its authorized but unissued shares of capital stock, solely for the purpose of issuance upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock issuable upon the conversion of all outstanding Series A Preferred Stock pursuant to this **Section 8**, taking into account any adjustment to such number of shares so issuable in accordance with **Section 8.7** hereof. The Company shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Company upon each such issuance). The Company shall not close its books against the transfer of any of its capital stock in any manner which would prevent the timely conversion of the Shares of Series A Preferred Stock.

8.5 No Charge or Payment. The issuance of certificates for shares of Common Stock upon conversion of Shares of Series A Preferred Stock pursuant to **Section 8.1** or **Section 8.2** shall be made without payment of additional consideration by, or other charge, cost or Tax to, the holder in respect thereof.

8.6 Termination of Conversion Right in Connection with Redemption. Notwithstanding anything to the contrary set forth in this Certificate of Designation, in no event may Shares of Series A Preferred Stock be converted as provided in **Section 8.1** on and following the date that is two (2) Business Days prior to the Series A Company Redemption Date or Series A Shareholder Redemption Date, as

applicable, in respect of such Shares, *provided that*, for the avoidance of doubt, this **Section 8.6** shall no longer apply in the event in respect of Shares of Series A Preferred Stock to be redeemed in accordance with **Section 7** if the closing of the redemption of such Shares does not occur on the applicable Redemption Date and so long as such Shares are not otherwise redeemed.

**8.7 Adjustment to Conversion Price and Number of Conversion Shares.** In order to prevent dilution of the conversion rights granted under this **Section 8**, the Conversion Price and the number of Conversion Shares issuable on conversion of the Shares of Series A Preferred Stock shall be subject to adjustment from time to time as provided in this **Section 8.7**.

(a) **Subdivisions and Combinations.** In case the outstanding shares of Common Stock shall be subdivided (whether by stock split, recapitalization or otherwise) into a greater number of shares of Common Stock or combined (whether by consolidation, reverse stock split or otherwise) into a lesser number of shares of Common Stock, then the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision or combination becomes effective shall be adjusted to equal the product of the Conversion Price in effect on such date and a fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such subdivision or combination, and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such subdivision or combination. Such adjustment shall become effective retroactively to the close of business on the day upon which such subdivision or combination becomes effective. Absent a change in Tax law or IRS practice (a “**Change in Tax Law**”), or a contrary determination (as defined in Section 1313(a) of the Code), the Company shall treat any adjustment to the Conversion Price pursuant to this **Section 8.7(a)** as being made pursuant to a “bona fide, reasonable, adjustment formula” within the meaning of Treasury Regulations Section 1.305-7(b) for U.S. federal and applicable state and local income Tax and withholding Tax purposes, and shall not take any position inconsistent with such treatment.

(b) **Dividends or Distributions Payable in Common Stock.** In case the Company shall pay or make a dividend or other distribution on Common Stock payable in shares of Common Stock (in which case, for the avoidance of doubt, the holders of Series A Preferred Stock shall not participate), the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the record date fixed for such determination and the denominator of which shall be the sum of such number of shares outstanding at the close of business on the record date fixed for such determination and the total number of shares constituting such dividend or other distribution, such reduction to become effective retroactively to a date immediately following the close of business on the record date for the determination of the holders entitled to such dividends and distributions. For the purposes of this **Section 8.7(b)**, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company. Absent a Change in Tax Law, or a contrary determination (as defined in Section 1313(a) of the Code), the Company shall treat any adjustment to the Conversion Price pursuant to this **Section 8.7(b)** as being made pursuant to a “bona fide, reasonable, adjustment formula” within the meaning of Treasury Regulations Section 1.305-7(b) for U.S. federal and applicable state and local income Tax and withholding Tax purposes, and shall not take any position inconsistent with such treatment.

(c) **Adjustment for Reorganization Events.** If there shall occur any reclassification, statutory exchange, reorganization, recapitalization, consolidation or merger involving the Company with or into another Person in which a majority of the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (excluding a merger solely for the purpose of changing the Company’s jurisdiction of incorporation) other than a Change of Control (a “**Reorganization Event**”), then, subject to

**Section 5**, following any such Reorganization Event, each share of Series A Preferred Stock shall remain outstanding and be convertible into the number, kind and amount of securities, cash or other property which a holder of such share of Series A Preferred Stock would have received in such Reorganization Event had such holder converted its Shares of Series A Preferred Stock into the applicable number of shares of Common Stock immediately prior to the effective date of the Reorganization Event using the Conversion Price applicable immediately prior to the effective date of the Reorganization Event; and, in such case, appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the provisions in this **Section 8.7** set forth with respect to the rights and interest thereafter of the holders, to the end that the provisions set forth in this **Section 8.7** (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably practicable, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series A Preferred Stock. The Company (or any successor) shall, no less than twenty (20) Business Days prior to the occurrence of any Reorganization Event, provide written notice to the holders of Series A Preferred Stock of such occurrence of such event and of the kind and amount of the cash, securities or other property that each share of Series A Preferred Stock will be convertible into under this **Section 8.7(c)**. Failure to deliver such notice shall not affect the operation of this **Section 8.7(c)**. The Company shall not enter into any agreement for a transaction constituting a Reorganization Event unless, to the extent that the Company is not the surviving corporation in such Reorganization Event, or will be dissolved in connection with such Reorganization Event, proper provision shall be made in the agreements governing such Reorganization Event for the conversion of the Series A Preferred Stock into stock of the Person surviving such Reorganization Event or such other continuing entity in such Reorganization Event. Absent a Change in Tax Law, or a contrary determination (as defined in Section 1313(a) of the Code), the Company shall treat any adjustment to the Conversion Price pursuant to this **Section 8.7(c)** as being made pursuant to a “bona fide, reasonable, adjustment formula” within the meaning of Treasury Regulations Section 1.305-7(b) for U.S. federal and applicable state and local income Tax and withholding Tax purposes, and shall not take any position inconsistent with such treatment.

(d) **Certain Events.** In the event that the CIS Spin-Off Transaction is consummated, the Conversion Price shall be adjusted immediately after the close of business on the CIS Spin-Off Transaction Adjustment Date by *multiplying* the Conversion Price in effect immediately prior to the CIS Spin-Off Transaction by the CIS Spin-Off Transaction Adjustment Ratio; *provided* that, in the event that the CIS Spin-Off Transaction Adjustment Ratio is greater than 0.76, it shall be deemed to be 0.76 for purposes of this adjustment to the Conversion Price, and in the event that the CIS Spin-Off Transaction Adjustment Ratio is less than 0.68, it shall be deemed to be 0.68 for purposes of this adjustment to the Conversion Price. For the avoidance of doubt, holders of Series A Preferred Stock will not be entitled to receive CIS Spin-Off Transaction Shares in the CIS Spin-Off Transaction.

(e) **Rounding; Par Value.** All calculations under **Section 8.7** shall be made to the nearest 1/1,000th of a cent or to the nearest 1/1,000th of a share, as the case may be. No adjustment in the Conversion Price shall reduce the Conversion Price below the then par value of the Common Stock.

(f) **Certificate as to Adjustment.**

(i) As promptly as reasonably practicable following any adjustment of the Conversion Price, but in any event not later than thirty (30) days thereafter, the Company shall furnish to each holder of record of Series A Preferred Stock at the address specified for such holder in the books and records of the Company (or at such other address as may be provided to the Company in writing by such holder) a certificate of an executive officer setting forth in reasonable detail such adjustment and the facts upon which it is based and certifying the calculation thereof.

(ii) As promptly as reasonably practicable following the receipt by the Company of a written request by any holder of Series A Preferred Stock, but in any event

not later than thirty (30) days thereafter, the Company shall furnish to such holder a certificate of an executive officer certifying the Conversion Price then in effect and the number of Conversion Shares or the amount, if any, of other shares of stock, securities or assets then issuable to such holder upon conversion of the Shares of Series A Preferred Stock held by such holder.

(g) Notices. In the event:

(i) that the Company shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, to vote at a meeting (or by written consent), to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(ii) of any capital reorganization of the Company, any reclassification of the Common Stock of the Company, any consolidation or merger of the Company with or into another Person, or sale of all or substantially all of the Company's assets to another Person; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then, and in each such case, unless the Company has previously publicly announced such information (including through filing or furnishing such information with the Securities and Exchange Commission), the Company shall send or cause to be sent to each holder of record of Series A Preferred Stock at the address specified for such holder in the books and records of the Company (or at such other address as may be provided to the Company in writing by such holder) or, if the Shares of Series A Preferred Stock are held in book-entry form through DTC, in accordance with the applicable procedures of DTC at least ten (10) days prior to the applicable record date or the applicable expected effective date, as the case may be, for the event, a written notice specifying, as the case may be, (A) the record date for such dividend, distribution, meeting or consent or other right or action, and a description of such dividend, distribution or other right or action to be taken at such meeting or by written consent, or (B) the effective date on which such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up is proposed to take place, and the date, if any is to be fixed, as of which the books of the Company shall close or a record shall be taken with respect to which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Conversion Shares.

9. Reissuance of Series A Preferred Stock. Shares of Series A Preferred Stock that have been issued and reacquired by the Company in any manner, including shares purchased or redeemed or exchanged or converted, shall (upon compliance with any applicable provisions of the laws of Delaware) have the status of authorized but unissued shares of Preferred Stock of the Company undesignated as to series and may be designated or re-designated and issued or reissued, as the case may be, as part of any series of preferred stock of the Company, *provided* that any issuance of such shares as Series A Preferred Stock must be in compliance with the terms hereof.

10. Notices. Except as otherwise provided herein, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the



addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent (a) to the Company, at its principal executive offices and (b) to any stockholder, at such holder's address as it appears in the stock records of the Company (or at such other address for a stockholder as shall be specified in a notice given in accordance with this **Section 10**).

11. **Amendment and Waiver.** No provision of this Certificate of Designation may be amended, modified or waived except by an instrument in writing executed by the Company and holders of Series A Preferred Stock holding a majority of the Shares of Series A Preferred Stock then outstanding, and any such written amendment, modification or waiver will be binding upon the Company and each holder of Series A Preferred Stock; *provided*, that no amendment, modification or waiver of the terms or relative priorities of the Series A Preferred Stock may be accomplished by the merger, consolidation or other transaction of the Company with another Company or entity unless the Company has obtained the prior written consent of the holders in accordance with this **Section 11**.

12. **Withholding.** Notwithstanding anything herein or in any other agreement to the contrary, the Company or any withholding agent shall be entitled to deduct and withhold from any amounts payable or otherwise deliverable in respect of the Series A Preferred Stock or Conversion Shares any Taxes as may be required to be deducted or withheld in respect of the Series A Preferred Stock or Conversion Shares under any provision of U.S. federal, state, local or non-U.S. law in respect of Taxes or other applicable law, and the holders shall provide the Company or any withholding agent with any necessary U.S. Tax forms, including a IRS Form W-9 or the appropriate IRS Form W-8, as applicable, to the extent they are legally able to provide such forms, provided that in the event any holder fails to deliver such Tax forms, the Company's sole remedy shall be to make the appropriate withholding. Each holder shall use commercially reasonable efforts to update such forms if and when such forms become obsolete or invalid. Any amounts that are deducted or withheld pursuant to this **Section 12** shall be paid over to the appropriate taxing authority, and such amounts so paid shall be treated for all purposes of this Certificate of Designation and otherwise as having been paid to the holder in respect of which such deduction or withholding was made.

13. **Tax Matters.** Absent a Change in Tax Law, or a contrary determination that is final (as defined in Section 1313(a) of the Code), the holders of Series A Preferred Stock and the Company agree (i) not to treat the Series A Preferred Stock as "preferred stock" within the meaning of Section 305 of the Code and Treasury Regulations Section 1.305-5, and (ii) to treat any adjustment made to the conversion price of the Series A Preferred Stock pursuant to **Section 8.7(d)** as an adjustment to the purchase price of the Series A Preferred Stock within the meaning of Treasury Regulations Section 1.305-1(c), in each case of clauses (i) and (ii), for U.S. federal and applicable state and local income Tax and withholding Tax purposes, and shall not take any position inconsistent with such treatment. In addition, absent a Change in Tax Law or a determination that is "final" under Section 1313 of the Code, in any period that the Company concludes that it must report dividend income to a holder of Preferred Stock as a result of a determination that an increase in the "conversion ratio" of the Preferred Stock has occurred that is subject to Treasury Regulations Section 1.305-7 as a result of the accumulation of dividends, the amount of such dividend shall be based on the cash amount of dividends that have so accrued and not any other metric.

14. **Rule 144A.**

14.1 **Form of Series A Preferred Stock.**

(a) The Series A Preferred Stock shall be initially issued in the form of one or more permanent Global Certificates in definitive, fully registered form with the Global Certificate Legend set forth in **Exhibit B** hereto. The Series A Preferred Stock Certificates shall be in the form set forth in **Exhibit C** hereto, which is incorporated in and expressly made a part of this Certificate of Designation. The Global Certificates may have notations, legends or endorsements as set forth herein or as required by law or stock exchange rules to which the Company is subject, if any.

(b) The Global Certificates shall be deposited on behalf of the holders represented thereby with the Transfer Agent, as custodian for DTC, and registered in the name of DTC or a nominee of DTC, duly executed by an officer of the Company for the Company, in accordance with the Company's bylaws and applicable law. If an officer whose signature is on a Series A Preferred Stock Certificate no longer holds that office at the time the Transfer Agent countersigned the Series A Preferred Stock Certificate, the Series A Preferred Stock Certificate shall be valid nevertheless. A Series A Preferred Stock Certificate shall not be valid until an authorized signatory of the Transfer Agent countersigns such Series A Preferred Stock Certificate. The Transfer Agent will, upon receipt of a written order of the Company signed by an officer of the Company, countersign a Series A Preferred Stock Certificate for original issue. Each Series A Preferred Stock Certificate shall be dated the date of its countersignature.

(c) The aggregate number of Shares represented by each Global Certificate may from time to time be increased or decreased by adjustments made on the records of the Transfer Agent and DTC or its nominee as hereinafter provided. At such time as all interests in Shares represented by a Global Certificate have been canceled, repurchased or transferred, such Global Certificate shall be canceled by the Transfer Agent upon receipt of a written order of the Company signed by an officer of the Company.

(d) This **Section 14.1** shall apply only to a Global Certificate deposited with or on behalf of DTC. The Company shall execute and deliver initially one or more Global Certificates that (i) shall be registered in the name of Cede & Co. or other nominee of DTC and (ii) shall be delivered by the Company to Cede & Co. or pursuant to instructions received from Cede & Co. or held by the Transfer Agent as custodian for DTC. Members of, or participants in, DTC ("**Agent Members**") shall have no rights under this Certificate of Designation, with respect to any Global Certificate held on their behalf by DTC or by the Transfer Agent as the custodian of DTC, or under such Global Certificate, and DTC or its nominee may be treated by the Company, the Transfer Agent and any agent of the Company or the Transfer Agent as the absolute owner of such Global Certificate for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Transfer Agent or any agent of the Company or the Transfer Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a holder of a beneficial interest in any Global Certificate.

#### 14.2 Transfer Restrictions; Global Certificates for Stock.

(a) In the case of Rule 144A Shares, prior to the date which is one year after the later of the Original Issuance Date and the last date on which the Company or any Affiliate of the Company was the owner of such Shares or a beneficial interest in a Series A Preferred Stock Certificate representing such Shares, no holder or Beneficial Owner of the Series A Preferred Stock may transfer any Shares of Series A Preferred Stock owned by it except:

- (i) pursuant to an effective registration statement under the Securities Act;
- (ii) for so long as the shares are eligible for resale pursuant to Rule 144A under the Securities Act ("**Rule 144A**"), to a Person it reasonably believes is a "qualified institutional buyer" as defined in Rule 144A (a "**Qualified Institutional Buyer**") that is purchasing for its own account or for the account of another Qualified Institutional Buyer in a transaction meeting the requirements of Rule 144A;
- (iii) pursuant to another available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act; or
- (iv) to the Company or any of its Affiliates,

subject to the Company's and the Transfer Agent's right prior to any offer, sale or other transfer pursuant to clause (ii) and (iii) to require the delivery of certification and/or other information reasonably satisfactory to each of them.

(b) Series A Preferred Stock Certificates representing Rule 144A Shares shall bear the applicable restrictive legend set forth in Exhibit A hereto until such legend is removed by the Company in accordance with the procedures set forth in **Section 14.2(h)**.

(c) Each transferee of Shares of Series A Preferred Stock shall be deemed to have represented and agreed that either (i) no portion of the assets used to acquire or hold the Series A Preferred Stock and the Common Stock, if any, that may be issued upon conversion thereof constitutes the assets of (A) any employee benefit plan that is subject to Title I of the Employee Retirement Income Security Act of 1973 ("ERISA"), (B) a plan, individual retirement account or other arrangement that is subject to Section 4975 of the Code or provisions under any other federal, state, local, non-U.S. or other laws, rules or regulations that are similar to such provisions of ERISA or the Code ("**Similar Laws**"), or (C) an entity whose underlying assets are considered to include "plan assets" of any such plan, account or arrangement or (ii) the purchase and holding by such transferee of the Series A Preferred Stock and the Common Stock, if any, that may be issued upon conversion thereof will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a similar violation under any applicable Similar Law.

(d) The Shares of Series A Preferred Stock are freely transferable subject to **Sections 14.2(a), (b)** and (c) and the applicable provisions of the Investment Agreement.

(e) The Shares of Series A Preferred Stock initially sold on the Original Issuance Date (the "**Rule 144A Shares**") shall be issued in the form of one or more permanent Global Certificates as set forth on the form of the Series A Preferred Stock certificate attached hereto as Exhibit C, including the legend set forth in Exhibit B hereto (the "**Rule 144A Global Certificate**"). The Rule 144A Global Certificate shall be deposited upon issuance with, or on behalf of, the Transfer Agent as custodian for DTC and registered in the name of Cede & Co., as nominee for DTC, for credit to the respective accounts of the Beneficial Owners of the Series A Preferred Stock represented thereby (or to such other accounts as they may direct). The number of Shares of the Series A Preferred Stock represented by the Rule 144A Global Certificate may from time to time be increased or decreased by adjustments made on the records of the Transfer Agent, as custodian for DTC or its nominee, as hereinafter provided.

(f) A holder may transfer Shares of Series A Preferred Stock to another Person by presenting to the Transfer Agent a written request therefor stating the name of the proposed transferee, accompanied by any certification, opinion or other document reasonably required by the Transfer Agent. The Transfer Agent shall promptly register any transfer that meets the applicable requirements by noting the same in the register maintained by the Transfer Agent for the purpose, and no transfer shall be effective until it is registered in such register. The transfer of any Series A Preferred Stock Certificate (or a beneficial interest therein) may only be made in accordance with applicable law and this Certificate of Designation, as applicable, and, in the case of a Global Certificate (or a beneficial interest therein), the applicable rules and procedures of DTC. The Transfer Agent shall refuse to register any requested transfer that does not comply with this Certificate of Designation. A Global Certificate may not be transferred as a whole except by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any such nominee to a successor depository or a nominee of such successor depository.

(g) The transfer and exchange of beneficial interests in Global Certificates shall be effected through DTC, in accordance with this Certificate of Designation (including restrictions on transfer set forth in this **Section 14.2**, as applicable) and the applicable procedures of DTC therefor.

(h) Following the one-year anniversary of the later of the Original Issuance Date and the last date on which the Company or any Affiliate of the Company was the owner of such Shares or a beneficial interest in a Series A Preferred Stock Certificate representing such Shares, the Company shall, if required by the Issuer Agreement, and if not so required may, in its sole discretion, (i) if Rule 144A Shares (if any) are represented by one or more Rule 144A Global Certificates, comply with any applicable DTC procedures for delegending or otherwise exchanging any such Restricted Global Certificate for an Unrestricted Global Certificate and changing the restricted CUSIP number for an unrestricted CUSIP number (including DTC's mandatory exchange process, if applicable), and (ii) if Rule 144A Shares (if any) are represented by Restricted Definitive Series A Preferred Stock Certificates, (1) instruct the Transfer Agent to cancel any such Restricted Definitive Series A Preferred Stock Certificates and (2) issue to the holder thereof (or its transferee) a new Unrestricted Definitive Series A Preferred Stock Certificate representing the same number of Shares of Series A Preferred Stock, registered in the name of the holder thereof (or its transferee), if, in the case of both clauses (i) and (ii), the Company determines in its sole discretion (upon the advice of counsel and such other certifications and evidence as the Company may reasonably require) that Rule 144A Shares are eligible for resale by non-Affiliates of the Company pursuant to Rule 144 under the Securities Act (or a successor provision) without the need to satisfy certain conditions to ensure that transfers thereof are effected in compliance with the Securities Act (the date on which the Company makes such a determination in the affirmative, the "**Resale Restriction Termination Date**").

(i) (i) Except as provided below, owners of beneficial interests in Global Certificates shall not be entitled to receive Definitive Series A Preferred Stock Certificates. If required pursuant to the Issuer Agreement, if required pursuant to any applicable law or regulation, or if requested by the owners of beneficial interests in Global Certificates and not in violation of the Issuer Agreement, Beneficial Owners may obtain Definitive Series A Preferred Stock Certificates in exchange for their beneficial interests in a Global Certificate upon written request in accordance with DTC's and the Transfer Agent's procedures. In addition, Definitive Series A Preferred Stock Certificates shall be transferred to all Beneficial Owners in exchange for their beneficial interests in a Global Certificate if (A) DTC notifies the Company that it is unwilling or unable to continue as depository for such Global Certificate or DTC ceases to be a clearing agency registered under the Exchange Act, at a time when DTC is required to be so registered in order to act as depository, and in each case a successor depository is not appointed by the Company within 90 days of such notice or (B) the Company in its sole discretion executes and delivers to the Transfer Agent an officer's certificate stating that such Global Certificate shall be so exchangeable. In the event of the occurrence of any of the events specified in the preceding two sentences, the Company shall promptly make available to the Transfer Agent a reasonable supply of Definitive Series A Preferred Stock Certificates.

(ii) Any Definitive Series A Preferred Stock Certificate delivered in exchange for an interest in a Global Certificate pursuant to this **Section 14.2(i)** shall (A) bear the appropriate legend set forth in Exhibit A, in the case of Rule 144A Shares, if a Definitive Series A Preferred Stock Certificate shall be issued before the Resale Restriction Termination Date, and (B) be registered in the name of the holder of the Definitive Series A Preferred Stock Certificate.

(iii) If a Definitive Series A Preferred Stock Certificate is transferred or exchanged for a beneficial interest in a Global Certificate, the Transfer Agent shall (A) cancel such Definitive Series A Preferred Stock Certificate, (B) record an increase in the number of Shares of Series A Preferred Stock represented by such Global Certificate equal to the number of Shares of Series A Preferred Stock of such transfer or exchange and (C) in the event that such transfer or exchange involves less than the entire number of shares represented by the canceled Definitive Series A Preferred Stock Certificate, the Company shall execute and make available for delivery to the transferring Holder a new Definitive Series A Preferred Stock Certificate representing the Shares of Series A Preferred Stock not so transferred.

(iv) If a Definitive Series A Preferred Stock Certificate is transferred or exchanged for another Definitive Series A Preferred Stock Certificate, (A) the Transfer Agent shall cancel the Definitive Series A Preferred Stock Certificate being transferred or exchanged, (B) the Company shall execute and make available for delivery one or more new Definitive Series A Preferred Stock Certificates representing the number of Shares of Series A Preferred Stock of such transfer or exchange to the transferee (in the case of a transfer) or the Holder of the canceled Definitive Series A Preferred Stock Certificate (in the case of an exchange), registered in the name of such transferee or Holder, as applicable, and (C) if such transfer or exchange involves less than the entire number of shares represented by the canceled Definitive Series A Preferred Stock Certificate, the Company shall execute and make available for delivery to the Holder thereof one or more Definitive Series A Preferred Stock Certificates representing the number of Shares of Series A Preferred Stock equal to the untransferred or unexchanged Shares of Series A Preferred Stock represented by the canceled Definitive Series A Preferred Stock Certificates, registered in the name of the holder thereof.

(v) Prior to the Resale Restriction Termination Date, a registration of transfer or exchange of beneficial interests in Definitive Series A Preferred Stock Certificates representing Rule 144A Shares to a Qualified Institutional Buyer shall be made upon the representation of the transferee in the form as set forth on the applicable Series A Preferred Stock Certificate that it is purchasing for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a Qualified Institutional Buyer and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as it has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A.

14.3 Transfer Agent. The duly appointed Transfer Agent for the Series A Preferred Stock on the Original Issuance Date shall be Broadridge Corporate Issuer Solutions, Inc. The Company may, in its sole discretion, remove the Transfer Agent in accordance with the agreement between the Company and the Transfer Agent; *provided* that the Company shall appoint a successor transfer agent who shall accept such appointment prior to the effectiveness of such removal.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, said corporation has caused this First Amended and Restated Certificate of Designation, Preferences and Rights to be signed by Peter Fante, Chief Administrative Officer, and attested by Jonathan Kohl, General Counsel and Corporate Secretary, as of May 7, 2020.

/s/ Peter Fante

\_\_\_\_\_  
Name: Peter Fante

Title: Chief Administrative Officer

ATTESTED:

By: /s/ Jonathan Kohl

\_\_\_\_\_  
Name: Jonathan Kohl

Title: General Counsel and Corporate Secretary

EXHIBIT A

**RESTRICTIVE LEGEND TO THE SERIES A PREFERRED STOCK CERTIFICATE**

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY SECURITIES LAWS OF ANY OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY BENEFICIAL INTERESTS HEREIN MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE THAT IS [IN THE CASE OF RULE 144A CERTIFICATE: ONE YEAR AFTER THE LATER OF THE DATE OF ORIGINAL ISSUE AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF SUCH SECURITY OR THE RELEVANT BENEFICIAL INTEREST THEREIN (OR ANY PREDECESSOR THERETO)], ONLY (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SHARES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, OR (D) TO THE COMPANY OR ANY OF ITS AFFILIATES, SUBJECT TO THE COMPANY'S AND THE TRANSFER AGENT'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR OTHER TRANSFER PURSUANT TO CLAUSE (B) AND (C) TO REQUIRE THE DELIVERY OF CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS, AND QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS SET FORTH IN THE FIRST AMENDED AND RESTATED CERTIFICATE OF DESIGNATION, PREFERENCES AND RIGHTS FOR THE SERIES A CONVERTIBLE PERPETUAL PREFERRED STOCK FILED WITH THE SECRETARY OF STATE FOR THE STATE OF DELAWARE PURSUANT TO SECTION 151 OF THE DELAWARE GENERAL CORPORATION LAW (THE "CERTIFICATE OF DESIGNATION"). NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THE CERTIFICATE OF DESIGNATION. A COPY OF THE CERTIFICATE OF DESIGNATION WILL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER UPON REQUEST.

IN ADDITION, THE HOLDER OF THIS SECURITY UNDERSTANDS THAT THE COMPANY MAY RECEIVE A LIST OF PARTICIPANTS HOLDING POSITIONS IN THIS SECURITY. EACH PURCHASER OF THIS SECURITY OR ANY BENEFICIAL INTERESTS HEREIN WILL BE DEEMED TO REPRESENT THAT IT AGREES TO COMPLY WITH THE TRANSFER RESTRICTIONS SET FORTH HEREIN AND IN THE CERTIFICATE OF DESIGNATION, AND WILL NOT TRANSFER THIS SECURITY OR ANY BENEFICIAL INTERESTS HEREIN EXCEPT TO AN ELIGIBLE PURCHASER WHO CAN MAKE THE SAME ACKNOWLEDGMENTS, REPRESENTATIONS, WARRANTIES AND AGREEMENTS ON BEHALF OF ITSELF AND EACH ACCOUNT FOR WHICH IT IS PURCHASING.

**EXHIBIT B**

**GLOBAL LEGEND CERTIFICATE**

THIS GLOBAL CERTIFICATE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE FIRST AMENDED AND RESTATED CERTIFICATE OF DESIGNATION, PREFERENCES AND RIGHTS FOR THE SERIES A CONVERTIBLE PERPETUAL PREFERRED STOCK FILED WITH THE SECRETARY OF STATE FOR THE STATE OF DELAWARE PURSUANT TO SECTION 151 OF THE DELAWARE GENERAL CORPORATION LAW (THE "CERTIFICATE OF DESIGNATION")) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRANSFER AGENT MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 14.2 OF THE CERTIFICATE OF DESIGNATION, (II) THIS GLOBAL CERTIFICATE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 14.2 OF THE CERTIFICATE OF DESIGNATION, (III) THIS GLOBAL CERTIFICATE MAY BE DELIVERED TO THE TRANSFER AGENT FOR CANCELLATION PURSUANT TO SECTION 14.1 OF THE CERTIFICATE OF DESIGNATION AND (IV) THIS GLOBAL CERTIFICATE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS A BENEFICIAL INTEREST HEREIN.



**EXHIBIT C**

**FACE OF SECURITY**

*[Insert the applicable legend(s), if any, pursuant to Section 14 of the Certificate of Designation]*

Certificate Number: [●]

[●] Shares  
144A CUSIP No.: [●]  
ISIN No.: [●]

Series A Preferred Stock (par value \$0.001 per share)  
(Initial Liquidation Value \$1,000.00 per share)

of

VERINT SYSTEMS INC.

Verint Systems Inc., a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the “**Company**”), hereby certifies that [●] (the “**Holder**”) is the registered owner of [●] fully paid and non-assessable preferred securities of the Company designated the Series A Convertible Perpetual Preferred Stock (par value \$0.001) (initial Liquidation Value \$1,000.00 per share) (the “**Series A Preferred Stock**”). The dividend rate of the Series A Preferred Stock is set forth in the Certificate of Designation.

The Series A Preferred Stock is transferable on the books and records of [●], as Transfer Agent, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer.

The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Series A Preferred Stock represented hereby are issued and shall in all respects be subject to the provisions of the First Amended and Restated Certificate of Designation, Preferences and Rights of the Series A Preferred Stock adopted on [●], 2020, as the same may be amended, supplemented, waived or otherwise modified from time to time (the “**Certificate of Designation**”). Capitalized terms used but not defined herein shall have the meanings given them in the Certificate of Designation. The Company shall provide a copy of the Certificate of Designation to a Holder without charge upon written request to the Company at its principal place of business. In the event of any conflict or inconsistency between this Certificate and the Certificate of Designation, the Certificate of Designation shall control and govern.

Reference is hereby made to select provisions of the Series A Preferred Stock set forth on the reverse hereof, and to the Certificate of Designation, which select provisions and the Certificate of Designation shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this certificate, each Holder (and each Beneficial Owner thereof) shall be deemed, by its acceptance hereof, to have agreed to the terms of the Series A Preferred Stock.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this certificate this day of [●], 2020.

VERINT SYSTEMS INC.

By: \_\_\_\_\_  
Name:  
Title:

C-2

---

Countersigned by:  
BROADRIDGE CORPORATE ISSUER SOLUTIONS, INC.,  
as Transfer Agent

By: \_\_\_\_\_  
Name:  
Title:

---

**REVERSE OF SECURITY**

Dividends on the Series A Preferred Stock shall be payable as provided in the Certificate of Designation.

The Liquidation Value on the Series A Preferred Stock shall be adjusted as provided in the Certificate of Designation.

The Series A Preferred Stock is entitled to the voting rights set forth in the Certificate of Designation.

The Series A Preferred Stock shall be redeemable as provided in the Certificate of Designation.

The Company shall be subject to the covenants set forth in the Certificate of Designation.

**SHARE TRANSFER FORM**

FOR VALUE RECEIVED, the undersigned transfers the Series A Preferred Stock evidenced hereby to:

(INSERT ASSIGNEE'S LEGAL NAME)  
(Insert assignee's soc. sec. or tax I.D. no.)  
(Print or type assignee's name, address and zip code)

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

Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this  
Series A Preferred Stock Certificate)

Signature Guarantee\*: \_\_\_\_\_

\* Signature must be guaranteed by an "eligible guarantor institution," that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the registrar of the Company in addition to, or in substitution for, STAMP, all in accordance with the Exchange Act).

**SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL CERTIFICATE**

The following exchanges of a part of this Global Certificate for an interest in another Global Certificate or for a Definitive Series A Preferred Stock Certificate, or exchanges of a part of another Global Certificate or Definitive Series A Preferred Stock Certificate for an interest in this Global Certificate, have been made:

<u>Date of Exchange</u>	<b>Amount of decrease in number of Shares of this Global Certificate</b>	<b>Amount of increase in number of Shares of this Global Certificate</b>	<b>Number of Shares of this Global Certificate following such decrease (or increase)</b>	<b>Signature of authorized signatory of Custodian</b>
-------------------------	--	--	--	---

REGISTRATION RIGHTS AGREEMENT

by and between

VERINT SYSTEMS INC

and

VALOR PARENT LP

Dated as of May 7, 2020

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
Resale Shelf Registration	
Section 1.1 Resale Shelf Registration Statement	1
Section 1.2 Effectiveness Period	1
Section 1.3 Subsequent Shelf Registration Statement	2
Section 1.4 Supplements and Amendments	2
Section 1.5 Subsequent Holder Notice	2
Section 1.6 Underwritten Offering	3
Section 1.7 Take-Down Notice	4
Section 1.8 Piggyback Registration	4
ARTICLE II	
Additional Provisions Regarding Registration Rights	
Section 2.1 Registration Procedures	5
Section 2.2 Suspension	8
Section 2.3 Expenses of Registration	8
Section 2.4 Information by Holders	9
Section 2.5 Rule 144 Reporting	10
Section 2.6 Holdback Agreement	10
ARTICLE III	
Indemnification	
Section 3.1 Indemnification by Company	10
Section 3.2 Indemnification by Holders	11
Section 3.3 Notification	12
Section 3.4 Contribution	13
Section 3.5 Survival	13
ARTICLE IV	
Transfer and Termination of Registration Rights	
Section 4.1 Transfer of Registration Rights	13
Section 4.2 Termination of Registration Rights	14



---

ARTICLE V

Miscellaneous

Section 5.1 Amendments and Waivers	14
Section 5.2 Extension of Time, Waiver, Etc	14
Section 5.3 Assignment	14
Section 5.4 Counterparts	14
Section 5.5 Entire Agreement; No Third Party Beneficiary	14
Section 5.6 Governing Law; Jurisdiction	15
Section 5.7 Specific Enforcement	15
Section 5.8 Waiver of Jury Trial	15
Section 5.9 Notices	16
Section 5.10 Severability	17
Section 5.11 Expenses	17
Section 5.12 Interpretation	17

## REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "Agreement") is entered into as of May 7, 2020 by and between VERINT SYSTEMS INC., a Delaware corporation (the "Company"), and VALOR PARENT LP, a Delaware limited partnership (together with its successors and any Person that becomes a party hereto pursuant to Section 4.1, the "Investor"). Capitalized terms that are used but not defined elsewhere herein are defined in Exhibit A.

WHEREAS, the Company and the Investor are parties to the Investment Agreement, dated as of December 4, 2019 (as amended from time to time, the "Investment Agreement"), pursuant to which the Company is selling to the Investor, and the Investor is purchasing from the Company, an aggregate of 200,000 shares of the Series A Preferred Stock and up to 200,000 shares of Series B Preferred Stock (collectively, "Preferred Stock"), which are convertible into shares of Common Stock;

WHEREAS, as a condition to the obligations of the Company and the Investor under the Investment Agreement, the Company and the Investor are entering into this Agreement for the purpose of granting certain registration and other rights to the Investor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

### ARTICLE I

#### Resale Shelf Registration

Section 1.1 Resale Shelf Registration Statement. Subject to the other applicable provisions of this Agreement, the Company shall use its commercially reasonable efforts to prepare and file, no later than the first Business Day following the Common Stock Restricted Period, a registration statement covering the sale or distribution from time to time by the Holders, on a delayed or continuous basis pursuant to Rule 415 of the Securities Act, of all of the Registrable Securities on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by the Holders in accordance with any reasonable method of distribution elected by the Investor) (the "Resale Shelf Registration Statement") and shall use its commercially reasonable efforts to cause such Resale Shelf Registration Statement to be declared effective by the SEC as promptly as is reasonably practicable after the filing thereof (it being agreed that the Resale Shelf Registration Statement shall be an automatic shelf registration statement that shall become effective upon filing with the SEC pursuant to Rule 462(e) if Rule 462(e) is available to the Company).

Section 1.2 Effectiveness Period. Once declared effective, the Company shall, subject to the other applicable provisions of this Agreement, use its commercially reasonable efforts to cause the Resale Shelf Registration Statement to be continuously effective and usable until such time as there are no longer any Registrable Securities (the "Effectiveness Period").

**Section 1.3 Subsequent Shelf Registration Statement.** If any Shelf Registration Statement ceases to be effective under the Securities Act for any reason at any time during the Effectiveness Period, the Company shall use its commercially reasonable efforts to as promptly as is reasonably practicable cause such Shelf Registration Statement to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration Statement), and shall use its commercially reasonable efforts to as promptly as is reasonably practicable amend such Shelf Registration Statement in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf Registration Statement or file an additional registration statement (a "Subsequent Shelf Registration Statement") for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by the Holders thereof of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration Statement is filed, the Company shall use its commercially reasonable efforts to (a) cause such Subsequent Shelf Registration Statement to become effective under the Securities Act as promptly as reasonably practicable after the filing thereof (it being agreed that the Subsequent Shelf Registration Statement shall be an automatic shelf registration statement that shall become effective upon filing with the SEC pursuant to Rule 462(e) if Rule 462(e) is available to the Company) and (b) keep such Subsequent Shelf Registration Statement continuously effective and usable until the end of the Effectiveness Period. Any such Subsequent Shelf Registration Statement shall be a registration statement on Form S-3 to the extent that the Company is eligible to use such form. Otherwise, such Subsequent Shelf Registration Statement shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by the Holders in accordance with any reasonable method of distribution elected by the Investor.

**Section 1.4 Supplements and Amendments.** The Company shall supplement and amend any Shelf Registration Statement if required by the Securities Act or the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement.

**Section 1.5 Subsequent Holder Notice.** If a Person entitled to the benefits of this Agreement becomes a Holder of Registrable Securities after a Shelf Registration Statement becomes effective under the Securities Act, the Company shall as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming a Holder and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration Statement (a "Subsequent Holder Notice"):

(a) if required and permitted by applicable law, file with the SEC a supplement to the related prospectus or a post-effective amendment to the Shelf Registration Statement so that such Holder is named as a selling securityholder in the Shelf Registration Statement and the related prospectus in such a manner as to permit such Holder to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law;

(b) if, pursuant to Section 1.5(a), the Company shall have filed a post-effective amendment to the Shelf Registration Statement that is not automatically effective, use its commercially reasonable efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is reasonably practicable; and

(c) notify such Holder as promptly as is reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 1.5(a).

Section 1.6 Underwritten Offering.

(a) Subject to any applicable restrictions on transfer in the Investment Agreement or otherwise, the Investor may, after the Resale Shelf Registration Statement becomes effective, deliver a written notice to the Company (the "Underwritten Offering Notice") specifying that the sale of some or all of the Registrable Securities subject to the Shelf Registration Statement is intended to be conducted through an underwritten offering (the "Underwritten Offering"); provided, that the Holders of Registrable Securities may not, without the Company's prior written consent, (i) launch an Underwritten Offering the anticipated gross proceeds of which shall be less than \$50,000,000 (unless the Holders are proposing to sell all of their remaining Registrable Securities), (ii) launch more than three (3) Underwritten Offerings at the request of the Holders within any twelve (12) month period or (iii) launch an Underwritten Offering within the period commencing fourteen (14) days prior to and ending two (2) Business Days following the Company's scheduled earnings release date for any fiscal quarter or year (or such shorter period as is the Company's customary "blackout window" applicable to directors and officers).

(b) In the event of an Underwritten Offering, the Holders of a majority of the Registrable Securities participating in an Underwritten Offering shall select the managing underwriter(s) to administer the Underwritten Offering; provided, that the choice of such managing underwriter(s) shall be subject to the consent of the Company, which is not to be unreasonably withheld, conditioned or delayed; provided, further, that in making the determination to consent to the Holder's choice of managing underwriter(s), the Company may take into account its business and strategic interests. The Company and the Holders of Registrable Securities participating in an Underwritten Offering will enter into an underwriting agreement in customary form with the managing underwriter or underwriters selected for such offering.

(c) The Company will not include in any Underwritten Offering pursuant to this Section 1.6 any securities that are not Registrable Securities without the prior written consent of the Investor. If the managing underwriter or underwriters advise the Company and the Investor in writing that in its or their good faith opinion the number of Registrable Securities (and, if permitted hereunder, other securities requested to be included in such offering) exceeds the number of securities which can be sold in such offering in light of market conditions or is such so as to adversely affect the success of such offering, the Company will include in such offering only such number of securities that can be sold without adversely affecting the marketability of the offering, which securities will be so included in the following order of priority: (i) first, the Registrable Securities of the Holders that have requested to participate in such Underwritten Offering, allocated *pro rata* among such Holders on the basis of the percentage of the Registrable Securities then-owned by such Holders, and (ii) second, any other securities of the Company that have been requested to be so included.

Section 1.7 Take-Down Notice. Subject to the other applicable provisions of this Agreement, at any time that any Shelf Registration Statement is effective, if the Investor delivers a notice to the Company (a "Take-Down Notice") stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement (a "Shelf Offering") and stating the number of the Registrable Securities to be included in such Shelf Offering, then the Company shall amend, subject to the other applicable provisions of this Agreement or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

Section 1.8 Piggyback Registration.

(a) If the Company proposes to file a registration statement under the Securities Act with respect to an offering of Common Stock or securities convertible into, or exchangeable or exercisable for, Common Stock, whether or not for sale for its own account (other than a Registration Statement (i) on Form S-4, Form S-8 or any successor forms thereto or any successor forms thereto or (ii) filed to effectuate an exchange offer or any employee benefit or dividend reinvestment plan), then the Company shall give prompt written notice of such filing, which notice shall be given, to the extent reasonably practicable, no later than five (5) Business Days prior to the filing date (the "Piggyback Notice") to the Holders of Registrable Securities. The Piggyback Notice shall offer such Holders the opportunity to include (or cause to be included) in such registration statement the number of shares of Registrable Securities as each such Holder may request (each, a "Piggyback Registration Statement"). Subject to Section 1.8(b), the Company shall include in each Piggyback Registration Statement all Registrable Securities with respect to which the Company has received written requests for inclusion therein (each a "Piggyback Request") promptly following delivery of the Piggyback Notice but in any event no later than one (1) Business Day prior to the filing date of a Piggyback Registration Statement. The Company shall not be required to maintain the effectiveness of a Piggyback Registration Statement beyond the earlier of (x) 180 days after the effective date thereof and (y) consummation of the distribution by the Holders of the Registrable Securities included in such registration statement.

(b) If any of the securities to be registered pursuant to the registration giving rise to the rights under this Section 1.8 are to be sold in an underwritten offering, the Company shall use commercially reasonable efforts to cause the managing underwriter or underwriters of a proposed underwritten offering to permit Holders of Registrable Securities who have timely submitted a Piggyback Request in connection with such offering to include in such offering all Registrable Securities included in each Holder's Piggyback Request on the same terms and subject to the same conditions as any other shares of capital stock, if any, of the Company included in the offering. Notwithstanding the foregoing, if the managing underwriter or underwriters of such underwritten offering advise the Company in writing that in its or their good faith opinion the number of securities exceeds the number of securities which can be sold in such offering in light of market conditions or is such so as to adversely affect the success of such offering, the Company will include in such offering only such number of securities that can be sold without adversely affecting the marketability of the offering, which securities will be so included in the following order of priority: (i) first, the securities proposed to be sold by the Company for its own account; (ii) second, the Registrable Securities of the Holders that have

requested to participate in such underwritten offering, allocated *pro rata* among such Holders on the basis of the percentage of the Registrable Securities then-owned by such Holders; (iii) third, any other securities of the Company that have been requested to be included in such offering; *provided* that Holders may, prior to the earlier of the (a) effectiveness of the registration statement and (b) the time at which the offering price or underwriter's discount is determined with the managing underwriter or underwriters, withdraw their request to be included in such registration pursuant to this Section 1.8.

## ARTICLE II

### Additional Provisions Regarding Registration Rights

Section 2.1 Registration Procedures. Subject to the other applicable provisions of this Agreement, in the case of each registration of Registrable Securities effected by the Company pursuant to Article I, the Company shall:

- (a) prepare and promptly file with the SEC a registration statement with respect to such securities and use commercially reasonable efforts to cause such registration statement to become and remain effective for the period of the distribution contemplated thereby, in accordance with the applicable provisions of this Agreement;
- (b) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to keep such registration statement effective for the period specified in paragraph (a) above and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement in accordance with the Investor's intended method of distribution set forth in such registration statement for such period;
- (c) furnish to the Investor's legal counsel copies of the registration statement and the prospectus included therein (including each preliminary prospectus) proposed to be filed and provide such legal counsel a reasonable opportunity to review and comment on such registration statement;
- (d) if requested by the managing underwriter or underwriters, if any, or the Investor, promptly include in any prospectus supplement or post-effective amendment such information as the managing underwriter or underwriters, if any, or the Investor may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement or post-effective amendment as soon as reasonably practicable after the Company has received such request;
- (e) in the event that the Registrable Securities are being offered in an Underwritten Offering, furnish to the Investor and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus and final prospectus as the Investor or such underwriters may reasonably request in order to facilitate the public offering or other disposition of such securities;

(f) as promptly as is reasonably practicable notify the Investor at any time when a prospectus relating thereto is required to be delivered under the Securities Act or of the Company's discovery of the occurrence of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing, and, subject to Section 2.2, at the request of the Investor, prepare promptly and furnish to the Investor a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing;

(g) use commercially reasonable efforts to register and qualify (or exempt from such registration or qualification) the securities covered by such registration statement under such other securities or "blue sky" laws of such jurisdictions within the United States as shall be reasonably requested in writing by the Investor; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdictions where it would not otherwise be required to qualify but for this subsection or (ii) take any action that would subject it to general service of process in any such jurisdictions;

(h) in the event that the Registrable Securities are being offered in an underwritten public offering, enter into an underwriting agreement in accordance with the applicable provisions of this Agreement;

(i) in connection with an Underwritten Offering, the Company shall cause its officers to use their commercially reasonable efforts to support the marketing of the Registrable Securities covered by such offering (including participation in "road shows" or other similar marketing efforts);

(j) use commercially reasonable efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion dated such date of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, (ii) a "negative assurances letter", dated such date of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering and (iii) a letter dated such date from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(k) use commercially reasonable efforts to list the Registrable Securities covered by such registration statement with any securities exchange on which the Common Stock is then listed;

(l) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(m) in connection with a customary due diligence review, make available for inspection by the Investor, any underwriter participating in any such disposition of Registrable Securities, if any, and any counsel or accountants retained by the Investor or underwriter (collectively, the “Offering Persons”), at the offices where normally kept, during reasonable business hours, all financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information and participate in customary due diligence sessions in each case reasonably requested by any such representative, underwriter, counsel or accountant in connection with such Registration Statement, provided, however, that any information that is not generally publicly available at the time of delivery of such information shall be kept confidential by such Offering Persons unless (i) disclosure of such information is required by court or administrative order or in connection with an audit or examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or auditor, (ii) disclosure of such information, in the reasonable judgment of the Offering Persons, is required by law or applicable legal process (including in connection with the offer and sale of securities pursuant to the rules and regulations of the SEC), (iii) such information is or becomes generally available to the public other than as a result of a non-permitted disclosure or failure to safeguard by such Offering Persons in violation of this Agreement or (iv) such information (A) was known to such Offering Persons or their representatives from a source other than the Company when such source, to the knowledge of the Offering Persons, was not bound by any contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information, (B) becomes available to the Offering Persons from a source other than the Company when such source, to the knowledge of the Offering Persons, is not bound by any contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information or (C) was developed independently by the Offering Persons or their respective representatives without the use of, or reliance on, information provided by the Company;

(n) cooperate with the Investor and each underwriter or agent participating in the disposition of Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA, including the use of commercially reasonable efforts to obtain FINRA’s pre-clearance or pre-approval of the registration statement and applicable prospectus upon filing with the SEC; and

(o) as promptly as is reasonably practicable notify the Investor (i) when the prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to such registration statement or any post-effective amendment, when the same has become effective, (ii) of any request by the SEC or other federal or state governmental authority for amendments or supplements to such registration statement or related prospectus or to amend or to supplement such prospectus or for additional information, (iii) of the issuance by the SEC of any stop order suspending the effectiveness of such registration statement or the initiation of any proceedings for such purpose, (iv) if at any time the Company has reason to believe that the representations and warranties of the Company contained in any agreement (including any underwriting agreement contemplated by Section 2.1(f) above) cease to be true and correct or (v)



of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose.

The Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Sections 2.1(f), 2.1(o)(ii) or 2.1(o)(iii), the Investor shall discontinue disposition of any Registrable Securities covered by such registration statement or the related prospectus until receipt of the copies of the supplemented or amended prospectus, which supplement or amendment shall, subject to the other applicable provisions of this Agreement, be prepared and furnished as soon as reasonably practicable, or until the Investor is advised in writing by the Company that the use of the applicable prospectus may be resumed, and have received copies of any amended or supplemented prospectus or any additional or supplemental filings which are incorporated, or deemed to be incorporated, by reference in such prospectus (such period during which disposition is discontinued being an “Interruption Period”) and, if requested by the Company in writing, the Investor shall use commercially reasonable efforts to return to the Company all copies then in their possession, of the prospectus covering such Registrable Securities at the time of receipt of such request. As soon as is reasonably practicable after the Company has determined that the use of the applicable prospectus may be resumed, the Company will notify the Investor thereof. In the event the Company invokes an Interruption Period hereunder and in the reasonable discretion of the Company the need for the Company to continue the Interruption Period ceases for any reason, the Company shall provide written notice, as soon as is reasonably practicable, to the Investor that such Interruption Period is no longer applicable.

Section 2.2 Suspension. (a) The Company shall be entitled, on one (1) occasion in any 6 month period, for a period of time not to exceed 60 days in the aggregate in any such 6 month period, to (x) defer any registration of Registrable Securities and shall have the right not to file and not to cause the effectiveness of any registration covering any Registrable Securities, (y) suspend the use of any prospectus and registration statement covering any Registrable Securities, and (z) require the Holders of Registrable Securities to suspend any offerings or sales of Registrable Securities pursuant to a registration statement, if the Company delivers to the Investor a certificate signed by an executive officer certifying that such registration and offering would (i) require the Company to make an Adverse Disclosure or (ii) materially interfere with any *bona fide* material financing, acquisition, disposition or other similar transaction involving the Company or any of its subsidiaries then under consideration. Such certificate shall contain a statement of the reasons for such suspension and the anticipated length of such suspension. The Investor shall keep the information contained in such certificate confidential subject to the same terms set forth in Section 2.1(m). If the Company defers any registration of Registrable Securities in response to a Underwritten Offering Notice, or requires the Holders to suspend any Underwritten Offering, the Investor shall be entitled to withdraw such Underwritten Offering Notice and if they do so, such request shall not be treated for any purpose as the delivery of an Underwritten Offering Notice pursuant to Section 1.6.

Section 2.3 Expenses of Registration. All Registration Expenses incurred in connection with any registration shall be borne by the Company, provided that each holder of Registrable Securities participating in an offering shall pay all applicable underwriting discounts and commissions, brokers’ commissions and stock transfer taxes, if any, on the Registrable Securities sold by such holder and the fees and expenses of any counsel to the Holders (other than such fees and expenses expressly included in Registration Expenses).

Section 2.4 Information by Holders. The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders and their Affiliates, the Registrable Securities held by them and the distribution proposed by such Holder or Holders and their Affiliates as the Company may reasonably request and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement. It is understood and agreed that the obligations of the Company under Article I are conditioned on the timely provisions of the foregoing information by such Holder or Holders and, without limitation of the foregoing, will be conditioned on compliance by such Holder or Holders with the following:

(a) such Holder or Holders will, and will cause their respective Affiliates to, cooperate with the Company in connection with the preparation of the applicable registration statement and prospectus and, for so long as the Company is obligated to keep such registration statement effective, such Holder or Holders will and will cause their respective Affiliates to, provide to the Company, in writing and in a timely manner, for use in such registration statement (and expressly identified in writing as such), all information regarding themselves and their respective Affiliates and such other information as may be required by applicable law to enable the Company to prepare or amend such registration statement, any related prospectus and any other documents related to such offering covering the applicable Registrable Securities owned by such Holder or Holders and to maintain the currency and effectiveness thereof;

(b) during such time as such Holder or Holders and their respective Affiliates may be engaged in a distribution of the Registrable Securities, such Holder or Holders will, and they will cause their Affiliates to, comply with all laws applicable to such distribution, including Regulation M promulgated under the Exchange Act, and, to the extent required by such laws, will, and will cause their Affiliates to, among other things (i) not engage in any stabilization activity in connection with the securities of the Company in contravention of such laws; (ii) distribute the Registrable Securities acquired by them solely in the manner described in the applicable registration statement and (iii) if required by applicable law, cause to be furnished to each agent or broker-dealer to or through whom such Registrable Securities may be offered, or to the offeree if an offer is made directly by such Holder or Holders or their respective Affiliates, such copies of the applicable prospectus (as amended and supplemented to such date) and documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree;

(c) such Holder or Holders shall, and they shall cause their respective Affiliates to, (i) permit the Company and its representatives to examine such documents and records and will supply in a timely manner any information as they may be reasonably requested to provide in connection with the offering or other distribution of Registrable Securities by such Holder or Holders and (ii) execute, deliver and perform under any agreements and instruments reasonably requested by the Company or its representatives to effectuate such registered offering, including opinions of counsel and questionnaires; and

(d) on receipt of any notice from the Company of the occurrence of any of the events specified in Section 2.1(f) or clauses (ii) or (iii) of Section 2.1(o), or that otherwise requires the suspension by such Holder or Holders and their respective Affiliates of the offering, sale or distribution of any of the Registrable Securities owned by such Holder or Holders, such Holders shall, and they shall cause their respective Affiliates to, cease offering, selling or distributing the Registrable Securities owned by such Holder or Holders until the offering, sale and distribution of the Registrable Securities owned by such Holder or Holders may recommence in accordance with the terms hereof and applicable law.

Section 2.5 Rule 144 Reporting. With a view to making available the benefits of Rule 144 to the Holders, the Company agrees that, for so long as a Holder owns Registrable Securities, the Company will use its commercially reasonable efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the date of this Agreement; and

(b) so long as a Holder owns any Restricted Securities, furnish to the Holder upon written request a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act.

Section 2.6 Holdback Agreement. If during the Effectiveness Period, the Company shall file a registration statement (other than in connection with the registration of securities issuable pursuant to an employee stock option, stock purchase or similar plan or pursuant to a merger, exchange offer or a transaction of the type specified in Rule 145(a) under the Securities Act) with respect to an underwritten public offering of Common Stock or securities convertible into, or exchangeable or exercisable for, such securities or otherwise informs the Investor that it intends to conduct such an offering utilizing an effective registration statement or pursuant to an underwritten Rule 144A and/or Regulation S offering and provides the Investor the opportunity to participate in such offering in accordance with and to the extent required by Section 1.8, the Investor shall, if requested by the managing underwriter or underwriters, enter into a customary “lock-up” agreement relating to the sale, offering or distribution of Registrable Securities, in the form reasonably requested by the managing underwriter or underwriters, covering the period commencing on the date of the prospectus pursuant to which such offering may be made and continuing until no more than 90 days from the date of such prospectus, or such shorter period as shall be required by any director, executive officer or other shareholder.

### ARTICLE III

#### Indemnification

Section 3.1 Indemnification by Company. To the fullest extent permitted by applicable law, the Company will, with respect to any Registrable Securities covered by a registration statement or prospectus, or as to which registration, qualification or compliance under applicable “blue sky” laws has been effected pursuant to this Agreement, indemnify and hold harmless each Holder, each Holder’s current and former officers, directors, partners,

members, managers, shareholders, accountants, attorneys, agents and employees, and each Person controlling such Holder within the meaning of Section 15 of the Securities Act and such Holder's current and former officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents and employees, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the Securities Act (collectively, the "Company Indemnified Parties"), from and against any and all expenses, claims, losses, damages, costs (including costs of preparation and reasonable attorney's fees and any legal or other fees or expenses actually incurred by such party in connection with any investigation or proceeding), judgments, fines, penalties, charges, amounts paid in settlement and other liabilities, joint or several, (or actions in respect thereof) (collectively, "Losses") to the extent arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular, "issuer free writing prospectus" (as such term is defined in Rule 433 under the Securities Act) or other document, in each case related to such registration statement, or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rules or regulations thereunder applicable to the Company and (without limiting the preceding portions of this Section 3.1), the Company will reimburse each of the Company Indemnified Parties for any reasonable and documented out-of-pocket legal expenses and any other reasonable and documented out-of-pocket expenses actually incurred in connection with investigating, defending or, subject to the last sentence of this Section 3.1, settling any such Losses or action, as such expenses are incurred; provided that the Company's indemnification obligations shall not apply to amounts paid in settlement of any Losses or action if such settlement is effected without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), nor shall the Company be liable to a Holder in any such case for any such Losses or action to the extent that it arises out of or is based upon a violation or alleged violation of any state or federal law (including any claim arising out of or based on any untrue statement or alleged untrue statement or omission or alleged omission in the registration statement or prospectus) which occurs in reliance upon and in conformity with written information regarding such Holder furnished to the Company by such Holder expressly for use in connection with such registration by any such Holder.

Section 3.2 Indemnification by Holders. To the fullest extent permitted by applicable law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which registration or qualification or compliance under applicable "blue sky" laws is being effected, indemnify, severally and not jointly with any other Holders of Registrable Securities, the Company, each of its Representatives, each Person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act (collectively, the "Holder Indemnified Parties"), against all Losses (or actions in respect thereof) to the extent arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular, "issuer free writing prospectus" or other document, in each case related to such registration statement, or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and

will reimburse each of the Holder Indemnified Parties for any reasonable and documented out-of-pocket legal expenses and any other reasonable and documented out-of-pocket expenses actually incurred in connection with investigating, defending or, subject to the last sentence of this [Section 3.2](#), settling any such Losses or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, “issuer free writing prospectus” or other document in reliance upon and in conformity with written information regarding such Holder furnished to the Company by such Holder and stated to be specifically for use therein; provided, however, that in no event shall any indemnity under this [Section 3.2](#) payable by any Holder exceed an amount equal to the net proceeds received by such Holder in respect of the Registrable Securities sold pursuant to the registration statement. The indemnity agreement contained in this [Section 3.2](#) shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the applicable Holder (which consent shall not be unreasonably withheld or delayed).

[Section 3.3 Notification](#). If any Person shall be entitled to indemnification under this [Article III](#) (each, an “[Indemnified Party](#)”), such Indemnified Party shall give prompt notice to the party required to provide indemnification (each, an “[Indemnifying Party](#)”) of any claim or of the commencement of any proceeding as to which indemnity is sought. The Indemnifying Party shall have the right, exercisable by giving written notice to the Indemnified Party as promptly as is reasonably practicable after the receipt of written notice from such Indemnified Party of such claim or proceeding, to assume, at the Indemnifying Party’s expense, the defense of any such claim or litigation, with counsel reasonably satisfactory to the Indemnified Party and, after notice from the Indemnifying Party to such Indemnified Party of its election to assume the defense thereof, the Indemnifying Party will not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such Indemnified Party hereunder for any legal expenses and other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof; provided, however, that an Indemnified Party shall have the right to employ separate counsel in any such claim or litigation, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless the Indemnifying Party shall have failed within a reasonable period of time to assume such defense and the Indemnified Party is or would reasonably be expected to be materially prejudiced by such delay. The failure of any Indemnified Party to give notice as provided herein shall relieve an Indemnifying Party of its obligations under this [Article III](#) only to the extent that the failure to give such notice is materially prejudicial or harmful to such Indemnifying Party’s ability to defend such action. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the prior written consent of each Indemnified Party (which consent shall not be unreasonably withheld or delayed), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. The indemnity agreements contained in this [Article III](#) shall not apply to amounts paid in settlement of any claim, loss, damage, liability or action if such settlement is effected without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. The indemnification set forth in this [Article III](#) shall be in addition to any other indemnification rights or agreements that an Indemnified Party may have. An Indemnifying Party who is not entitled to, or elects not to, assume the defense of a

claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such Indemnifying Party with respect to such claim, unless in the reasonable judgment of any Indemnified Party a conflict of interest may exist between such Indemnified Party and any other Indemnified Parties with respect to such claim.

Section 3.4 Contribution. If the indemnification provided for in this Article III is held by a court of competent jurisdiction to be unavailable to an Indemnified Party, other than pursuant to its terms, with respect to any Losses or action referred to therein, then, subject to the limitations contained in this Article III, the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses or action in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party, on the other, in connection with the actions, statements or omissions that resulted in such Losses or action, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party, on the other hand, shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made (or omitted) by, or relates to information supplied by such Indemnifying Party or such Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent any such action, statement or omission. The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 3.4 was determined solely upon *pro rata* allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding sentence of this Section 3.4. Notwithstanding the foregoing, the amount any Holder will be obligated to contribute pursuant to this Section 3.4 will be limited to an amount equal to the net proceeds received by such Holder in respect of the Registrable Securities sold pursuant to the registration statement which gives rise to such obligation to contribute. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

Section 3.5 Survival. The indemnification provided for under this Article III shall survive the sale or other transfer of the Registrable Securities and the termination of this Agreement.

#### ARTICLE IV

##### Transfer and Termination of Registration Rights

Section 4.1 Transfer of Registration Rights. Any rights to cause the Company to register securities granted to a Holder under this Agreement may be transferred or assigned to any Person in connection with a Transfer (as defined in the Investment Agreement) of Series A Preferred Stock, Series B Preferred Stock or Common Stock issued upon conversion of Series A Preferred Stock or Series B Preferred Stock to such Person in a Transfer permitted by the Investment Agreement; provided, however, that (i) prior written notice of such assignment of rights is given to the Company, and (ii) such transferee agrees in writing to be bound by, and subject to, this Agreement as a "Holder" pursuant to a written instrument in the form of Exhibit B hereto.

Section 4.2 Termination of Registration Rights. The rights of any particular Holder to cause the Company to register securities under Article I shall terminate with respect to such Holder upon the date upon which such Holder no longer holds any Series A Preferred Stock, Series B Preferred Stock or Registrable Securities. The registration rights set forth in this Agreement shall terminate on the date on which all shares of Common Stock issuable (or actually issued) upon conversion of the Series A Preferred Stock and the Series B Preferred Stock cease to be Registrable Securities.

## ARTICLE V

### Miscellaneous

Section 5.1 Amendments and Waivers. Subject to compliance with applicable law, this Agreement may be amended or supplemented in any and all respects by written agreement of the Company and the Investor.

Section 5.2 Extension of Time, Waiver, Etc. The parties hereto may, subject to applicable law, (a) extend the time for the performance of any of the obligations or acts of the other party or (b) waive compliance by the other party with any of the agreements contained herein applicable to such party or, except as otherwise provided herein, waive any of such party's conditions. Notwithstanding the foregoing, no failure or delay by the parties hereto in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 5.3 Assignment. Except as provided in Section 4.1, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of law or otherwise, by any of the parties hereto without the prior written consent of the other party hereto.

Section 5.4 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic mail), each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto.

Section 5.5 Entire Agreement; No Third Party Beneficiary. This Agreement, including the Transaction Documents, constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties and their Affiliates, or any of them, with respect to the subject matter hereof and thereof. No provision of this Agreement shall confer upon any Person other than the parties hereto and their permitted assigns any rights or remedies hereunder.

Section 5.6 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed entirely within that State, regardless of the laws that might otherwise govern under any applicable conflict of laws principles.

(b) All legal or administrative proceedings, suits, investigations, arbitrations or actions (“Actions”) arising out of or relating to this Agreement shall be heard and determined in the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over any Action, any state or federal court within the State of Delaware) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such Action. The consents to jurisdiction and venue set forth in this Section 5.6 shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any Action arising out of or relating to this Agreement shall be effective if notice is given by overnight courier at the address set forth in Section 5.9 of this Agreement. The parties hereto agree that a final judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law; provided, however, that nothing in the foregoing shall restrict any party’s rights to seek any post-judgment relief regarding, or any appeal from, a final trial court judgment.

Section 5.7 Specific Enforcement. The parties acknowledge and agree that (a) the parties shall be entitled to an injunction or injunctions, specific performance or other equitable relief to enforce specifically the terms and provisions hereof in the courts described in Section 5.6 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement and (b) the right of specific enforcement is an integral part of this Agreement and without that right, neither the Company nor the Investor would have entered into this Agreement. The parties hereto agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to law or inequitable for any reason, and agree not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. The parties hereto acknowledge and agree that any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 5.7 shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 5.8 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS



DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER VOLUNTARILY AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 5.8.

Section 5.9 Notices. All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given if delivered personally, emailed (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses:

(a) If to the Company, to it at:

Verint Systems Inc.  
175 Broadhollow Road  
Melville, New York 11747  
Attention: Chief Administrative Officer  
Email: peter.fante@verint.com

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

Jones Day  
250 Vesey Street  
New York, NY 10281  
Attention: Randi Lesnick and Brad Brassler  
Email: rclesnick@jonesday.com, bcbrasser@jonesday.com

(b) If to the Investor at:

c/o Apax Partners, L.P.  
601 Lexington Avenue, 53rd Floor  
New York, NY 10022  
Attn: Jason Wright  
Email: Jason.Wright@apax.com

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

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attention: Leo M. Greenberg; Joshua N. Korff; Ross Leff  
Email: leo.greenberg@kirkland.com; joshua.korff@kirkland.com;  
ross.leff@kirkland.com

or such other address or email address as such party may hereafter specify by like notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of actual receipt by the recipient thereof if received prior to 5:00 p.m. local time in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 5.10 Severability. If any term, condition or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term, condition or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law.

Section 5.11 Expenses. Except as provided in Section 2.3, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 5.12 Interpretation. The rules of interpretation set forth in Section 8.12 of the Investment Agreement shall apply to this Agreement, *mutatis mutandis*.

[Signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first above written.

**COMPANY:**

**VERINT SYSTEMS INC.**

By: /s/ Douglas E. Robinson

Name: Douglas E. Robinson

Title: Chief Financial Officer

SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT

---

**INVESTOR:**

**VALOR PARENT LP**

By: Valor GP LLC  
Its: General Partner

By: /s/ Jason Wright  
Name: Jason Wright  
Title: President

SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT

**EXHIBIT A**

**DEFINED TERMS**

1. The following capitalized terms have the meanings indicated:

“Adverse Disclosure” means public disclosure of material non-public information that, in the good faith judgment of the Company (after consultation with external legal counsel): (i) would be required to be made in any registration statement filed with the SEC by the Company so that such registration statement would not be materially misleading; (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement; and (iii) the Company has a bona fide business purpose for not disclosing publicly.

“Affiliates” shall have the meaning given to such term in the Investment Agreement.

“Business Day” shall have the meaning given to such term in the Investment Agreement.

“Common Stock” means all shares currently or hereafter existing of the Company’s common stock, par value \$0.001 per share.

“Common Stock Restricted Period” shall have the meaning given to such term in the Investment Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“Holder” means any Person holding Registrable Securities.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization or any other entity, including a governmental authority.

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

“Registration Expenses” means all expenses incurred by the Company in complying with Article I, including all registration, qualification, listing and filing fees, printing expenses, escrow fees, fees and disbursements of counsel and accountants, fees and expenses in connection with complying with state securities or “blue sky” laws, FINRA fees, fees of transfer agents and registrars, transfer taxes, and fees and expenses of one outside legal counsel to the Investor and all Holders retained in connection with registrations contemplated hereby, but excluding underwriting discounts and commissions, brokers’ commissions and stock transfer taxes, if any, in each case to the extent applicable to the Registrable Securities of any selling Holders.

“Registrable Securities” means, as of any date of determination, any shares of Common Stock acquired by any Investor pursuant to the conversion of any Preferred Stock, and any other securities issued or issuable with respect to any such shares of Common Stock by way of share split, share dividend, distribution, recapitalization, merger, exchange, replacement or similar event or otherwise. As to any particular Registrable Securities, once issued, such securities shall cease to be Registrable Securities when (i) such securities are sold or otherwise transferred pursuant to an effective Registration Statement under the Securities Act, (ii) such securities shall have ceased to be outstanding, (iii) such securities have been transferred in a transaction in which the Holder’s rights under this Agreement are not assigned to the transferee of the securities or (iv) such securities are sold in a broker’s transaction under circumstances in which all of the applicable conditions of Rule 144 (or any similar provisions then in force) under the Securities Act are met.

“Restricted Securities” means any Common Stock required to bear the legend set forth in Section 5.09(a) of the Investment Agreement.

“Rule 144” means Rule 144 promulgated under the Securities Act and any successor provision.

“Rule 462(e)” means Rule 462(e) promulgated under the Securities Act and any successor provision.

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

“Securities Act” means the Securities Act of 1933, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

“Shelf Registration Statement” means the Resale Shelf Registration Statement or a Subsequent Shelf Registration Statement, as applicable.

“Transaction Documents” shall have the meaning given to such term in the Investment Agreement

2. The following terms are defined in the Sections of the Agreement indicated:

#### INDEX OF TERMS

<u>Term</u>	<u>Section</u>
Actions	<u>Section 5.6(b)</u>
Agreement	Preamble
Company	Preamble
Company Indemnified Parties	<u>Section 3.1</u>
Effectiveness Period	<u>Section 1.2</u>
Holder Indemnified Parties	<u>Section 3.2</u>
Indemnified Party	<u>Section 3.3</u>
Indemnifying Party	<u>Section 3.3</u>
Interruption Period	<u>Section 2.1(o)</u>

---

<u>Term</u>	<u>Section</u>
Investment Agreement	Recitals
Investor	Preamble
Losses	<u>Section 3.1</u>
Offering Persons	<u>Section 2.1(m)</u>
Piggyback Notice	<u>Section 1.8(a)</u>
Piggyback Registration Statement	<u>Section 1.8(a)</u>
Piggyback Request	<u>Section 1.8(a)</u>
Preferred Stock	Recitals
Resale Shelf Registration Statement	<u>Section 1.1</u>
Shelf Offering	<u>Section 1.7</u>
Subsequent Holder Notice	<u>Section 1.5</u>
Subsequent Shelf Registration Statement	<u>Section 1.3</u>
Take-Down Notice	<u>Section 1.7</u>
Underwritten Offering	<u>Section 1.6(a)</u>
Underwritten Offering Notice	<u>Section 1.6(a)</u>

**EXHIBIT B**

**JOINDER TO REGISTRATION RIGHTS AGREEMENT**

The undersigned is executing and delivering this Joinder pursuant to the Registration Rights Agreement, dated as of [●] (the "Registration Rights Agreement"), by and between Verint Systems Inc. (the "Company") and Valor Parent LP (the "Investor"). Capitalized terms used and not defined herein shall have the meanings set forth in the Registration Rights Agreement.

By executing and delivering this Joinder to the Company, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of the Registration Rights Agreement as a Holder and an Investor as of the date hereof in the same manner as if the undersigned were an original signatory to the Registration Rights Agreement.

Accordingly, the undersigned has executed and delivered this Joinder as of [●], 20[ ] .

[HOLDER]

By: \_\_\_\_\_  
Name:  
Title:





## Press Release

### Verint Closes \$200 Million Investment by Funds Advised by Apax Partners

#### Investment Made in Connection with Verint's Plan to Separate into Two Independent Public Companies

MELVILLE, N.Y., May 7, 2020 — Verint® Systems Inc. (NASDAQ: VRNT) today announced it has closed the first tranche under the two tranche investment agreement with funds advised by Apax Partners signed in December in connection with Verint's plan to separate into two independent public companies. In connection with the closing, Jason Wright, Partner at Apax Partners, has been appointed to Verint's Board of Directors.

"I am pleased to welcome Jason to our Board and to have Apax as a strategic partner. Apax has a proven track record of creating value by partnering with leading software companies around the world, including significant experience in both cloud transitions and carve-outs. The investment represents a strong vote of confidence in our strategy and future growth opportunities," said Dan Bodner, CEO of Verint.

Mr. Wright added, "We are excited to partner with Verint and help the Board complete the separation, enabling both businesses to achieve their full potential. Verint's Customer Engagement business is a market leader and we look forward to working with management to execute its cloud strategy and extend its market leadership."

The \$200 million first tranche investment is in the form of convertible preferred stock with an initial conversion price of \$53.50. Following the closing, Verint's balance sheet includes more than \$800 million of cash and short-term investments. Additional information can be found in the Form 8-K that will be filed today with the U.S. Securities and Exchange Commission.

#### About Verint Systems Inc.

Verint® is a global leader in Actionable Intelligence® solutions with a focus on customer engagement optimization and cyber intelligence. Today, over 10,000 organizations in more than 180 countries—including over 85 percent of the Fortune 100—count on intelligence from Verint solutions to make more informed, effective and timely decisions. Learn more about how we're creating A Smarter World with Actionable Intelligence® at [www.verint.com](http://www.verint.com).

This press release contains "forward-looking statements," including statements regarding expectations, predictions, views, opportunities, plans, strategies, beliefs, and statements of similar effect relating to Verint Systems Inc. These forward-looking statements are not guarantees of future performance and they are based on management's expectations that involve a number of risks, uncertainties and assumptions, any of which could cause actual results to differ materially from those expressed in or implied by the forward-looking statements. For a detailed discussion of these risk factors, see our Annual Report on Form 10-K for the fiscal year ended January 31, 2020, and other filings we make with the SEC. The forward-looking statements contained in this press release are made as of the date of this press release and, except as required by law, Verint assumes no obligation to update or revise them or to provide reasons why actual results may differ.

VERINT, ACTIONABLE INTELLIGENCE, THE CUSTOMER ENGAGEMENT COMPANY, CUSTOMER ENGAGEMENT SOLUTIONS, and CYBER INTELLIGENCE SOLUTIONS are trademarks of Verint Systems Inc. or its subsidiaries. Verint and other parties may also have trademark rights in other terms used herein.

###

#### **Investor Relations Contact:**

Alan Roden  
Verint Systems Inc.  
(631) 962-9304  
[alan.rodin@verint.com](mailto:alan.rodin@verint.com)