

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

**FORM S-8  
REGISTRATION STATEMENT**  
*UNDER*  
**THE SECURITIES ACT OF 1933**

**C3.ai, Inc.**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
Incorporation or organization)

**26-3999357**  
(I.R.S. Employer  
Identification No.)

**1300 Seaport Blvd, Suite 500**  
**Redwood City, California 94063**  
(Address of principal executive offices) (Zip code)

**C3.ai, Inc. 2012 Equity Incentive Plan**  
(Full titles of the plans)

**Thomas M. Siebel**  
**Chief Executive Officer**  
**C3.ai, Inc.**  
**1300 Seaport Blvd, Suite 500**  
**Redwood City, California 94063**  
(Name and address of agent for service)

**(650) 503-2200**  
(Telephone number, including area code, of agent for service)

*Copies to:*

**Eric Jensen**  
**Calise Y. Cheng**  
**Sepideh Mousakhani**  
**Cooley LLP**  
**3175 Hanover Street**  
**Palo Alto, California 94304**  
**(650) 843-5000**

**Brady Mickelsen**  
**General Counsel**  
**C3.ai, Inc.**  
**1300 Seaport Blvd, Suite 500**  
**Redwood City, California 94063**  
**(650) 503-2200**

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

Large accelerated filer  Accelerated filer   
Non-accelerated filer  Smaller reporting company   
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share (2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee

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Class A Common Stock, par value \$0.001 per share (3)	3,192,339	\$89.30	\$285,075,872.70	\$31,101.78
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- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of Registrant's Class A common stock that become issuable under the plans set forth herein by reason of any stock dividend, stock split, recapitalization, or other similar transaction effected that results in an increase to the number of outstanding shares of Registrant's Class A common stock, as applicable.
  - (2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(h) and 457(c) of the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are based on the average of the high and low prices of the Registrant's Class A common stock on March 4, 2021, as reported on the New York Stock Exchange.
  - (3) Represents shares issued to certain stockholders that are directors, executive officers and current and former employees of the Registrant upon exercise of stock option awards granted under the Registrant's 2012 Equity Incentive Plan (the "2012 Plan").
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## EXPLANATORY NOTE

This registration statement contains a “reoffer prospectus” prepared in accordance with Part I of Form S-3 (in accordance with Instruction C of the General Instructions to Form S-8). This reoffer prospectus may be used for reoffers and resales on a continuous or delayed basis of certain of those shares of Class A common stock (the “Shares”) of C3.ai, Inc. (“us”, “we” or the “Registrant”) referred to above that constitute “control securities” or “restricted securities” within the meaning of the Securities Act, by certain stockholders that are directors, executive officers and current and former service providers to the Registrant (the “Selling Stockholders”), some of whom are deemed to be our “affiliates,” as that term is defined in Rule 405 under the Securities Act, for their own accounts. As specified in General Instruction C of Form S-8, the amount of securities to be reoffered or resold under the reoffer prospectus by each Selling Stockholder and any other person with whom he or she is acting in concert for the purpose of selling the Registrant’s securities, may not exceed, during any three-month period, the amount specified in Rule 144(e) under the Securities Act.

REOFFER PROSPECTUS

**C3.ai, Inc.**

**3,192,339 SHARES OF CLASS A COMMON STOCK**

This prospectus relates to 3,192,339 shares of Class A common stock, par value \$0.001 per share (the “Shares”), of C3.ai, Inc., which may be offered from time to time by certain of our stockholders that are directors, executive officers and current and former service providers to C3.ai, Inc. (the “Selling Stockholders”), some of whom are deemed to be our “affiliates,” as that term is defined in Rule 405 under the Securities Act, for their own accounts. We will not receive any of the proceeds from the sale of Shares by the Selling Stockholders made hereunder. The Shares were or will be acquired by the Selling Stockholders pursuant to our employee benefit plans.

The Selling Stockholders may sell the securities described in this prospectus in a number of different ways and at varying prices, including sales in the open market, sales in negotiated transactions and sales by a combination of these methods. The Selling Stockholders may sell any, all or none of the Shares and we do not know when or in what amount the Selling Stockholders may sell their Shares hereunder following the effective date of this registration statement. The price at which any of the Shares may be sold, and the commissions, if any, paid in connection with any such sale, are unknown and may vary from transaction to transaction. The Shares may be sold at the market price of the Class A common stock at the time of a sale, at prices relating to the market price over a period of time, or at prices negotiated with the buyers of shares. The Shares may be sold through underwriters or dealers which the Selling Stockholders may select. If underwriters or dealers are used to sell the Shares, we will name them and describe their compensation in a prospectus supplement. We provide more information about how the Selling Stockholders may sell their Shares in the section titled “Plan of Distribution.” The Selling Stockholders will bear all sales commissions and similar expenses. Any other expenses incurred by us in connection with the registration and offering that are not borne by the Selling Stockholders will be borne by us.

Our Class A common stock is listed on the New York Stock Exchange (“NYSE”) under the symbol “AI.” On March 4, 2021, the last reported sale price of our Class A common stock was \$88.51 per share.

The amount of securities to be offered or resold under this reoffer prospectus by each Selling Stockholder or other person with whom he or she is acting in concert for the purpose of selling our securities, may not exceed, during any three month period, the amount specified in Rule 144(e) under the Securities Act.

**We are an “emerging growth company” as defined under the federal securities laws, and as such, we have elected to comply with certain reduced public company reporting requirements for this prospectus and may elect to do so in future filings.**

**Investing in our securities involves a high degree of risk. Before buying any securities, you should carefully read the discussion of the risks of investing in our securities in [“Risk Factors” beginning on page 2 of this prospectus.](#)**

If any of the Selling Stockholders utilize a broker-dealer in the sale or distribution of the Shares, such broker-dealer may receive commissions in the form of discounts, concessions, or commissions from such Selling Stockholder or commissions from purchasers of the Shares for whom they may act as agent or to whom they may sell as principal. The U.S. Securities and Exchange Commission may take the view that, under certain circumstances, the Selling Stockholders and any broker-dealers or agents that participate with the Selling Stockholders in the distribution of the Shares may be deemed to be “underwriters” within the meaning of the Securities Act, and commissions, discounts or concessions received by any such broker-dealer or agent may be deemed to be underwriting commissions under the Securities Act. See the section titled “Plan of Distribution.”

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

**The date of this prospectus is March 5, 2021**

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You should rely only on the information contained in this prospectus or in any accompanying prospectus supplement by us or on our behalf. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus, regardless of the time of delivery of this prospectus or of any sale of the Shares. Our business, financial condition, results of operations and prospects may have changed since that date.

The C3.ai design logo, “C3.ai,” and our other registered or common law trademarks, service marks or trade names appearing in this prospectus are the property of C3.ai, Inc. Other trade names, trademarks, and service marks used in this prospectus are the property of their respective owners.

Unless the context otherwise requires, all references in this prospectus to “we,” “us,” “our,” “our company,” and “C3.ai” refer to C3.ai, Inc. and its subsidiaries.

## THE COMPANY

### Overview

C3.ai is an Enterprise AI software company.

We provide software-as-a-service applications that enable the rapid deployment of enterprise-scale AI applications of extraordinary scale and complexity that offer significant social and economic benefit.

We provide three primary families of software solutions that enable the rapid deployment of enterprise-scale AI applications of extraordinary scale and complexity that offer significant social and economic benefit:

- The C3 AI Suite, our core technology, is a comprehensive application development and runtime environment that is designed to allow our customers to rapidly design, develop, and deploy Enterprise AI applications of any type.
- C3 AI Applications, built using the C3 AI Suite, include a large and growing family of industry-specific and application-specific turnkey AI solutions that can be immediately installed and deployed.
- C3.ai Ex Machina, our no-code solution that provides secure, easy access to analysis-ready data, and enables business analysts without data science training to rapidly perform data science tasks such as building, configuring, and training AI models.

### Corporate Information

We were initially formed in 2009 as C3, LLC, a Delaware limited liability company. In June 2012, we incorporated under the laws of the state of Delaware under the name C3, Inc. In July 2016, we changed our name to C3 IoT, Inc., and, in June 2019, we changed our name to C3.ai, Inc. Our principal executive offices are located at 1300 Seaport Blvd, Suite 500, Redwood City, California 94063. Our telephone number is (650) 503-2200. Our website address is C3.ai. Information contained on, or that can be accessed through, our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus.

We are an “emerging growth company” under the Jumpstart Our Business Startups Act of 2012, and therefore we are subject to reduced public company reporting requirements.

## **RISK FACTORS**

An investment in shares of our Class A common stock is highly speculative and involves a high degree of risk. We face a variety of risks that may affect our operations or financial results and many of those risks are driven by factors that we cannot control or predict. Before investing in our Class A common stock, you should carefully consider the risks set forth under the caption “Risk Factors” in the final prospectus relating to our Registration Statement on Form S-1 (File No. 333-250082), filed with the U.S. Securities and Exchange Commission on December 9, 2020, which are incorporated by reference herein, and subsequent reports filed with the SEC, together with the financial and other information contained or incorporated by reference in this prospectus. If any of these risks actually occurs, our business, prospects, financial condition and results of operations could be materially adversely affected. In that case, the trading price of our Class A common stock would likely decline and you may lose all or a part of your investment. Only those investors who can bear the risk of loss of their entire investment should invest in our Class A common stock.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference herein contain forward-looking statements about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical facts contained or incorporated by reference in this prospectus, including statements regarding our future results of operations or financial condition, business strategy and plans and objectives of management for future operations, including our statements regarding the benefits and timing of the roll-out of new technology, are forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will” or “would” or the negative of these words or other similar terms or expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- our expectations regarding our revenue, expenses, and other operating results;
- our ability to acquire new customers and successfully retain existing customers;
- our ability to increase usage our AI Suite and AI Applications;
- our ability to achieve or sustain profitability;
- future investments in our business, our anticipated capital expenditures, and our estimates regarding our capital requirements;
- the costs and success of our sales and marketing efforts, and our ability to promote our brand;
- our growth strategies for our AI Suite and AI Applications;
- the estimated addressable market opportunity for our AI Suite and AI Applications;
- our reliance on key personnel and our ability to identify, recruit, and retain skilled personnel;
- our ability to effectively manage our growth, including any international expansion;
- our ability to protect our intellectual property rights and any costs associated therewith;
- the effects of the coronavirus, or COVID-19, pandemic or other public health crises;
- our ability to compete effectively with existing competitors and new market entrants; and
- the growth rates of the markets in which we compete.

You should not rely on forward-looking statements as predictions of future events. We have based the forward-looking statements contained or incorporated by reference in this prospectus primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition and operating results. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties and other factors described in the section titled “Risk Factors” and elsewhere in this prospectus. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this prospectus. The results, events and circumstances reflected in the forward-looking statements may not be achieved or occur, and actual results, events or circumstances could differ materially from those described in the forward-looking statements.



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In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this prospectus. While we believe that such information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

The forward-looking statements made or incorporated by reference in this prospectus relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this prospectus to reflect events or circumstances after the date of this prospectus or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments.

## **USE OF PROCEEDS**

We will not receive any of the proceeds from the sale of the Shares. All proceeds from the sale of the Shares will be for the account of the Selling Stockholders, as described below. See the sections titled “Selling Stockholders” and “Plan of Distribution” described below.

**SELLING STOCKHOLDERS**

The following table sets forth information regarding beneficial ownership of our Class A common stock as of February 28, 2021, as adjusted to reflect the Shares that may be sold from time to time pursuant to this prospectus, for all Selling Stockholders, consisting of the individuals shown as having shares listed in the column entitled “Shares Being Offered.”

The Shares offered by the Selling Stockholders hereunder represents an aggregate of 3,192,339 Shares of our Class A common stock acquired by certain of our stockholders that are directors, executive officers and current and former service providers upon the exercise of stock options. We have determined beneficial ownership in accordance with the rules of the SEC and the information is not necessarily indicative of beneficial ownership for any other purpose. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares that they beneficially own, subject to community property laws where applicable. In computing the number of shares of our Class A common stock beneficially owned by a person and the percentage ownership of that person, we deemed outstanding shares of our Class A common stock subject to options held by that person that are currently exercisable or exercisable within 60 days of February 28, 2021. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person.

We have based percentage ownership of our Class A common stock prior to this offering on 97,431,675 shares of our Class A common stock outstanding as of February 28, 2021, unless otherwise noted.

Unless otherwise indicated, the address of each beneficial owner listed below is c/o C3.ai, Inc., 1300 Seaport Blvd, Suite 500, Redwood City, California 94063.

Selling Stockholder	Shares Beneficially Owned Prior to the Offering		Shares Being Offered	Shares Beneficially Owned After the Offering (1)	
	Shares	Percentage	Shares	Shares	Percentage
Ed Abbo	1,901,726	1.93%	72,292	1,829,434	1.86%
Houman Behzadi	1,409,090	1.43%	213,940	1,195,150	1.21%
Stephen Ward Jr.	1,213,368	1.24%	190,096	1,023,272	1.04%
Brady Mickelsen	983,333	1.00%	62,778	920,555	*
S. Shankar Sastry	644,971	*	11,400	633,571	*
Patricia House	613,131	*	233,922	379,209	*
Michael McCaffery	523,366	*	203,931	319,435	*
Named Selling Stockholders(2)	8,505,842	8.32%	2,203,980	6,301,862	6.17%

\* Represents beneficial ownership of less than 1%.

- (1) Assumes that all of the Shares held by each Selling Stockholder and being offered under this prospectus are sold, and that no Selling Stockholder will acquire additional shares of Class A common stock before the completion of this offering.
- (2) Includes the following 110 named non-affiliate persons: Seung Ahn, Alex Amato, Umashankar Anand, Gilberto Arnaiz, John Bard, Simon Barnes, Aditya Bhashyam, Richard Binch, Yaroslav Buzko, John Carolan, Laurent Carriere, Juan Castaneda, Phoebus Chen, Tony Cho, Franck Cohen, Steven Coles, Donald Cotriss, Daniel Crowley, Jonathan Dall, Stanley Denney, Ning Ding, Fanming Dong, Satprit Duggal, Ivo Dujmović, David Elliston, Eileen Enriquez, Kevin Eveker, Fedor Fomenko, John Christopher Frech, Udit Garg, Annaji Garimella, Hans Guntren, Joel Haas, Jo Ann Hartley, James Hassman, Timothy Holtan, Amir Hossein Delgoshai, Kim Huynh, Jeremiah Jacobs, Robert Jenks, Niels Jensen, Yubing Ji, Romain Juban, Varada Karamchedu, Nikhil Krishnan, Richard Ledgett, Wilfrid Lemasson, Isaiah Leonard, Tony Li, Yuju Lin, Jacqueline Liu, Mehdi Maasoumy, Santosh Manoharmal, Daniel Marshall, Eric Marti, Binu Mathew, Donald Matthews, Fabio Mazzocchetti, Felipe Motta, Pavankumar Nandikonda, Sascha Naujoks, Henrik Ohlsson, Kenneth Okumura, Nikolai Oudalov, Dhairyashil Padalkar, Sina Pakazad, Stephanie Palocz, Rahul Patil, Louis Poirier, Stephen Power, Jawwad Rafique, Adrian Rami, Vidyasagar Ranganaboina, Ranjilla

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Ranganathan, Carlton Reeves, Steven Rog, Thomas Rothwein, Amit Salunke, Bahareh Samsami, Maureen Santos, Naresh Shah, Riley Siebel, Pat Slocum, Melissa So, Marc Stillman, Katherine Stricklin, Steve Sundstrom, Rohit Sureka, Manas Talukdar, David Tchankotadze, Ted Tran, Roger Turner, Tom Ulrich, Jeroen Van Godtsenhoven, Sumeet Vij, Meng Wang, Harald Weppner, Amy Whiley, Jake Whitcomb, Anthony Wilkinson, Chuck Winebrenner, Keith Wiseman, Merel Witteveen, Henry Wong, Mark Woollen, Qiru Xia, Baljeet Yadav, Paul Yip, Ali Zahabi, and Jieli Zhou. Each of these persons beneficially owns less than 1% of our common stock.

## PLAN OF DISTRIBUTION

We are registering the Shares covered by this prospectus to permit the Selling Stockholders to conduct public secondary trading of these Shares from time to time after the date of this prospectus. We will not receive any of the proceeds of the sale of the Shares offered by this prospectus. The aggregate proceeds to the Selling Stockholders from the sale of the Shares will be the purchase price of the Shares less any discounts and commissions. We will not pay any brokers' or underwriters' discounts and commissions in connection with the registration and sale of the Shares covered by this prospectus. The Selling Stockholders reserve the right to accept and, together with their respective agents, to reject, any proposed purchases of Shares to be made directly or through agents.

The Shares offered by this prospectus may be sold from time to time to purchasers:

- directly by the Selling Stockholders, or
- through underwriters, broker-dealers or agents, who may receive compensation in the form of discounts, commissions or agent's commissions from the Selling Stockholders or the purchasers of the Shares.

If any of the Selling Stockholders utilize a broker-dealer in the sale or distribution of the Shares, such broker-dealer may receive commissions in the form of discounts, concessions, or commissions from such Selling Stockholder or commissions from purchasers of the Shares for whom they may act as agent or to whom they may sell as principal. Any underwriters, broker-dealers or agents who participate in the sale or distribution of the Shares may be deemed to be "underwriters" within the meaning of the Securities Act. As a result, any discounts, commissions or concessions received by any such broker-dealer or agents who are deemed to be underwriters will be deemed to be underwriting discounts and commissions under the Securities Act. Underwriters are subject to the prospectus delivery requirements of the Securities Act and may be subject to certain statutory liabilities under the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"). We will make copies of this prospectus available to the Selling Stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. To our knowledge, there are currently no plans, arrangements or understandings between the Selling Stockholders and any underwriter, broker-dealer or agent regarding the sale of the Shares by the Selling Stockholders.

The Shares may be sold in one or more transactions at:

- fixed prices;
- prevailing market prices at the time of sale;
- prices related to such prevailing market prices;
- varying prices determined at the time of sale; or
- negotiated prices.

These sales may be effected in one or more transactions:

- on any national securities exchange or quotation service on which the Shares may be listed or quoted at the time of sale, including the NYSE;
- in the over-the-counter market;
- in transactions otherwise than on such exchanges or services or in the over-the-counter market;
- any other method permitted by applicable law; or
- through any combination of the foregoing.

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These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the trade.

At the time a particular offering of the Shares is made, a prospectus supplement, if required, will be distributed, which will set forth the name of the Selling Stockholders, the aggregate amount of Shares being offered and the terms of the offering, including, to the extent required, (1) the name or names of any underwriters, broker-dealers or agents, (2) any discounts, commissions and other terms constituting compensation from the Selling Stockholders and (3) any discounts, commissions or concessions allowed or reallocated to be paid to broker-dealers.

The Selling Stockholders will act independently of us in making decisions with respect to the timing, manner, and size of each resale or other transfer. There can be no assurance that the Selling Stockholders will sell any or all of the Shares under this prospectus. Further, we cannot assure you that the Selling Stockholders will not transfer, distribute, devise or gift the Shares by other means not described in this prospectus. In addition, any Shares covered by this prospectus that qualify for sale under Rule 144 of the Securities Act may be sold under Rule 144 rather than under this prospectus. The Shares may be sold in some states only through registered or licensed brokers or dealers. In addition, in some states the Shares may not be sold unless they have been registered or qualified for sale or an exemption from registration or qualification is available and complied with.

The Selling Stockholders and any other person participating in the sale of the Shares will be subject to the Exchange Act. The Exchange Act rules include, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the Shares by the Selling Stockholders and any other person. In addition, Regulation M may restrict the ability of any person engaged in the distribution of the Shares to engage in market-making activities with respect to the particular Shares being distributed. This may affect the marketability of the Shares and the ability of any person or entity to engage in market-making activities with respect to the Shares.

The Selling Stockholders may indemnify any broker or underwriter that participates in transactions involving the sale of the Shares against certain liabilities, including liabilities arising under the Securities Act.

## LEGAL MATTERS

The validity of the Shares offered hereby has been passed upon by Cooley LLP, Palo Alto, California.

## EXPERTS

The consolidated financial statements as of April 30, 2019 and April 30, 2020 and for each of the years then ended have been included in this Prospectus, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such financial statements are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## INFORMATION INCORPORATED BY REFERENCE

The following documents filed with the SEC are hereby incorporated by reference in this prospectus:

- The Registrant's [Prospectus](#) filed on December 9, 2020, pursuant to Rule 424(b) under the Securities Act, relating to the Registration Statement on Form S-1, as amended (File No. 333-250082), which contains the Registrant's audited financial statements for the latest fiscal year for which such statements have been filed;
- The Registrant's Quarterly Report on [Form 10-Q](#) filed with the U.S. Securities and Exchange Commission on March 2, 2021 (File No. 001-39744); and
- The description of the Registrant's common stock which is contained in a registration statement on [Form 8-A](#) filed on November 30, 2020 (File No. 333-251236) under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the SEC shall not be deemed incorporated by reference into this Registration Statement.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and other reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at <http://www.sec.gov>. Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, including any amendments to those reports, and other information that we file with or furnish to the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act can also be accessed free of charge by linking directly from our website at C3.ai. These filings will be available as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Information contained on our website is not part of this prospectus.

The Registrant hereby undertakes to provide without charge to each person, including any beneficial owner, to whom a copy of this prospectus is delivered, upon written or oral request of any such person, a copy of any and all of the information that has been incorporated by reference in this prospectus but not delivered with the prospectus other than the exhibits to those documents, unless the exhibits are specifically incorporated by reference into the information that this prospectus incorporates. Requests for documents should be directed to C3.ai, Inc., Attention: General Counsel, 1300 Seaport Blvd, Suite 500, Redwood City, California 94063, (650) 503-2200.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS**

**Item 1. Plan Information.\***

**Item 2. Registration Information and Employee Plan Annual Information.\***

\* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act and the “Note” to Part I of Form S-8.



## PART II

### INFORMATION REQUIRED IN REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The following documents filed with the SEC are hereby incorporated by reference in this prospectus:

- The Registrant's Prospectus filed on December 7, 2020, pursuant to Rule 424(b) under the Securities Act, relating to the Registration Statement on Form S-1, as amended (File No. 333-250082), which contains the Registrant's audited financial statements for the latest fiscal year for which such statements have been filed.
- The Registrant's Quarterly Report on Form 10-Q filed with the U.S. Securities and Exchange Commission on March 2, 2021 (File No. 001-39744).
- The description of the Registrant's common stock which is contained in a registration statement on Form 8-A filed on November 30, 2020 (File No. 333-251236) under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the SEC shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

#### Item 4. Description of Securities.

Not applicable.

#### Item 5. Interests of Named Experts and Counsel.

As of the date of this Registration Statement, certain attorneys at Cooley LLP beneficially own 52,812 shares of our Class A Common Stock, which collectively represent less than 1% of our outstanding shares of capital stock.

#### Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law ("DGCL") authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act.

The Registrant's amended and restated certificate of incorporation permits indemnification of its directors, officers and other agents to the maximum extent permitted by the DGCL through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise. The Registrant's amended and restated bylaws provide that it will indemnify, to the fullest extent permitted by law, any person who was or is made or is threatened to be made a party or is otherwise involved in proceeding, by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Registrant. The Registrant's amended and restated bylaws also provide that the Registrant must advance expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action or proceeding, subject to limited exceptions.

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Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment or repeal. If the DGCL is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of the Registrant's directors will be further limited to the greatest extent permitted by the DGCL.

Further, the Registrant has entered into indemnification agreements with each of its directors and executive officers that may be broader than the specific indemnification provisions contained in the DGCL. These indemnification agreements require the Registrant, among other things, to indemnify its directors and executive officers against liabilities that may arise by reason of their status or service. These indemnification agreements also require the Registrant to advance all expenses incurred by the directors and executive officers in investigating or defending any such action, suit or proceeding. The Registrant believes that these agreements are necessary to attract and retain qualified individuals to serve as directors and executive officers.

The limitation of liability and indemnification provisions that are included in the Registrant's amended and restated certificate of incorporation, amended and restated bylaws and in indemnification agreements that the Registrant has entered into or will enter into with its directors and executive officers may discourage stockholders from bringing a lawsuit against its directors and executive officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against the Registrant's directors and executive officers, even though an action, if successful, might benefit the Registrant and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that the Registrant pays the costs of settlement and damage awards against directors and executive officers as required by these indemnification provisions. At present, there is no pending litigation or proceeding involving a director or officer of the Registrant regarding which indemnification is sought, nor is the Registrant aware of any threatened litigation that may result in claims for indemnification.

The Registrant maintains insurance policies that indemnify its directors and officers against various liabilities arising under the Securities Act and the Exchange Act that might be incurred by any director or officer in his or her capacity as such.

Certain of the Registrant's non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of the Registrant's board of directors.

### **Item 7. Exemption from Registration Claimed.**

The issuance of the Shares being offered by the Form S-3 resale prospectus were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act (or Regulation D or Regulation S promulgated thereunder), or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions. All recipients had adequate access, through their relationships with us, to information about the Registrant.

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### Item 8. Exhibits.

#### EXHIBIT INDEX

Exhibit Number	Description	Schedule Form	Incorporated by Reference		Filing Date
			File Number	Exhibit	
4.1	<a href="#">Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect.</a>	8-K	001-39744	3.1	December 11, 2020
4.2	<a href="#">Amended and Restated Bylaws of the Registrant, as currently in effect.</a>	S-1/A	333-250082	3.4	November 30, 2020
4.5	<a href="#">Form of Class A common stock certificate of the Registrant.</a>	S-1/A	333-250082	4.1	November 30, 2020
5.1*	<a href="#">Opinion of Cooley LLP.</a>				
10.1*	<a href="#">Form of Indemnification Agreement between the Registrant and each of its directors and executive officers.</a>				
23.1*	<a href="#">Consent of Cooley LLP (included in Exhibit 5.1).</a>				
23.2*	<a href="#">Consent of Deloitte &amp; Touche LLP, independent registered public accounting firm.</a>				
24.1*	<a href="#">Power of Attorney (included on the signature page of this Form S-8).</a>				
99.1	<a href="#">C3.ai, Inc. Amended and Restated 2012 Equity Incentive Plan and forms of agreements thereunder.</a>	S-1	333-250082	10.1	November 13, 2020

\* Filed herewith

### Item 9. Undertakings.

A. The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

*Provided, however,* that paragraphs (A)(1)(i) and (A)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

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B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Redwood City, State of California, on this 5th day of March, 2021.

**C3.ai, Inc.**

By: /s/ Thomas M. Siebel

Thomas M. Siebel

Chief Executive Officer

## POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints Thomas M. Siebel, David Barter, and Brady Mickelsen, each of them, as his or her true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him or her and in their name, place or stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the U.S. Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Thomas M. Siebel</u> Thomas M. Siebel	Chief Executive Officer and Chairman of the Board of Directors <i>(Principal Executive Officer)</i>	March 5, 2021
<u>/s/ David Barter</u> David Barter	Senior Vice President and Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	March 5, 2021
<u>/s/ Patricia A. House</u> Patricia A. House	Director	March 5, 2021
<u>/s/ Richard Levin</u> Richard Levin	Director	March 5, 2021
<u>/s/ Michael G. McCaffery</u> Michael G. McCaffery	Director	March 5, 2021
<u>/s/ Nehal Raj</u> Nehal Raj	Director	March 5, 2021

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<hr/> <i>/s/ Condoleezza Rice</i> Condoleezza Rice	Director	March 5, 2021
<hr/> <i>/s/ S. Shankar Sastry</i> S. Shankar Sastry	Director	March 5, 2021
<hr/> <i>/s/ Bruce Sewell</i> Bruce Sewell	Director	March 5, 2021
<hr/> <i>/s/ Lorenzo Simonelli</i> Lorenzo Simonelli	Director	March 5, 2021
<hr/> <i>/s/ Jim Hagemann Snabe</i> Jim Hagemann Snabe	Director	March 5, 2021
<hr/> <i>/s/ Stephen M. Ward Jr.</i> Stephen M. Ward Jr.	Director	March 5, 2021



Calise Y. Cheng  
+1 650 843 5172  
ccheng@cooley.com

March 5, 2021

C3.ai, Inc.  
1300 Seaport Boulevard, Suite 500  
Redwood City, California 94063

Ladies and Gentlemen:

We have acted as counsel to C3.ai, Inc., a Delaware corporation (the "**Company**"), and you have requested our opinion in connection with the filing of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission, covering the registration for resale of up to 3,192,339 shares of the Company's Class A Common Stock, par value \$0.001 per share (the "**Shares**"), on behalf of selling stockholders described in the prospectus included in the Registration Statement (the "**Prospectus**").

In connection with this opinion, we have examined and relied upon (a) the Registration Statement and the Prospectus, (b) the Company's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, each as currently in effect, (c) originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials and the due authorization, execution and delivery of all documents by all persons other than by the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares are validly issued, fully paid and nonassessable.

Our opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated. Our opinion is based on these laws as in effect on the date hereof, and we disclaim any obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and which may alter, affect or modify the opinion expressed herein.

Cooley LLP 3175 Hanover Street, Palo Alto, CA 94304-1130  
t: (650) 843-5000 f: (650) 849-7400 cooley.com



Calise Y. Cheng  
+1 650 843 5172  
ccheng@cooley.com

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to our firm under the caption "Legal Matters" in the Prospectus.

Sincerely,

Cooley LLP

By: /s/Calise Y. Cheng  
Calise Y. Cheng

Cooley LLP 3175 Hanover Street, Palo Alto, CA 94304-1130  
t: (650) 843-5000 f: (650) 849-7400 cooley.com



**C3.AI, INC.**  
**INDEMNITY AGREEMENT**

**This Indemnity Agreement** (this “**Agreement**”), dated as of \_\_\_\_\_, is made by and between **C3.ai, Inc.**, a Delaware corporation (the “**Company**”), and \_\_\_\_\_ (“**Indemnitee**”).

**Recitals**

**A.** The Company desires to attract and retain the services of highly qualified individuals as directors, officers, employees and agents.

**B.** The Company’s bylaws (the “**Bylaws**”) require that the Company indemnify its directors and executive officers, and empowers the Company to indemnify its other officers, employees and agents, as authorized by the Delaware General Corporation Law, as amended (the “**Code**”), under which the Company is organized and such Bylaws expressly provide that the indemnification provided therein is not exclusive and contemplates that the Company may enter into separate agreements with its directors, officers and other persons to set forth specific indemnification provisions.

**C.** Indemnitee does not regard the protection currently provided by applicable law, the Company’s governing documents and available insurance as adequate under the present circumstances, and the Company has determined that Indemnitee and other directors, officers, employees and agents of the Company may not be willing to serve or continue to serve in such capacities without additional protection.

**D.** The Company desires and has requested Indemnitee to serve or continue to serve as a director, officer, employee or agent of the Company, as the case may be, and has proffered this Agreement to Indemnitee as an additional inducement to serve in such capacity.

**E.** Indemnitee is willing to serve, or to continue to serve, as a director, officer, employee or agent of the Company, as the case may be, if Indemnitee is furnished the indemnity provided for herein by the Company.

**Agreement**

**Now Therefore**, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

**1. Definitions.**

**(a) Agent.** For purposes of this Agreement, the term “**Agent**” of the Company means any person who: (i) is or was a director, officer, employee or other fiduciary of the Company or a subsidiary of the Company; or (ii) is or was serving at the request or for the convenience of, or representing the interests of, the Company or a subsidiary of the Company, as a director, officer, employee or other fiduciary of a foreign or domestic corporation, partnership, joint venture, trust or other enterprise. References to “serving at the request of the Company” shall include, but not be limited to, any service as a director, officer, employee or agent of the Company or any other entity which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries, including as a deemed fiduciary thereto.

**(b) Change of Control.** For purposes of this Agreement, the term “**Change of Control**” shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

**(i) Acquisition of Stock by Third Party.** Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company’s then outstanding securities;

**(ii) Change in Board Composition.** During any period of two consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constituted the Company's board of directors and any Approved Directors cease for any reason to constitute a majority of the members of the of the Company's board of directors. "**Approved Directors**" means new directors whose election or nomination by the board of directors was approved by a vote of at least two thirds of the directors then still in office who either were directors at the beginning of such two-year period or whose election or nomination for election was previously so approved;

**(iii) Corporate Transactions.** The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the Board of Directors or other governing body of such surviving entity;

**(iv) Liquidation.** Either (1) the approval by the Board of Directors of the Company of a complete liquidation or dissolution of the Company or (2) a sale, lease, transfer or other disposition by the Company of all or substantially all of the Company's assets; and

**(v) Other Events.** Any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended, whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 1(b), the following terms shall have the following meanings:

(A) "**Person**" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended; *provided, however*, that "Person" shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(B) "**Beneficial Owner**" shall have the meaning given to such term in Rule 13d-3 under the Securities Exchange Act of 1934, as amended; *provided, however*, that "Beneficial Owner" shall exclude any Person otherwise becoming a Beneficial Owner by reason of (i) the stockholders of the Company approving a merger of the Company with another entity or (ii) the Company's board of directors approving a sale of securities by the Company to such Person.

**(c) Disinterested Director.** For purposes of this Agreement, the term "**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

**(d) Expenses.** For purposes of this Agreement, the term "**Expenses**" shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys', witness, or other professional fees and related disbursements, and other out-of-pocket costs of whatever nature), actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of a Proceeding or establishing or enforcing a right to indemnification or advancement under this Agreement, the Code or otherwise or a right to insurance recovery under any D&O Insurance (and including, in all cases, the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). The term

“Expenses” shall also include reasonable compensation for time spent by Indemnitee for which he is not compensated by the Company or any subsidiary or third party for any period during which Indemnitee is not an agent, in the employment of, or providing services for compensation to, the Company or any subsidiary, but only if the rate of compensation and estimated time involved is approved by the directors of the Company who are not parties to any action with respect to which expenses are incurred.

**(e) Independent Counsel.** For purposes of this Agreement, the term “**Independent Counsel**” means a law firm, a partner (or, if applicable, member) of such a law firm, or a solo practitioner, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company, any Subsidiary or Indemnitee in any matter material to any such party, or (ii) any other party to the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards or rules of professional conduct then applicable and/or prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

**(f) Proceedings.** For purposes of this Agreement, the term “**Proceeding**” shall be broadly construed and shall include, without limitation, any threatened, pending, or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, and whether formal or informal in any case, in which Indemnitee was, is or will be involved as a party or otherwise by reason of: (i) the fact that Indemnitee is or was a director or officer of the Company; (ii) the fact of any action taken by Indemnitee or of any action on Indemnitee’s part while acting as director, officer, employee or agent of the Company; or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and in any such case described above, whether or not serving in any such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses may be provided under this Agreement.

**(g) Subsidiary.** For purposes of this Agreement, the term “**Subsidiary**” means any corporation or limited liability company of which more than 50% of the outstanding voting securities or equity interests are owned, directly or indirectly, by the Company and one or more of its subsidiaries, and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary.

**2. Agreement to Serve.** Indemnitee will serve, or continue to serve in the capacity Indemnitee currently serves, as a director, officer, employee or agent of the Company or any subsidiary, as the case may be, faithfully and to the best of his or her ability, at the will of such corporation (or under separate agreement, if such agreement exists), , so long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the Bylaws or other applicable charter documents of such corporation, or until such time as Indemnitee tenders his or her resignation in writing; provided, however, that nothing contained in this Agreement is intended as an employment agreement between Indemnitee and the Company or any of its subsidiaries or to create any right to continued employment of Indemnitee with the Company or any of its subsidiaries in any capacity.

The Company acknowledges that it has entered into this Agreement and assumes the obligations imposed on it hereby, in addition to and separate from its obligations to Indemnitee under the Bylaws, to induce Indemnitee to serve, or continue to serve, as a director, officer, employee or agent of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Company.

### 3. Indemnification.

**(a) Indemnification in Third Party Proceedings.** Subject to Section 10 below, the Company shall hold harmless and indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved (including as a witness) in any Proceeding, for any and all Expenses, judgments, fines, and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with such Proceeding.

**(b) Indemnification in Derivative Actions and Direct Actions by the Company.** Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved (including as a witness) in any Proceeding by or in the right of the Company to procure a judgment in its favor, against any and all Expenses actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement, or appeal of such Proceedings.

**(c) [Fund Indemnitors.** The Company hereby acknowledges that the Indemnitee has certain rights to indemnification, advancement of expenses or insurance, provided by [Name of Fund/Sponsor] and certain of [its][their] affiliates (collectively, the “Fund Indemnitors”). In the event that the Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding to the extent resulting from any claim based on the Indemnitee’s service to the Company as a director or other fiduciary of the Company, then the Company shall (i) be an indemnitor of first resort (*i.e.*, its obligations to Indemnitee are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) be required to advance reasonable expenses incurred by Indemnitee, and (iii) be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and any provision of the Company’s Bylaws or the Certificate of Incorporation (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Fund Indemnitors. The Company irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by the Fund Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Fund Indemnitors are third party beneficiaries of the terms of this Section.] **[Note to Draft: Section applicable only to those directors appointed pursuant to a fund/major stockholder’s designation rights and section to be customized for each such director.]**

**4. Indemnification of Expenses of Successful Party.** Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any Proceeding or in defense of any claim, issue or matter therein, including the dismissal of any action without prejudice, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred in connection with the investigation, defense or appeal of such Proceeding, claim, issue or matter.

**5. Partial Indemnification.** If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any Expenses actually and reasonably incurred by Indemnitee in the investigation, defense, settlement or appeal of a Proceeding, but is precluded by applicable law or the specific terms of this Agreement to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

**6. Advancement of Expenses.** The Company shall promptly advance the Expenses incurred by Indemnitee in connection with any Proceeding, and in any event such advancement shall be made within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances

(which shall reasonably evidence the Expenses incurred and include invoices received by Indemnitee in connection with such Expenses). The Company shall, in accordance with such statement (but without duplication), (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. Indemnitee hereby undertakes to repay any Expenses that are advanced under this Section 6 (without interest) to the fullest extent required by law if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. Advances shall be unsecured, interest free and without regard to Indemnitee's ability to repay the Expenses. Advances shall include any and all Expenses actually and reasonably incurred by Indemnitee pursuing an action to enforce Indemnitee's right to indemnification under this Agreement, or otherwise and this right of advancement, including reasonable Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. The right to advances under this Section shall continue until final disposition of any Proceeding, including any appeal therein. This Section 6 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 10(b).

## **7. Notice and Other Indemnification Procedures.**

**(a) Notification of Proceeding.** Indemnitee will notify the Company in writing promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise, unless and only to the extent that such failure actually and materially prejudices the Company.

**(b) Request for Indemnification and Indemnification Payments.** Indemnitee shall notify the Company promptly in writing upon receiving notice of any demand, judgment or other requirement for payment that Indemnitee reasonably believes to be subject to indemnification under the terms of this Agreement, Indemnitee shall include such documentation and information as is reasonably available to Indemnitee and would be reasonably necessary for the Company to determine whether and to what extent Indemnitee is entitled to indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company. Upon such written request by Indemnitee for indemnification, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods (which shall be at the election of the Board of Directors if there has not been a Change of Control, and which shall be at the election of the Indemnitee if there has been a Change of Control): (1) by a majority vote of the Disinterested Directors, even though less than a quorum, (2) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum, (3) if there are no Disinterested Directors or if the Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee, or (4) if so directed by the Board of Directors, by the stockholders of the Company. Indemnification payments requested by Indemnitee under Section 3 hereof shall be made by the Company no later than sixty (60) days after receipt of the written request of Indemnitee. Claims for advancement of Expenses shall be made under the provisions of Section 6 herein.

**(i)** If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 7(b) hereof, the independent counsel shall be selected as provided in this 7(b)(i). The independent counsel shall be selected by the Board of Directors if there has not been a Change of Control. The independent counsel shall be selected by the Indemnitee if there has been a Change of Control. In either case, the non-selecting party may, within 10 days after such written notice of selection shall have been given, deliver to the Company or Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the

Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined herein, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the independent counsel selected may not serve as independent counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 7(b) hereof, no independent counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnitee to the Company's selection of independent counsel and/or for the appointment as independent counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as independent counsel under Section 7(b) hereof. The Company shall pay any and all reasonable fees and expenses of independent counsel incurred by such independent counsel in connection with acting pursuant to Section 7(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this section (including all reasonable fees and expenses, including attorneys' fees and disbursements, incurred by Indemnitee in cooperating with the independent counsel or the Company for which the Company shall indemnify Indemnitee), regardless of the manner in which such independent counsel was selected or appointed and regardless of the determination reached by independent counsel with respect to Indemnitee's entitlement to indemnification.

**(c) Presumption of Entitlement.** In making any determination concerning Indemnitee's right to indemnification, there shall be a presumption that Indemnitee has satisfied the applicable standard of conduct and is entitled to indemnification under this Agreement. Any determination concerning Indemnitee's right to indemnification that is adverse to Indemnitee may be challenged by the Indemnitee in the Court of Chancery of the State of Delaware. A determination by the Company (including without limitation by its directors or any Independent Counsel) that Indemnitee has not satisfied any applicable standard of conduct, or the failure by the Company to have made a determination regarding whether Indemnitee has met any applicable standard of conduct, shall not create a presumption that Indemnitee has not met any applicable standard of conduct. The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement (with or without court approval), conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

**(d) Application for Enforcement.** In the event (i) the Company fails to make timely payments as set forth in Sections 6 or 7(b) above, (ii) a determination is made pursuant to this Section 7 that Indemnitee is not entitled to indemnification under this Agreement or (iii) payment of indemnification is not made pursuant to Section 4 or the last sentence of Section 7(b)(i) within ten (10) days after receipt by the Company of a request therefor, Indemnitee shall have the right to apply to any court of competent jurisdiction for the purpose of enforcing Indemnitee's right to indemnification or advancement of Expenses pursuant to this Agreement. In such an enforcement hearing or proceeding, the burden of proof shall be on the Company to prove that indemnification or advancement of Expenses to Indemnitee is not required under this Agreement or permitted by applicable law. Any determination by the Company (including its Board of Directors, stockholders or independent counsel) that Indemnitee is not entitled to indemnification hereunder, shall not be a defense by the Company to the action nor create any presumption that Indemnitee is not entitled to indemnification or advancement of Expenses hereunder. The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement.

**(e) Indemnification/Advancement of Certain Expenses.** The Company shall indemnify Indemnitee against all Expenses and, if requested by Indemnitee, the Company shall (within ten (10) days after receipt by the Company of a written request therefor) advance all Expenses incurred in connection with any hearing or proceeding under this Section 7 or in connection with any proceeding or action brought by Indemnitee to seek insurance recovery under any D&O Insurance regardless of whether Indemnitee is ultimately determined to be entitled to such indemnification, advancement or insurance recovery, as the case may be, in the suit for which indemnification, advancement or insurance is brought.

**8. Assumption of Defense.** In the event the Company shall be requested by Indemnitee to pay the Expenses of any Proceeding, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, or to participate to the extent permissible in such proceeding, with counsel reasonably acceptable to Indemnitee. Upon assumption of the defense by the Company and the retention of such counsel by the Company, the Company shall not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that Indemnitee shall have the right to employ separate counsel in such proceeding at Indemnitee's sole cost and expense. Notwithstanding the foregoing, if Indemnitee's counsel delivers a written notice to the Company stating that such counsel has reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or the Company shall not, in fact, have employed counsel or otherwise actively pursued the defense of such proceeding within a reasonable time, then in any such event the fees and expenses of Indemnitee's counsel to defend such proceeding shall be subject to the indemnification and advancement of expenses provisions of this Agreement.

**9. Insurance.** To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Company or of any subsidiary ("**D&O Insurance**"), Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's key employees, if Indemnitee is not an officer or director but is a key employee. If, at the time of the receipt of a notification of proceeding pursuant to the terms hereof, the Company has D&O Insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

**10. Exceptions.** Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any Proceeding (or any part of any Proceeding):

**(a)** for which payment has actually been made to or on behalf of Indemnitee under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

**(b)** for amounts paid to Indemnitee if it is determined in a final adjudication not subject to further appeal that such payment was in violation of law (and, in this respect, both the Company and Indemnitee have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable);

**(c)** for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

**(d)** for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended

(including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(e) for any amounts paid in settlement of a Proceeding effected without the Company’s written consent; neither the Company nor Indemnitee shall unreasonably withhold consent to any proposed settlement; provided, however, that the Company may in any event decline to consent to (or to otherwise admit or agree to any liability for indemnification hereunder in respect of) any proposed settlement if the Company is also a party in such proceeding and reasonably determines in good faith that such settlement is not in the best interests of the Company and its stockholders;

(f) in violation of any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act of 1933, as amended (the “**Act**”), or in any registration statement filed with the SEC under the Act; Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K currently generally requires the Company to undertake in connection with any registration statement filed under the Act to submit the issue of the enforceability of Indemnitee’s rights under this Agreement in connection with any liability under the Act on public policy grounds to a court of appropriate jurisdiction and to be governed by any final adjudication of such issue; Indemnitee specifically agrees that any such undertaking shall supersede the provisions of this Agreement and to be bound by any such undertaking;

(g) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Company’s board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise authorized in Section 10(d) or (iv) otherwise required by applicable law; provided, for the avoidance of doubt, Indemnitee shall not be deemed for purposes of this paragraph, to have initiated any Proceeding (or any part of a Proceeding) by reason of (i) having asserted any affirmative defenses in connection with a claim not initiated by Indemnitee or (ii) having made any counterclaim (whether permissive or mandatory) in connection with any claim not initiated by Indemnitee; or

(h) if prohibited by the DGCL or other applicable law.

**11. Nonexclusivity and Survival of Rights.** The provisions for indemnification and advancement of expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may at any time be entitled under any provision of applicable law, the Company’s Certificate of Incorporation, Bylaws or other agreements, both as to action in Indemnitee’s official capacity and Indemnitee’s action as an agent of the Company, in any court in which a Proceeding is brought, and Indemnitee’s rights hereunder shall continue after Indemnitee has ceased acting as an agent of the Company and shall inure to the benefit of the heirs, executors, administrators and assigns of Indemnitee. The obligations and duties of the Company to Indemnitee under this Agreement shall be binding on the Company and its successors and assigns until terminated in accordance with its terms. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her corporate status prior to such amendment, alteration or repeal. To the extent that a change in the Code, whether by statute or judicial decision, permits greater indemnification or advancement



of expenses than would be afforded currently under the Company's Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, by Indemnitee shall not prevent the concurrent assertion or employment of any other right or remedy by Indemnitee.

**12. Term.** This Agreement shall continue until and terminate upon the later of: (a) ten (10) years after the date that Indemnitee shall have ceased to serve as a director or and/or officer, employee or agent of the Company; or (b) one (1) year after the final termination of any Proceeding, including any appeal then pending, in respect to which Indemnitee was granted rights of indemnification or advancement of expenses hereunder.

**13. Subrogation.** In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who, at the request and expense of the Company, shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

**14. Interpretation of Agreement.** It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification and advancement of expenses to Indemnitee to the fullest extent now or hereafter permitted by law.

**15. Severability.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of the Agreement (including without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 14 hereof.

**16. Amendment and Waiver.** No supplement, modification, amendment, or cancellation of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

**17. Notice.** Except as otherwise provided herein, any notice or demand which, by the provisions hereof, is required or which may be given to or served upon the parties hereto shall be in writing and, if by telegram, telecopy or telex, shall be deemed to have been validly served, given or delivered when sent, if by overnight delivery, courier or personal delivery, shall be deemed to have been validly served, given or delivered upon actual delivery and, if mailed, shall be deemed to have been validly served, given or delivered three (3) business days after deposit in the United States mail, as registered or certified mail, with proper postage prepaid and addressed to the party or parties to be notified at the addresses set forth on the signature page of this Agreement (or such other address(es) as a party may designate for itself by like notice). If to the Company, notices and demands shall be delivered to the attention of the Secretary of the Company.

**18. Contribution.** To the fullest extent permitted under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in

connection with any Proceeding in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee in connection with the event(s) and/or transaction(s) giving rise to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

**19. Governing Law.** This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware.

**20. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement.

**21. Headings.** The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

**22. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Company's Certificate of Incorporation, Bylaws, the Code and any other applicable law, and shall not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

[Signatures Follow]

**In Witness Whereof**, the parties hereto have entered into this Agreement effective as of the date first above written.

**COMPANY**

By: \_\_\_\_\_  
Name: Brady Mickelsen  
Title: Senior Vice President and General Counsel

**INDEMNITEE**

\_\_\_\_\_  
Signature of Indemnitee

\_\_\_\_\_  
Name

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated September 18, 2020 (November 30, 2020 as to the effects of the reverse stock split described in Note 1), appearing in the Prospectus dated December 9, 2020 filed by the Company, pursuant to Rule 424(b) under the Securities Act of 1933, relating to the Company's Registration Statement No. 333-250082 on Form S-1, as amended. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ DELOITTE & TOUCHE LLP

San Jose, California  
March 5, 2021