THE INDEBTEDNESS REPRESENTED BY THIS NOTE IS EXPRESSLY SUBORDINATED TO THE CLAIMS OF SILICON VALLEY BANK, OR ANY SUCCESSOR BANK THERETO, INCLUDING, WITHOUT LIMITATION, DEPOSIT INSURANCE NATIONAL BANK OF SANTA CLARA (“BANK”) PURSUANT TO A SUBORDINATION AGREEMENT DATED AS OF MARCH \_\_, 2023 BY AND AMONG THE HOLDER OF THIS NOTE AND THE BANK (THE “SUBORDINATION AGREEMENT”). ANY ASSIGNMENT OF THIS NOTE SHALL BE SUBJECT TO THE SUBORDINATION AGREEMENT.

SUBORDINATED PROMISSORY NOTE

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Date]
 \_\_\_\_\_\_\_\_\_\_, United States

For value received, [Company Name], a Delaware corporation (the “Company”), promises to pay to [\_\_\_\_\_\_\_\_\_\_\_\_] (the “Holder”), the principal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_). Interest shall accrue from the date of this Subordinated Promissory Note (this “Note”) on the unpaid principal amount at a rate equal to [4.5]% per annum, computed as simple interest on the basis of a year of 365 days. If a Change of Control (as such term is defined herein) is consummated, all interest on this Note shall be deemed to have stopped accruing as of a date selected by the Company that is up to 10 days prior to the signing of the definitive agreement for such Change of Control. This Note is subject to the following terms and conditions.

1. **Basic Terms.**
	1. **Maturity.** Principal and any accrued but unpaid interest under this Note shall be due and payable upon demand of the Holder at any time after [\_\_\_\_\_] (the “Maturity Date”), subject to Section 8 hereof. Interest shall accrue on this Note and shall be due and payable with each installment of principal. Notwithstanding the foregoing, subject to Section 8 hereof, the entire unpaid principal sum of this Note, together with accrued and unpaid interest thereon, shall become immediately due and payable upon the commission of any act of bankruptcy by the Company, the execution by the Company of a general assignment for the benefit of creditors, the filing by or against the Company of a petition in bankruptcy or any petition for relief under the federal bankruptcy act or the continuation of such petition without dismissal for a period of 90 days or more, or the appointment of a receiver or trustee to take possession of the property or assets of the Company.
	2. **Payment; Prepayment.** All payments shall be made in lawful money of the United States of America at such place as the Holder hereof may from time to time designate in writing to the Company. Payment shall be credited first to the accrued interest then due and payable and the remainder shall be applied to principal. The Company may prepay this Note at any time without penalty.
2. **Change of Control.** In the event of a Change of Control (as defined below) prior to repayment in full of this Note, immediately prior to such Change of Control, the outstanding principal and any accrued but unpaid interest on this Note shall become immediately due and payable. The term “Change of Control” means (i) a sale of all or substantially all of the Company’s assets other than to an Excluded Entity (as defined below), (ii) a merger, consolidation or other capital reorganization or business combination transaction of the Company with or into another corporation, limited liability company or other entity other than an Excluded Entity, or (iii) the consummation of a transaction, or series of related transactions, in which any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of all of the Company’s then outstanding voting securities. Notwithstanding the foregoing, a transaction shall not constitute a Change of Control if its purpose is to (A) change the jurisdiction of the Company’s incorporation, (B) create a holding company that will be owned in substantially the same proportions by the persons who hold the Company’s securities immediately before such transaction, or (C) obtain funding for the Company in a financing that is approved by the Company’s Board of Directors. An “Excluded Entity” means a corporation or other entity of which the holders of voting capital stock of the Company outstanding immediately prior to such transaction are the direct or indirect holders of voting securities representing at least a majority of the votes entitled to be cast by all of such corporation’s or other entity’s voting securities outstanding immediately after such transaction.
3. **Representations and Warranties of the Company.** The Company hereby represents and warrants to Holder that:
	1. **Organization, Good Standing and Qualification.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.
	2. **Authorization.** The Company has full power and authority to enter into this Note. This Note, when executed and delivered by the Company, will constitute a valid and legally binding obligation of the Company, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors’ rights generally, and as limited by laws relating to the availability of a specific performance, injunctive relief, or other equitable remedies.
4. **Stockholders, Officers and Directors Not Liable.** In no event shall any stockholder, officer or director of the Company be liable for any amounts due or payable pursuant to this Note.
5. **Interest Rate Limitation.** Notwithstanding anything to the contrary contained in this Note, the interest paid or agreed to be paid under this Note shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the “Maximum Rate”). If the Holder shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal remaining owed under this Note or, if it exceeds such unpaid principal, refunded to the Company. In determining whether the interest contracted for, charged, or received by the Holder exceeds the Maximum Rate, the Holder may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of this Note.
6. **Action to Collect on Note.** If action is instituted to collect on this Note, the Company promises to pay all of the Holder’s costs and expenses, including reasonable attorney’s fees, incurred in connection with such action.
7. **Loss of Note.** Upon receipt by the Company of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Note or any Note exchanged for it, and indemnity satisfactory to the Company (in case of loss, theft or destruction) or surrender and cancellation of such Note (in the case of mutilation), the Company will make and deliver in lieu of such Note a new Note of like tenor.
8. **Subordination.** The indebtedness evidenced by this Note is expressly subordinated, to the extent and in the manner set forth in the subordination agreement among the Holder and Silicon Valley Bank (or any successor bank thereto, including, without limitation, Deposit Insurance National Bank of Santa Clara) in substantially the form attached as Exhibit A to this Agreement (the “Subordination Agreement”), in right of payment to the prior payment in full of all of the Company’s senior indebtedness, and Holder hereby agrees to enter into such agreements and take such additional action as may be necessary to perfect such subordination.
9. **Miscellaneous.**
	1. **Governing Law.** The validity, interpretation, construction and performance of this Note, and all acts and transactions pursuant hereto and the rights and obligations of the Company and Holder shall be governed, construed and interpreted in accordance with the laws of the state of [California], without giving effect to principles of conflicts of law.
	2. **Entire Agreement.** This Note constitutes the entire agreement and understanding between the Company and the Holder relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written between them relating to the subject matter hereof.
	3. **Amendments and Waivers.** Any term of this Note may be amended only with the written consent of the Company and the Holder. Any amendment or waiver effected in accordance with this Section 9(c) shall be binding upon the Company, the Holder and each transferee of this Note.
	4. **Successors and Assigns.** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and assigns of the Company and the Holder. Notwithstanding the foregoing, the Holder may not assign, pledge, or otherwise transfer this Note without the prior written consent of the Company. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee. Interest and principal are payable only to the registered holder of this Note.
	5. **Notices.** Any notice, demand or request required or permitted to be given under this Note shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party’s address as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address set forth in the Company’s books and records.
	6. **Counterparts.** This Note may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same instrument.
	7. [**Waiver of Conflicts.** Each party to this Agreement acknowledges that Orrick, Herrington & Sutcliffe LLP, counsel for the Company, may have in the past performed and may continue to perform legal services for the Holder in matters unrelated to the transactions described in this Agreement, including the representation of the Holder in venture capital financings and other matters. Accordingly, each party to this Agreement hereby (a) acknowledges that they have had an opportunity to ask for information relevant to this disclosure; and (b) gives its informed consent to Orrick, Herrington & Sutcliffe LLP’s representation of the Holder in such unrelated matters and to Orrick, Herrington & Sutcliffe LLP’s representation of the Company in connection with this Agreement and the transactions contemplated hereby.]

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Company has executed this Promissory Note as of the date first set forth above.

**the company:**

[Company Name]

By:

 (Signature)

Name:

Title:

Address:
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_
United States
Email:

AGREED TO AND ACCEPTED:

**The holder:**

[HOLDEr]

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Signature)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address:

Email:

**EXHIBIT A**

**SUBORDINATION** **AGREEMENT**

SUBORDINATION AGREEMENT

**THIS SUBORDINATION AGREEMENT** (the “**Agreement**”) is made as of March [●], 2023 by and between the creditor listed on the signature pages hereof (solely in such creditor’s role as a holder of Subordinated Debt (as defined below) and not in such creditor’s role as a holder of equity interests in Borrower, the “**Creditor**”) and **Silicon Valley Bank**, a California corporation, with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054, or any successor bank thereto, including, without limitation Deposit Insurance National Bank of Santa Clara (“**Bank**”).

**Recitals**

A. [Company Name], a Delaware corporation, (“**Borrower**”), has requested and/or obtained certain loans or other credit accommodations from Bank which are or may be from time to time secured by assets and property of Borrower.

B. Creditor has extended loans to Borrower, and/or may extend loans or other credit accommodations to Borrower from time to time.

C. To induce Bank to extend credit to Borrower and, at any time or from time to time, at Bank’s option, to make such further loans, extensions of credit, or other accommodations to or for the account of Borrower, or to purchase or extend credit upon any instrument or writing in respect of which Borrower may be liable in any capacity, or to grant such renewals or extension of any such loan, extension of credit, purchase, or other accommodation as Bank may deem advisable, Creditor is willing to subordinate: (i) all of Borrower’s indebtedness and obligations to Creditor under the Subordinated Promissory Note, dated as of the date hereof, issued by Borrower to Creditor (as the same may be amended, restated, supplemented or otherwise modified from time to time, each a “**Note**” and collectively, the “**Subordinated Debt Documents**”) (including, without limitation, principal, premium (if any), interest, fees, charges, expenses, costs, professional fees and expenses, and reimbursement obligations), whether presently existing or arising in the future under the Subordinated Debt Documents (the “**Subordinated Debt**”) to all of Borrower’s indebtedness and obligations to Bank; and (ii) all of Creditor’s security interests, if any, to all of Bank’s security interests in Borrower’s property.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Creditor subordinates to Bank any security interest or lien that Creditor may have in any property of Borrower. Notwithstanding the respective dates of attachment or perfection of the security interests of Creditor and the security interests of Bank, all now existing and hereafter arising security interests of Bank in any property of Borrower and all proceeds thereof (the “**Collateral**”), including, without limitation, the “Collateral,” as defined in a certain Loan and Security Agreement between Borrower and Bank dated as of [DATE][, as amended [DATE] (as may be further amended, modified, restated, replaced, or supplemented from time to time, the “**Loan Agreement**”), shall at all times be senior to the security interests of Creditor. Creditor hereby  acknowledges and consents to  Borrower granting to Bank a security interest in the Collateral,  Bank filing any and all financing statements and other documents as deemed necessary by Bank in order to perfect Bank’s security interest in the Collateral, and  the entering into of the Loan Agreement and all documents in connection therewith by Borrower,  acknowledges and agrees that the Senior Debt, the entering into of the Loan Agreement and all documents in connection therewith by Borrower, and the security interest granted by Borrower to Bank in the Collateral shall be permitted under the provisions of the Subordinated Debt Documents (notwithstanding any provision of the Subordinated Debt Documents to the contrary),  acknowledges, agrees and covenants that Creditor shall not contest, challenge or dispute the validity, attachment, perfection, priority or enforceability of Bank’s security interest in the Collateral, or the validity, priority or enforceability of the Senior Debt, and  acknowledges and agrees that the provisions of this Agreement will apply fully and unconditionally even in the event that Bank’s security interest in the Collateral (or any portion thereof) shall be unperfected.
2. All Subordinated Debt is subordinated in right of payment to all obligations of Borrower to Bank now existing or hereafter arising, including, without limitation, the Obligations (as defined in the Loan Agreement), together with all costs of collecting such obligations (including attorneys’ fees), including, without limitation, all obligations under any agreement in connection with the provision by Bank to Borrower of products and/or credit services facilities, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services, all interest accruing after the commencement by or against Borrower of any bankruptcy, reorganization or similar proceeding (such obligations, collectively, the “**Senior Debt**”). As used herein, the term “Senior Debt” shall exclude any warrants, capital stock or other equity securities of Borrower issued to Bank (or its Affiliates) and any agreements executed solely in connection therewith.
3. Subject to the terms of Section 7, Creditor will not demand or receive from Borrower (and Borrower will not pay to Creditor) all or any part of the Subordinated Debt, by way of payment, prepayment, setoff, lawsuit or otherwise, nor will Creditor exercise any remedy with respect to any property of Borrower, nor will Creditor accelerate the Subordinated Debt, or commence, or cause to commence, prosecute or participate in any administrative, legal or equitable action against Borrower, until such time as  the Senior Debt (other than inchoate indemnity obligations or any other obligations which, by their terms, survive termination of the Loan Agreement) has been fully paid in cash,  Bank has no commitment or obligation to lend any further funds to Borrower under the Loan Documents (as defined in the Loan Agreement), and  all financing agreements between Bank and Borrower are terminated (the earliest date on which (a), (b) and (c) of this Section 3 have occurred, the “**Termination Date**”).
4. Creditor shall promptly deliver to Bank in the form received (except for endorsement or assignment by Creditor where required by Bank) for application to the Senior Debt any payment, distribution, security or proceeds received by Creditor with respect to the Subordinated Debt other than in accordance with this Agreement.
5. In the event of Borrower’s insolvency, reorganization or any case or proceeding under any bankruptcy or insolvency law or laws relating to the relief of debtors, including, without limitation, any voluntary or involuntary bankruptcy, insolvency, receivership, or other similar statutory or common law proceeding or arrangement involving Borrower, the readjustment of its liabilities, any assignment for the benefit of its creditors or any marshalling of its assets or liabilities (each, an “**Insolvency Proceeding**”),  this Agreement shall remain in full force and effect in accordance with Section 510(a) of the United States Bankruptcy Code;  the Collateral shall include, without limitation, all Collateral arising during or after any such Insolvency Proceeding; and  Bank’s claims against Borrower and the estate of Borrower shall be paid in full before any payment is made to Creditor (other than inchoate indemnity obligations or other obligations which, by their terms, are to survive the termination of the Loan Agreement). For the avoidance of doubt, this Section 5 only applies to Creditor in its capacity as a holder of Subordinated Debt and not in any other capacity, including as an equity holder in Borrower.
6. Creditor shall simultaneously with giving any notice of default to Borrower, provide Bank with a copy of any notice of default given to Borrower. Creditor acknowledges and agrees that any default or event of default under the Subordinated Debt documents shall be deemed to be a default and an event of default under the Senior Debt documents.
7. Until the Termination Date, Creditor irrevocably appoints Bank as Creditor’s attorney-in-fact, and grants to Bank a power of attorney with full power of substitution, in the name of Creditor or in the name of Bank, for the use and benefit of Bank, without notice to Creditor, to perform at Bank’s option the following acts in any Insolvency Proceeding involving Borrower:

(a) To file the appropriate claim or claims in respect of the Subordinated Debt on behalf of Creditor if Creditor does not do so prior to ten (10) days before the expiration of the time to file claims in such Insolvency Proceeding and if Bank elects, in its sole discretion, to file such claim or claims; and

(b) To accept or reject any plan of reorganization or arrangement on behalf of Creditor and to otherwise vote Creditor’s claims in respect of any Subordinated Debt in any manner that Bank deems appropriate for the enforcement of its rights hereunder.

In addition to and without limiting the foregoing: (x) until the Termination Date, Creditor shall not commence or join in any involuntary bankruptcy petition or similar judicial proceeding against Borrower, and (y) if an Insolvency Proceeding occurs: (i) Creditor shall not assert, without the prior written consent of Bank, any claim, motion, objection or argument in respect of the Collateral in connection with any Insolvency Proceeding which could otherwise be asserted or raised in connection with such Insolvency Proceeding, including, without limitation, any claim, motion, objection or argument seeking adequate protection or relief from the automatic stay in respect of the Collateral, (ii) Bank may consent to the use of cash collateral on such terms and conditions and in such amounts as it shall in good faith determine without seeking or obtaining the consent of Creditor as (if applicable) holder of an interest in the Collateral, (iii) if use of cash collateral by Borrower is consented to by Bank, Creditor shall not oppose such use of cash collateral on the basis that Creditor’s interest in the Collateral (if any) is impaired by such use or inadequately protected by such use, or on any other ground, and (iv) Creditor shall not object to, or oppose, any sale or other disposition of any assets comprising all or part of the Collateral, free and clear of security interests, liens and claims of any party, including Creditor, under Section 363 of the United States Bankruptcy Code or otherwise, on the basis that the interest of Creditor in the Collateral (if any) is impaired by such sale or inadequately protected as a result of such sale, or on any other ground (and, if requested by Bank, Creditor shall affirmatively and promptly consent to such sale or disposition of such assets), if Bank has consented to, or supports, such sale or disposition of such assets.

Notwithstanding the provisions of this Section 7 and so long as the following actions do not impair Bank’s rights hereunder, Creditor may (a) subject to Section 7(a), file proofs of claim against Borrower in any Insolvency Proceeding, (b) file a claim against Borrower in an Insolvency Proceeding if necessary to prevent the running of the applicable statute of limitation or similar restriction on any claims under the Subordinated Debt, (c) seek specific performance in an Insolvency Proceeding to compel Borrower to comply with an obligation under the Subordinated Debt Documents so long as it is not accompanied by a claim for monetary damages, or (d) make an election to receive payment of any monetary damages as long as such election is subject to the prior payment in full in cash of the Senior Debt (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of the Loan Agreement) and the termination of Bank’s commitment or obligation to lend further funds to Borrower. Creditor agrees that any exercise of remedies as to the Subordinated Debt, including without limitation, those described in this Section 7, must be in express compliance with this Agreement and is subject to prior payment in full in cash of the Senior Debt (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of the Loan Agreement).

1. Borrower represents and warrants that Borrower has provided Bank with true and correct copies of all of the documents evidencing or relating to the Subordinated Debt. The instruments evidencing the Subordinated Debt shall contain a legend stating that the instruments are subject to the terms of this Agreement. By the execution of this Agreement, Creditor hereby authorizes Bank to amend any financing statements filed by Creditor against Borrower as follows: “In accordance with a certain Subordination Agreement by and among the Secured Party, the Debtor, and Silicon Valley Bank, the Secured Party has subordinated any security interest or lien that Secured Party may have in any property of the Debtor to the security interest of Silicon Valley Bank in all assets of the Debtor, notwithstanding the respective dates of attachment or perfection of the security interest of the Secured Party and Silicon Valley Bank.”
2. No amendment of the documents evidencing or relating to the Subordinated Debt shall directly or indirectly modify the provisions of this Agreement in any manner which might terminate or impair the subordination of the Subordinated Debt or the subordination of the security interest or lien that Creditor may have in any property of Borrower. By way of example, such instruments shall not be amended to accelerate the payment of the principal or interest or any other portion of the Subordinated Debt but for the avoidance of doubt, and provided none of Bank’s rights hereunder are modified or affected in any manner (and any additional Subordinated Debt incurred by Borrower remains subject to the terms and conditions of this Agreement), subject to the consent of Borrower if and where required under the Subordinated Debt Documents, at any time and from time to time, with notice to Bank, Creditor may, with respect to the Subordinated Debt, increase the principal amount, extend the time of payment, or increase applicable interest rates. Bank shall have the sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of property of Borrower except in accordance with the terms of the Senior Debt. Upon written notice from Bank to Creditor of Bank’s agreement to release its lien on all or any portion of the Collateral in connection with the sale, transfer or other disposition thereof by Bank (or by Borrower with consent of Bank), Creditor shall be deemed to have also, automatically and simultaneously, released its lien on the Collateral, and Creditor shall upon written request by Bank, promptly take such action as shall be necessary or appropriate to evidence and confirm such release. All proceeds resulting from any such sale, transfer or other disposition shall be applied first to the Senior Debt (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of this Loan Agreement) until payment in full thereof, with the balance, if any, to the Subordinated Debt, or to any other entitled party. If Creditor fails to release its lien as required hereunder, Creditor hereby appoints Bank as attorney in fact for Creditor with full power of substitution to release Creditor’s liens as provided hereunder. Such power of attorney being coupled with an interest shall be irrevocable until the Termination Date.
3. All necessary action on the part of Creditor, its officers, directors, partners, members and shareholders, as applicable, necessary for the authorization of this Agreement and the performance of all obligations of Creditor hereunder has been taken. This Agreement constitutes the legal, valid and binding obligation of Creditor, enforceable against Creditor in accordance with its terms. The execution, delivery and performance of and compliance with this Agreement by Creditor will not  result in any material violation or default of any term of any of Creditor’s charter, formation or other organizational documents (such as Articles or Certificate of Incorporation, bylaws, partnership agreement, operating agreement, etc.) or  violate any material applicable law, rule or regulation.
4. If, at any time after payment in full of the Senior Debt, any payments of the Senior Debt must be disgorged by Bank for any reason (including, without limitation, any Insolvency Proceeding), this Agreement and the relative rights and priorities set forth herein shall be reinstated as to all such disgorged payments as though such payments had not been made and Creditor shall immediately pay over to Bank all payments received with respect to the Subordinated Debt to the extent that such payments would have been prohibited hereunder. At any time and from time to time, without notice to Creditor, Bank may take such actions with respect to the Senior Debt as Bank, in its sole discretion, may deem appropriate, including, without limitation, terminating advances to Borrower, increasing the principal amount, extending the time of payment, increasing applicable interest rates, renewing, compromising or otherwise amending the terms of any documents affecting the Senior Debt and any collateral securing the Senior Debt, and enforcing or failing to enforce any rights against Borrower or any other person. No such action or inaction shall impair or otherwise affect Bank’s rights hereunder. To the extent permitted by applicable law, Creditor waives any benefits of California Civil Code Sections 2809, 2810, 2819, 2845, 2847, 2848, 2849, 2850, 2899 and 3433.
5. This Agreement shall bind any successors or assignees of Creditor and shall benefit any successors or assigns of Bank, provided, however, Creditor agrees that, prior and as conditions precedent to Creditor assigning all or any portion of the Subordinated Debt:  Creditor shall give Bank prior written notice of such assignment, and  such successor or assignee, as applicable, shall execute a written agreement whereby such successor or assignee expressly agrees to assume and be bound by all terms and conditions of this Agreement with respect to Creditor. Subject to the provisions of Section 11 which survive termination of this Agreement, this Agreement shall remain effective until the earliest to occur: (i) the date it is terminated in writing by Bank; and (ii) the Termination Date. This Agreement is solely for the benefit of Creditor and Bank and not for the benefit of Borrower or any other party. Creditor further agrees that if Borrower is in the process of refinancing any portion of the Senior Debt with a new lender, and if Bank makes a request of Creditor, Creditor shall agree to enter into a new subordination agreement with the new lender on substantially the terms and conditions of this Agreement.
6. Creditor hereby agrees to execute such documents and/or take such further action as Bank may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement, including, without limitation, ratifications and confirmations of this Agreement from time to time hereafter, as and when requested by Bank.
7. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.
8. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflicts of laws principles. Creditor and Bank submit to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California in any action, suit, or proceeding of any kind, against it which arises out of or by reason of this Agreement. CREDITOR AND BANK WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES’ AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and order applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to the California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

1. This Agreement represents the entire agreement with respect to the subject matter hereof, and supersedes all prior negotiations, agreements and commitments. Creditor is not relying on any representations by Bank or Borrower in entering into this Agreement, and Creditor has kept and will continue to keep itself fully apprised of the financial and other condition of Borrower. This Agreement may be amended only by written instrument signed by Creditor and Bank.
2. In the event of any legal action to enforce the rights of a party under this Agreement, the party prevailing in such action shall be entitled, in addition to such other relief as may be granted, all reasonable documented costs and expenses, including reasonable documented attorneys’ fees, incurred in such action.
3. Each Creditor enters into this Agreement solely for its own account, and not as an agent, partner, or joint-venturer of any other Creditor, and the representations, warranties, and other obligations of each Creditor shall for all purposes be several and not joint, as to each Creditor and its respective Subordinated Debt or other loans or credit accommodations extended to Borrower from time to time.

[Signature page follows.]

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

**BANK:**

SILICON VALLEY BANK

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

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

**CREDITOR:**

[INVESTOR NAME]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

The undersigned approves of the terms of this Agreement.

**BORROWER:**

[Company Name]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title: