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

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): July 7, 2025**

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**MICROSTRATEGY INCORPORATED**

(Exact name of registrant as specified in its charter)

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

**001-42509**  
(Commission  
File Number)

**51-0323571**  
(I.R.S. Employer  
Identification No.)

**1850 Towers Crescent Plaza  
Tysons Corner, Virginia**  
(Address of principal executive offices)

**22182**  
(Zip Code)

**Registrant's telephone number, including area code: (703) 848-8600**

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

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

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

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

Title of Each Class	Trading Symbol	Name of Each Exchange on which Registered
Class A common stock, \$0.001 par value per share	MSTR	The Nasdaq Global Select Market
8.00% Series A Perpetual Strike Preferred Stock, \$0.001 par value per share	STRK	The Nasdaq Global Select Market
10.00% Series A Perpetual Strife Preferred Stock, \$0.001 par value per share	STRF	The Nasdaq Global Select Market

10.00% Series A Perpetual Stride Preferred Stock,  
\$0.001 par value per share

STRD

The Nasdaq Global Select Market

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

Emerging growth company ☐

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

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### Item 5.03. Amendments to Articles of Incorporation or Bylaws.

On July 7, 2025, MicroStrategy Incorporated® d/b/a Strategy™ (“Strategy” or the “Company”) filed a Certificate of Amendment (the “STRK Certificate of Amendment”) with the Secretary of State of the State of Delaware to the STRK Certificate of Designations (the “STRK Certificate of Designations”), which was originally filed on February 5, 2025, and which established the terms of its 8.00% Series A Perpetual Strike Preferred Stock, \$0.001 par value per share (the “STRK Stock”). As described further below, the STRK Certificate of Amendment amends certain terms of the STRK Stock so that, among other conforming changes, the liquidation preference per share of the STRK Stock will generally approximate its trading price with a floor of \$100.

As a result of the filing of the STRK Certificate of Amendment, STRK Stock has a liquidation preference (“Liquidation Preference”) that is initially \$100 per share; *provided, however*, that, effective immediately after the close of business on each business day on or after July 7, 2025 (and, on or after July 7, 2025, if applicable, during the course of a business day on which any sale transaction to be settled by the issuance of STRK Stock is executed, from the exact time of the first such sale transaction during such business day until the close of business of such business day), the Liquidation Preference per share of STRK Stock will be adjusted to be the greatest of (i) the stated amount of \$100 per share of STRK Stock (the “Stated Amount”); (ii) in the case of any business day on or after July 7, 2025 with respect to which Strategy has, on such business day or any business day during the ten trading day period preceding such business day, executed any sale transaction to be settled by the issuance of STRK Stock, an amount equal to the Last Reported Sale Price (as defined in the STRK Certificate of Designations) per share of STRK Stock on the trading day immediately before such business day; and (iii) the arithmetic average of the Last Reported Sale Prices per share of STRK Stock for each trading day of the ten consecutive trading days immediately preceding such business day; *provided* that, for purposes of the definition of Liquidation Preference, the execution of the STRK Certificate of Amendment will be treated as an execution of a sale transaction settled by the issuance of STRK Stock.

The STRK Stock will accumulate cumulative dividends (“Regular Dividends”) at a rate per annum equal to 8.00% on the Stated Amount thereof, and will be payable when, as and if declared by Strategy’s board of directors, out of funds legally available for their payment to the extent paid in cash, quarterly in arrears on March 31, June 30, September 30 and December 31 of each year.

Strategy will have the right, at its election, to redeem all, and not less than all, of the STRK Stock, at any time, for cash if the total aggregate Stated Amount of all STRK Stock then outstanding is less than \$182,500,000 (which is equal to 25% of the aggregate Stated Amount of the STRK Stock issued on February 5, 2025) (such a redemption, an “Optional Redemption”). The redemption price for any STRK Stock to be redeemed pursuant to an Optional Redemption will be a cash amount equal to the Liquidation Preference of the STRK Stock to be redeemed as of the business day immediately before the date Strategy sends the related redemption notice, plus accumulated and unpaid Regular Dividends to, but excluding, the redemption date.

Strategy will also have the right, at its election, to redeem all, and not less than all, of the STRK Stock, at any time, for cash if a “Tax Event” (as defined in the STRK Certificate of Designations) occurs (such a redemption, a “Tax Redemption”). The redemption price for any STRK Stock to be redeemed pursuant to a Tax Redemption will be a cash amount equal to (i) the greater of (1) the Liquidation Preference of the STRK Stock to be redeemed as of the business day immediately before the date Strategy sends the related redemption notice; and (2) the average of the Last Reported Sale Prices per share of STRK Stock for the five consecutive trading days ending on, and including, the trading day immediately before the date on which Strategy sends the related redemption notice, plus (ii) accumulated and unpaid Regular Dividends to, but excluding, the redemption date.

If a “Fundamental Change” (as defined in the STRK Certificate of Designations) occurs, then, subject to a limited exception, holders of STRK Stock will have the right to require Strategy to repurchase some or all of their shares of STRK Stock at a cash repurchase price equal to the Stated Amount of the STRK Stock to be repurchased, plus accumulated and unpaid Regular Dividends, if any, to, but excluding the repurchase date.

The above description of the terms of the STRK Certificate of Amendment and the terms of the STRK Stock is a summary and is not complete. A copy of the STRK Certificate of Designations was filed as Exhibit 3.1 to Strategy’s Current Report on Form 8-K filed with the U.S. Securities and Exchange Commission on February 5, 2025 and the STRK Certificate of Amendment is filed as Exhibit 3.1 to this Current Report on Form 8-K, and the above summary is qualified by reference to the terms of the STRK Certificate of Designations and the STRK Certificate of Amendment, which STRK Certificate of Amendment is incorporated herein by reference. The above summary and

the STRK Certificate of Amendment supplement, update and are incorporated by reference into Strategy's prospectus supplement filed with the Securities and Exchange Commission on March 10, 2025 (the "STRK Prospectus Supplement"), under its existing automatic shelf registration statement, which became effective on January 27, 2025 (File No. 333-284510) (the "Registration Statement"), and the base prospectus contained therein.

#### **Item 8.01. Other Events.**

##### *STRD ATM*

On July 7, 2025, the Company entered into a Sales Agreement (the "STRD Sales Agreement") with TD Securities (USA) LLC ("TD Cowen"), Barclays Capital Inc. ("Barclays"), The Benchmark Company, LLC ("Benchmark"), Clear Street LLC and Morgan Stanley & Co. LLC ("Morgan Stanley"), as sales agents (each an "STRD Agent" and collectively, the "STRD Agents"), pursuant to which the Company may issue and sell shares of its 10.00% Series A Perpetual Stride Preferred Stock, \$0.001 par value per share (the "STRD Stock"), having an aggregate offering price of up to \$4.2 billion (the "STRD ATM Shares"), from time to time through the STRD Agents (the "STRD ATM Offering"). Also, on July 7, 2025, the Company filed a prospectus supplement with the Securities and Exchange Commission in connection with the STRD ATM Offering (the "STRD Prospectus Supplement") under the Registration Statement, and the base prospectus contained therein.

Upon delivery of a placement notice, and subject to the terms and conditions of the STRD Sales Agreement, the STRD Agents may sell the STRD ATM Shares by any method that is deemed an "at the market offering" as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended, or any other method permitted by law, which may include negotiated transactions or block trades. The Company may sell the STRD ATM Shares through the STRD Agents in amounts and at times to be determined by the Company from time to time subject to the terms and conditions of the STRD Sales Agreement, but neither it nor the STRD Agents have an obligation to sell any of the STRD ATM Shares in the STRD ATM Offering. No assurance can be given that the Company will sell any STRD ATM Shares under the STRD Sales Agreement, or, if it does, as to the price or amount of STRD ATM Shares that it sells or the dates when such sales will take place. The Company will only sell STRD ATM Shares through one STRD Agent on any single day. Sales pursuant to the STRD Sales Agreement may be made through an affiliate of an STRD Agent.

The Company or the STRD Agents may suspend or terminate the STRD ATM Offering upon notice to the other parties and subject to other conditions. Each STRD Agent will act as sales agent on a commercially reasonable efforts basis consistent with its normal trading and sales practices.

The Company has agreed to pay the STRD Agents' commissions for their respective services in acting as agents in the sale of the STRD ATM Shares in the amount of up to 2.0% of the aggregate gross proceeds it receives from each sale of its STRD ATM Shares pursuant to the STRD Sales Agreement. The Company has also agreed to provide the STRD Agents with customary indemnification and contribution rights.

A copy of the STRD Sales Agreement is attached as Exhibit 1.1 hereto and is incorporated herein by reference. The foregoing description of the material terms of the STRD Sales Agreement does not purport to be complete and is qualified in its entirety by reference to such exhibit.

Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Company, has issued a legal opinion relating to the STRD ATM Shares. A copy of such legal opinion, including the consent included therein, is attached as Exhibit 5.1 hereto.

The STRD ATM Shares are registered pursuant to the Registration Statement and the base prospectus contained therein, and offerings for the STRD ATM Shares will be made only by means of the STRD Prospectus Supplement. This Current Report on Form 8-K shall not constitute an offer to sell or solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities law of such state or jurisdiction.

Also, on July 7, 2025, the Company issued a press release relating to the STRD ATM Offering. A copy of the press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference.

### *STRF ATM*

As previously disclosed, on May 22, 2025, Strategy entered into a Sales Agreement (the “STRF Sales Agreement”) with TD Cowen, Barclays, and Benchmark, as sales agents (each an “STRF Agent” and collectively, the “STRF Agents”), pursuant to which Strategy may issue and sell shares of its 10.00% Series A Perpetual Strife Preferred Stock, \$0.001 par value per share (the “STRF Stock”), having an aggregate offering price of up to \$2.1 billion, from time to time through the STRF Agents (the “STRF ATM Offering”).

On July 7, 2025, Strategy entered into an amendment to the STRF Sales Agreement (as amended, the “Amended STRF Sales Agreement”) to add Morgan Stanley as an additional STRF Agent. Also on July 7, 2025, Strategy filed a prospectus supplement with the Securities and Exchange Commission in connection with its entry into the Amended STRF Sales Agreement under the Registration Statement, and the base prospectus contained therein.

A copy of the Amended STRF Sales Agreement is attached as Exhibit 1.2 hereto and is incorporated herein by reference. The foregoing description of the terms of the Amended STRF Sales Agreement does not purport to be complete and is qualified in its entirety by reference to such exhibit.

### *STRK ATM*

As previously disclosed, on March 10, 2025, Strategy entered into a sales agreement pursuant to which it may issue and sell shares of its STRK Stock, having an aggregate offering price of up to \$21.0 billion from time to time through sales agents (the “STRK ATM Offering”). Such STRK Stock is offered pursuant to the STRK Prospectus Supplement.

Strategy is filing as Exhibit 99.2 to this Current Report on Form 8-K certain updated risk factors with respect to the STRK ATM Offering following the adoption of the STRK Certificate of Amendment, which are incorporated by reference herein and into the STRK Prospectus Supplement, and which replaces and supersedes in its entirety the risk factors of equivalent subheading in the section under “Risk Factors—Risks Relating to the Perpetual Strike Preferred Stock and This Offering” in the STRK Prospectus Supplement.

Strategy is also filing as Exhibit 99.3 to this Current Report on Form 8-K certain updated descriptions of Material United States Federal Income Tax Considerations with respect to the STRK ATM Offering following the adoption of the STRK Certificate of Amendment, which are incorporated by reference herein and into the STRK Prospectus Supplement, and which replaces and supersedes in its entirety the descriptions of equivalent subheading in the section under “Material United States Federal Income Tax Considerations” in the STRK Prospectus Supplement.

Neither this Current Report on Form 8-K nor the press release attached hereto constitutes an offer to sell or a solicitation of an offer to buy any of the abovementioned securities.

### **Forward-Looking Statements**

Statements in this Current Report on Form 8-K and the exhibits attached hereto about future expectations, plans, and prospects, as well as any other statements regarding matters that are not historical facts, may constitute “forward-looking statements” within the meaning of The Private Securities Litigation Reform Act of 1995. These statements include, but are not limited to, statements relating to the at-the-market offerings of the STRD Stock, the STRF Stock and the STRK Stock.

The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will,” “would,” and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Actual results may differ materially from those indicated by such forward-looking statements as a result of various important factors, including the uncertainties related to the sales made pursuant to the STRF ATM Offering, the STRK ATM Offering, or the STRD ATM Offering, if any, market conditions and the other factors discussed in the “Risk Factors” section of Strategy’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 5, 2025, the factors discussed under the header “Risk Factor Updates” in the Current Report on Form 8-K filed by Strategy with the Securities and Exchange Commission on June 7, 2025 and the risks described in other filings that Strategy may make with the Securities and Exchange Commission. Any forward-looking statements contained in this Current Report on Form 8-K and the exhibits attached hereto speak only as of the date hereof, and Strategy specifically disclaims any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

Exhibit No.	Description
1.1	<a href="#"><u>Sales Agreement, dated as of July 7, 2025, by and among Strategy and TD Securities (USA) LLC, Barclays Capital Inc., The Benchmark Company, LLC, Clear Street LLC and Morgan Stanley &amp; Co. LLC</u></a>
1.2	<a href="#"><u>Amendment to the Sales Agreement, dated as of July 7, 2025, by and among Strategy and TD Securities (USA) LLC, Barclays Capital Inc., The Benchmark Company, LLC and Morgan Stanley &amp; Co. LLC</u></a>
3.1	<a href="#"><u>Certificate of Amendment to Certificate of Designations relating to the 8.00% Series A Perpetual Strike Preferred Stock</u></a>
5.1	<a href="#"><u>Opinion of Wilmer Cutler Pickering Hale and Dorr LLP</u></a>
23.1	<a href="#"><u>Consent of Wilmer Cutler Pickering Hale and Dorr LLP (included in Exhibit 5.1)</u></a>
99.1	<a href="#"><u>Press Release of Strategy, dated July 7, 2025</u></a>
99.2	<a href="#"><u>Certain risk factors with respect to the STRK ATM Offering</u></a>
99.3	<a href="#"><u>Certain descriptions of Material United States Federal Income Tax Considerations with respect to the STRK ATM Offering</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

## SIGNATURE

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

Date: July 7, 2025

MicroStrategy Incorporated  
(Registrant)

By: /s/ W. Ming Shao

Name: W. Ming Shao

Title: Executive Vice President & General Counsel

**STRATEGY  
SALES AGREEMENT**

July 7, 2025

TD SECURITIES (USA) LLC  
1 Vanderbilt Avenue  
New York, New York 10017

BARCLAYS CAPITAL INC.  
745 Seventh Avenue  
New York, New York 10019

THE BENCHMARK COMPANY, LLC  
150 East 58th Street, 17th Floor  
New York, New York 10155

CLEAR STREET LLC  
4 World Trade Center,  
150 Greenwich St. Floor 45  
New York, New York 10007

MORGAN STANLEY & CO. LLC  
1585 Broadway  
New York, New York 10036

Ladies and Gentlemen:

MicroStrategy Incorporated d/b/a Strategy, a Delaware corporation (the “**Company**”), proposes, subject to the terms and conditions stated herein, to issue and sell from time to time through TD Securities (USA) LLC, Barclays Capital Inc., The Benchmark Company, LLC, Clear Street LLC and Morgan Stanley & Co. LLC as sales agents and/or principals (each an “**Agent**” and collectively the “**Agents**”), shares of the Company’s 10.00% Series A Perpetual Stride Preferred Stock, par value \$0.001 per share, with a stated amount of \$100 per share (the “**Preferred Shares**”), having an aggregate offering price of up to \$4,200,000,000, on the terms set forth in this agreement (this “**Agreement**”).

**Section 1. Definitions**

(a) *Certain Definitions.* For purposes of this Agreement, capitalized terms used herein and not otherwise defined shall have the following respective meanings:



**“Agency Period”** means the period commencing on the date of this Agreement and expiring on the earliest to occur of (x) the date on which the Agents shall have placed the Maximum Program Amount pursuant to this Agreement, (y) the first date on which the closing price of Preferred Shares on the Principal Market exceeds the difference between the Maximum Offering Proceeds and the Aggregate Sales Proceeds and (z) the date this Agreement is terminated pursuant to Section 7.

**“Aggregate Sales Proceeds”** means the aggregate gross proceeds from the sale of Preferred Shares placed by the Designated Agent pursuant to this Agreement. For purposes of this definition, (i) the amount shall be calculated at the close of the Principal Market on each Trading Day and (ii) proceeds from sales of Preferred Shares shall only be included in the calculation following their issuance on the applicable Settlement Date.

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

**“Designated Agent”** has the meaning set forth in Section 3(a).

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

**“Floor Price”** means the minimum price set by the Company in the Issuance Notice below which the Designated Agent shall not sell Shares during the applicable period set forth in the Issuance Notice, which may be adjusted by the Company at any time during the period set forth in the Issuance Notice by delivering written notice of such change to the Designated Agent and which in no event shall be less than \$1.00 without the prior written consent of the Designated Agent, which may be withheld in the Designated Agent’s sole discretion.

**“Issuance Amount”** means the aggregate Sales Price of the Shares to be sold by the Designated Agent pursuant to any Issuance Notice.

**“Issuance Notice”** means a written notice delivered to the Designated Agent by the Company in accordance with this Agreement in the form attached hereto as Exhibit A that is executed by its Chief Executive Officer, President or Chief Financial Officer.

**“Issuance Notice Date”** means any Trading Day during the Agency Period that an Issuance Notice is delivered pursuant to Section 3(b)(i).

**“Issuance Price”** means the Sales Price less the Selling Commission.

**“Maximum Offering Proceeds”** means \$4,200,000,000.

**“Maximum Program Amount”** means Preferred Shares with an aggregate Sales Price of the lesser of (a) \$4,200,000,000, (b) the number or dollar amount of Preferred Shares the issuance and sale of which is registered under the effective Registration Statement (defined below) pursuant to which the offering is being made, (c) the number of authorized but unissued Preferred Shares (less Preferred Shares issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company’s authorized capital stock), (d) the number or dollar amount of Preferred Shares permitted to be sold under Form S-3 (including General Instruction I.B.6 thereof, if applicable), or (e) the number or dollar amount of Preferred Shares for which the Company has filed a Prospectus (defined below).

“**Person**” means an individual or a corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental authority or other entity of any kind.

“**Principal Market**” means the Nasdaq Global Select Market or such other national securities exchange on which the Preferred Shares, including any Shares, are then listed.

“**Sales Price**” means the actual sale execution price of each Share placed by the Designated Agent pursuant to this Agreement.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.

“**Selling Commission**” means up to two percent (2.0%) of the gross proceeds of Shares sold pursuant to this Agreement, or as otherwise agreed between the Company and the Designated Agent with respect to any Shares sold pursuant to this Agreement.

“**Settlement Date**” means the first business day following each Trading Day during the period set forth in the Issuance Notice on which Shares are sold pursuant to this Agreement, when the Company shall deliver to the Designated Agent the amount of Shares sold on such Trading Day and the Designated Agent shall deliver to the Company the Issuance Price received on such sales.

“**Shares**” shall mean the Company’s Preferred Shares issued or issuable pursuant to this Agreement.

“**Trading Day**” means any day on which the Principal Market is open for trading.

## **Section 2. Representations And Warranties Of The Company**

The Company represents and warrants to, and agrees with, the Agents that as of (1) the date of this Agreement, (2) each Issuance Notice Date, (3) each Settlement Date, (4) each Triggering Event Date (as defined below) with respect to which the Company is required to deliver a certificate pursuant to Section 4(p) and (5) as of each Time of Sale (as defined below) (each of the times referenced above is referred to herein as a “**Representation Date**”), except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and any supplements thereto) on or before a Representation Date:

(a) *Registration Statement.* The Company has prepared and filed with the Commission an “automatic” shelf registration statement, as defined under Rule 405 of the Securities Act, on Form S-3ASR that contains a base prospectus relating, among other things, to shares of preferred stock that may be issued from time to time by the Company, and has prepared and filed, or will file, with the Commission, a prospectus supplement to such base prospectus relating to the Shares. Such registration statement registers the issuance and sale by the Company of the Shares under the Securities Act. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable, with respect to the Shares. Except where the context otherwise requires, such registration statement(s), including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, including all financial statements, exhibits and schedules thereto and all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 12 of Form S-3ASR under the Securities Act as from time to time amended or supplemented, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act or deemed to be part of such registration statement pursuant to Rule 430B under the Securities Act, is herein referred to as the “**Registration Statement**,” and the prospectus constituting a part of such registration statement(s), together with any prospectus supplement filed with the Commission pursuant to Rule 424(b) under the Securities Act relating to a particular issuance of the Shares, including all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 12 of Form S-3 under the Securities Act, in each case, as from time to time amended or supplemented, is referred to herein as the “**Prospectus**,” except that if any revised prospectus is provided to the Agents by the Company for use in connection with the offering of the Shares that is not required to be filed by the Company pursuant to Rule 424(b) under the Securities Act, the term “**Prospectus**” shall refer to such revised prospectus from and after the time it is first provided to the Agents for such use. The Registration Statement at the time it originally became effective is herein called the “**Original Registration Statement**.” As used in this Agreement, the terms “**amendment**” or “**supplement**” when applied to the Registration Statement or the Prospectus shall be deemed to include the filing by the Company with the Commission of any document under the Exchange Act after the date hereof that is or is deemed to be incorporated therein by reference.

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included,” “stated” or “part of” in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in or otherwise deemed under the Securities Act to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include, without limitation, the filing of any document under the Exchange Act which is or is deemed to be incorporated by reference in or otherwise deemed under the Securities Act to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date. The Company’s obligations under this Agreement to furnish, provide, deliver or make available (and all other similar references) copies of any report or statement shall be deemed satisfied if the same is filed with the Commission through its Electronic Data Gathering, Analysis and Retrieval system (“**EDGAR**”).

At the time the Original Registration Statement became effective and at the time the Company's most recent annual report on Form 10-K was filed with the Commission, if later, the Company was, or will be, a "well known seasoned issuer" as defined in Rule 405 under the Securities Act. The Original Registration Statement is an "automatic shelf registration statement," as defined in Rule 405 under the Securities Act, and became effective upon filing. The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to the Company's use of the automatic shelf registration form. The Company meets the requirements for use of Form S-3 under the Securities Act. During the Agency Period, each time the Company files an annual report on Form 10-K the Company will meet the then-applicable requirements for use of Form S-3 under the Securities Act.

(b) *Compliance with Registration Requirements.* The Original Registration Statement has become effective under the Securities Act. The Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information with respect to the Original Registration Statement. No stop order suspending the effectiveness of the Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the best knowledge of the Company, are contemplated or threatened by the Commission.

The Prospectus when filed complied or will comply in all material respects with the Securities Act and, if filed with the Commission through EDGAR (except as may be permitted by Regulation S-T under the Securities Act), was identical to the copy thereof delivered to the Agents for use in connection with the issuance and sale of the Shares. Each of the Registration Statement and any post-effective amendment thereto, at the time it became or becomes effective and at each Representation Date, complied and will comply in all material respects with the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the date of this Agreement, the Prospectus and any Free Writing Prospectus (as defined below) considered together (collectively, the "**Time of Sale Information**") did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Prospectus, as amended or supplemented, as of its date and at each Representation Date, did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the three immediately preceding sentences do not apply to statements in or omissions from the Registration Statement or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with information relating to an Agent furnished to the Company in writing by such Agent expressly for use therein, it being understood and agreed that the only such information furnished by the Agents to the Company consists of the information described in Section 6 below. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required. The Registration Statement and the offer and sale of the Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said rule.

(c) *Ineligible Issuer Status.* The Company is not an “ineligible issuer” in connection with the offering of the Shares pursuant to Rules 164, 405 and 433 under the Securities Act. Any Free Writing Prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act. Each Free Writing Prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of Rule 433 under the Securities Act including timely filing with the Commission or retention where required and legending, and each such Free Writing Prospectus, as of its issue date and at each Time of Sale through the completion of the issuance and sale of the Shares did not, does not and will not include any information that conflicted, conflicts with or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein. Except for the Free Writing Prospectuses identified in Schedule B hereto, and the Free Writing Prospectuses, if any, and electronic road shows, if any, furnished to you before first use, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to, any Free Writing Prospectus.

(d) *Incorporated Documents.* The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, at the time they were filed with the Commission, complied in all material respects with the requirements of the Exchange Act, as applicable, and, when read together with the other information in the Prospectus, do not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(e) *Exchange Act Compliance.* The documents incorporated or deemed to be incorporated by reference in the Prospectus, at the time they were or hereafter are filed with the Commission, and any Free Writing Prospectus or amendment or supplement thereto complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together with the other information in the Prospectus, at the time the Registration Statement and any amendments thereto become effective and at each Time of Sale, as the case may be, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(f) *Statistical and Market-Related Data.* The statistical, industry-related and market-related data included or incorporated by reference in each of the Registration Statement and the Prospectus are based on or derived from sources which the Company reasonably and in good faith believes are reliable and accurate and such data is consistent with the sources from which they are derived, in each case in all material respects.

(g) *Disclosure Controls and Procedures; Deficiencies in or Changes to Internal Control Over Financial Reporting.* The Company and its subsidiaries maintain a system of “disclosure controls and procedures” (as defined in Rule 13a-15(e) of the Exchange Act) that has been designed to comply with the requirements of the Exchange Act and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure, and such disclosure controls and procedures are reasonably effective to perform the functions for which they were established subject to the limitations of any such control system.

(h) *This Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(i) *Authorization of the Shares.* The Shares have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company against payment therefor pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and will have the rights set forth in the Certificate of Designations (as defined below), and the issuance and sale of the Shares is not subject to any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase the Shares.

(j) *Certificate of Designations.* The execution and filing of the Certificate of Designations has been duly authorized and executed by the Company and the Certificate of Designations has been filed with the Secretary of State of the State of Delaware.

(k) *No Applicable Registration or Other Similar Rights.* There are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering contemplated by this Agreement, except for such rights as have been duly waived.

(l) *No Material Adverse Change.* Except as otherwise disclosed in the Registration Statement and the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus: (i) there has been no material adverse change, or any development that would reasonably be expected to result in a material adverse change, in (A) the condition, financial or otherwise, or in the earnings, business, properties, operations, operating results, assets, liabilities or prospects, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity or (B) the ability of the Company to consummate the transactions contemplated by this Agreement or perform its obligations hereunder (any such change being referred to herein as a “**Material Adverse**

**Change”**); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, including without limitation any losses or interference with their business from fire, explosion, flood, earthquakes, accident or other calamity, whether or not covered by insurance, or from any strike, labor dispute or court or governmental action, order or decree, that are material, individually or in the aggregate, to the Company and its subsidiaries, considered as one entity, and have not entered into any transactions or agreements that are material to the Company not in the ordinary course of business; and (iii) there has not been any material decrease in the capital stock of the Company or its subsidiaries or any material increase in any short-term or long-term indebtedness of the Company and its subsidiaries, considered as one entity, and there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, by any of the Company’s subsidiaries on any class of capital stock, or any repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(m) *Independent Accountants.* KPMG LLP, which has expressed its opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) filed with the Commission as a part of the Registration Statement and the Prospectus, is (i) an independent registered public accounting firm as required by the Securities Act, the Exchange Act, and the rules of the Public Company Accounting Oversight Board (“PCAOB”), (ii) in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X under the Securities Act and (iii) a registered public accounting firm as defined by the PCAOB whose registration has not been suspended or revoked and who has not requested such registration to be withdrawn.

(n) *Financial Statements.* The financial statements, together with the related schedules and notes, filed with the Commission as a part of the Registration Statement and the Prospectus present fairly the consolidated financial position of the Company and its subsidiaries as of the dates shown and its results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with generally accepted accounting principles in the United States (“U.S. GAAP”) applied on a consistent basis throughout the periods covered thereby, except for any normal year-end adjustments in the Company’s quarterly financial statements. The other financial information included or incorporated by reference in the Prospectus has been derived from the accounting records of the Company and its consolidated subsidiaries and presents fairly in all material respects the information shown thereby.

(o) *Company’s Accounting System.* The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any

differences; and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission's rules and guidelines applicable thereto. Since the end of the Company's most recent audited fiscal year, there has been (i) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (ii) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(p) *Incorporation and Good Standing of the Company.* The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own or lease its property and to conduct its business as described in each of the Registration Statement and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not, singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole.

(q) *Subsidiaries.* Each subsidiary of the Company has been duly incorporated, organized or formed, as applicable, is validly existing as a corporation or other business entity in good standing under the laws of the jurisdiction of its incorporation, organization or formation, has the corporate or other business entity power and authority to own or lease its property and to conduct its business as described in each of the Registration Statement and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not, singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole; all of the issued shares of capital stock or other equity interests of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable (to the extent that such status is applicable and exists under the laws of the jurisdiction in which such entity is organized) and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims.

(r) *Capitalization and Other Capital Stock Matters.* The authorized, issued and outstanding capital stock of the Company is as set forth in the Registration Statement and the Prospectus as of the dates referred to therein. The Preferred Shares (including the Shares) and the Certificate of Designations relating to the Preferred Shares designating the "10.00% Series A Perpetual Stride Preferred Stock" and establishing the rights, preferences and entitlements thereof (the "**Certificate of Designations**"), in each case conform as to legal matters to the descriptions thereof contained in the Registration Statement and the Prospectus. All of the issued and outstanding Preferred Shares have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with all federal and state securities laws. None of the outstanding Preferred Shares were issued in violation of any preemptive rights, rights of first refusal



or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those described in or contemplated by the Registration Statement and the Prospectus. The descriptions of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement and the Prospectus accurately and fairly in all material respects present the information required to be shown with respect to such plans, arrangements, options and rights.

(s) *Stock Exchange Listing.* The Preferred Shares are registered pursuant to Section 12(b) or 12(g) of the Exchange Act and are listed on the Principal Market, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Preferred Shares under the Exchange Act or delisting the Preferred Shares from the Principal Market, nor has the Company received any notification that the Commission or the Principal Market is contemplating terminating such registration or listing. To the Company's knowledge, it is in compliance with all applicable listing requirements of the Principal Market.

(t) *Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required.* Neither the Company nor any of its subsidiaries is (i) in violation of its charter, bylaws or other constitutive document or (ii) in default (or, with the giving of notice or lapse of time, would be in default) ("**Default**") under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound (including, without limitation, the indentures governing the Company's 0.625% Convertible Senior Notes due 2028, 0% Convertible Senior Notes due 2029, 0% Convertible Senior Notes due 2030, 0.625% Convertible Senior Notes due 2030, 0.875% Convertible Senior Notes due 2031 and 2.25% Convertible Senior Notes due 2032), or to which any of the property or assets of the Company or any of its subsidiaries is subject (each, an "**Existing Instrument**"), except, in the case of clause (ii) above, for such Defaults as would not, singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole. The Company's execution, delivery and performance of this Agreement, the issuance and delivery of the Shares and consummation of the transactions contemplated hereby and by the Prospectus (A) will not result in any violation of the provisions of the charter, bylaws or other constitutive document of the Company or any subsidiary, (B) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument, except for such conflicts, breaches, Defaults, liens, charges, encumbrances or required consents as would not singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole, (C) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any subsidiary and (D) no consent, approval, authorization or order of, or qualification with, any governmental

body, agency or court is required for the performance by the Company of its obligations under this Agreement, the Certificate of Designations and the Preferred Shares, except (i) such as may be required by the Financial Industry Regulatory Authority, Inc. (“**FINRA**”) and under applicable securities or Blue Sky laws of the various states in connection with the offer and sale of the Shares or (ii) for any law or regulation applicable to the filing of the Certificate of Designations with the Secretary of State of the State of Delaware. As used herein, a “Debt Repayment Triggering Event” means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(u) *No Material Actions or Proceedings.* Other than proceedings accurately described in all material respects in each of the Registration Statement and the Prospectus, there are no legal or governmental proceedings pending or threatened to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject that would result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole, or on the power or ability of the Company to perform its obligations under this Agreement, the Certificate of Designations and the Preferred Shares or to consummate the transactions contemplated by each of the Registration Statement and the Prospectus or that are required to be described in the Registration Statement or the Prospectus and are not so described.

(v) *Intellectual Property Rights.* (i) To the Company’s knowledge, the Company and its subsidiaries own, have a valid license or possess sufficient rights to all patents, inventions, copyrights, know how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names and all other intellectual property and proprietary rights (including all registrations and applications for registration of, and all goodwill associated with, any of the foregoing) (collectively, “**Intellectual Property Rights**”) used in or reasonably necessary to the conduct of their respective businesses as now conducted by them; (ii) the Intellectual Property Rights owned by the Company and its subsidiaries and, to the Company’s knowledge, the Intellectual Property Rights licensed to the Company and its subsidiaries, are valid, subsisting and enforceable, and there is no pending or, to the Company’s knowledge, threatened action, suit, proceeding or claim by others challenging the validity, scope or enforceability of, or any rights of the Company or any of its subsidiaries in, any such Intellectual Property Rights in any material respect; (iii) neither the Company nor any of its subsidiaries has received any notice alleging any infringement, misappropriation or other violation of Intellectual Property Rights which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole; (iv) to the Company’s knowledge, no Person (as defined below) is infringing, misappropriating or otherwise violating, or has infringed, misappropriated or otherwise violated, any Intellectual Property Rights owned or controlled by the Company or any of its subsidiaries, other than as would not result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole; (v) to the Company’s knowledge, neither the Company nor any of its subsidiaries infringes,

misappropriates or otherwise violates, or has infringed, misappropriated or otherwise violated, any Intellectual Property Rights of any Person, which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would be material to the conduct of the business of the Company and its subsidiaries, taken as a whole; (vi) all employees or contractors engaged in the development of Intellectual Property Rights on behalf of the Company or any of its subsidiaries have executed an invention assignment agreement whereby such employees or contractors presently assign all of their right, title and interest in and to such Intellectual Property Rights to the Company or its applicable subsidiary, and to the Company's knowledge no such agreement has been breached or violated; and (vii) the Company and its subsidiaries use, and have used, commercially reasonable efforts to appropriately maintain the confidentiality of all information intended to be maintained as a trade secret that is material to the conduct of their businesses as currently conducted by them.

(w) *All Necessary Permits, etc.* The Company and its subsidiaries possess all licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the conduct of their respective businesses as currently conducted, except where the failure to possess or make the same would not, singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole; and except as would not singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole, neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such license, certificate, permit or authorization.

(x) *Title to Properties.* The Company and its subsidiaries own no real property and have valid rights to lease or otherwise use, all items of real and personal property and assets that are material to the respective businesses of the Company and its subsidiaries taken as a whole, in each case, except as disclosed in the Prospectus, free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries or would not, singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole.

(y) *Tax Law Compliance.* The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date of this Agreement or have requested extensions thereof (except where the failure to file would not, singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole) and have paid all taxes required to be paid thereon (except for cases in which the failure to file or pay would not, singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole, or, except as currently being contested in good faith and for which reserves required by U.S. GAAP have been created in the financial statements of the Company), and no tax deficiency has been determined adversely to the Company or any of its subsidiaries which, singly or in the aggregate, has had (nor does the Company nor any of its subsidiaries have any notice or knowledge of any tax deficiency which could reasonably be expected to be determined adversely to the Company or its subsidiaries and which could reasonably be expected to have) a Material Adverse Change for the Company and its subsidiaries, taken as a whole.

(z) *Fast-Pay Stock Compliance.* The Company has made reasonable best efforts to comply and believes that it has complied with the written guidelines previously agreed to by the Company and the Agents with respect to “fast-pay stock” (the “Fast-Pay Stock Guidelines”) (for the avoidance of doubt, the Company may take into account written or oral representations from the Agents in determining that it has fulfilled the Fast-Pay Stock Guidelines) and does not believe that the Shares to be sold pursuant to this Agreement are structured in a manner that causes the Shares to be treated as “fast-pay stock” within the meaning of Section 1.7701(l)-3(b)(2) of the United States Treasury Regulations.

(aa) *Company Not an “Investment Company.”* The Company is not, and will not be, either after receipt of payment for the Shares or after the application of the proceeds therefrom as described under “Use of Proceeds” in the Registration Statement or the Prospectus, required to register as an “investment company” under the Investment Company Act of 1940, as amended (the “**Investment Company Act**”).

(bb) *Insurance.* The Company and its subsidiaries have insurance covering their respective properties, operations, personnel and businesses, including business interruption insurance, which insurance is in amounts and insures against such losses and risks as are customary in the business in which they are engaged; and neither the Company nor any of its subsidiaries has (i) received written notice from any insurer or agent of such insurer that material capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business in all material respects at a cost that would not singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole.

(cc) *No Price Stabilization or Manipulation; Compliance with Regulation M.* Neither the Company nor any of its subsidiaries has taken, directly or indirectly, any action designed to or that might cause or result in stabilization or manipulation of the price of the Preferred Shares or of any “reference security” (as defined in Rule 100 of Regulation M under the Exchange Act (“**Regulation M**”)) with respect to the Preferred Shares, whether to facilitate the sale or resale of the Shares or otherwise, and has taken no action which would directly or indirectly violate Regulation M, *provided, however*, that the Company makes no representation or warranty as to any activities of the Agents.

(dd) *Related Party Transactions.* There are no business relationships or related-party transactions involving the Company or any of its subsidiaries or any other person required to be described in the Registration Statement or the Prospectus which have not been described as required.

(ee) *FINRA Matters*. All of the information provided to the Agents or to counsel for the Agents by the Company, and, to the Company's knowledge, its counsel, its officers and directors and the holders of any securities (debt or equity) or options to acquire any securities of the Company, for the preparation of any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rules in connection with the offering of the Shares is true, complete and correct in all material respects. The Company is an "experienced issuer" as defined in FINRA Corporate Financing Rule 5110.

(ff) *No Unlawful Contributions or Other Payments*. Neither the Company nor any of its subsidiaries or affiliates, or any director or officer thereof, nor, to the Company's knowledge, any employee or agent of the Company or any subsidiary, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Registration Statement and the Prospectus.

(gg) *Compliance with Environmental Laws*. The Company and each of its subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("**Environmental Laws**"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such non-compliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole.

(hh) *Costs of Environmental Compliance*. There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole.

(ii) *Open Source Software*. (i) The Company and its subsidiaries use and have used any and all software and other materials distributed under a "free," "open source," or similar licensing model (including but not limited to the MIT License, Apache License, GNU General Public License, GNU Lesser General Public License and GNU Affero General Public License) ("**Open Source Software**") in material compliance with all license terms applicable to such Open Source Software; and (ii) neither the Company nor any of its subsidiaries uses or distributes or has used or distributed any Open Source Software in any manner that requires or has required (A) the Company or any of its subsidiaries to permit reverse engineering of any software code or other technology owned by the Company or any of its subsidiaries material to the conduct of their businesses as currently conducted by them or (B) any software code or other technology owned by the Company or any of its subsidiaries material to the conduct of their businesses as currently conducted by them to be (1) disclosed or distributed in source code form, (2) licensed for the purpose of making derivative works or (3) redistributed at no charge.

(jj) *Brokers*. Except as otherwise disclosed in the Prospectus, there is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder's fee or other fee or commission as a result of any transactions contemplated by this Agreement.

(kk) *No Outstanding Loans or Other Extensions of Credit*. The Company does not have any outstanding extension of credit, in the form of a personal loan, to or for any director or executive officer (or equivalent thereof) of the Company except for such extensions of credit as are expressly permitted by Section 13(k) of the Exchange Act.

(ll) *Compliance with Laws*. The Company and its subsidiaries have been and are in compliance with all applicable laws, rules and regulations, except where failure to be so in compliance would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

(mm) *Dividend Restrictions*. No subsidiary of the Company is prohibited or restricted, directly or indirectly, from paying dividends to the Company, or from making any other distribution with respect to such subsidiary's equity securities or from repaying to the Company or any other subsidiary of the Company any amounts that may from time to time become due under any loans or advances to such subsidiary from the Company or from transferring any property or assets to the Company or to any other subsidiary.

(nn) *Anti-Corruption and Anti-Bribery Laws*. None of the Company or any of its subsidiaries or affiliates, or any director or officer thereof, or, to the Company's knowledge, any employee, agent or representative of the Company or of any of its subsidiaries or affiliates, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment, giving or receipt of money, property, gifts or anything else of value, directly or indirectly, to any government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) ("**Government Official**") in order to influence official action, or to any person in violation of any applicable anti-corruption laws; (ii) the Company and each of its subsidiaries and affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with such laws and with the representations and warranties contained herein; and (iii) neither the Company nor any of its subsidiaries will use, directly or indirectly, the proceeds of the offering in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any applicable anti-corruption laws.

(oo) *Money Laundering Laws.* (i) The operations of the Company and each of its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and each of its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Anti-Money Laundering Laws**”), (ii) no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company, threatened and (iii) the Company and each of its subsidiaries have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with Anti-Money Laundering Laws and with the representations and warranties contained herein.

(pp) *Sanctions.* (i) None of the Company, any of its subsidiaries, or any director or officer thereof, or, to the Company’s knowledge, any employee, agent, affiliate or representative of the Company or any of its subsidiaries, is an individual or entity (“**Person**”) that is, or is owned or controlled by one or more Persons that are: (A) the subject of any sanctions administered or enforced by the United States Government (including the United States Department of Treasury’s Office of Foreign Assets Control and the United States Department of State), the United Nations Security Council, the European Union, His Majesty’s Treasury, or other relevant sanctions authority (collectively, “**Sanctions**”), or (B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, the non-government controlled areas of the Kherson and Zaporizhzhia regions of Ukraine or any other Covered Region of Ukraine identified pursuant to Executive Order 14065, Crimea, Cuba, Iran, North Korea and Syria); (ii) the Company will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person: (A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or (B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise); (iii) since April 24, 2019, the Company and each of its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions; (iv) the Company and each of its subsidiaries and affiliates have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with Sanctions and with the representations and warranties contained herein.

(qq) *Outbound Investment Security Program*. Neither the Company nor any of its subsidiaries is a “covered foreign person”, as that term is defined in 31 C.F.R. § 850.209. Neither the Company nor any of its subsidiaries currently engages, or has plans to engage, directly or indirectly, in a “covered activity”, as that term is defined in 31 C.F.R. § 850.208 (“Covered Activity”). The Company does not have any joint venture that engages in or plans to engage in any Covered Activity. The Company also does not, directly or indirectly, hold a board seat on, have a voting or equity interest in, or have any contractual power to direct or cause the direction of the management or policies of any person or persons that engages or plans to engage in any Covered Activity.

(rr) *Sarbanes-Oxley*. The Company is in compliance, in all material respects, with all applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder.

(ss) *Duties, Transfer Taxes, Etc.* No stamp or other issuance or transfer taxes or duties are payable by the Agents in the United States or any political subdivision or taxing authority thereof or therein in connection with the execution, delivery or performance of this Agreement by the Company or the sale and delivery by the Company of the Shares.

(tt) *Cybersecurity*. The Company and its subsidiaries have taken commercially reasonable technical and organizational measures necessary to protect the respective information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, technology, data and databases (including Personal Data (as defined below) and the data and information of their respective customers, employees, suppliers, vendors and any third party data maintained, processed or stored by or on behalf of the Company and its subsidiaries) used in connection with the operation of the Company’s and its subsidiaries’ respective businesses (“**IT Systems and Data**”), and such IT Systems and Data are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants. Without limiting the foregoing, the Company and its subsidiaries have used commercially reasonable efforts to establish and maintain, and have established, maintained, implemented and complied, in all material respects, with reasonable information technology, information security, cyber security and data protection controls, policies and procedures, including oversight, access controls, encryption, technological and physical safeguards and business continuity/disaster recovery and security plans, consistent with industry standards and practices, that are designed to protect against and prevent breach, destruction, loss, unauthorized distribution, use, access, disablement, misappropriation or modification, or other compromise or misuse of or relating to any IT Systems and Data (“**Breach**”). There has been no such Breach, and the Company and its subsidiaries have not been notified of and have no knowledge of any event or condition that would reasonably be expected to result in, any such Breach that would result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole.



(uu) *Compliance with Data Privacy Laws.* (i) The Company and each of its subsidiaries have complied and are presently in compliance in all material respects with all internal and external privacy policies, contractual obligations, industry standards, applicable laws, statutes, judgments, orders, rules and regulations of any court or arbitrator or other governmental or regulatory authority and any other legal obligations, in each case, relating to the collection, use, transfer, import, export, storage, protection, disposal and disclosure by the Company or any of its subsidiaries of personal, personally identifiable, household, sensitive, confidential or regulated data or information (“**Data Security Obligations**”, and such data and information, “**Personal Data**”); (ii) the Company and its subsidiaries have not received any notification of or complaint regarding and are unaware of any other facts that, individually or in the aggregate, would reasonably indicate non-compliance with any Data Security Obligation by the Company or any of its subsidiaries; and (iii) there is no action, suit or proceeding by or before any court or governmental agency, authority or body pending or, to the Company’s knowledge, threatened alleging non-compliance with any Data Security Obligation by the Company or any of its subsidiaries.

(vv) *Labor Disputes.* No labor disturbance by or dispute with employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing, threatened or imminent labor disturbance by the employees of any of its or its subsidiaries’ principal suppliers, contractors or customers, except as would not singly or in the aggregate, result in a Material Adverse Change for the Company and its subsidiaries, taken as a whole.

(ww) *Other Agreements.* The Company is not a party to any agreement with an agent or underwriter for any other “at the market” or continuous equity transaction with respect to the Preferred Shares.

Any certificate signed by any officer or representative of the Company or any of its subsidiaries and delivered to the Agents or counsel for the Agents in connection with an issuance of Shares shall be deemed a representation and warranty by the Company to the Agents as to the matters covered thereby on the date of such certificate.

The Company acknowledges that the Agents and, for purposes of the opinions to be delivered pursuant to Section 4(p) hereof, counsel to the Company and counsel to the Agents, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

### **Section 3. Issuance And Sale Of Preferred Shares**

(a) *Sale of Securities.* On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company and the Agents agree that the Company may from time to time seek to sell Shares through the Agent named in the applicable Issuance Notice, acting as sales agent, or directly to an Agent, acting as principal (either such agent, the “**Designated Agent**”), as follows, with an aggregate Sales Price of up to the Maximum Program Amount, based on and in accordance with Issuance Notices as the Company may deliver, during the Agency Period. The Company acknowledges and agrees that sales of Shares under this Agreement may be made through affiliates of the Agents, and that the Agents may otherwise fulfill their obligations pursuant to this Agreement to or through an affiliated broker-dealer of such Agent. Each Agent acknowledges and agrees that the sale of Shares under this Agreement through an affiliate of such Agent in no way alleviates such Agent of its responsibilities under this Agreement and that it shall be responsible for the actions of its affiliates as if such actions were the actions of such Agent itself.

(b) Mechanics of Issuances.

(i) *Issuance Notice*. Upon the terms and subject to the conditions set forth herein, on any Trading Day during the Agency Period on which the conditions set forth in Section 5(a) and Section 5(b) shall have been satisfied, the Company may exercise its right to request an issuance of Shares by delivering to the Designated Agent an Issuance Notice; *provided, however*, that (A) in no event may the Company deliver an Issuance Notice to the extent that the sum of (x) the aggregate Sales Price of the requested Issuance Amount, plus (y) the aggregate Sales Price of all Shares issued under all previous Issuance Notices effected pursuant to this Agreement, would exceed the Maximum Program Amount; (B) prior to delivery of any Issuance Notice, the period set forth for any previous Issuance Notice shall have expired or been terminated; (C) any sales of the Shares shall be effected by or through the Designated Agent on any single given day and the Company shall in no event request that more than one Agent offer or sell the Shares pursuant to this Agreement on the same day; (D) upon receipt of any Issuance Notice, the Designated Agent shall promptly confirm in writing to the Company (as well as counsel to the Company and the Agents) that any sales contemplated by the Issuance Notice will comply with the Fast-Pay Stock Guidelines; and (E) the Designated Agent may decline to accept the terms contained in the Issuance Notice for any reason, in its sole discretion, which shall not be deemed a breach by the Designated Agent under this Agreement. An Issuance Notice shall be considered delivered on the Trading Day that it is received by e-mail to the persons set forth in Schedule A hereto for the applicable Agent and confirmed by the Company by telephone (including a voicemail message to the persons so identified), with the understanding that, with adequate prior written notice, each Agent may modify the list of such persons for such Agent from time to time. Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitation set forth in this Section 3(b)(i) on the aggregate Sales Price and aggregate number of Shares that may be issued and sold under this Agreement from time to time shall be the sole responsibility of the Company, and that the Agents shall have no obligation in connection with such compliance.

(ii) *Agent Efforts*. Upon the terms and subject to the conditions set forth in this Agreement, upon the receipt of an Issuance Notice, the Designated Agent will use its commercially reasonable efforts consistent with its normal sales and trading practices to place the Shares with respect to which the Designated Agent has agreed to act as sales agent, subject to, and in accordance with the information specified in, the Issuance Notice, unless the sale of the Shares described therein has been suspended, cancelled or otherwise terminated in accordance with the terms of this Agreement. For the avoidance of doubt, the Company and the Designated Agent may modify an Issuance Notice at any time provided they both agree in writing to any such modification.

(iii) *Method of Offer and Sale.* The Shares may be offered and sold (A) in privately negotiated transactions with the consent of the Company; (B) as block transactions; or (C) by any other method permitted by law deemed to be an “at the market offering” as defined in Rule 415(a)(4) under the Securities Act, including sales made directly on the Principal Market or sales made into any other existing trading market of the Preferred Shares. In the event the Company engages an Agent for a sale of Shares in an agency transaction that would constitute a “block” within the meaning of Rule 10b-18(a)(5) under the Exchange Act, the Company will provide such Agent, at the Agent’s request and upon reasonable advance notice to the Company, on or prior to the Settlement Date, the opinions of counsel, accountant’s letter and officers’ certificates set forth in Section 4 hereof, each dated the Settlement Date, and such other documents and information as the Agent shall reasonably request. Nothing in this Agreement shall be deemed to require any party to agree to the method of offer and sale specified in the first sentence of this paragraph, and (except as specified in clauses (A) and (B) above) the method of placement of any Shares by the Designated Agent shall be at the Designated Agent’s discretion.

(iv) *Confirmation to the Company.* If acting as sales agent hereunder, the Designated Agent will provide written confirmation to the Company no later than the opening of the Trading Day next following the Trading Day on which it has placed Shares hereunder setting forth the number of Shares sold on such Trading Day, the corresponding Sales Price and the Issuance Price payable to the Company in respect thereof.

(v) *Settlement.* Each issuance of Shares will be settled on the applicable Settlement Date for such issuance of Shares and, subject to the provisions of Section 5, on or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Shares being sold by crediting the Designated Agent or its designee’s account at The Depository Trust Company through its Deposit/Withdrawal At Custodian (DWAC) System, or by such other means of delivery as may be mutually agreed upon by the Company and the applicable Designated Agent and, upon receipt of such Shares, which in all cases shall be freely tradable, transferable, registered shares in good deliverable form, the Designated Agent will deliver, by wire transfer of immediately available funds, the related Issuance Price in same day funds delivered to an account designated by the Company prior to the Settlement Date. The Company may sell Shares to the Designated Agent as principal at a price agreed upon between the Company and the Designated Agent at each relevant time Shares are sold pursuant to this Agreement (each, a “**Time of Sale**”).

(vi) *Suspension or Termination of Sales.* Consistent with standard market settlement practices, the Company or the Designated Agent may, upon notice to the other party hereto in writing or by telephone (confirmed immediately by verifiable email), suspend any sale of Shares, and the period set forth in an Issuance Notice shall immediately terminate; *provided, however*, that (A) such suspension and termination shall not affect or impair either party’s obligations with respect to any Shares placed or sold hereunder prior to the receipt of such notice; (B) if the Company suspends or terminates any sale of Shares after the Designated Agent confirms such sale to the

Company, the Company shall still be obligated to comply with Section 3(b)(v) with respect to such Shares; and (C) if the Company defaults in its obligation to deliver Shares on a Settlement Date, the Company agrees that it will hold the Designated Agent harmless against any loss, claim, damage or expense (including, without limitation, penalties, interest and reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company. The parties hereto acknowledge and agree that, in performing their respective obligations under this Agreement, the Agents may borrow Preferred Shares from stock lenders in the event that the Company has not delivered Shares to settle sales as required by subsection (v) above, and may use the Shares to settle or close out such borrowings. The Company agrees that no such notice shall be effective against the Designated Agent unless it is made to the persons identified in writing by the Designated Agent pursuant to Section 3(b)(i).

(vii) *No Guarantee of Placement, Etc.* The Company acknowledges and agrees that (A) there can be no assurance that the Designated Agent will be successful in placing Shares; (B) the Designated Agent will incur no liability or obligation to the Company or any other Person if it does not sell Shares; and (C) the Designated Agent shall be under no obligation to purchase Shares on a principal basis pursuant to this Agreement, except as otherwise specifically agreed by the Designated Agent and the Company.

(viii) *Material Non-Public Information.* Notwithstanding any other provision of this Agreement, the Company shall not offer, sell or deliver, or request the offer or sale, of any Shares pursuant to this Agreement and, by notice to the Agents given by telephone (confirmed promptly by email), shall cancel any instructions for the placement, offer or sale of any Shares, and the Agents shall not be obligated to place, offer or sell any Shares, (i) during any period in which the Company is in possession of material non-public information, or (ii) at any time from and including the date on which the Company shall issue a press release containing, or shall otherwise publicly announce, its earnings, revenues or other results of operations (an “**Earnings Announcement**”) through and including the time that the Company files a Quarterly Report on Form 10-Q or an Annual Report on Form 10-K that includes consolidated financial statements as of and for the same period or periods, as the case may be, covered by such Earnings Announcement unless the Company has filed a Form 8-K in a manner such that the information in the Earnings Announcement is incorporated by reference into the Registration Statement and the Prospectus.

(c) *Fees.* As compensation for services rendered, the Company shall pay to the Designated Agent, on the applicable Settlement Date, the Selling Commission for the applicable Issuance Amount (including with respect to any suspended or terminated sale pursuant to Section 3(b)(vi)) by the Designated Agent deducting the Selling Commission from the applicable Issuance Amount.

(d) *Expenses.* The Company agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Shares (including all printing and engraving costs); (ii) all fees and expenses of the registrar and transfer agent of the Shares; (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Shares to the Agents; (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors; (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), the Prospectus, any Free Writing Prospectus prepared by or on behalf of, used by, or referred to by the Company, the Certificate of Designations, and all amendments and supplements to the foregoing, and this Agreement; (vi) all filing fees, attorneys' fees and expenses incurred by the Company or the Agents in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Shares for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada, and, if requested by the Agents, preparing and printing a "Blue Sky Survey" or memorandum and a "Canadian wrapper", and any supplements thereto, advising the Agents of such qualifications, registrations, determinations and exemptions; (vii) the reasonable and documented fees and disbursements of the Agents' counsel, including the reasonable and documented fees and expenses of counsel for the Agents in connection with, FINRA review, if any, and approval of the Agents' participation in the offering and distribution of the Shares; (viii) the filing fees incident to FINRA review, if any; (ix) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives, employees and officers of the Company and of the Agents and any such consultants, and the cost of any aircraft chartered in connection with the road show; and (x) the fees and expenses associated with listing the Shares on the Principal Market. The fees and disbursements of Agents' counsel pursuant to subsections (vi) and (vii) above shall not exceed (A) \$75,000 in connection with the execution of this Agreement and (B) \$15,000 in connection with each Triggering Event Date (as defined below) on which the Company is required to provide a certificate pursuant to Section 4(p).

(e) *Fast-Pay Stock.* In connection with any offerings of Preferred Shares (for this purpose, including (i) each sale of Shares pursuant to this Agreement; (ii) each future sale of the Preferred Shares pursuant to any future at-the-market sales program or otherwise and (iii) any Preferred Shares acquired and then resold by the Company or any of its subsidiaries) (each, an "**Offering**"), the Company will use its reasonable best efforts (which shall include obtaining advice from a qualified external tax advisor) to cause the Preferred Shares to be structured in a manner that is intended to cause the Preferred Shares not to be treated as "fast-pay stock" within the meaning of Section 1.7701(l)-3(b)(2) of the United States Treasury Regulations. For the avoidance of doubt, fulfilling the Fast-Pay Stock Guidelines will be deemed sufficient to meet the Company's obligations under this provision. The Company and the Agents further agree and acknowledge that the Company may take into account written or oral representations from one or more nationally recognized financial institutions participating in such Offering in determining that it has fulfilled the Fast-Pay Stock Guidelines.

If the Company makes any filing (including a protective filing) (the “**Filing**”) pursuant to Section 1.6011-4 of the United States Treasury Regulations (or any successor or similar or related regulation, including similar state or local tax regulations) to the effect that it has (or may have, in the case of a protective Filing) issued “fast-pay stock” with respect to any Preferred Shares sold by the Company in Offerings, the Company shall (A) announce such Filing by, at the Company’s option, (i) a press release through a major news service, (ii) publication on the Company’s investor relations website, or (iii) filing a Current Report on Form 8-K with the Securities and Exchange Commission (or provide similar notice to holders of the Securities), in each case, within four business days of the Filing and (B) use reasonable best efforts to promptly provide written advance notice (and in any event no later than 10 business days in advance of the Filing) to any potential “material advisors” (within the meaning of Section 6111 of the United States Internal Revenue Code of 1986, as amended) in connection with the Filing. The Company further agrees and covenants that if the Company receives any notice of any governmental audit, assessment, claim, examination or other governmental inquiry relating to the tax treatment of any Preferred Shares sold by the Company in Offerings being “fast-pay stock” (a “**Tax Claim**”) it shall use reasonable best efforts to promptly provide written notice to the Agents and any potential “material advisors” (within the meaning of Section 6111 of the United States Internal Revenue Code of 1986, as amended) in connection with such Tax Claim.

#### **Section 4. Additional Covenants**

The Company covenants and agrees with the Agents as follows, in addition to any other covenants and agreements made elsewhere in this Agreement:

(a) *Exchange Act Compliance.* During the Agency Period, the Company shall (i) file, on a timely basis, with the Commission all reports and documents required to be filed under Section 13, 14 or 15 of the Exchange Act in the manner and within the time periods required by the Exchange Act; and (ii) either (A) include in its quarterly reports on Form 10-Q and its annual reports on Form 10-K, a summary detailing, for the relevant reporting period, (1) the number of Shares sold through the Agents pursuant to this Agreement and (2) the net proceeds received by the Company from such sales or (B) prepare a prospectus supplement containing, or include in such other filing permitted by the Securities Act or Exchange Act (each an “**Interim Prospectus Supplement**”), such summary information and, at least once a quarter and subject to this Section 4, file such Interim Prospectus Supplement pursuant to Rule 424(b) under the Securities Act (and within the time periods required by Rule 424(b) and Rule 430B under the Securities Act).

(b) *Securities Act Compliance.* After the date of this Agreement, the Company shall promptly advise the Agents in writing (i) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission relating to the Registration Statement or the Prospectus; (ii) of the time and date of any filing of any post-effective amendment to the Registration Statement or any amendment or supplement to the Prospectus and any Free Writing Prospectus; (iii) of the time and date that any post-effective amendment to the Registration Statement becomes effective; and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or any amendment or supplement

to the Prospectus or of any order preventing or suspending the use of any Free Writing Prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Preferred Shares from any securities exchange upon which they are listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its commercially reasonable efforts to obtain the lifting of such order as soon as practicable. Additionally, the Company agrees that it shall comply with the provisions of Rule 424(b) and Rule 433, as applicable, under the Securities Act and will use its commercially reasonable efforts to confirm that any filings made by the Company under such Rule 424(b) or Rule 433 were filed in a timely manner with the Commission.

(c) *Amendments and Supplements to the Prospectus and Other Securities Act Matters.* If any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus so that the Prospectus does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if in the opinion of the Agents or counsel for the Agents it is otherwise necessary to amend or supplement the Prospectus to comply with applicable law, including the Securities Act, the Company agrees (subject to Section 4(d) and Section 4(f)) to promptly prepare, file with the Commission and furnish at its own expense to the Agents, amendments or supplements to the Prospectus (including by filing a document incorporated by reference therein) so that the statements in the Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law including the Securities Act. Neither the Agents' consent to, or delivery of, any such amendment or supplement shall constitute a waiver of any of the Company's obligations under Section 4(d) and Section 4(f). Notwithstanding the foregoing, the Company shall not be required to file such amendment or supplement if there is no outstanding Issuance Notice and the Company believes that it is in its best interest not to file such amendment or supplement; *provided, however*, the Company agrees not to provide an Issuance Notice or otherwise sell under this Agreement until such amendment or supplement is filed.

(d) *Agents' Review of Proposed Amendments and Supplements.* Prior to amending or supplementing the Registration Statement (excluding (i) the filing under the Exchange Act of documents incorporated by reference into the Registration Statement that either (A) do not name the Agents and do not relate to the transactions contemplated by this Agreement or (B) include disclosure naming the Agents and regarding the transactions contemplated by this Agreement that is limited to disclosure of periodic sales pursuant to this Agreement, and (ii) amendments or supplements that do not name the Agents and do not relate to the transactions contemplated by this Agreement) or the

Prospectus (excluding any amendment or supplement through incorporation of any report filed under the Exchange Act), the Company shall furnish to the Agents for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each such proposed amendment or supplement, and the Company shall not file or use any such proposed amendment or supplement without the Agents' prior consent, which shall not be unreasonably withheld, conditioned or delayed. The Company shall file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

(e) *Use of Free Writing Prospectus.* Neither the Company nor any Agent has prepared, used, referred to or distributed, or will prepare, use, refer to or distribute, without the other party's prior written consent, any "written communication" that constitutes a "free writing prospectus" as such terms are defined in Rule 405 under the Securities Act with respect to the offering contemplated by this Agreement (any such free writing prospectus being referred to herein as a "**Free Writing Prospectus**") other than the Free Writing Prospectuses identified in Schedule B hereto.

(f) *Free Writing Prospectuses.* The Company shall furnish to the Agents for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each proposed Free Writing Prospectus or any amendment or supplement thereto to be prepared by or on behalf of, used by, or referred to by the Company and the Company shall not file, use or refer to any proposed Free Writing Prospectus or any amendment or supplement thereto without the Agents' consent, which shall not be unreasonably withheld, conditioned or delayed. The Company shall furnish to the Agents, without charge, as many copies of any Free Writing Prospectus prepared by or on behalf of, or used by the Company, as the Agents may reasonably request. If at any time when a prospectus is required by the Securities Act (including, without limitation, pursuant to Rule 173(d)) to be delivered in connection with sales of the Shares (but in any event if at any time through and including the date of this Agreement) there occurred or occurs an event or development as a result of which any Free Writing Prospectus prepared by or on behalf of, used by, or referred to by the Company conflicted or would conflict with the information contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company shall promptly amend or supplement such Free Writing Prospectus to eliminate or correct such conflict or so that the statements in such Free Writing Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at such subsequent time, not misleading, as the case may be; *provided, however*, that prior to amending or supplementing any such Free Writing Prospectus, the Company shall furnish to the Agents for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of such proposed amended or supplemented Free Writing Prospectus and the Company shall not file, use or refer to any such amended or supplemented Free Writing Prospectus without the Agents' consent, which shall not be unreasonably withheld, conditioned or delayed.



(g) *Filing of Agent Free Writing Prospectuses.* The Company shall not take any action that would result in the Agents or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a Free Writing Prospectus prepared by or on behalf of the Agents that the Agents otherwise would not have been required to file thereunder.

(h) *Copies of Registration Statement and Prospectus.* After the date of this Agreement through the last time that a prospectus is required by the Securities Act (including, without limitation, pursuant to Rule 173(d)) to be delivered in connection with sales of the Shares, the Company agrees to furnish the Agents with copies (which may be electronic copies) of the Registration Statement and each amendment thereto, and with copies of the Prospectus and each amendment or supplement thereto in the form in which it is filed with the Commission pursuant to the Securities Act or Rule 424(b) under the Securities Act, both in such quantities as the Agents may reasonably request from time to time; and, if the delivery of a prospectus is required under the Securities Act or under the blue sky or securities laws of any jurisdiction at any time on or prior to the applicable Settlement Date for any period set forth in an Issuance Notice in connection with the offering or sale of the Shares and if at such time any event has occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it is necessary during such same period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify the Agents and to request that the Agents suspend offers to sell Shares (and, if so notified, the Agents shall cease such offers as soon as practicable); and if the Company decides to amend or supplement the Registration Statement or the Prospectus as then amended or supplemented, to advise the Agents promptly by telephone (with confirmation in writing) and to prepare and cause to be filed promptly with the Commission an amendment or supplement to the Registration Statement or the Prospectus as then amended or supplemented that will correct such statement or omission or effect such compliance; *provided, however*, that if during such same period any Agent is required to deliver a prospectus in respect of transactions in the Shares, the Company shall promptly prepare and file with the Commission such an amendment or supplement.

(i) *Blue Sky Compliance.* The Company shall cooperate with the Agents and counsel for the Agents to qualify or register the Shares for sale under (or obtain exemptions from the application of) the state securities or blue sky laws or Canadian provincial securities laws of those jurisdictions designated by the Agents, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Shares. The Company shall not be required to qualify as a foreign corporation or as a dealer of securities or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Agents promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Shares for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof as soon as practicable.

(j) *Earnings Statement.* As soon as reasonably practicable, the Company will make generally available to its security holders and to the Agents an earnings statement (which need not be audited) covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act.

(k) *Beneficial Owners.* The Company will deliver to each Agent (or its agent), upon the request of each Agent, a properly completed and executed Certification Regarding Beneficial Owners of Legal Entity Customers, together with copies of identifying documentation, and the Company undertakes to provide such additional supporting documentation as each Agent may reasonably request in connection with the verification of the foregoing Certification.

(l) *Listing; Reservation of Shares.* (a) The Company will maintain the listing of the Shares on the Principal Market; and (b) the Company will reserve and keep available at all times, free of preemptive rights, Shares for the purpose of enabling the Company to satisfy its obligations pursuant to an outstanding Issuance Notice under this Agreement.

(m) *Transfer Agent.* The Company shall engage and maintain, at its expense, a registrar and transfer agent for the Shares.

(n) *Due Diligence.* During the term of this Agreement, the Company will reasonably cooperate with any reasonable due diligence review conducted by the Agents in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during normal business hours and at the Company's principal offices or virtually, as the Agents may reasonably request from time to time.

(o) *Representations and Warranties.* The Company acknowledges that each delivery of an Issuance Notice and each delivery of Shares on a Settlement Date shall be deemed to be (i) an affirmation to the Agents that the representations and warranties of the Company contained in or made pursuant to this Agreement are true and correct as of the date of such Issuance Notice or of such Settlement Date, as the case may be, as though made at and as of each such date, except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and any supplements thereto); and (ii) an undertaking that the Company will advise the Agents if any of such representations and warranties will not be true and correct as of the Settlement Date for the Shares relating to such Issuance Notice, as though made at and as of each such date (except that such representations and warranties shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented relating to such Shares).

(p) *Deliverables at Triggering Event Dates; Certificates.* The Company agrees that on or prior to the date of the first Issuance Notice and, during the term of this Agreement after the date of the first Issuance Notice, upon: (A) the filing of the Prospectus or the amendment or supplement of any Registration Statement or Prospectus (other than a prospectus supplement relating solely to an offering of securities other than the Shares or a prospectus filed pursuant to Section 4(a)(ii)(B)), by means of a post-effective amendment, sticker or supplement, but not by means of incorporation of documents by reference into the Registration Statement or Prospectus; (B) the filing with the Commission of an annual report on Form 10-K or a quarterly report on Form 10-Q (including any Form 10-K/A or Form 10-Q/A containing amended financial information or a material amendment to the previously filed annual report on Form 10-K or quarterly report on Form 10-Q), in each case, of the Company; or (C) the filing with the Commission of a current report on Form 8-K of the Company containing amended financial information or that incorporates by reference into the Registration Statement and the Prospectus the information contained in an Earnings Announcement as contemplated by clause (ii) of Section 3(b)(viii) (other than information (1) “furnished” pursuant to Item 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144 or (2) solely related to the acquisition of bitcoin) that is material to the offering of securities of the Company in the Agents’ reasonable discretion (any such event specified in clause (A), (B) or (C), a “**Triggering Event Date**”), the Company shall furnish the Agents (but in the case of clause (C) above only if any Agent reasonably determines that the information contained in such current report on Form 8-K of the Company is material) with a certificate as of the Triggering Event Date, in the form and substance satisfactory to the Agents and their counsel, substantially similar to the form previously provided to the Agents and their counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as amended or supplemented, (A) confirming that the representations and warranties of the Company contained in this Agreement are true and correct, (B) confirming that the Company has performed all of its obligations hereunder to be performed on or prior to the date of such certificate and as to the matters set forth in Section 5(a)(iii) hereof, and (C) containing any other certification that any Agent shall reasonably request. The requirement to provide a certificate under this Section 4(p) shall be waived for any Triggering Event Date occurring at a time when no Issuance Notice is pending or a suspension is in effect, which waiver shall continue until the earlier to occur of the date the Company delivers instructions for the sale of Shares hereunder (which for such calendar quarter shall be considered a Triggering Event Date) and the next occurring Triggering Event Date. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following a Triggering Event Date when a suspension was in effect and did not provide the Agents with a certificate under this Section 4(p), then before the Company delivers the instructions for the sale of Shares or the Designated Agent sells any Shares pursuant to such instructions, the Company shall provide the Agents with a certificate in conformity with this Section 4(p) dated as of the date that the instructions for the sale of Shares are issued.

(q) *Legal Opinions.* On or prior to the date of the first Issuance Notice and within two (2) Trading Days of each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(p) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause to be furnished to the Agents written legal opinion letter(s) and a negative assurance letter of Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Company, a written legal opinion of Wilson Sonsini Goodrich & Rosati PC (limited to confirming the matters addressed in clause 2(aa)), special counsel to the Company, and a negative assurances letter and a written legal opinion of Davis Polk & Wardwell LLP, counsel to the Agents, each dated the date of delivery, in each case in form and substance reasonably satisfactory to the Agents and their counsel, substantially similar to the form previously provided to the Agents and their counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented; provided that the Company shall be required to furnish no more than one opinion from each such counsel per each filing of an annual report on Form 10-K or quarterly report on Form 10-Q. In lieu of such opinions for subsequent periodic filings, in the discretion of the Agents, the Company may furnish a reliance letter from such counsel to the Agents, permitting the Agents to rely on a previously delivered opinion letter, modified as appropriate for any passage of time or Triggering Event Date (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of such Triggering Event Date).

(r) *Comfort Letter.* On or prior to the date of the first Issuance Notice and within two (2) Trading Days of each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(p) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause KPMG LLP, the independent registered public accounting firm who has audited the financial statements included or incorporated by reference in the Registration Statement, to furnish the Agents a comfort letter, dated the date of delivery, in form and substance reasonably satisfactory to the Agents and their counsel, substantially similar to the form previously provided to the Agents and their counsel; *provided, however,* that any such comfort letter will only be required on the Triggering Event Date specified to the extent that it contains financial statements filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into a Prospectus. At any time when an Issuance Notice is outstanding and no suspension thereto is in effect, if requested by the Agents, the Company shall also cause a comfort letter to be furnished to the Agents within ten (10) Trading Days of the date of occurrence of any material transaction or event requiring the filing of a current report on Form 8-K containing material amended financial information of the Company, including the restatement of the Company's financial statements. Notwithstanding the foregoing, the Company shall be required to furnish no more than one comfort letter hereunder per each filing of an annual report on Form 10-K or a quarterly report on Form 10-Q; *provided, however,* that if the Company files any amendment to such annual report on Form 10-K or a quarterly report on Form 10-Q, as applicable, or a current report on Form 8-K that in any of such cases requires the filing of any material financial information, the Company shall be required to furnish one or more comfort letters, as applicable, pursuant to the terms of this section.

(s) *Certificate of the Chief Financial Officer.* On or prior to the date of the first Issuance Notice and within two (2) Trading Days of each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(p) for which no waiver is applicable and excluding the date of this Agreement, the Company shall furnish the Agents a certificate signed by the Chief Financial Officer of the Company, dated the date of delivery, in form and substance reasonably satisfactory to the Agents; *provided, however*, that any such certificate will only be required on the Triggering Event Date specified to the extent that it contains financial statements filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into a Prospectus.

(t) *Secretary's Certificate.* On or prior to the date of the first Issuance Notice and within two (2) Trading Days of each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(p) for which no waiver is applicable, the Company shall furnish the Agents a certificate executed by the Secretary of the Company, signing in such capacity, dated the date of delivery (i) certifying that attached thereto are true and complete copies of the resolutions duly adopted by the Board of Directors of the Company authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby (including, without limitation, the issuance of the Shares pursuant to this Agreement), which authorization shall be in full force and effect on and as of the date of such certificate, (ii) certifying and attesting to the office, incumbency, due authority and specimen signatures of each Person who executed this Agreement for or on behalf of the Company, and (iii) containing any other certification that the Agents shall reasonably request.

(u) *Agents' Own Account; Clients' Account.* The Company consents to each Agent trading, in compliance with applicable law, in the Preferred Shares for the Agents' own account and for the account of its clients at the same time as sales of the Shares occur pursuant to this Agreement.

(v) *Investment Limitation.* The Company shall not invest, or otherwise use the proceeds received by the Company from its sale of the Shares in such a manner as would require the Company or any of its subsidiaries to register as an investment company under the Investment Company Act.

(w) *Market Activities.* The Company will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of the Shares or any other reference security, whether to facilitate the sale or resale of the Shares or otherwise, and the Company will, and shall cause each of its affiliates to, comply with all applicable provisions of Regulation M. If the limitations of Rule 102 of Regulation M ("**Rule 102**") do not apply with respect to the Shares or any other reference security pursuant to any exception set forth in Section (d) of Rule 102, then promptly upon notice from the Agents (or, if later, at the time stated in the notice), the Company will, and shall cause each of its affiliates to, comply with Rule 102 as though such exception were not available but the other provisions of Rule 102 (as interpreted by the Commission) did apply. The Company shall promptly notify the Agents if the Preferred Shares no longer constitute "excepted securities" as defined in Section (c) of Rule 101 of Regulation M.

(x) *Notice of Other Sale.* Without the written consent of the Designated Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Preferred Shares or securities convertible into or exchangeable for Preferred Shares (other than Shares hereunder), warrants or any rights to purchase or acquire Preferred Shares, or effect a reverse stock split, recapitalization, share consolidation, reclassification or similar transaction affecting the outstanding Preferred Shares, during the period beginning on the third Trading Day immediately prior to the date on which any Issuance Notice is delivered to the Designated Agent hereunder and ending on the earlier of (A) the third Trading Day immediately following the Settlement Date with respect to Shares sold pursuant to such Issuance Notice and (B) the date such Issuance Notice is cancelled if no Shares have been sold pursuant to such Issuance Notice; and will not directly or indirectly enter into any other “at the market” or continuous equity transaction to offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Preferred Shares (other than the Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Preferred Shares, warrants or any rights to purchase or acquire, Preferred Shares prior to the termination of this Agreement.

## **Section 5. Conditions To Delivery Of Issuance Notices And To Settlement**

(a) *Conditions Precedent to the Right of the Company to Deliver an Issuance Notice and the Obligation of the Agents to Sell Shares.* The right of the Company to deliver an Issuance Notice hereunder is subject to the satisfaction, on the date of delivery of such Issuance Notice, and the obligation of the applicable Designated Agent to use its commercially reasonable efforts to place Shares during the applicable period set forth in the Issuance Notice is subject to the satisfaction, on each Trading Day during the applicable period set forth in the Issuance Notice, of each of the following conditions:

(i) *Accuracy of the Company's Representations and Warranties; Performance by the Company.* The Company shall have delivered the certificate required to be delivered pursuant to Section 4(p) on or before the date on which delivery of such certificate is required pursuant to Section 4(p). The Company shall have performed, satisfied and complied with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to such date, including, but not limited to, the covenants contained in Section 4(q), Section 4(r), Section 4(s) and Section 4(t).

(ii) *No Injunction.* No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that prohibits or directly and materially adversely affects any of the transactions contemplated by this Agreement, and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by this Agreement.

(iii) *Material Adverse Changes*. Except as disclosed in the Prospectus and the Time of Sale Information, (a) in the judgment of the Agents there shall not have occurred any Material Adverse Change; and (b) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any securities of the Company or any of its subsidiaries by any “nationally recognized statistical rating organization” as such term is defined for purposes of Section 3(a)(62) of the Exchange Act.

(iv) *No Suspension of Trading in or Delisting of Preferred Shares ; Other Events*. The trading of the Preferred Shares (including without limitation the Shares) shall not have been suspended by the Commission, the Principal Market or FINRA and the Preferred Shares (including without limitation the Shares) shall have been approved for listing or quotation on and shall not have been delisted from the Principal Market. There shall not have occurred (and be continuing in the case of occurrences under clauses (i) and (ii) below) any of the following: (i) trading or quotation in any of the Company’s securities shall have been suspended or limited by the Commission or by the Principal Market or trading in securities generally on the Principal Market shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such stock exchanges by the Commission or FINRA; (ii) a general banking moratorium shall have been declared by any federal or New York authorities; or (iii) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States’ or international political, financial or economic conditions, as in the judgment of the applicable Designated Agent is material and adverse and makes it impracticable to market the Shares in the manner and on the terms described in the Prospectus or to enforce contracts for the sale of securities.

(b) *Documents Required to be Delivered on each Issuance Notice Date*. The Designated Agent’s obligation to use its commercially reasonable efforts to place Shares hereunder shall additionally be conditioned upon the delivery to the Designated Agent on or before the Issuance Notice Date of a certificate in form and substance reasonably satisfactory to the Designated Agent, executed by the Chief Executive Officer, President or Chief Financial Officer of the Company, to the effect that all conditions to the delivery of such Issuance Notice shall have been satisfied as at the date of such certificate (which certificate shall not be required if the foregoing representations shall be set forth in the Issuance Notice or the certificate described in Section 4(p)).

(c) *No Misstatement or Material Omission*. The Agents shall not have advised the Company that the Registration Statement, the Prospectus or the Time of Sale Information, or any amendment or supplement thereto, contains an untrue statement of fact that in the Agents’ reasonable opinion is material, or omits to state a fact that in the Agents’ reasonable opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

## Section 6. Indemnification And Contribution

(a) *Indemnification of the Agents.* The Company agrees to indemnify and hold harmless each Agent, each Agent's directors, officers, members, partners, affiliates, agents and employees, and each person, if any, who controls such Agent within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Agent or such director, officer, partner, affiliate, agent, employee or controlling person may become subject, under the Securities Act, the Exchange Act, other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Shares have been offered or sold or at common law or otherwise (including in settlement of any litigation, investigation or proceeding by any governmental agency or body, commenced or threatened), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Free Writing Prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and to reimburse the applicable Agent and each such director, officer, member, partner, affiliate, agent, employee and controlling person for any and all reasonable and documented expenses (including the reasonable and documented fees and disbursements of counsel chosen by the applicable Agent) as such expenses are reasonably incurred by the applicable Agent or such director, officer, member, partner, affiliate, agent, employee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; *provided, however*, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by such Agent expressly for use in the Registration Statement, any such Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), it being understood and agreed that the only such information furnished by such Agent to the Company consists of the information set forth in subsection (b) below. The indemnity agreement set forth in this Section 6(a) shall be in addition to any liabilities that the Company may otherwise have.



(b) *Indemnification of the Company, its Directors and Officers.* Each Agent, severally but not jointly, agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which the Company or any such director, officer or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Shares have been offered or sold or at common law or otherwise (including in settlement of any litigation), insofar as such loss, claim, damage, liability or expense arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Free Writing Prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act, or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; but, for each of (i) and (ii) above, only to the extent arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by such Agent expressly for use in the Registration Statement, any such Free Writing Prospectus, or the Prospectus (or any amendment or supplement thereto), it being understood and agreed that the only such information furnished by such Agent to the Company consists of the information set forth in the first sentence of the ninth paragraph under the caption “Plan of Distribution” in the Prospectus, and to reimburse the Company and each such director, officer and controlling person for any and all expenses (including the fees and disbursements of one counsel chosen by the Company) as such expenses are reasonably incurred by the Company or such officer, director or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The indemnity agreement set forth in this Section 6(b) shall be in addition to any liabilities that such Agent or the Company may otherwise have.

(c) *Notifications and Other Indemnification Procedures.* Promptly after receipt by an indemnified party under this Section 6 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 6, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise than under the indemnity agreement contained in this Section 6 or to the extent it is not prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense

thereof with counsel reasonably satisfactory to such indemnified party; *provided, however*, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 6 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the fees and expenses of more than one separate counsel (together with local counsel), representing the indemnified parties who are parties to such action), which counsel (together with any local counsel) for the indemnified parties shall be selected by the applicable Agent (in the case of counsel for the indemnified parties referred to in Section 6(a) above) or the Company (in the case of counsel for the indemnified parties referred to in Section 6(b) above), (ii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized in writing the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party and shall be paid as they are incurred.

(d) *Settlements.* The indemnifying party under this Section 6 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 6(c) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request; and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding.

(e) *Contribution.* If the indemnification provided for in this Section 6 is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the applicable Agent, on the other hand, from the offering of the Shares pursuant to this Agreement; or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the applicable Agent, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the applicable Agent, on the other hand, in connection with the offering of the Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as the total gross proceeds from the offering of the Shares (before deducting expenses) received by the Company bear to the total Selling Commission received by the applicable Agent. The relative fault of the Company, on the one hand, and the applicable Agent, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the applicable Agent, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 6(c), any reasonable and documented legal or other fees or expenses incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 6(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 6(e); *provided, however*, that no additional notice shall be required with respect to any action for which notice has been given under Section 6(c) for purposes of indemnification.

The Company and each Agent agrees that it would not be just and equitable if contribution pursuant to this Section 6(e) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 6(e).

Notwithstanding the provisions of this Section 6(e), an Agent shall not be required to contribute any amount in excess of the Selling Commission received by such Agent in connection with the offering contemplated hereby. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 6(e), each director, officer, member, partner, affiliate, agent, and employee of an Agent and each person, if any, who controls such Agent within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such Agent, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company.

## **Section 7. Termination & Survival**

(a) *Term.* Subject to the provisions of this Section 7, the term of this Agreement shall continue from the date of this Agreement until the end of the Agency Period, unless earlier terminated by the parties to this Agreement pursuant to this Section 7.

(b) *Termination; Survival Following Termination.* (i) Each Agent may terminate this Agreement, solely with respect to its rights and obligations hereunder, and the Company may terminate this Agreement, with respect to one or more Agents, prior to the end of the Agency Period, by giving written notice as required by this Agreement, upon three (3) Trading Days' notice to the other party; provided that, (A) if the Company terminates this Agreement after an Agent confirms to the Company any sale of Shares, the Company shall remain obligated to comply with Section 3(b)(v) with respect to such Shares and (B) Section 2, Section 6, Section 7 and Section 8 shall survive termination of this Agreement. If termination shall occur prior to the Settlement Date for any sale of Shares, such sale shall nevertheless settle in accordance with the terms of this Agreement. For the avoidance of doubt, the termination by one Agent of its rights and obligations under this Agreement pursuant to this Section shall not affect the rights and obligations of the other Agent under this Agreement. (ii) In addition to the survival provision of Section 7(b)(i), the respective indemnities, agreements, representations, warranties and other statements of the Company, of its officers and of the Agents set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of an Agent or the Company or any of its or their partners, affiliates, officers or directors or any controlling person, as the case may be, and, anything herein to the contrary notwithstanding, will survive delivery of and payment for the Shares sold hereunder and any termination of this Agreement, provided that, for the avoidance of doubt, upon termination of this Agreement, the Company shall not have any liability to the Agents for any discount, commission or other compensation with respect to any Shares not sold by the Agents under this Agreement prior to such termination.

## **Section 8. Miscellaneous**

(a) Recognition of the U.S. Special Resolution Regimes.

(i) In the event that any Agent is a Covered Entity and becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Agent of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(ii) In the event that any Agent is a Covered Entity and such Agent or a BHC Act Affiliate of such Agent becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Agent are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(iii) For purposes of this Section 8(a); (a) “**BHC Act Affiliate**” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k), (b) “**Covered Entity**” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b), (c) “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable, and (d) “**U.S. Special Resolution Regime**” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

(b) *Press Releases and Disclosure.* The Company may issue a press release describing the material terms of the transactions contemplated hereby as soon as practicable following the date of this Agreement, and may file with the Commission a Current Report on Form 8-K, with this Agreement attached as an exhibit thereto, describing the material terms of the transactions contemplated hereby, and the Company shall consult with the Agents prior to making such disclosures, and the parties hereto shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosures that is reasonably satisfactory to all parties hereto. No party hereto shall issue thereafter any press release or like public statement (including, without limitation, any disclosure required in reports filed with the Commission pursuant to the Exchange Act) related to this Agreement or any of the transactions contemplated hereby without the prior written approval of the other parties hereto, except as may be necessary or appropriate in the reasonable opinion of the party seeking to make disclosure to comply with the requirements of applicable law or stock exchange rules and except for the disclosure required pursuant to Section 4(a) of this Agreement in the Company’s quarterly reports on Form 10-Q or annual reports on Form 10-K. If any such press release or like public statement is so required, the party making such disclosure shall consult with the other parties prior to making such disclosure, and the parties shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosure that is reasonably satisfactory to all parties hereto.

(c) *No Advisory or Fiduciary Relationship.* The Company acknowledges and agrees that (i) the transactions contemplated by this Agreement, including the determination of any fees, are arm's-length commercial transactions between the Company and the Agents, (ii) when acting as principals under this Agreement, the Agents are and have been acting solely as principals and are not the agents or fiduciaries of the Company, or its stockholders, creditors, employees or any other party, (iii) the Agents have not assumed nor will assume an advisory or fiduciary responsibility in favor of the Company with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether any Agent has advised or is currently advising the Company on other matters) and the Agents do not have any obligation to the Company with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement, (iv) the Agents and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (v) the Agents have not provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

(d) *Research Analyst Independence.* The Company acknowledges that the Agents' research analysts and research departments are required to and should be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and as such an Agent's research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company or the offering that differ from the views of their respective investment banking divisions. The Company understands that the Agents are full service securities firms and as such from time to time, subject to applicable securities laws, may effect transactions for their own respective accounts or the accounts of their respective customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

(e) *Notices.* All communications hereunder shall be in writing and shall be mailed, hand delivered, faxed or e-mailed and confirmed to the parties hereto as follows:

If to the Agents:

TD Securities (USA) LLC  
1 Vanderbilt Avenue  
New York, New York 10017  
Facsimile: [\*\*\*]  
E-mail: [\*\*\*]  
Attention: Head of Equity Capital Markets; General Counsel

Barclays Capital Inc.  
745 Seventh Avenue  
New York, New York 10019  
Attention: Syndicate Registration  
Fax: [\*\*\*]

The Benchmark Company, LLC  
150 East 58th Street, 17th Floor  
New York, New York 10155  
E-mail: [\*\*\*]  
Attention: General Counsel

Clear Street LLC  
4 World Trade Center,  
150 Greenwich St. Floor 45  
New York, New York 10007  
Attention: General Counsel  
Email: [\*\*\*]

Morgan Stanley & Co. LLC  
1585 Broadway, 29th Floor  
New York, New York 10036  
Attention: Investment Banking Division (fax: [\*\*\*])

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

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
Attention: Joseph A. Hall  
Dan Gibbons  
Facsimile: [\*\*\*]  
E-mail: [\*\*\*]  
[\*\*\*]

If to the Company:

MicroStrategy Incorporated d/b/a Strategy  
1850 Towers Crescent Plaza  
Tysons Corner, VA 22182  
Attention: General Counsel  
E-mail: [\*\*\*]

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

Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
Facsimile: [\*\*\*]  
Attention: Thomas S. Ward  
E-mail: [\*\*\*]

Any party hereto may change the address for receipt of communications by giving written notice to the others in accordance with this Section 8(e).

(f) *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the employees, members, partners, affiliates, agents, officers and directors and controlling persons referred to in Section 6, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term “successors” shall not include any purchaser of the Shares as such from any Agent merely by reason of such purchase.

(g) *Partial Unenforceability.* The invalidity or unenforceability of any Article, Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Article, Section, paragraph or provision hereof. If any Article, Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

(h) *Governing Law Provisions.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the “**Specified Courts**”), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court, as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party’s address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

(i) *General Provisions.* This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and may be delivered via facsimile, electronic mail (including any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law, e.g., [www. DocuSign.com](http://www.DocuSign.com)) or other transmission method. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Article and Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

[Signature Page Immediately Follows]



If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

**MICROSTRATEGY INCORPORATED D/B/A  
STRATEGY**

By: /s/ Andrew Kang

Name: Andrew Kang

Title: Executive Vice President & Chief Financial  
Officer

*[Signature Page to Sales Agreement]*

The foregoing Agreement is hereby confirmed and accepted by the Agents in New York, New York as of the date first above written.

**TD SECURITIES (USA) LLC**

By: /s/ Michael Murphy

Name: Michael Murphy

Title: Managing Director

*[Signature Page to Sales Agreement]*

**BARCLAYS CAPITAL INC.**

By: /s/ Jamie Turturici

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Name: Jamie Turturici

Title: Managing Director, Head of Technology ECM

*[Signature Page to Sales Agreement]*

**THE BENCHMARK COMPANY, LLC**

By: /s/ John J. Borer III

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Name: John J Borer III

Title: Senior Managing Director

**CLEAR STREET LLC**

By: /s/ Ryan Gerety

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Name: Ryan Gerety

Title: Managing Director

**MORGAN STANLEY & CO. LLC**

By: /s/ Andrew Doherty

---

Name: Andrew Doherty

Title: Authorized Signatory

## EXHIBIT A

### FORM OF ISSUANCE NOTICE

[Date]

[TD SECURITIES (USA) LLC  
1 Vanderbilt Avenue  
New York, New York 10017]

[BARCLAYS CAPITAL INC.  
745 Seventh Avenue  
New York, New York 10019]

[THE BENCHMARK COMPANY, LLC  
150 East 58th Street, 17th Floor  
New York, New York 10155]

[CLEAR STREET LLC  
4 World Trade Center,  
150 Greenwich St. Floor 45  
New York, New York 10007]

[MORGAN STANLEY & CO. LLC  
1585 Broadway  
New York, New York 10036]

Attn: [                      ]

Reference is made to the Sales Agreement between MicroStrategy Incorporated d/b/a Strategy, a Delaware corporation (the “**Company**”), and TD Securities (USA) LLC, Barclays Capital Inc., The Benchmark Company, LLC, Clear Street LLC and Morgan Stanley & Co. LLC and dated as of July [7], 2025. The Company confirms that all conditions to the delivery of this Issuance Notice to [TD Securities (USA) LLC] [Barclays Capital Inc.] [The Benchmark Company] [Clear Street LLC] [Morgan Stanley & Co. LLC] (the “**Designated Agent**”) are satisfied as of the date hereof.

Date of Delivery of Issuance Notice (determined pursuant to Section 3(b)(i)):

Issuance Amount (equal to the total Sales Price for such Shares):	\$
Number of days in selling period:	
First date of selling period:	
Last date of selling period:	
Settlement Date(s) if other than standard T+1 settlement:	

Floor Price Limitation (in no event less than \$1.00 without the prior written consent of the Designated Agent, which consent may be withheld in the Agent’s sole discretion): \$            per share

Comments: \_\_\_\_\_



## **Schedule A**

### **Notice Parties**

#### **The Company**

MicroStrategy Incorporated d/b/a Strategy  
1850 Towers Crescent Plaza  
Tysons Corner, VA 22182  
Attention: General Counsel  
E-mail: [\*\*\*]

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

Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
Facsimile: [\*\*\*]  
Attention: Thomas S. Ward  
E-mail: [\*\*\*]

#### **The Agents**

TD Securities (USA) LLC  
1 Vanderbilt Avenue  
New York, New York 10017  
Attention: General Counsel  
E-mail: [\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]

Barclays Capital Inc.  
745 Seventh Avenue  
New York, New York 10019  
Attention: Syndicate Registration  
Fax: [\*\*\*]

The Benchmark Company, LLC  
150 East 58th Street, 17th Floor  
New York, New York 10155  
E-mail: [\*\*\*]  
Attention: General Counsel

Clear Street LLC  
4 World Trade Center,  
150 Greenwich St, Floor 45  
New York, New York 10007  
Attention: General Counsel  
Email: [\*\*\*]  
[\*\*\*]  
Phone: [\*\*\*]

Morgan Stanley & Co. LLC  
1585 Broadway, 29th Floor  
New York, New York 10036  
Attention: Investment Banking Division (fax: [\*\*\*])

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

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
Attention: Joseph A. Hall  
Dan Gibbons  
Facsimile: [\*\*\*]  
E-mail: [\*\*\*]  
[\*\*\*]

**Form of Officer's Certificate Pursuant to Section 4(p)**

The undersigned, the duly qualified and elected [•] of MicroStrategy Incorporated d/b/a Strategy, a Delaware corporation (the “**Company**”), does hereby certify in such capacity and on behalf of the Company, pursuant to Section 4(p) of the Sales Agreement, dated July 7, 2025, between the Company and TD Securities (USA) LLC, Barclays Capital Inc., The Benchmark Company, LLC, Clear Street LLC and Morgan Stanley & Co. LLC (the “**Sales Agreement**”), that to the knowledge of the undersigned:

(i) The representations and warranties of the Company in Section 2 of the Sales Agreement are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof; *provided, however* that such representations and warranties are qualified by the disclosure included or incorporated by reference in the Registration Statement and Prospectus (including any documents incorporated by reference therein and any supplements thereto); and

(ii) The Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied pursuant to the Sales Agreement at or prior to the date hereof.

Wilmer Cutler Pickering Hale and Dorr LLP, Wilson Sonsini Goodrich & Rosati PC and Davis Polk & Wardwell LLP are entitled to rely on this certificate in connection with the respective opinions such firms are rendering pursuant to the Sales Agreement.

Capitalized terms used herein without definition shall have the meanings given to such terms in the Sales Agreement.

MICROSTRATEGY INCORPORATED D/B/A STRATEGY

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

Name:

Title:

Date: [•]

**Schedule B**

**Free Writing Prospectus**

1. Investor presentation filed with the Commission pursuant to Rule 433 on July 7, 2025.

STRATEGY

10.00% Series A Perpetual Strife Preferred Stock, par value \$0.001 per share

FIRST AMENDMENT TO SALES AGREEMENT

July 7, 2025

TD SECURITIES (USA) LLC  
1 Vanderbilt Avenue  
New York, New York 10017

BARCLAYS CAPITAL INC.  
745 Seventh Avenue  
New York, New York 10019

THE BENCHMARK COMPANY, LLC  
150 East 58th Street, 17th Floor  
New York, New York 10155

MORGAN STANLEY & CO. LLC  
1585 Broadway  
New York, New York 10036

Ladies and Gentlemen:

Reference is hereby made to that certain Sales Agreement, dated May 22, 2025 (the “Sales Agreement”), by and among MicroStrategy Incorporated d/b/a Strategy (the “Company”), TD Securities (USA) LLC, Barclays Capital Inc. and The Benchmark Company, LLC, each in its capacity as sales agent and/or principal in connection with the offering and sale of Shares (as defined in the Sales Agreement) (collectively, the “Existing Agents”). This First Amendment to the Sales Agreement (this “Amendment”) is made by and among the Company, each of the Existing Agents, and Morgan Stanley & Co. LLC (the “New Agent”), in its capacity as sales agent and/or principal in connection with the offering and sale of Shares (together with the Existing Agents, each, an “Agent”, and collectively, the “Agents”). All capitalized terms used in this Amendment and not otherwise defined herein shall have the respective meanings assigned to such terms in the Sales Agreement. For the avoidance of doubt, as of the date hereof, all references to the Sales Agreement in any document other than this Amendment related to the transactions contemplated by the Sales Agreement shall be to the Sales Agreement as amended by this Amendment.

The Agents and the Company (collectively, the “parties hereto”) agree as follows:

Section 1. Amendments to Sales Agreement. The parties hereto agree that the Sales Agreement is amended as follows:

(a) As of the date hereof, the parties acknowledge and agree that, by virtue of this Amendment, the New Agent has joined as a party to the Sales Agreement as a sales agent and/or principal in connection with the offering and sale of Shares and that as of the date hereof the New Agent be added as an addressee of the Sales Agreement by inserting the following immediately following the name and address of the Benchmark Company, LLC on the first page of the Sales Agreement:

“MORGAN STANLEY & CO. LLC  
1585 Broadway  
New York, New York 10036”

(b) As of the date hereof, the first full paragraph of the Sales Agreement shall be deleted in its entirety and replaced with the following:

“MicroStrategy Incorporated d/b/a Strategy, a Delaware corporation (the “**Company**”), proposes, subject to the terms and conditions stated herein, to issue and sell from time to time through TD Securities (USA) LLC, Barclays Capital Inc., The Benchmark Company and Morgan Stanley & Co. LLC, as sales agents and/or principals (each an “**Agent**” and collectively the “**Agents**”), shares of the Company’s 10.00% Series A Perpetual Strife Preferred Stock, par value \$0.001 per share, with a stated amount of \$100 per share (the “**Preferred Shares**”), having an aggregate offering price of up to \$2,100,000,000, on the terms set forth in this agreement (this “**Agreement**”).”

(c) As of the date hereof, Section 8(e) of the Sales Agreement shall be deleted in its entirety and replaced with the following:

“Section 8(e). Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered, faxed or e-mailed and confirmed to the parties hereto as follows:

If to the Agents:

TD Securities (USA) LLC  
1 Vanderbilt Avenue  
New York, New York 10017  
Facsimile: [\*\*\*]  
E-mail: [\*\*\*]  
Attention: Head of Equity Capital Markets; General Counsel

Barclays Capital Inc.  
745 Seventh Avenue  
New York, New York 10019  
Attention: Syndicate Registration  
Fax: [\*\*\*]

The Benchmark Company, LLC  
150 East 58th Street, 17th Floor  
New York, New York 10155  
E-mail: [\*\*\*]  
Attention: General Counsel

Morgan Stanley & Co. LLC  
1585 Broadway, 29th Floor  
New York, New York 10036  
Attention: Investment Banking Division  
Fax: [\*\*\*]

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

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
Attention: Joseph A. Hall  
Dan Gibbons  
Facsimile: [\*\*\*]  
E-mail: [\*\*\*]

If to the Company:

MicroStrategy Incorporated d/b/a Strategy  
1850 Towers Crescent Plaza  
Tysons Corner, VA 22182  
Attention: General Counsel  
E-mail: [\*\*\*]

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

Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
Facsimile: [\*\*\*]  
Attention: Thomas S. Ward  
E-mail: [\*\*\*]

Any party hereto may change the address for receipt of communications by giving written notice to the others in accordance with this Section 8(e).”

(d) As of the date hereof, Exhibit A and Schedule A to the Sales Agreement is hereby deleted in its entirety and replaced with Exhibit A and Schedule A attached hereto.

Section 2. Prospectus Supplement. Promptly after execution and delivery of this Amendment, the Company will prepare and file with the Commission a prospectus supplement relating to the Shares in accordance with the provisions of Rule 424(b) (the “Amended Prospectus Supplement”). For the avoidance of doubt, the Company shall not be obligated to provide written notice of the intent to file or of the filing of the New Prospectus Supplement pursuant to Section 3(b) or Section 3(c) of the Sales Agreement.

Section 3. Conditions of Agent’s Obligations. The obligations of the Agents under this Amendment are subject to the accuracy of the representations and warranties of the Company contained herein or in certificates of any officer of the Company delivered pursuant to the provisions of this Amendment and to the performance by the Company of its covenants and other obligations under this Amendment and under the Sales Agreement, including Section 4 thereunder. For the avoidance of doubt, the filing of the Amended Prospectus Supplement shall be a “Representation Date” under the Sales Agreement.

Section 4. Representations and Warranties. The Company represents and warrants to the Agents that the representations and warranties of the Company contained in Section 2 of the Sales Agreement are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof; provided, however that such representations and warranties are qualified by the disclosure included or incorporated by reference in the Registration Statement and Prospectus (including any documents incorporated by reference therein and any supplements thereto); and provided further, that all references to the “Agreement” therein shall be to the Sales Agreement, as amended by this Amendment.

Section 5. No Other Amendments. The parties hereto agree that, except as set forth in, and amended by, Section 1 and Section 2 above, all the terms and provisions of the Sales Agreement shall remain in full force and effect.

Section 6. Incorporation of Terms. The provisions of Section 8(h) (Governing Law Provisions) and 8(i) (General Provisions) of the Sales Agreement shall apply with respect to this Amendment and are incorporated herein mutatis mutandis.



If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement between the Agents and the Company in accordance with its terms.

Very truly yours,

**MICROSTRATEGY INCORPORATED D/B/A  
STRATEGY**

By: /s/ Andrew Kang  
Name: Andrew Kang  
Title: Executive Vice President & Chief Financial  
Officer

*{Signature Page to First Amendment to Sales Agreement}*

Accepted as of the date hereof:

TD SECURITIES (USA) LLC

By: /s/ Michael Murphy  
Name: Michael Murphy  
Title: Managing Director

BARCLAYS CAPITAL INC.

By: /s/ Jamie Turturici  
Name: Jamie Turturici  
Title: Managing Director, Head of Technology ECM

THE BENCHMARK COMPANY, LLC

By: /s/ John J Borer III  
Name: John J Borer III  
Title: Senior Managing Director

MORGAN STANLEY & CO. LLC

By: /s/ Andrew Doherty  
Name: Andrew Doherty  
Title: Authorized Signatory

*{Signature Page to First Amendment to Sales Agreement}*

EXHIBIT A

FORM OF ISSUANCE NOTICE

[Date]

[TD SECURITIES (USA) LLC  
1 Vanderbilt Avenue  
New York, New York 10017]

[BARCLAYS CAPITAL INC.  
745 Seventh Avenue  
New York, New York 10019]

[THE BENCHMARK COMPANY, LLC  
150 East 58th Street, 17th Floor  
New York, New York 10155]

[MORGAN STANLEY & CO. LLC  
1585 Broadway  
New York, New York 10036]

Attn: [            ]

Reference is made to the Sales Agreement, dated May 22, 2025, as amended by the First Amendment to Sales Agreement, dated July [•], 2025, between MicroStrategy Incorporated d/b/a Strategy, a Delaware corporation (the “**Company**”), and TD Securities (USA) LLC, Barclays Capital Inc., The Benchmark Company, LLC and Morgan Stanley & Co. The Company confirms that all conditions to the delivery of this Issuance Notice to [TD Securities (USA) LLC] [Barclays Capital Inc.] [The Benchmark Company, LLC] [Morgan Stanley & Co. LLC] (the “**Designated Agent**”) are satisfied as of the date hereof.

Date of Delivery of Issuance Notice (determined pursuant to Section 3(b)(i)):

Issuance Amount (equal to the total Sales Price for such Shares):	\$ _____
Number of days in selling period:	_____
First date of selling period:	_____
Last date of selling period:	_____
Settlement Date(s) if other than standard T+1 settlement:	_____

Floor Price Limitation (in no event less than \$1.00 without the prior written consent of the Designated Agent, which consent may be withheld in the Agent’s sole discretion): \$ \_\_\_\_\_ per share

Comments: \_\_\_\_\_

*{Signature Page to First Amendment to Sales Agreement}*

## **Schedule A**

### **Notice Parties**

#### **The Company**

MicroStrategy Incorporated d/b/a Strategy  
1850 Towers Crescent Plaza  
Tysons Corner, VA 22182  
Attention: General Counsel  
E-mail: [\*\*\*]

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

Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
Facsimile: [\*\*\*]  
Attention: Thomas S. Ward  
E-mail: [\*\*\*]

#### **The Agents**

TD Securities (USA) LLC  
1 Vanderbilt Avenue  
New York, New York 10017  
Attention: General Counsel  
E-mail: [\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]

Barclays Capital Inc.  
745 Seventh Avenue  
New York, New York 10019  
Attention: Syndicate Registration  
Fax: [\*\*\*]

The Benchmark Company, LLC  
150 East 58th Street, 17th Floor  
New York, New York 10155  
E-mail: [\*\*\*]  
Attention: General Counsel

Morgan Stanley & Co. LLC  
1585 Broadway, 29th Floor  
New York, New York 10036  
Attention: Investment Banking Division  
Fax: [\*\*\*]

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

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
Attention: Joseph A. Hall  
Dan Gibbons  
Facsimile: [\*\*\*]  
E-mail: [\*\*\*]  
[\*\*\*]

### Form of Officer's Certificate Pursuant to Section 4(p)

The undersigned, the duly qualified and elected [•] of MicroStrategy Incorporated d/b/a Strategy, a Delaware corporation (the “**Company**”), does hereby certify in such capacity and on behalf of the Company, pursuant to Section 4(p) of the Sales Agreement, dated May 22, 2025, as amended by the First Amendment to Sales Agreement, dated July [•], 2025, between the Company and TD Securities (USA) LLC, Barclays Capital Inc., The Benchmark Company, LLC and Morgan Stanley & Co. LLC (the “**Sales Agreement**”), that to the knowledge of the undersigned:

(i) The representations and warranties of the Company in Section 2 of the Sales Agreement are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof; *provided, however* that such representations and warranties are qualified by the disclosure included or incorporated by reference in the Registration Statement and Prospectus (including any documents incorporated by reference therein and any supplements thereto); and

(ii) The Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied pursuant to the Sales Agreement at or prior to the date hereof.

Wilmer Cutler Pickering Hale and Dorr LLP, Wilson Sonsini Goodrich & Rosati PC and Davis Polk & Wardwell LLP are entitled to rely on this certificate in connection with the respective opinions such firms are rendering pursuant to the Sales Agreement.

Capitalized terms used herein without definition shall have the meanings given to such terms in the Sales Agreement.

MICROSTRATEGY INCORPORATED D/B/A STRATEGY

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

Name:

Title:

Date: [•]

**MicroStrategy Incorporated**  
**Certificate of Amendment to Certificate of Designations**  
**8.00% Series A Perpetual Strike Preferred Stock**  
**Pursuant to Section 151 of the**  
**General Corporation Law of the State of Delaware**

MicroStrategy Incorporated (the “**Company**”), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

**FIRST:** The Company filed a Certificate of Designations (the “**Certificate of Designations**”) establishing the terms of the Company’s 8.00% Series A Perpetual Strike Preferred Stock on February 5, 2025.

**SECOND:** On July 6, 2025, the Board of Directors of the Company pursuant to Section 151 of the General Corporation Law of the State of Delaware adopted the following resolution setting forth an amendment to the Certificate of Designations:

**RESOLVED** that, pursuant to the Company’s second restated Certificate of Incorporation, as amended pursuant to that certain Certificate of Amendment dated January 22, 2025, as the same may be further amended, supplemented or restated, the Certificate of Designations is amended, pursuant to Section 9(b)(iii)(5) thereof, as follows:

1. **Section 1** of the Certificate of Designations is hereby amended as follows:

- (a) A new definition “**Certificate of Amendment**” is inserted immediately after the definition of “**Capital Stock**” as follows:  
“**Certificate of Amendment**” means the Certificate of Amendment to Certificate of Designations, dated as of July 7, 2025.
- (b) A new definition “**Stated Amount**” is inserted immediately after the definition of “**Spin-Off Valuation Period**” as follows:  
“**Stated Amount**” means one hundred dollars (\$100) per share of Perpetual Strike Preferred Stock.
- (c) The following definitions are amended and restated in their entirety as follows:  
“**Conversion Price**” means, as of any time, an amount equal to (i) the Stated Amount per share of Perpetual Strike Preferred Stock, *divided by* (ii) the Conversion Rate in effect at such time.



**“Liquidation Preference”** initially means one hundred dollars (\$100) per share of Perpetual Strike Preferred Stock; *provided, however,* that, effective immediately after the Close of Business on each Business Day on or after July 7, 2025 (and, on or after July 7, 2025, if applicable, during the course of a Business Day on which any sale transaction to be settled by the issuance of Perpetual Strike Preferred Stock is executed, from the exact time of the first such sale transaction during such Business Day until the Close of Business of such Business Day), the Liquidation Preference per share of Perpetual Strike Preferred Stock will be adjusted to be the greatest of (a) the Stated Amount per share of Perpetual Strike Preferred Stock; (b) in the case of any Business Day on or after July 7, 2025 with respect to which the Company has, on such Business Day or any Business Day during the ten (10) Trading Day period preceding such Business Day, executed any sale transaction to be settled by the issuance of Perpetual Strike Preferred Stock, an amount equal to the Last Reported Sale Price per share of Perpetual Strike Preferred Stock on the Trading Day immediately before such Business Day; and (c) the arithmetic average of the Last Reported Sale Prices per share of Perpetual Strike Preferred Stock for each Trading Day of the ten (10) consecutive Trading Days immediately preceding such Business Day; *provided* that, for purposes of this definition, the execution of the Certificate of Amendment will be treated as an execution of a sale transaction settled by the issuance of Perpetual Strike Preferred Stock. Whenever this Certificate of Designations refers to the Liquidation Preference of the Perpetual Strike Preferred Stock as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Liquidation Preference immediately after the Close of Business on such date. For purposes of this definition, any reference to the Company’s execution of any sale transaction to be settled by the issuance of Perpetual Strike Preferred Stock includes any resale of any shares of Perpetual Strike Preferred Stock that the Company or any of its Subsidiaries have purchased or otherwise acquired.

2. **Section 3(f)(i)(2)(A)** of the Certificate of Designations is hereby amended and restated in its entirety as follows:

(A) if the aggregate Stated Amount of the shares of Perpetual Strike Preferred Stock represented by such Physical Certificate is at least five million dollars (\$5,000,000) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Perpetual Strike Preferred Stock entitled to such cash Regular Dividend or amount has delivered to the Paying Agent, no later than the time set forth in the next sentence, a written request to receive payment by wire transfer to an account of such Holder within the United States, by wire transfer of immediately available funds to such account; and

3. **Section 5(a)(i)** of the Certificate of Designations is hereby amended and restated in its entirety as follows:

(i) *Accumulation and Payment of Regular Dividends.* The Perpetual Strike Preferred Stock will accumulate cumulative dividends (“**Regular Dividends**”) at a rate per annum equal to the Regular Dividend Rate on the Stated Amount thereof (and, to the extent described in the fourth sentence of this **Section 5(a)(i)**, on unpaid Regular Dividends thereon), regardless of whether or not declared or funds are legally available for their payment. Subject to the other provisions of this **Section 5**, such Regular Dividends will be payable when, as and if declared by the Board of Directors, out of funds legally available for their payment to the extent paid in cash, quarterly in arrears on each Regular Dividend Payment Date, to the Holders as of the Close of Business on the immediately preceding Regular Record Date. Regular Dividends on the Perpetual Strike Preferred Stock will accumulate from, and including, the last date to which Regular Dividends have been paid (or, if no Regular Dividends have been paid, from, and including, the Initial Issue Date (in the case of the Perpetual Strike Preferred Stock issued on the Initial Issue Date) or as otherwise provided pursuant to **Section 3(c)** or in the certificate(s) representing the applicable Perpetual Strike Preferred Stock (in the case of any other Perpetual Strike Preferred Stock )) to, but excluding, the next Regular Dividend Payment Date. Declared Regular Dividends on the Perpetual Strike Preferred Stock will be payable in the manner set forth in **Section 5(c)**. If any accumulated Regular Dividend (or any portion thereof) on the Perpetual Strike Preferred Stock is not paid on the applicable Regular Dividend Payment Date (or, if such Regular Dividend Payment Date is not a Business Day, the next Business Day), then additional Regular Dividends (“**Compounded Dividends**”) will accumulate on the amount of such unpaid Regular Dividend, compounded quarterly at the Regular Dividend Rate, from, and including, such Regular Dividend Payment Date to, but excluding, the date the same, including all Compounded Dividends thereon, is paid in full. Each reference in this Certificate of Designations to accumulated or unpaid Regular Dividends will include any Compounded Dividends that accumulate thereon pursuant to the previous sentence. For the avoidance of doubt, except as set forth in **Section 5(b)**, nothing in this Certificate of Designations will require the Company or the Board of Directors to declare and pay Regular Dividends, regardless of whether funds are legally available for their payment, and Regular Dividends, if any, will be paid when, as and if declared by the Board of Directors, in its sole and absolute discretion, out of funds legally available for their payment to the extent paid in cash.

4. **Section 6(a)(i)** of the Certificate of Designations is hereby amended and restated in its entirety as follows:

(i) the Liquidation Preference per share of Perpetual Strike Preferred Stock as of the Business Day immediately before the date of such payment; and

5. **Section 7(a)** of the Certificate of Designations is hereby amended and restated in its entirety as follows:

(a) *Optional Redemption.* Subject to the terms of this **Section 7**, the Company has the right, at its election, to redeem (an “**Optional Redemption**”) all, and not less than all, of the Perpetual Strike Preferred Stock, for a cash purchase price equal to the Redemption Price, if the total aggregate Stated Amount of all Perpetual Strike Preferred Stock then outstanding is less than twenty five percent (25%) of the aggregate Stated Amount of the Perpetual Strike Preferred Stock issued on the Initial Issue Date.

6. **Section 7(c)** of the Certificate of Designations is hereby amended and restated in its entirety as follows:

(c) *Redemption Price.*

(i) *Optional Redemption.* The Redemption Price per share of Perpetual Preferred Stock called for Optional Redemption will be an amount equal to (1) the Liquidation Preference of such share as of the Business Day immediately before the date the Company sends the related Redemption Notice, plus (2) accumulated and unpaid Regular Dividends on such share to, but excluding, the Redemption Date; *provided, however*, if the Redemption Date is after a Regular Record Date for a declared Regular Dividend on the Perpetual Strike Preferred Stock and on or before the next Regular Dividend Payment Date, then (A) the Holder of such share at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Optional Redemption, to receive, on or, at the Company's election, before such Regular Dividend Payment Date, such declared Regular Dividend on such share; and (B) the amount referred to in **clause (2)** above will instead be the excess, if any, of (x) the accumulated and unpaid Regular Dividends on such share to, but excluding, such Redemption Date over (y) the amount of such declared Regular Dividend on such share.

(ii) *Tax Redemption.* The Redemption Price per share of Perpetual Preferred Stock called for Tax Redemption will be an amount equal to (1) the greater of (A) the Liquidation Preference of such share as of the Business Day immediately before the date the Company sends the related Redemption Notice and (B) the average of the Last Reported Sale Prices per share of Perpetual Strike Preferred Stock for the five (5) consecutive Trading Days ending on, and including, the Trading Day immediately before the related Redemption Notice Date, plus (2) accumulated and unpaid Regular Dividends on such share to, but excluding, the Redemption Date; *provided, however*, if the Redemption Date is after a Regular Record Date for a declared Regular Dividend on the Perpetual Strike Preferred Stock and on or before the next Regular Dividend Payment Date, then (A) the Holder of such share at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Tax Redemption, to receive, on or, at the Company's election, before such Regular Dividend Payment Date, such declared Regular Dividend on such share; and (B) the amount referred to in **clause (2)** above will instead be the excess, if any, of (x) the accumulated and unpaid Regular Dividends on such share to, but excluding, such Redemption Date over (y) the amount of such declared Regular Dividend on such share.

7. **Section 8(d)** of the Certificate of Designations is hereby amended and restated in its entirety as follows:

(d) *Fundamental Change Repurchase Price*. The Fundamental Change Repurchase Price for a share of Perpetual Strike Preferred Stock to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to (i) the Stated Amount of such share plus (ii) accumulated and unpaid Regular Dividends on such share to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change; *provided, however*, that if such Fundamental Change Repurchase Date is after a Regular Dividend Record Date for a declared Regular Dividend on the Perpetual Strike Preferred Stock and on or before the next Regular Dividend Payment Date, then (x) pursuant to **Section 5(d)**, the Holder of such share at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Repurchase Upon Fundamental Change, to receive, on or, at the Company's election, before such Regular Dividend Payment Date, such declared Regular Dividend on such share; and (y) the amount referred to in **clause (ii)** above will instead be the excess, if any, of (1) the accumulated and unpaid Regular Dividends on such share to, but excluding such Fundamental Change Repurchase Date over (2) the amount of such declared Regular Dividend on such share.

8. **Section 5** of the Form of Perpetual Strike Preferred Stock, attached as **Exhibit A** to the Certificate of Designations, is hereby amended and restated in its entirety as follows:

5. **Liquidation Preference**. The Liquidation Preference per share of Perpetual Strike Preferred Stock is initially one hundred dollars (\$100) per share of Perpetual Strike Preferred Stock and is subject to adjustment, as set forth in the Certificate of Designations. The rights of Holders upon the Company's liquidation, dissolution or winding up are set forth in Section 6 of the Certificate of Designations.

\*\*\*

**IN WITNESS WHEREOF**, the Company has caused this Certificate of Amendment to be duly executed as of this 7th day of July, 2025.

MICROSTRATEGY INCORPORATED

By: /s/ Phong Le

Name: Phong Le

Title: President & Chief Executive Officer

[Signature Page to Certificate of Amendment]

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July 7, 2025

MicroStrategy Incorporated d/b/a Strategy  
 1850 Towers Crescent Plaza  
 Tysons Corner, Virginia 22182

Re: Prospectus Supplement to Registration Statement on Form S-3

Ladies and Gentlemen:

This opinion is furnished to you in connection with (i) the Registration Statement on Form S-3 (File No. 333-284510) (the “Registration Statement”) filed by MicroStrategy Incorporated d/b/a Strategy, a Delaware corporation (the “Company”), with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), for the registration of, among other things, an indeterminate amount of shares of 10.00% Series A Perpetual Stride Preferred Stock, \$0.001 par value per share (“Perpetual Stride Preferred Stock”) of the Company, which may be issued from time to time on a delayed or continuous basis by the Company pursuant to Rule 415 under the Securities Act, as set forth in the Registration Statement, the base prospectus contained therein (the “Base Prospectus”) and (ii) the prospectus supplement, dated July 7, 2025 (the “Prospectus Supplement” and, together with the Base Prospectus, the “Prospectus”), relating to the issuance and sale from time to time by the Company of shares of Perpetual Stride Preferred Stock having an aggregate offering price of up to \$4,200,000,000 (the “Shares”). The Shares are to be issued and sold pursuant to a Sales Agreement, dated July 7, 2025, between the Company and TD Securities (USA) LLC, Barclays Capital Inc., The Benchmark Company, LLC, Clear Street LLC and Morgan Stanley & Co. LLC (the “Sales Agreement”). The preferences, limitations and relative rights of shares of the Perpetual Stride Preferred Stock are set forth in the certificate of designations, dated June 10, 2025, establishing the terms of the Perpetual Stride Preferred Stock (the “Certificate of Designations”). We are acting as counsel for the Company in connection with the issue and sale by the Company of the Shares.

We have examined and relied upon copies of the Registration Statement and the Prospectus, as filed with the Commission, including the exhibits thereto. We have also examined and relied upon the Sales Agreement, the Second Restated Certificate of Incorporation of the Company (as amended and supplemented to date, including as amended and supplemented by the Certificate of Designations, the “Second Restated Certificate”), the Amended and Restated By-Laws of the Company (as amended or restated from time to time, the “Bylaws”) and minutes of meetings of the stockholders and the Board of Directors of the Company including duly authorized committees thereof as provided to us by the Company.

In our examination of the foregoing documents, we have assumed the genuineness of all signatures, the legal capacity of all signatories, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as copies, the authenticity of such original documents and the completeness and accuracy of the corporate minute books of the Company.

We have relied as to certain matters on information obtained from public officials and officers of the Company, and we have assumed (i) all Shares will be issued and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement, the Prospectus and any applicable prospectus supplement; (ii) there will be sufficient shares of Perpetual Stride Preferred Stock authorized under the Second Restated Certificate and not otherwise reserved for issuance; and (iii) at the time of the issuance and sale of the Shares, the Company will be validly existing as a corporation and in good standing under the laws of the State of Delaware.

We are expressing no opinion herein as to the application of any federal or state law or regulation to the power, authority or competence of any party to any agreement with respect to the Perpetual Stride Preferred Stock other than the Company. We have assumed that such agreements are, or will be, the valid and binding obligations of each party thereto other than the Company, and enforceable against each such other party in accordance with their respective terms.

Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109

Berlin Boston Brussels Denver Frankfurt London Los Angeles New York Palo Alto San Francisco Washington

We have assumed for purposes of our opinion below that no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for the due execution, delivery or performance by the Company of any such agreement, or, if any such authorization, approval, consent, action, notice or filing is required, it will have been duly obtained, taken, given or made and will be in full force and effect. We have also assumed that there will not have occurred, prior to the date of issuance of any Perpetual Stride Preferred Stock, any change in law affecting the validity or enforceability of such Perpetual Stride Preferred Stock and that at the time of the issuance and sale of such Perpetual Stride Preferred Stock, the Board of Directors of the Company (or any committee of the Board of Directors pursuant to authority properly delegated to such committee by the Board of Directors of the Company) shall not have taken any action to rescind or otherwise reduce its prior authorization of the issuance of such Perpetual Stride Preferred Stock.

We also express no opinion herein as to the laws of any state or jurisdiction other than the General Corporation Law of the State of Delaware. We also express no opinion herein with respect to compliance by the Company with the securities or “blue sky” laws of any state or other jurisdiction of the United States or of any foreign jurisdiction. We also express no opinion and make no statement herein with respect to the antifraud laws of any jurisdiction.

Based upon and subject to the foregoing, we are of the opinion that when the Shares have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers thereof and have been issued by the Company against payment therefor in an amount not less than the par value thereof in accordance with the terms of the Sales Agreement, the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company and the Shares will be validly issued, fully paid and non-assessable. In rendering the foregoing opinion, we have assumed that (a) the issuance and sale of the Shares will be in accordance with the express authority and approval (including, without limitation, with respect to the price, quantity and timing of sale of the Shares) theretofore established by the Board of Directors of the Company (or one or more duly authorized committees of such Board of Directors) in accordance with the DGCL and the Second Restated Certificate of Incorporation of the Company (as amended and supplemented to date) and the Amended and Restated Bylaws of the Company; (b) the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL; and (c) upon the issuance of any Shares, the total number of shares of Perpetual Stride Preferred Stock that are issued and outstanding will not exceed the total number of shares of Perpetual Stride Preferred Stock that the Company is then authorized to issue under the Certificate of Designations.

Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters. This opinion is based upon currently existing statutes, rules, regulations and judicial decisions, and we disclaim any obligation to advise you of any change in any of these sources of law or subsequent legal or factual developments which might affect any matters or opinions set forth herein.

We hereby consent to the filing of this opinion with the Commission in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act as an exhibit to the Current Report on Form 8-K to be filed by the Company on the date hereof in connection with the issuance and sale of the Shares and to the use of our name therein and in the related Prospectus Supplement under the caption “Legal Matters.” In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

Very truly yours,

WILMER CUTLER PICKERING  
HALE AND DORR LLP

By: /s/ Wilmer Cutler Pickering Hale and Dorr LLP  
WILMER CUTLER PICKERING HALE AND DORR  
LLP



**Strategy Announces \$4.2 Billion STRD At-The-Market Program**

TYSONS CORNER, Va., July 7, 2025 —Strategy™ (Nasdaq: MSTR; STRK; STRF; STRD) today announced that it has entered into a sales agreement pursuant to which Strategy may issue and sell shares of its 10.00% Series A Perpetual Stride Preferred Stock, \$0.001 par value per share (the “STRD Stock”), having an aggregate offering price of up to \$4.2 billion (the “ATM Program”).

Strategy expects to make sales of STRD Stock pursuant to the ATM Program in a disciplined manner over an extended period, taking into account the trading price and trading volumes of the STRD Stock at the time of sale.

Strategy intends to use the net proceeds from the ATM Program for general corporate purposes, including the acquisition of bitcoin and for working capital, and may also use the net proceeds for the payment of dividends to holders of its 10.00% Series A Perpetual Stride Preferred Stock, \$0.001 par value per share and 8.00% Series A Perpetual Strike Preferred Stock, \$0.001 par value per share.

The STRD Stock, subject to the terms and conditions of the sales agreement, may be sold by agents by any method that is deemed an “at the market offering” as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended or any other method permitted by law, which may include negotiated transactions or block trades.

The sale of STRD Stock under the ATM Program is only offered pursuant to a prospectus supplement, filed with the Securities and Exchange Commission on July 7, 2025 under the existing automatic shelf registration statement, which became effective on January 27, 2025 (File No. 333-284510), and the base prospectus contained therein.

This press release shall not constitute an offer to sell, or a solicitation of an offer to buy, STRD Stock, nor shall there be any sale of STRD Stock in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such state or jurisdiction.

**About Strategy**

MicroStrategy Incorporated d/b/a Strategy (Nasdaq: MSTR/STRK/STRF/STRD) is the world’s first and largest Bitcoin Treasury Company. We are a publicly traded company that has adopted Bitcoin as our primary treasury reserve asset. By using proceeds from equity and debt financings, as well as cash flows from our operations, we strategically accumulate Bitcoin and advocate for its role as digital capital. Our treasury strategy is designed to provide investors varying degrees of economic exposure to Bitcoin by offering a range of securities, including equity and fixed-income instruments. In addition, we provide industry-leading AI-powered enterprise analytics software, advancing our vision of Intelligence Everywhere. We leverage our development capabilities to explore innovation in Bitcoin applications, integrating analytics expertise with our commitment to digital asset growth. We believe our combination of operational excellence, strategic Bitcoin reserve, and focus on technological innovation positions us as a leader in both the digital asset and enterprise analytics sectors, offering a unique opportunity for long-term value creation.

Strategy, MicroStrategy, and Intelligence Everywhere are either trademarks or registered trademarks of MicroStrategy Incorporated in the United States and certain other countries. Other product and company names mentioned herein may be the trademarks of their respective owners.

**Forward-Looking Statements**

Statements in this press release about future expectations, plans, and prospects, as well as any other statements regarding matters that are not historical facts, may constitute “forward-looking statements” within the meaning of The Private Securities Litigation Reform Act of 1995. These statements include, but are not limited to, statements relating to the at-the-market offering of the STRD Stock. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will,” “would,” and similar expressions are intended to identify forward-looking statements, although not all forward-looking

statements contain these identifying words. Actual results may differ materially from those indicated by such forward-looking statements as a result of various important factors, including the uncertainties related to the sales made pursuant to the offering program, if any, market conditions and the other factors discussed in the “Risk Factors” section of Strategy’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on May 5, 2025, the factors discussed under the header “Risk Factor Updates” in the current report on Form 8-K filed by Strategy with the Securities and Exchange Commission on July 7, 2025 and the risks described in other filings that Strategy may make with the Securities and Exchange Commission. Any forward-looking statements contained in this press release speak only as of the date hereof, and Strategy specifically disclaims any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.

Strategy  
Shirish Jajodia  
Corporate Treasurer  
ir@strategy.com

***Holders of perpetual strike preferred stock may be treated as receiving deemed distributions and/or receive distributions paid in class A common stock, and consequently may be subject to tax with respect to the perpetual strike preferred stock under certain circumstances, even though no corresponding distribution of cash has been made.***

Under Section 305 of the Internal Revenue Code of 1986, as amended (the “Code”), holders of perpetual strike preferred stock may be treated as receiving a deemed distribution on the perpetual strike preferred stock under certain circumstances, including (i) an increase in the liquidation preference of the perpetual strike preferred stock or (ii) if the perpetual strike preferred stock is issued at a discount. If our board of directors does not declare a dividend on the perpetual strike preferred stock in respect of any dividend period before the related dividend payment date, the deferred dividend may be treated as an increase in the liquidation preference of the perpetual strike preferred stock that gives rise to a deemed dividend to holders of perpetual strike preferred stock. In addition, the liquidation preference of the perpetual strike preferred stock is subject to adjustment in the manner described in the certificate of designations, which adjustment may give rise to a deemed distribution to holders of perpetual strike preferred stock. Although the matter is not entirely clear, we believe any such adjustment of liquidation preference in the manner described in the certificate of designations or any such deferred dividend or discount should not be treated as giving rise to a deemed distribution on the perpetual strike preferred stock. However, there is no assurance that the IRS or an applicable withholding agent will not take a contrary position.

In addition, the conversion rate of the perpetual strike preferred stock is subject to adjustment in certain circumstances. If and to the extent that certain adjustments in the conversion rate (or failures to adjust the conversion rate) increase the proportionate interest of a holder of perpetual strike preferred stock in our assets or earnings and profits, the holder of perpetual strike preferred stock may be deemed to have received for U.S. federal income tax purposes a deemed distribution without the receipt of any cash or property.

Furthermore, upon a conversion of perpetual strike preferred stock into class A common stock, depending on the circumstances, any class A common stock received in respect of any deferred and unpaid dividend (and any dividend that has been declared and not yet paid as well as any accrued but unpaid dividend in the then-current dividend period) could be treated as a deemed distribution for U.S. federal income tax purposes.

Any deemed distribution or any distribution to holders of the perpetual strike preferred stock that is paid in class A common stock will generally be taxable to the same extent as a cash distribution. In addition, for any perpetual strike preferred stockholder that is a non-U.S. holder (as defined in “Material United States Federal Income Tax Considerations”), any deemed distribution or non-cash distribution could be subject to U.S. federal withholding tax at a 30% rate, or such lower rate as may be specified by an applicable treaty. Because deemed distributions or non-cash distributions received by a holder of perpetual strike preferred stock would not give rise to any cash from which any applicable withholding tax could be satisfied, if we (or an applicable withholding agent) pay withholding (including backup withholding) on behalf of a holder of perpetual strike preferred stock, we (or an applicable withholding agent) may set off any such payment against, or withhold such taxes from, payments of cash or delivery of shares of class A common stock to such holder of perpetual strike preferred stock (or, in some circumstances, any payments on our class A common stock) or sales proceeds received by, or other funds or assets of, such holder of perpetual strike preferred stock, or require alternative arrangements (e.g., deposit for taxes prior to delivery of such dividend in the form of class A common stock or of conversion consideration).

The application of the rules under Section 305 of the Code to the perpetual strike preferred stock is uncertain, and holders of perpetual strike preferred stock should consult their tax advisors about the impact of these rules in their particular situations.

***The tax rules applicable to “fast-pay stock” could result in adverse consequences to holders of perpetual strike preferred stock.***

Under Treasury Regulations promulgated under Section 7701(l) of the Code (the “Fast-Pay Stock Regulations”), if stock of a corporation is structured such that dividends paid with respect to the stock are economically (in whole or in part) a return of the stockholder’s investment (rather than a return on the stockholder’s investment), then the stock is characterized as “fast-pay stock” and is subject to adverse tax reporting requirements and potentially penalties, as described below. In addition, under the Fast-Pay Stock Regulations, unless clearly demonstrated otherwise, stock is presumed to be fast-pay stock if it is structured to have a dividend that is reasonably expected to decline (as opposed to a dividend rate that is reasonably expected to fluctuate or remain constant) (for such purpose, the dividend rate may be viewed as reasonably expected to decline if we are reasonably expected to stop paying regular dividends on the perpetual strike preferred stock) or is issued for an amount that exceeds (by more than a de minimis amount, as determined under applicable Treasury Regulations) the amount at which the stockholder can be compelled to dispose of the stock. It is not clear what amount would constitute “de minimis” in the case of stock with a perpetual term.

The determination of whether stock is fast-pay stock is based on all the facts and circumstances. To determine if it is fast-pay stock, stock is examined when issued, and, for stock that is not fast-pay stock when issued, when there is a significant modification in the terms of the stock or the related agreements or a significant change in the relevant facts and circumstances. The relevant tax regulations do not indicate the types of significant changes in facts and circumstances that are intended to give rise to such a determination.

We will issue shares of perpetual strike preferred stock from time to time under this prospectus supplement (the “Offered Shares”) and may otherwise issue shares of perpetual strike preferred stock (or resell any shares that we or any of our subsidiaries have purchased or otherwise acquired) from time to time (such issued or resold shares, the “Additional Shares”). We do not intend to issue any shares of perpetual strike preferred stock that would be treated as fast-pay stock, and we do not believe that we structured the Offered Shares, or will structure any Additional Shares, such that dividends paid by us with respect to the perpetual strike preferred stock will be economically a return of a stockholder’s investment. Moreover, we have obtained, and intend to obtain in the future, advice of counsel in connection with offerings of perpetual strike preferred stock for the purpose of analyzing the consequences of issuing such shares, including in light of any legal developments regarding the definition of fast-pay stock. It is possible, however, that the Offered Shares or Additional Shares may be issued at a premium above their liquidation preference. As the liquidation preference of the perpetual strike preferred stock is subject to adjustment in the manner described in the certificate of designations, and based on the expected overall circumstances of an offering of the Offered Shares or Additional Shares, it is generally not expected that any Offered Shares or Additional Shares would be issued at such a level of premium above their liquidation preference at the time of sale of the Offered Shares or Additional Shares so as to implicate the fast-pay stock rules. Nonetheless, there may be increased risk that the IRS could assert that such Offered Shares or Additional Shares constitute fast-pay stock.

Transactions involving fast-pay stock arrangements are treated as “listed transactions” for U.S. federal income tax purposes. Issuers and holders of any shares of fast-pay stock would be required to report their participation in the transaction on IRS Form 8886 on an annual basis with their U.S. federal income tax returns and would also be required to mail a copy of that form to the IRS Office of Tax Shelter Analysis. Failure to comply with those disclosure requirements could result in the assessment by the IRS of interest, additions to tax and onerous penalties. In addition, an accuracy-related penalty applies under the Code to any reportable transaction understatement attributable to a listed transaction if a significant purpose of the transaction is the avoidance or evasion of U.S. federal income tax. Furthermore, certain material advisors would also be required to file a disclosure statement with the IRS. If we determine that we are required to file an IRS Form 8886 (including a protective filing) in connection with the potential issuance of fast-pay stock with respect to any perpetual strike preferred stock, we intend to provide public notice to the applicable holders of the perpetual strike preferred stock, which notice may be by a press release, by publication on our investor relations website, or by filing a current report on Form 8-K with the Securities and Exchange Commission.

Notwithstanding our intent not to issue perpetual strike preferred stock that would be fast-pay stock, the rules regarding the definition of fast-pay stock are unclear in certain respects and, therefore, the IRS could disagree with our determination and treat Offered Shares or Additional Shares as fast-pay stock. In addition, even if a particular issuance of Offered Shares or Additional Shares is not fast-pay stock, the treatment of any other shares of perpetual strike preferred stock—including other Offered Shares or any Additional Shares—as fast-pay stock (for example, as a result of a determination by the IRS or because they are issued at a premium to their liquidation preference) could result in adverse consequences to holders of all shares of perpetual strike preferred stock because the shares may be indistinguishable from each other. See “—An issuance of perpetual strike preferred stock could have an adverse tax profile, which could subject holders of any other shares of perpetual strike preferred stock to adverse consequences” below.

Accordingly, holders of perpetual strike preferred stock are strongly urged to consult their tax advisors regarding the Fast-Pay Stock Regulations and their potential consequences to an investment in the perpetual strike preferred stock.

***An issuance of perpetual strike preferred stock could have an adverse tax profile, which could subject holders of any other shares of perpetual strike preferred stock to adverse consequences.***

If we issue shares of perpetual strike preferred stock—whether Offered Shares or Additional Shares—that have a different, and potentially adverse, tax profile or treatment for U.S. federal income tax purposes from your shares of perpetual strike preferred stock, since all such shares would trade under the same CUSIP or other identifying number, your shares of perpetual strike preferred stock may be treated by subsequent purchasers, withholding agents and potentially the IRS as having the same adverse tax profile or treatment if they are not otherwise distinguishable from the perpetual strike preferred stock subject to such adverse treatment.

For example, notwithstanding our intent not to issue any shares of perpetual strike preferred stock that are fast-pay stock, the IRS could assert that certain shares of perpetual strike preferred stock constitute fast-pay stock, particularly if they are issued at a premium to their liquidation preference in their offering. See “—The tax rules applicable to “fast-pay stock” could result in adverse consequences to holders of perpetual strike preferred stock” above.

Furthermore, if any shares of perpetual strike preferred stock are issued at a price that exceeds their liquidation preference, such shares would constitute “disqualified preferred stock” within the meaning of Section 1059(f)(2) of the Code and any corporate U.S. holder generally will be required to reduce its tax basis (but not below zero) in the perpetual strike preferred stock by the amount of any dividends-received deduction it receives. The liquidation preference of the perpetual strike preferred stock is subject to adjustment in the manner described in the certificate of designations, which adjustment may be taken into account for purposes of disqualified preferred stock determination. If any shares of perpetual strike preferred stock issued are considered disqualified preferred stock, the other shares of perpetual strike preferred stock could also be subject to same treatment as a practical matter due to fungible trading.

If any shares of perpetual strike preferred stock are sold at a discount, such shares may be subject to rules that require the accrual of such discount (or a greater discount that applies to any other shares of perpetual strike preferred stock) currently over the deemed term of the shares as deemed distributions under U.S. tax rules similar to those governing original issue discount for debt instruments. In that event, the IRS or a withholding agent may treat any such discount as resulting in deemed taxable distributions with respect to the all shares of perpetual strike preferred stock, including those not issued at a discount (or issued at a lesser discount).

Because the IRS or other parties (such as withholding agents) may not be able to distinguish the shares of perpetual strike preferred stock offered or resold from time to time, a holder of perpetual strike preferred stock might be subject to adverse tax consequences or might be required to demonstrate to the IRS (or such other parties) that the holder purchased the perpetual strike preferred stock in a specific offering to which those adverse tax consequences did not apply. Moreover, any adverse tax consequences as described above in connection with the issuance of any Offered Shares or Additional Shares may adversely affect the trading price of the perpetual strike preferred stock. See “Material United States Federal Income Tax Considerations” for further discussion.

**U.S. Holders*****Deemed Distributions on the Offered Shares***

Under Section 305 of the Code, U.S. holders may be treated as receiving a deemed dividend on the Offered Shares upon an increase in the liquidation preference of the Offered Shares. The matter is not entirely clear, and if our board of directors does not declare a distribution on the Offered Shares in respect of any dividend period before the related dividend payment date, the deferred dividend may be treated as an increase in the liquidation preference of the Offered Shares. Furthermore, if the Offered Shares is issued at a discount to its liquidation preference, it may be subject to rules that require the accrual of such discount currently over deemed term of the Offered Shares as deemed distributions under U.S. tax rules similar to those governing original issue discount for debt instruments. In addition, the liquidation preference of the Perpetual Strike Preferred Stock is subject to adjustment in the manner described in the certificate of designations, which adjustment may give rise to a deemed distribution to holders of the Offered Shares. Although the matter is not entirely clear, we believe any such adjustment of liquidation preference in the manner described in the certificate of designations or any such a deferred dividend or discount should not be treated as giving rise to a deemed distribution on the Offered Shares, but in light of this uncertainty, the IRS or an applicable withholding agent could take a contrary position.

In each case of the foregoing, if the IRS or an applicable withholding agent takes a contrary position, you may be required to include a deemed dividend in income currently with respect to the Offered Shares even though you have not received a cash payment. Further, because deemed distributions received by a U.S. holder would not give rise to any cash from which any applicable withholding could be satisfied, if we (or an applicable withholding agent) pay backup withholding on behalf of a U.S. holder (because the U.S. holder failed to establish an exemption from backup withholding), we may, at our option, set off any such payment against, or an applicable withholding agent may withhold such taxes from, payments of cash or shares of common stock payable to the U.S. holder, or require alternative arrangements (e.g., deposit for taxes prior to delivery of conversion consideration).

**Non-U.S. Holders*****Deemed Distributions on the Offered Shares***

As described above under “U.S. Holders—Deemed Distributions on the Offered Shares,” upon an adjustment to the liquidation preference of the Offered Shares, or if our board of directors does not declare a distribution on the Offered Shares in respect of any dividend period before the related dividend payment date or the Offered Shares were issued at a discount, the holder may be treated as receiving a deemed distribution. Furthermore, as described above under “U.S. Holders—Adjustment of Conversion Rate,” adjustments in the conversion rate (or failures to adjust the conversion rate) of Perpetual Strike Preferred Stock that result in an increase in the proportionate interest of a non-U.S. holder in our assets or earnings and profits could result in deemed distributions to the non-U.S. holder that are taxed as described under “—Distributions.” If we (or an applicable withholding agent) pay withholding on behalf of a non-U.S. holder (because such non-U.S. holder failed to establish an exemption from dividend withholding), we (or an applicable withholding agent) may set off such payments against, or withhold such taxes from, shares of common stock payable to such holder or current or subsequent payments of cash, or require alternative arrangements (e.g., deposit for taxes prior to delivery of conversion consideration).

**Multiple Issuances of Perpetual Strike Preferred Stock – Effect of Fungible Trading*****Extraordinary Dividends***

If any shares of Perpetual Strike Preferred Stock are issued at a price that exceeds their liquidation preference, such shares of Perpetual Strike Preferred Stock would constitute “disqualified preferred stock” for purposes of the extraordinary dividend rules. The liquidation preference of the Perpetual Strike Preferred Stock is subject to adjustment in the manner described in the certificate of designations, which adjustment may be taken into account for purposes of disqualified preferred stock determination. Even if your Offered Shares is not issued at such a price, due to fungible trading of the Perpetual Strike Preferred Stock, your Offered Shares may be considered disqualified.

preferred stock unless you can clearly demonstrate that you purchased the Offered Shares in an offering other than one in which shares of Perpetual Strike Preferred Stock are issued at a price that exceeds their liquidation preference. If the Offered Shares held by a corporate U.S. holder were considered disqualified preferred stock (including because such shares are indistinguishable from other shares of Perpetual Strike Preferred Stock that are disqualified preferred stock) for any dividend received, the holder generally will be required to reduce its tax basis (but not below zero) in the Offered Shares with respect to which the dividend is received by the non-taxed portion of the dividend. Please also review the discussion above under “U.S. Holders—Distributions” for a discussion of extraordinary dividends.

### **Fast-Pay Stock Regulations**

Under Treasury Regulations promulgated under Section 7701(l) of the Code (the “Fast-Pay Stock Regulations”), if stock of a corporation is structured such that dividends paid with respect to the stock are economically (in whole or in part) a return of the stockholder’s investment (rather than a return on the stockholder’s investment), then the stock is characterized as “fast-pay stock” and is subject to adverse tax reporting requirements and potentially penalties, as described below. In addition, under the Fast-Pay Stock Regulations, unless clearly demonstrated otherwise, stock is presumed to be fast-pay stock if it is structured to have a dividend that is reasonably expected to decline (as opposed to a dividend rate that is reasonably expected to fluctuate or remain constant) (for such purpose, the dividend rate may be viewed as reasonably expected to decline if we are reasonably expected to stop paying regular dividends on the Perpetual Strike Preferred Stock) or is issued for an amount that exceeds (by more than a de minimis amount, as determined under applicable Treasury Regulations) the amount at which the stockholder can be compelled to dispose of the stock. It is not clear what amount would constitute “de minimis” in the case of stock with a perpetual term.

The determination of whether stock is fast-pay stock is based on all the facts and circumstances. To determine if it is fast-pay stock, stock is examined when issued, and, for stock that is not fast-pay stock when issued, when there is a significant modification in the terms of the stock or the related agreements or a significant change in the relevant facts and circumstances. The relevant tax regulations do not indicate the types of significant changes in facts and circumstances that are intended to give rise to such a determination.

We do not intend to issue any shares of Perpetual Strike Preferred Stock that would be treated as fast-pay stock, and we do not believe that we structured any Offered Shares, or will structure any Additional Shares, such that dividends paid by us with respect to the Perpetual Strike Preferred Stock will be economically a return of a stockholder’s investment. Moreover, we have obtained, and we intend to obtain in the future, advice of counsel in connection with offerings of Perpetual Strike Preferred Stock for the purpose of analyzing the consequences of issuing such shares, including in light of any legal developments regarding the definition of fast-pay stock.

It is possible, however, that Offered Shares or Additional Shares may be issued at a premium above their liquidation preference. As the liquidation preference of the Perpetual Strike Preferred Stock is subject to adjustment in the manner described in the certificate of designations, and based on the expected overall circumstances of an offering of the Offered Shares or Additional Shares, it is generally not expected that any Offered Shares or Additional Shares would be issued at such a level of premium above their liquidation preference at the time of sale of the Offered Shares or Additional Shares so as to implicate the fast-pay stock rules. Nonetheless, there may be increased risk that the IRS could assert that such Offered Shares or Additional Shares constitutes fast-pay stock.

Transactions involving fast-pay stock arrangements are treated as “listed transactions” for U.S. federal income tax purposes. Issuers and holders of any shares of fast-pay stock would be required to report their participation in the transaction on IRS Form 8886 on an annual basis with their U.S. federal income tax returns and would also be required to mail a copy of that form to the IRS Office of Tax Shelter Analysis. Failure to comply with those disclosure requirements could result in the assessment by the IRS of interest, additions to tax and onerous penalties. In addition, an accuracy-related penalty applies under the Code to any reportable transaction understatement attributable to a listed transaction if a significant purpose of the transaction is the avoidance or evasion of U.S. federal income tax. Furthermore, certain material advisors would also be required to file a disclosure statement with the IRS. If we determine that we are required to file an IRS Form 8886 (including a protective filing) in connection with the potential issuance of fast-pay stock with respect to any Perpetual Strike Preferred Stock, we intend to provide public notice to the applicable holders of the Perpetual Strike Preferred Stock, which notice may be by a press release, by publication on our investor relations website, or by filing a current report on Form 8-K with the Securities and Exchange Commission.

Notwithstanding our intent not to issue Perpetual Strike Preferred Stock that would be fast-pay stock, the rules regarding the definition of fast-pay stock are unclear in certain respects and, therefore, the IRS could disagree with our determination and treat Offered Shares or Additional Shares as fast-pay stock. In addition, as discussed above under “—Multiple Issuances of Perpetual Strike Preferred Stock—Effect of Fungible Trading,” the treatment of any shares of Perpetual Strike Preferred Stock as fast-pay stock could affect other shares of Perpetual Strike Preferred Stock if all such shares are indistinguishable with each other because they have the same CUSIP or other identifying number. Accordingly, even if your Offered Shares are not fast-pay stock, if the IRS treated any shares of Perpetual Strike Preferred Stock as fast-pay stock, you might be required to demonstrate to the IRS that you purchased your Offered Shares in a different issuance in order to avoid fast-pay stock treatment.

Furthermore, treatment of any shares of Perpetual Strike Preferred Stock as fast-pay stock could adversely affect the trading price of all shares of Perpetual Strike Preferred Stock. Accordingly, holders are strongly urged to consult their tax advisors regarding the Fast-Pay Stock Regulations and their potential consequences to an investment in the Offered Shares.